



Semi-presidentialism as a form of government: Lessons for Tunisia

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I Introduction

1. This paper is a focused comparative analysis of the semi-presidential form of government, tailored to meet the concerns facing the constitutional design process in Tunisia. It is offered largely as a response to the helpful contribution of Professor Mohamed Chafik Sarsar, entitled 'Constitutional Reform in Tunisia and Powers of Parliament'. Our thanks go to Professor Sarsar for a thoughtful summary of Tunisia's constitutional and political history, and for his clear and precise identification of issues central to the constitutional reform process in Tunisia.
2. The paper divides into three sections. In the remainder of this introduction in Part I, we note three broad objectives of constitutional reform that Professor Sarsar has highlighted for Tunisia. The first objective is the need for a truly representative parliament that is an effective site of political power, especially legislative power, and more than merely a rubber-stamp of the executive. The second is the need for mechanisms through which parliament can act as a check on executive power and maintain oversight of the executive's activities. Both of these first two objectives are driven by a desire to overcome Tunisia's history of weak parliaments, and inversely powerful executives. The third objective is to guard against a pendulum-swing to an excessively powerful parliament, by establishing oversight of parliament itself and ensuring it does not abuse the powers it does hold.
3. The bulk of the contribution, in Part II, takes the form of a comparative study of the constitutional architecture of a range of existing and former semi-presidential regimes. The analysis indicates that semi-presidential regimes can vary greatly as to the core constitutional and institutional arrangements by which government proceeds, and that there is wide scope for customization and variation within the category of semi-presidential government. We describe how the allocation and distribution of political powers among the branches of government in a semi-presidential system – that is, the president, the government and the legislature – affects the relationships between the branches of government, and structures and defines the limits of power and influence that each branch has over the others.
4. Moreover, our analysis indicates that many of the concerns that Professor Sarsar expresses, about both weak parliaments and overzealous parliaments, can be effectively addressed through careful attention to the constitutional design of a semi-presidential system.
5. Part III offers a brief account of the experience of a handful of semi-presidential regimes. These necessarily brief snapshots of a cross-section of semi-presidential systems, in France, Russia,

Weimar Republic, Ukraine and Georgia, point to some of the more significant advantages, disadvantages, successes and failures of the semi-presidential form of government.

1. Flaws of the previous constitutional structure

6. Tunisia's constitutional history makes it plain that the president has enjoyed a great deal of power since independence in 1957. Professor Sarsar's account demonstrates that the powers of the Tunisian president have included the following:
 - Legislative initiative: The president could draft bills and submit them to parliament for consideration. Moreover, the president's bills had priority consideration.
 - Budget: The president formulated the budget, and submitted it to the government with no need for parliamentary approval.
 - Appointments: The president monopolized the power of appointment to important civil and political offices.
 - Wide-ranging decree power: In addition, the constitutionality of laws, including presidential decrees, could not be questioned.
7. After 1969, the position of prime minister was introduced into the constitutional structure, making Tunisia a semi-presidential regime. Nevertheless, the parliament remained subordinate to the president. A number of changes since 1969 served to ensure that parliament remained subordinate to presidential power:
8. First, the scope of legislative jurisdiction was reduced to a list of enumerated competencies, with executive legislative jurisdiction extended to residual matters.
9. Second, although the members of parliament had the right of legislative initiative, the threat of party discipline meant that very little draft legislation that was not approved by the ruling power was ever introduced. Control over the members of parliament was facilitated and augmented by the electoral dominance of a single party – the Socialist Destourian Party, later renamed the Democratic Constitutional Rally. Provisions in the electoral law ensured that opposition parties could not achieve a significant number of seats in the legislature, and would not challenge the dominance of the ruling party in the legislature.
10. Third, a second chamber of parliament was introduced in order to allow persons loyal to the ruling power to serve in parliament.
11. The power of the president, coupled with the subordination of the parliament, has had three primary outcomes:
 - (i) The power of the president specifically, and the executive more generally, was unchecked. Over and above the fact that the president was constitutionally entitled to exercise great political power, neither the parliament nor the prime minister exercised an effective restraint on the power of the president.

The Tunisian case is a poor example of a separation of powers in the tradition of Montesquieu: even though there was a separate legislature, executive and president, the majority of political power was held by the president alone, and the other branches had no means to restrict the exercise of this power.

- (ii) Parliament was not in control of the legislative function. The scope of legislative jurisdiction was restricted to begin with, while the electoral dominance of a single party and the discipline it exerted in parliament ensured that no legislation that did not meet the approval of the ruling party was ever introduced, let alone passed into law.

The restrictions on parliament allowed a corresponding expansion of the legislative power of the executive.

- (iii) Finally, the legislature was not a representative body, in the sense that a restrictive electoral law did not allow it to reflect the true choices of the electorate, or to follow a legislative programme that reflected the true desires of the electorate. Instead, the legislature became a 'supporting council' of the president.

2. Objectives of constitutional reform

12. Constitutional reform in Tunisia is driven by a desire to overcome the history of unrestrained presidential power. The route to doing so takes three paths. The first is to restore legislative power to parliament, and ensure that parliament is the engine of legislative action. Second, and relatedly, the parliament must function as a truly representative organ that accurately reflects the electoral choices of the people. Third, and most important, the separation of powers must ensure that there is a balance of power in the political system and that each branch of government is able to act as an effective check on the power of the other sites of power. In other words, parliament must be able to exercise oversight of the president and the government; but must at the same time be subject to some form of oversight from the government and/or the president. Similarly, the president and the government must be able to exercise oversight of each other, without either institution dominating the other.
13. The rest of this paper explores the extent to which the distribution of powers and different constitutional arrangements, within the model of semi-presidential government, can accommodate the imperatives of constitutional reform in Tunisia and achieve the objectives of that reform. The methodology adopted in doing so is a comparative study of semi-presidential systems from around the world. Some of the cases we select are historical while other cases are constitutional systems currently in existence. The paper focuses on a range of specific powers and competencies, and investigates how they are allocated and distributed between the president, the government and/or prime minister, and the legislature. We examine also the extent to which the branches of government are able to exercise oversight of the exercise of the specific powers.
14. The analysis offers comment on the effects and results of the various constitutional design options. The paper thus offers an account of how a semi-presidential system might best overcome the flaws that have plagued Tunisia's constitutional history, and achieve the objectives that Professor Sarsar has outlined for Tunisia's current constitutional reform.

Draft Constitution of the Republic of Tunisia

Throughout this piece, in text boxes like this, we reproduce relevant provisions from the draft Constitution of the Republic of Tunisia of August 2012. The text boxes appear at the end of sections, reproducing draft constitutional provisions aimed at regulating the matters discussed in the section above.

The draft constitution includes different options for many of these questions. We follow the text of the draft constitution in referring to the competing options as ‘First opinion’, ‘Second opinion’, and ‘Other opinions’.

II Semi-presidentialism

15. The two dominant forms of government in the tradition of liberal democracy revolve around parliaments (e.g. the United Kingdom) and presidents (e.g. the United States). But the twentieth century has seen the rise of semi-presidentialism, a third form of constitutional democratic government, which blends the core institutional arrangements of *both* presidential and parliamentary democracies. As the Third Wave of democratization and constitutional reform swept over the world with the collapse of authoritarian regimes in Africa and Latin America and the collapse of the Soviet Union, semi-presidentialism spread. By the late 1990s, semi-presidential systems accounted for 22 per cent of the world’s democracies, and by 2007 this figure had risen to 33 per cent.¹ A compelling explanation for the turn to semi-presidentialism in young democracies lies in a reaction against the risks posed by ‘pure’ forms of both presidentialism and parliamentarism. Presidential government is seen as encouraging the consolidation of power by populist leaders, thereby threatening the democratic process, and as too rigid to allow for the accommodation of diverse political interests or for effective dispute resolution. Semi-presidentialism offsets this danger by retaining parliaments with real control over the government.² On the other hand, in parliamentarism, governments are more beholden to the political parties in the legislature than to the electorate, because of the lack of direct election of the prime minister and the need for a government to enjoy the confidence of the legislature. In semi-presidentialism, a president serves as a direct agent of the electorate who can act as a check on political parties.³

¹ Elgie, *Semi-Presidentialism in Europe* (OUP, Oxford 1999); and Elgie, ‘What is semi-presidentialism and where is it found?’ in Elgie (ed) *Semi-Presidentialism outside Europe* (Routledge, London and New York 2007), 1. As at October 2012, the list of countries with institutionally semi-presidential forms of government includes the following: Algeria, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Central African Republic, Congo-Brazzaville, Comoros, Croatia, Czech Republic, Democratic Republic of Congo, Finland, France, Gabon, Georgia, Haiti, Iceland, Ireland, Kazakhstan, Kyrgyzstan, Lithuania, Macedonia, Madagascar, Mali, Mauritania, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Niger, Peru, Poland, Portugal, Romania, Russia, Rwanda, São Tomé e Príncipe, Senegal, Serbia, Slovakia, Slovenia, South Vietnam, Sri Lanka, Taiwan, Tanzania, Timor-Leste, Togo, Turkey, Ukraine, Yemen (Robert Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (OUP, Oxford 2011), 24, see also Professor Elgie’s semi-presidentialism blog at www.semipresidentialism.com/?cat=125). Both Egypt’s now-defunct constitution, as amended in 2007, and Yemen’s 1994 constitution can be described as institutionally semi-presidential, in spite of the experience of political power under those regimes (Elgie, id). Kenya and Zimbabwe operate semi-presidential systems adopted as the result of political negotiations responding to political and electoral violence. Syria, too, has taken a similar approach in recent months. These semi-presidential arrangements are not set out in the constitution. In addition, a handful of countries have at some point in their political history been governed by semi-presidential systems.

² Juan Linz, ‘The Perils of Presidentialism’ (1990) 1(1) *Journal of Democracy* 51; Linz, ‘The Virtues of Parliamentarism’ (1990) 1(4) *Journal of Democracy* 84; Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* 2 ed (Macmillan, London 1997).

³ Max Weber, ‘Parliament and Government in a Reconstructed Germany’ in *Economy and Society: An Outline of Interpretive Sociology* (R Guenther and C Wittich (eds), California University Press, California 1978[1917]). Another explanation lies in path dependency, arguing that the difficulty of breaking completely with a constitutional history

1. An institutional definition of semi-presidentialism

16. The institutional features of semi-presidentialism are best understood by comparison to presidential and parliamentary systems. Presidential and parliamentary systems, in turn, are structural opposites in respect of the formation and termination of governments.⁴

1.1 Parliamentary systems

17. In a parliamentary system, executive power flows from the legislature. After democratic elections, the party that commands a majority in parliament selects a prime minister who serves as head of government, and chooses a cabinet from among the members of the legislature and forms a government. Where there is no clear majority party in the legislature, the task of government-formation occurs through bargaining among the political parties represented in the legislature. The party or coalition that commands the 'confidence' of the legislature forms the government. The prime minister acts as head of government, and is distinct from the head of state. The prime minister and the cabinet hold office only as long as they command the confidence of a majority of the legislature. Where the government loses the confidence of the legislature, this may trigger the dissolution of the legislature and fresh elections, or may lead the head of state to call upon other political parties to attempt to form a government. The prime minister's term comes to a natural end when the legislature's term expires. There is 'a fusion of powers'⁵ between the executive and the legislative because the political executive sits in, and directs the work of, the legislature.⁶
18. Parliamentary systems vary in many respects, *inter alia* the electoral system for Parliamentary elections, the mechanism for the appointment of the head of state, the rules governing government formation and dismissal (e.g. affirmative votes to appoint a cabinet, constructive votes of non-confidence), legislative dissolution, and for determining the allocation of cabinet seats across parties. But all parliamentary systems share the following core characteristics:
1. Executive authority resides in a prime minister and his or her cabinet, which is conferred by a democratically elected legislature;
 2. The prime minister acts as the head of government;
 3. The prime minister and cabinet exercise executive authority only with the confidence of the legislature, and either or both can be dismissed at any time by a majority vote of 'no confidence'.

1.2 Presidential systems

of presidential leadership has led young democracies to choose semi-presidentialism rather than parliamentarism. See Eugene Mazo, 'Explaining Semi-Presidentialism in Post-Communist Europe: Russia, Ukraine and Moldova in Comparative Perspective', International Research and Exchanges Board (IREX) Research Brief, May 2008.

⁴ Cindy Skach, 'The "newest" separation of powers: Semipresidentialism' (2007) 5 *ICON* 93, 95; Matthew Soberg Shugart, 'Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns' (2005) 3 *French Politics* 323, 325.

⁵ Skach (n **Error! Bookmark not defined.**), 95.

⁶ Douglas Verney, 'The Analysis of Political Systems' in Arend Lijphart (ed) *Parliamentary v Presidential Government* (OUP, Oxford 1992); Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* (Yale University Press, New Haven 1999).

19. In a presidential system, the legislature and the president are elected in popular elections on separate ballots. The president fuses the roles of head of state and head of government, and appoints the cabinet. The president and the cabinet do not hold seats in the legislature, and do not depend on the confidence of the legislature for their appointment or survival. Likewise, the president's exercise of executive power does not depend on the confidence of the legislature, and a legislative majority does not have the power to remove the president from office before the expiry of his or her electoral term. Although the president is the head of state, s/he does not hold the power to dissolve the legislature before the end of its electoral term. However, the president's assent is required for legislation to become law.
20. Presidential systems vary in important details, e.g. the electoral system for legislative and Presidential elections, the precise allocation of powers between the executive and the legislature, whether and under what circumstances the President has law-making or decree powers, and the nature of a President's veto. But the common defining characteristics of presidentialism are as follows:
 1. Executive authority resides in a president who is popularly elected;
 2. The president selects and directs the cabinet, acting as head of government and head of state;
 3. The terms of the president and the legislature are fixed and independent of each other. Neither requires the confidence of the other to continue in office.

1.3 Semi-presidential or 'mixed' systems

21. In both presidential and parliamentary systems, there is a single site of executive power (the president or the prime minister). By contrast, semi-presidential systems have both a president and a prime minister, who share executive power in a 'dyarchy' with the elected president as head of state and the prime minister as head of government. Moreover, while in presidential and parliamentary systems the government is subordinated to only one elected agent (the parliament or the president), in semi-presidential systems the government is subordinated to two agents of the electorate, the president and the legislature, which share joint authority over the government.
22. As discussed in the next section, there is considerable variation among semi-presidential systems. But the defining characteristics of semi-presidential government are as follows:⁷
 1. The president is head of state, and is elected to a fixed term by popular vote. The president is independent of parliament and does not require the confidence of parliament to remain in office.
 2. The president holds constitutionally defined powers, which include some degree of executive authority, ensuring that the president and the prime minister share executive authority.
 3. The prime minister is head of government and leads the cabinet. The prime minister and the cabinet are subject to parliamentary confidence, and hold office only as long as they

⁷ For variations of this catalogue and the definitions of the concept of semi-presidentialism on which this catalogue is based, see Maurice Duverger, 'A New Political System: Semi-Presidential Government' (1980) 8 *European Journal of Political Research* 165, 166; Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (Macmillan, Basingstoke 1994), 132; Robert Elgie, 'The Politics of Semi-Presidentialism' in Elgie (ed) *Semi-Presidentialism in Europe* (OUP, Oxford 1999), 13; Robert Elgie and Sophia Moestrup, *Semi-Presidentialism Outside Europe: A Comparative Study* (Routledge, London and New York 2007).

retain the confidence of parliament. There is no definitional requirement that the prime minister and the cabinet arise from or remain members of the legislature.

Draft Constitution of the Republic of Tunisia

Article 45: President of the Republic

First opinion:

The election of the President of the Republic shall, in one round, be by a two-third majority of the members of the Chamber of Deputies.

Second opinion:

The President of the Republic shall, **by the people directly and for a five-year period** renewable only once during the last sixty-day period of the term of presidency thereof, be elected by means of general, free, direct and secret elections.

Article 66: Government

First and Second opinion:

The government shall be constituted comprising a Prime Minister, ministers and state clerks.

Article 71: Censure

First opinion:

One-third of the members of the Chamber of Deputies may bring a motion of censure against the government. The motion shall be voted on by the majority of the members of the Chamber and only after the elapse of no less than a twenty-day period as of the date of submission thereof, after hearing the government and having the majority of the members of the Chamber come to an agreement on the replacing government which shall receive a vote of confidence during the same voting process.

Second opinion:

Votes may be taken on a motion of censure brought against the government or against one of the ministers after at least one-third of the members of the Chamber of Deputies make a justified request to the Chair of the Chamber. The voting process shall not take place except after the elapse of a fifteen-day period as of the date the request has been presented to the Chairmanship of the Chamber.

Withdrawal of the vote of confidence given to the government shall be conditional upon the approval of an absolute majority of the members of the Chamber of Deputies and upon the presentation of a candidate alternative to the Prime Minister and who shall receive a vote of confidence during the same voting process.

In the event the specified majority is not attained, the motion of censure may not be reintroduced against the government except after the elapse of a six-month period.

The Chamber of Deputies shall not bring more than two motions of censure against the government during the same term of mandate.

The Chamber of Deputies may withdraw the vote of confidence given to any of the ministers after at least one-third of the members of the Chamber of Deputies make a justified request to the Chair of the Chamber. Withdrawal of the vote of confidence shall be by an absolute majority of votes.

Other opinions:

Presenting an alternative candidate to the Prime Minister shall not be necessary for the motion of censure to be accepted.

2. Variations of semi-presidentialism: the relationship between legislature and executive

23. Semi-presidential systems vary on how they structure the relationship between the legislative and the executive branches on a number of key questions: government formation (2.1), government dismissal (2.2), presidential power to dissolve the legislature and hold new elections (2.3), the legislative agenda and process (budget, chairing cabinet meetings, presidential veto) (2.4), executive lawmaking (including legislative delegation, decree powers, states of emergency) (2.5), appointment powers (2.6), and foreign policy (including declarations of war and peace) (2.7).
24. There are two major sub-groups of semi-presidential systems, distinguished by (a) whether the prime minister and the government are accountable to both the president and the legislature or only the legislature, and (b) whether both the president and the legislature or only the legislature are empowered to dismiss the prime minister and/or the government. In *president-parliamentary* regimes, the government is responsible to and dismissible by both the legislature and the president, while in *premier-presidential* systems the government is responsible to and dismissible by the legislature alone. In other words, in president-parliamentary regimes the president is more politically powerful than in premier-presidential systems.⁸ We explore this distinction in further detail below, and use it as the basis to organize our description of the specific design features of semi-presidential constitutions.
25. In this chapter, we focus on a selection of 37 semi-presidential regimes, which includes both historical examples and regimes in existence as of October 2012, and is divided into president-parliamentary and premier-presidential cases. The selection of cases is based on three criteria: the historical and contemporary significance of the regimes; the importance of including a diversity of political and constitutional experiences, including post-authoritarian regimes, post-colonial regimes and consolidated democracies; and the need for geographical diversity, with Western Europe and Scandinavia, Eastern and Central Europe, Asia, Africa and South America represented in the sample.
26. Eighteen of the 37 regimes are president-parliamentary:⁹
 - Armenia (1995-2005)
 - Austria
 - Belarus
 - Burkina Faso
 - Central African Republic
 - Croatia (1991-2000)
 - Weimar Republic
 - Iceland
 - Madagascar
 - Mozambique
 - Niger
 - Peru
 - Portugal (1976-1982)
 - Russia
 - Senegal
 - Sri Lanka
 - Taiwan
 - Ukraine (1996-2006)

⁸ The terms ‘president-parliamentary’ and ‘premier-presidential’ are common in the literature, but were first used in the influential book by Matthew Soberg Shugart and John M Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (CUP, Cambridge 1992), 23-27.

⁹ Examples of president-parliamentary regimes not included in the selection are Azerbaijan, Gabon, Guinea-Bissau, Kazakhstan, Kyrgyzstan, and Rwanda.

27. The remaining 19 of 37 regimes take a premier-presidential form:¹⁰

- Bulgaria
- Cape Verde
- Croatia
- Finland
- France
- Georgia
- Ireland
- Lithuania
- Macedonia
- Mali
- Moldova
- Mongolia
- Namibia
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Ukraine

28. In Part II, we analyze the distribution of powers within each sub-type of semi-presidentialism, and compare the effects of that distribution on the relationship between the branches of government. As a general matter, the president tends to hold greater power under president-parliamentary constitutions than under premier-presidential constitutions.

2.1 Defining two sub-types of semi-presidentialism

29. Before providing a detailed examination and analysis of powers, we describe in more detail the primary differences between the two sub-types of semi-presidential constitution.

2.1.1 Premier-presidentialism

¹⁰ Examples of premier-presidential regimes not included in the sample are Algeria, Cameroon, Chad, Haiti, Montenegro, São Tomé e Príncipe, Timor-Leste, Togo, Turkey.

30. Under the premier-presidential sub-type of semi-presidential government, only the legislature has the power to dismiss the government, no matter how the government is formed. The government is ultimately accountable only to the legislature. The president lacks the power to remove the government, and cannot use the threat of dismissal to ensure a government sympathetic to his or her policies – at least not without also dissolving the legislature, assuming the president has such a power.¹¹ Moreover, a government sympathetic to the president cannot act too aggressively in pursuing his or her policy program if it is to avoid a vote of no confidence.
31. In any particular case, the dynamic between president, government and legislature depends on the structure of party representation in the legislature, and in turn on the electoral system itself. Where the president and the majority in the legislature share political views and policy commitments, which may occur when the president belongs to the same party that controls the legislature, the cabinet may in practice become subordinated to the president.¹²

2.1.2 President-parliamentarism

32. Under president-parliamentarism, the president and the legislature enjoy concurrent powers to dismiss the government, unlike in premier-presidentialism (where only the legislature possesses this power). This changes the dynamics of political accountability. Whereas under premier-presidentialism, the government is accountable to only one representative of the electorate – the legislature – under president-parliamentarism, the government is dually accountable to both the president and the legislature. The government must attempt to retain both the confidence of the legislature and the pleasure of the president.
33. For example, in Namibia, the president does not have the power to dismiss the government, although the constitution unambiguously makes the government accountable to the president. This leads many commentators in the field to classify Namibia as a president-parliamentary regime.¹³ We disagree with this characterization of Namibia, and instead group it with premier-presidential countries. This is consistent with the categorization of Ukraine and Georgia, whose constitutions similarly provide that the government is responsible to the president without empowering the president to dismiss the government. Indeed, this power, along with a range of others, was removed from the president in revisions to the Ukrainian constitution in 2006, and the Georgian constitution in 2010. In light of these constitutional revisions, and the existing provisions of the Namibian constitution, all three countries are more accurately described as premier-presidential.

2.1.3 Premier-presidentialism vs. president-parliamentarism

34. The comparative literature on the two sub-types of semi-presidentialism has been largely critical of president-parliamentarism in relation to premier-presidentialism, on several grounds.
35. First, it has been argued that the ambiguity and uncertainty that flows from a dually accountable government undermines democratic legitimacy.¹⁴ One of the basic elements of democratic government – namely, the elected representatives' authority over the government itself – is undermined by this ambiguity. The basic complaint is that a dually accountable government leads

¹¹ See below, section 2.4.

¹² Shugart, 'Semi-Presidential Systems' (n **Error! Bookmark not defined.**), 333-34. See also below under section III.

¹³ See for example Shugart, id, and Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (n **Error! Bookmark not defined.**).

¹⁴ Shugart and Carey, *Presidents and Assemblies* (n **Error! Bookmark not defined.**), 30. 165.

to conflict over the appointment and dismissal of the government between the legislature and the president, an absence of clearly defined authority over the government, and ultimately to doubt over whether the cabinet serves the president or the legislature.

36. Second, it has been argued that president-parliamentarism is likely to induce 'prolonged conflict' between the president and the legislature.¹⁵ Under president-parliamentarism, where both the president and the legislature have the power to dismiss the prime minister and the government, 'neither the president nor the legislature has an incentive to negotiate over the formation of the government.'¹⁶ Under premier-presidentialism, by contrast,

'the president has an incentive to negotiate with the legislature over the formation of the government and the legislature is likely to have an interest in reciprocating. Both the president and the legislature have a stake in the government and the regime generally.'¹⁷

37. The results are twofold. First, the identity of the prime minister and the government is less predictable under president-parliamentarism as opposed to premier-presidentialism. The absence of an incentive to negotiate over the appointment of the prime minister means that there is rarely any indication, before the appointment is made, of who the prime minister will be. By the same token, neither the president's nor the legislature's preferred candidate is assured of appointment, precisely because both the president and the legislature can dismiss a prime minister they are unhappy with. By contrast, the outcome of government formation under premier-presidentialism is more predictable. Where only the legislature may dismiss the prime minister, the president has a greater incentive to select a prime minister that meets the approval of the legislature, with the result that the legislature's preferred candidate is often appointed. Empirical research confirms that the identity of the prime minister is more reliably predictable ahead of time in premier-presidential regimes than in president-parliamentary regimes.¹⁸
38. The second result is that premier-presidential regimes are more stable than president-parliamentary regimes. As one author puts it, under president-parliamentarism, where there is no incentive to negotiate over government formation, 'Political deals are likely to be fragile'.¹⁹ Greater political instability relative to premier-presidentialism is the result, and this is damaging to the performance of democracy. The greater relative stability of premier-presidentialism, on the other hand, is conducive to better democratic performance. Premier-presidential systems have generally been found to have greater governance potential, while president-parliamentary systems are prone to higher levels of intra-executive conflict, cabinet instability, and executive-legislative confrontation.²⁰
39. Third, in situations of intra-executive conflict and disequilibrium, it is very difficult for government to establish a coherent policy programme and govern effectively. This creates a temptation for an

¹⁵ Shugart and Carey, id, 121; Dan Reiter and Erik R Tillman, 'Public, Legislative, and Executive Constraints on the Democratic Initiation of Conflict' (2002) 64 *Journal of Politics* 810.

¹⁶ Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance*, 35.

¹⁷ Id.

¹⁸ Oleh Protsyk, 'Prime Ministers' Identity in Semi-Presidential Regimes: Constitutional Norms and Cabinet Formation Outcomes' (2005) 44 *European Journal of Political Research* 721, 742.

¹⁹ Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance*, 35.

²⁰ See Thomas Sedelius, *The Tug of War between Presidents and Prime Ministers: Semi-Presidentialism in Central and Eastern Europe* (Örebro Studies in Political Science, Örebro University 2006); Steven Roper, 'Are all Semi-Presidential Systems the Same? A Comparison of Premier-Presidential Regimes' (2002) 34 *Comparative Politics* 253; Edward Morgan Jones and Petra Schleiter, 'Government Change in a President-Parliamentary Regime: The Case of Russia 1994-2003' (2004) 20 *Post-Soviet Affairs* 132; Oleh Protsyk, 'Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine' (2003) 55 *Europe-Asia Studies* 1077.

extra-constitutional assumption of power by one of the elements of the governing system (typically the president), or an element external to it such as the military. The evidence partially supports this concern. One study contrasts president-parliamentary systems, which have given way to authoritarian regimes, with premier-presidentialism, which have never done so.²¹ Another study examined fifteen collapses of electoral democracy in 46 instances of semi-presidential rule, and concluded that eleven of those were president-parliamentary regimes (73 per cent), while only four were premier-presidential (27 per cent). Moreover, president-parliamentary systems were more likely to collapse (58 per cent) than premier-presidential systems (15 per cent). Similarly, empirical investigation of historical and existing semi-presidential regimes suggests that democratic performance is better under premier-presidentialism than president-parliamentarism.²²

Draft Constitution of the Republic of Tunisia

Article 67: Swearing and accountability

Agreed text:

The members of the government shall be sworn in before the President of the Republic.

The government shall be held accountable before the Chamber of Deputies.

2.2 Government formation

40. While the president and the legislature are both elected in a semi-presidential system, the government is not, and must be formed subsequent to the electoral process. Semi-presidential systems structure the interaction between the president and the legislature in forming the government in different ways. At either end of the spectrum, the president or the legislature acts unilaterally in selecting a government. Most semi-presidential systems lie between these two extremes, with various models of co-operation and consultation.

2.2.1 Presidential prerogative

41. Some semi-presidential systems empower the president to name a prime minister. The rest of the cabinet is then either selected by the president, or more commonly, appointed by the president upon recommendation of the prime minister without a requirement for legislative input or confirmation. While it is the president who appoints the prime minister, the government in a semi-presidential system can only retain power with the confidence of the legislature, which will be tested after the government takes office. In order to avoid a non-confidence vote, the president will need to take legislative preferences into account in discharging this function. This

²¹ David Samuels and Matthew Soberg Shugart, *Presidents, Parties, Prime Ministers: A Framework for Analysis* (CUP, Cambridge 2010), 260.

²² Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (n **Error! Bookmark not defined.**). The criteria by which Elgie measures democratic performance, in the first instance, and determines the collapse of electoral democracy in the second, are aggregations of the Freedom House classifications of countries as Free, Partly Free or Not Free, the Polity IV dataset which ranks nations on a 21-point scale between -10 (hereditary monarchy) and 10 (consolidated democracy), the Polyarchy dataset ranking the level of electoral competition, and the Alvarez, Cheibub, Limongi, Przeworski, and Svoboda datasets, both of which characterize countries as democracies or non-democracies.

calculus may be constitutionally entrenched. In Sri Lanka, for example, the president must select as prime minister the person who in his opinion is most likely to command the confidence of the legislature, while in Portugal and Cape Verde the president is required to take into account the electoral results and consult with the parties represented in the legislature.

42. This approach is followed in the president-parliamentary regimes of Austria, Central African Republic, Croatia (1991-2000), Weimar Republic, Niger, Peru and Senegal, and in the premier-presidential regimes of Cape Verde, France, Mali, Portugal and Slovakia. In these regimes, the other cabinet members are appointed on the prime minister's recommendation. In Iceland, Mozambique, Namibia and Sri Lanka (all president-parliamentary systems except Namibia) the president appoints the entire cabinet, without any formal requirement for the prime minister's recommendation.

2.2.2 Presidential appointment with the consent of the legislature

43. The president's power to appoint the prime minister and the cabinet sometimes requires formal legislative agreement or confirmation, which gives the legislature a veto over the president's choice of prime minister. The question is whether there is any practical difference between systems where the president has unfettered powers of government formation (but the cabinet requires legislative confidence) and situations where there are formal requirements of legislative investiture or confirmation. The difference is one of timing, with a formal requirement of legislative confirmation or investiture necessitating agreement before the government takes office, and institutionalizing a great 'transaction' between the president and the legislature.
44. There are two main variants of government formation in systems where the legislature must give approval of the president's appointment: legislative confirmation of the prime minister only (Belarus, Portugal (1976-1982), Russia, Taiwan, Lithuania, Ukraine (1996-2006) – mostly president-parliamentary systems); and legislative confirmation of the cabinet as a whole (Croatia (1991-2000), Croatia, Poland, Slovenia and Ukraine (2006-present) – all premier-presidential systems apart from Croatia (1991-2000), which later became a premier-presidential system). In Ukraine (2006-present), the president proposes the ministers of defence and foreign affairs to the legislature for approval, while the prime minister proposes the remaining ministers in the government to the legislature.

2.2.3 Non-discretionary presidential functions in government-formation

45. In some semi-presidential systems, the president exercises little or no discretion in the appointment of the government, and must nominate as prime minister a member or the leader of the party or coalition commanding a majority in the legislature. In effect, the prime minister is indirectly elected in the legislative election, even though the president formally appoints him or her. The following regimes follow this approach: Armenia (1995-2005), Burkina Faso, Madagascar, Bulgaria, Finland, Georgia, Ireland, Macedonia, Mongolia and Romania.
46. Of this group, the president appoints the rest of the government on the recommendation of the prime minister in Armenia, Burkina Faso, Madagascar and Finland (all president-parliamentary save for Finland), while in the remaining premier-presidential cases, the prime minister appoints the rest of the cabinet. In Mongolia and Romania, as well as Moldova, the entire government must be approved by the legislature before it takes office.

Draft Constitution of the Republic of Tunisia

Article 66

First opinion:

The government shall be constituted comprising a Prime Minister, ministers and state clerks.

The Prime Minister and the remaining members of government may be chosen from amongst the members of the Chamber of Deputies or otherwise.

The President of the Republic shall, after each legislative election, entrust the candidate of the electoral party or coalition having won the most number of seats in the Chamber of Deputies with the task of forming the government.

The Prime Minister entrusted with the task shall form the government and shall report the results to the President of the Republic by virtue of a file indicating the members of the government and a brief statement on the program thereof. The file shall be presented to the Chamber of Deputies. The President of the Republic shall refer the file to the Chair of the Chamber of Deputies immediately after the receipt thereof.

The Chair of the Chamber of Deputies shall invite the Chamber to a general session to give a vote of confidence to the government with an absolute majority of the members.

In the event the government fails to receive the vote of confidence, the President of the Republic, shall, upon consultation with groups represented within the Chamber, propose another person to form the government.

Second opinion:

The government shall be constituted comprising a Prime Minister, ministers and state clerks appointed by the President of the Republic upon the proposition of the Prime Minister and in conformity therewith on the sectors over which the President of the Republic has cognizance.

The President of the Republic shall entrust the candidate of the electoral party or coalition having won the most number of seats in the Chamber of Deputies with the task of forming the government within a one-month period extendable only once.

If the specified period of time elapses without the formation of the government or in the event of failure to receive the vote of trust of the Chamber of Deputies, the President of the Republic shall consult with the parties, coalitions and blocks within the Chamber with a view to entrusting the person most capable of forming a government within a period of no more than one month.

2.2.4 Membership of the government in the legislature

47. A question arises as to whether members of the government, if appointed from within the legislature, retain membership in that body. The answer to the question is important because it goes to the extent to which parliament may be able to hold cabinet politically accountable. The greatest accountability is possible when members of the government remain members of the

legislature, coupled with the practice of question period. Legislative oversight is minimized when members of the legislature may not be appointed to the government. There is a range of options between these two extremes.

48. In principle, there are six design alternatives: (a) members of government must be and remain members of the legislature upon appointment as members of government; (b) members of government must be members of the legislature at the time of appointment, but may not remain so upon joining the cabinet; (c) members of the government can come from within or outside the legislature, but cannot remain members of the legislature if appointed; (d) members of government must come from outside the legislature and cannot join the legislature; (e) members of the government can come from within or outside the legislature, and membership within the legislature is neither required nor prohibited by the constitution for cabinet members; (f) the constitution is silent on these questions, by implication leaving them to political practice and statute.
49. Of the 37 regimes surveyed, only three regimes follow option (a) (one president-parliamentary and two premier-presidential); seven adopt option (b) (three president-parliamentary and four premier-presidential); seven adopt option (c) (five president-parliamentary and two premier-presidential); one adopts option (d) (Macedonia, a premier-presidential regime); eight follow option (e) (three president-parliamentary and five premier-presidential); and 11 follow option (f) (six president-parliamentary and five premier-presidential). In very few of the cases examined here is there an explicit constitutional provision allowing placement into one these categories. In most cases, we must interpret the constitution to determine precisely the constitutional arrangement for cabinet selection.
50. Consider the following examples:

Option (a): In Sri Lanka, Ireland and Namibia, the constitution makes it clear that members of the government must be chosen from within the legislature, and moreover, remain in the legislature after appointment to the cabinet. In these cases the members of the government are obliged to attend parliament and lose their membership of the government if they cease to be a member of parliament. As in pure parliamentary systems, the prime minister serves as the leader of government business in parliament.

Option (b): In Burkina Faso, the president must appoint the prime minister from among the majority in the legislature, but 'the functions of a member of the Government are incompatible with the exercise of any parliamentary mandate'. This is a strong indication that the members of the government must be drawn from the legislature. In Bulgaria, Madagascar, Mali, France and Portugal (both between 1976-82 and presently), the constitution provides that members of the legislature appointed to the cabinet must resign their seats, and be replaced by their alternates. This could be read to suggest that the members of the government must be selected from within the legislature. In Slovakia, members of the legislature appointed to the government do not lose their seats in the legislature, but may not exercise their mandate. In effect, members of government become non-voting members of the legislature.

Option (c): In Belarus, Central African Republic, Mozambique and Senegal, the constitution prohibits simultaneous membership of the legislature and the cabinet; but the constitution is silent as to whether or not the members of the cabinet must initially be drawn from within the legislature. Presumably, they can be drawn from beyond the walls of the legislature, and must resign if they are drawn from within the legislature.

Option (d): The constitution of Macedonia provides that the prime minister and ministers 'cannot be representatives in the assembly', suggesting that the government must be

formed from outside the legislature (or at least that membership of the legislature must be surrendered upon appointment – option (c)).

Option (e): In Moldova and Niger, the constitution provides that members of the government have access to the sittings of the legislature, which strongly implies that they are not ordinary members of the legislature; but the constitution is not explicit on whether the government must be drawn from the legislature. In Iceland, members of the government are ‘entitled’ to a seat in the legislature, but have no duty to occupy a seat. They may vote in the legislature if they are members of the legislature. Whether the government must be drawn from the legislature initially is unclear. Similarly in Lithuania, members of the legislature may be appointed to the government – this is the only official function that is compatible with membership of the legislature – but need not resign on appointment. In Peru, members of cabinet ‘shall not hold any other public office, except legislative function’, but members of the cabinet shall not be elected to the legislature unless they have resigned at least six months prior to the election. This implies that in Peru members of the legislature may be appointed to the cabinet, and need not resign on such appointment. In Austria, Poland, Mongolia and Romania, members of the legislature may simultaneously serve as members of the government. In Cape Verde the members of the government may be present at sittings of the legislature.

Option (f): The constitution is silent on whether simultaneous membership of the legislature and the government is acceptable, as well as whether the prime minister and members of government must be selected from the legislature, in Armenia (1995-2005), Croatia (1991-present), Weimar Republic, Russia, Taiwan, Ukraine (1996-present), Finland, Georgia, and Slovenia.

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Article 68: External membership and activities

First opinion:

Membership of the government and of the Chamber of Deputies may be combined. The Prime Minister and the members of the government may not be employed in any other profession regardless of the nature thereof.

Second opinion:

Membership of the government and of the Chamber of Deputies may not be combined. Any member of the Chamber of Deputies who is a member of the government shall be compensated in accordance with the provisions of the Elections Law.

2.3 Questions and interpellation

51. Where the members of the government are at the same time members of parliament, as in pure parliamentary systems, questions can often be directly addressed to the government or specific members of the government during ordinary sittings of parliament. Moreover, most parliamentary systems dedicate a period of time for members of the legislature to pose questions to the prime minister or members of the government in parliament. This is often known as ‘question time’ or ‘prime minister’s question time’.

52. Since members of the government are not members of the legislature in all semi-presidential regimes, and are not required to attend sittings of the legislature in all semi-presidential regimes, the constitutional rules for the posing of questions to the prime minister and government become important. It matters a great deal in semi-presidential systems whether members of the legislature are constitutionally empowered to pose questions to the government, and whether the government or the prime minister is obliged to attend a 'question period' in the legislature.
53. In addition to questions, the mechanism of 'interpellation' is another mechanism of parliamentary oversight of the government. Interpellation refers to a procedure in which the legislature as a whole, either on the motion of an individual member or a threshold number of members, poses a question to the government followed by debate and a motion of confidence. Whether interpellation is allowed, and the rules for interpellation, is similarly important in semi-presidential systems.
54. A third mechanism for parliamentary oversight of the government's work is the commission of inquiry. In some cases, the legislature may establish a commission to investigate certain issues within the purview of the government's activity, and to present its findings to the legislature. The presentation of findings, as with interpellation, may give rise to debate in the legislature and a motion of confidence or censure in the government.
55. Whether a legislature is empowered to use any of these mechanisms in its supervision of the work of the government is an important facet of the relationship between the branches of government, and helps to define the balance of power between them. In the sample of cases analyzed here, only four constitutions are entirely silent on the issue. Two are president-parliamentary (Russia and Sri Lanka) while two are premier-presidential (Mali and Mongolia). In Sri Lanka, however, members of government remain members of the legislature, and are thus required to attend sittings of the legislature.
56. Of 18 president-parliamentary regimes, 14 empower members of the legislature to address questions to the government (Armenia, Austria, Belarus, Burkina Faso, Central African Republic, Croatia (1991-2000), Iceland, Madagascar, Mozambique, Niger, Peru, Portugal (1976-82), Senegal, Ukraine (1996-2006)). Of these, five set aside a dedicated question period (Belarus, Burkina Faso, Central African Republic, Madagascar, Peru). Seven regimes allow interpellation (Armenia, Austria, Central African Republic, Madagascar, Niger and Peru – Taiwan allows only interpellation and not individual questions). Six regimes allow parliamentary commissions of inquiry (Croatia (1991-2000), Madagascar, Mozambique, Niger and Senegal – Weimar Republic allowed only inquiry, and neither questions nor interpellation).
57. Of 19 premier-presidential regimes, 14 allow questions (Bulgaria, Cape Verde, Croatia, Finland, France, Georgia, Ireland, Lithuania, Macedonia, Moldova, Namibia, Poland, Portugal and Romania), with three establishing dedicated question time (France, Ireland, Portugal). Interpellation is allowed in 13 regimes (Bulgaria, Cape Verde, Croatia, Finland, France, Georgia, Lithuania, Macedonia, Moldova, Poland and Romania – Slovakia and Slovenia allow only interpellation). Only Ukraine specifically empowers the legislature to establish commissions of inquiry, but it does not specifically empower the legislature either to ask questions or to interpellate the government.

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Article 70: Role of members

First opinion:

Every member of the Chamber of Deputies shall have the right to pose oral and written questions to the government.

All members of the government shall have the right to be present during committee meetings and during the general session. Attendance shall be deemed obligatory upon a request submitted by the majority of the members of the Chamber of Deputies.

Second opinion:

In the event of a request submitted by the Chamber of Deputies, the members of the government shall be obliged to attend.

Every member of the Chamber of Deputies may pose oral and written questions to the government and/or may present briefings thereto.

A session shall be devoted periodically with a view to holding discussions between the Chamber of Deputies and the members of the government.

2.4 Government dismissal

58. The primary distinction between the two sub-types of semi-presidentialism is whether the president has the power to dismiss the government.
59. In all the countries we group as president-parliamentary, the president may dismiss the prime minister and the government as a whole at his discretion. In eight of these countries the president may dismiss individual ministers at his or her discretion, with no need for agreement or advice from the prime minister (Belarus, Burkina Faso, Weimar Republic, Iceland, Mozambique, Sri Lanka, Taiwan and Ukraine (1996-2006)). In nine regimes, however, the president may dismiss individual members of the government only on the advice of the prime minister (Armenia (1995-2005), Austria, Central African Republic, Croatia (1991-2000), Madagascar, Niger, Peru, Russia and Senegal). In Portugal (1976-1982), the president held no power to dismiss individual ministers.
60. In premier-presidential systems, the president may not dismiss the government as a whole. In France, Mali and Slovakia, however, the president may dismiss individual members of the government on the advice of the prime minister, and in Lithuania the president may dismiss the prime minister with the assent of the legislature, and may dismiss individual members of the government on the advice of the prime minister.

2.5 Presidential power to dissolve the legislature, triggering new elections

61. Many semi-presidential systems give the president the power to dissolve the legislature (as opposed to merely dismissing the government). As we illustrate below, presidents hold this power under both premier-presidential and president-parliamentary systems. The rationale for granting the president the power of legislative dissolution is that it allows the president to act as a check on the legislature and its parties. This rationale is especially compelling in premier-

presidential systems, where the president does not have full control over the government once it is appointed. The presidential power to dissolve the legislature corresponds to the legislature's power to remove a government through a vote of no confidence.²³ Just as the legislature's power to withdraw confidence from the government creates the incentive for the president to consider the legislature's preferences in selecting a government, the president's dissolution power should lead the legislature to consider the president's preferences when it exercises control over the government.

2.5.1 Presidential power to dissolve legislature in premier-presidential systems

62. Sixteen of 19 premier-presidential regimes confer a presidential power to dissolve the legislature (Bulgaria, Cape Verde, Croatia, France, Georgia, Lithuania, Mali, Moldova, Mongolia, Namibia, Poland, Portugal, Romania, Slovakia, Slovenia and Ukraine). The circumstances under which the president can dissolve the legislature vary. In 12 of these 16 cases the president's dissolution power is triggered by the legislature's passing of a vote of no confidence, or its non-exercise of powers such as the investiture of the government with a vote of confidence (Bulgaria, Cape Verde, Georgia, Lithuania, Moldova, Mongolia, Poland, Romania, Slovakia, Slovenia and Ukraine) or its failure to pass a budget (Croatia). The rationale for dissolution in these circumstances is to allow for fresh elections to break a legislative impasse that prevents a government from being formed or functioning effectively (e.g. by failing to pass a budget that has been tabled). By comparison, in the other systems, the president may dissolve the legislature without any evidence of an inability to form a stable government (France, Mali, Portugal). But to prevent its partisan abuse, in these cases the constitution imposes one or more of the following kinds of limitations: (a) a restriction on the frequency of presidential dissolution (France, Mali, Moldova and Romania, once per year; Niger once every two years); (b) a ban on dissolution during a state of emergency (Moldova, Portugal, Romania); (c) a prohibition on dissolution within six months of the expiry of the president's term, presumably to guard against a Presidential coup d'etat to evade a term limit or likely electoral loss (Moldova, Portugal, Romania). Finally, in Namibia, the dissolution of the legislature by the president triggers a new presidential election.
63. Finland, Ireland, and Macedonia confer no presidential discretion to dissolve the legislature. However, the legislature does not necessarily serve for a fixed term. Rather, in Finland and Ireland the initiative for dissolution prior to the completion of the legislature's maximum term rests with the government. Finally, there are intermediate cases. For example, in Ireland, the presumptive rule that the president summons and dissolves the lower house on the advice of the prime minister does not apply if the prime minister has lost the confidence of the house (article 13(2)). This gives the president a veto over the government's power to dissolve the legislature in that situation, which would presumably be exercised if another stable government can be formed. In Croatia (also listed above), the president may dissolve parliament if it has expressed a loss of confidence in the government, but only on the government's proposal (in contrast to cases where the loss of confidence alone is sufficient for the president to act, without the government's request). In Macedonia only the legislature itself may vote, by absolute majority, for dissolution.

²³ Shugart, 'Semi-Presidential Systems' (n **Error! Bookmark not defined.**), 335.

2.5.2 Presidential power to dissolve legislature in president-parliamentary systems

64. President-parliamentary systems usually include a presidential dissolution power, which fits with the logic of a powerful president. In these circumstances, the president retains influence over both the government (through the power of dismissal) and the legislature (through the power of dissolution).
65. All 18 president-parliamentary regimes confer on the president the power to dissolve the legislature. The somewhat exceptional case is Croatia (1991-2000), where the president's power to dissolve the legislature required a proposal from the government. Croatia has since become a premier-presidential regime, although this provision has remained unchanged. In Madagascar between 1992 and 2009, the president was not empowered to dissolve the legislature in the absence of a request from the government (as in Finland, Ireland and present-day Croatia). The 2010 Madagascar constitution changes the position, empowering the president to dissolve the National Assembly after consultation with the government and the leaders of the two chambers.
66. Of the presidential-parliamentary systems that establish a presidential power of dissolution, in many cases the power is triggered by legislative action or inaction, as in some premier-presidential systems. Examples of such triggers include situations in which the legislature rejects the government's program (Mozambique), passes a motion of no confidence in the government (Taiwan), censures or denies two cabinets (Peru), rejects the president's candidates for prime minister three times (Russia), or fails to meet within a specified time (Ukraine (1996-2006)). Dissolution is meant to allow for the election of a legislature that will yield a functioning government. However, there is the potential for this power to be abused by the president for partisan advantage in order to destabilize governments and render them subservient. Accordingly, a variety of restrictions are often placed on the discretionary exercise of the power, matching those found in premier-presidential systems, such as: limiting the frequency of its exercise to once per year (Burkina Faso, Central African Republic, Armenia (1995-2005)) or once every two years (Madagascar 2012); allowing dissolution only once for the same reason (Austria, Weimar Republic); or prohibiting the exercise of the power during the last six months of the president's term, during states of emergency or periods of martial law, or while impeachment proceedings are underway in the legislature (Belarus, Burkina Faso, Senegal). In a handful of countries, there are very few, if any restrictions on the use of the power (Iceland, Portugal (1976-82), Sri Lanka).

2.5.3 Assessment

67. The dissolution power is a significant one, affecting the transactional relationship between the legislature and president. Where the president has the option of dissolving the legislature, he or she acts as a check against the legislature and its parties. The logic of the dissolution power makes sense, one expert notes, 'in the context of a system in which the president is denied full control over the cabinet on account of the provision for a prime minister subject to parliamentary confidence. In other words, presidential power of dissolution provides a counterweight to the assembly's enhanced authority.'²⁴ This expert concludes:

'Specifically, then, if the president possesses dissolution power, it provides another instance by which one principal in a semi-presidential system may select an agent, but that agent must consider the preferences of a different institution empowered to terminate its authority. Under those semi-presidential systems that have a dissolution provision, the president may decide

²⁴ Shugart, 'Semi-Presidential Systems' (n **Error! Bookmark not defined.**), 332.

when the voters will choose new legislative agents. As a result, the assembly parties comprising the majority must consider the preferences of the (usually) broader constituency that empowered the president separately from the process by which voter preferences were aggregated through the assembly electoral system. Dissolution is thus parallel to the defining characteristic of semi-presidentialism by which the assembly may dismiss the head of the executive branch notwithstanding that it was the voter's other agent (the president) who initiated the appointment of the incumbent cabinet.²⁵

Draft Constitution of the Republic of Tunisia

Article 66

First opinion:

The President of the Republic may dissolve the Chamber of Deputies and call for new legislative elections to be held if the members of the Chamber fail to agree on a government within a period of three months as of the date of commencement of mandates or within a period of two months as of the date of resignation of the government.

Second opinion:

If a three-month period elapses from the date of the legislative elections and the members of the Chamber of Deputies fail to agree on the formation of the government, the President of the Republic may dissolve the Chamber and call for new legislative elections to be held.

Article 50

Second opinion:

The President of the Republic shall have the following terms of reference:

...

Dissolve the Chamber of Deputies as per the conditions stipulated under the Constitution.

2.6 Legislative process and legislative policy

68. In semi-presidential regimes, there is great institutional variation in the extent to which presidents are empowered to drive policy within government, influence or set the legislative agenda (especially on budgetary matters), or limit the outcomes of the legislative process (through a veto). These variations appear under presidential powers to control the legislative agenda, chair and direct cabinet meetings, or veto legislation.

2.6.1 Budget

69. In all the regimes examined here, the state budget is determined by a finance bill passed by the legislature. The question of whether the president or the government is entitled to introduce finance bills into the legislature can be of great consequence in the distribution of power in the regime, since it allows the president or the government to direct revenue raising and budget expenditure, and drive the public policy agenda.

²⁵ Id, 333.

70. The significance of the power of legislative initiative over budgetary and financial matters is perhaps reflected in the fact that all but two of the 37 regimes we consider confer on the government the exclusive right to prepare the state budget and submit it to the legislature for approval. The two exceptions are president-parliamentary regimes (Peru and Senegal), where the president introduces the draft budget bill into the legislature. In Belarus the president has a right to table the budget in the legislature, but he or she must do so in concurrence with the government.

2.6.2 Presidential legislative agenda control

71. Although both semi-presidential sub-types largely do not confer the authority to introduce the budget on the president, many of the president-parliamentary regimes grant the president the power of legislative initiative or legislative agenda control in respect of non-financial matters. In Belarus, Central African Republic and Senegal the president may initiate draft laws in the legislature and require consideration of certain issues as a matter of priority. In Iceland, Mozambique, Peru, Russia and Ukraine (1996-2006) the president can submit bills to the legislature. In Croatia (1991-2000) and Ukraine (1996-2006) the president could call a session of the legislature and set the agenda for that session. That these regimes deny the president the power to prepare and submit the budget to the legislature for approval indicates recognition of the significance of that power. In some of these premier-presidential cases, the president also enjoys a right of legislative initiative in respect of ordinary, non-financial bills (Lithuania, Moldova, Mongolia, Namibia, Poland, Ukraine). In Ukraine the president can call the legislature to a special session and set its agenda.

Draft Constitution of the Republic of Tunisia

Article 31

First opinion:

The government shall have jurisdiction over the presentation of draft laws related to the ratification of treaties and of the Finance Act ...

The bureau of the Chamber of Deputies shall define the priority of cognizance over draft laws.

Second opinion:

The President of the Republic, as well as no less than five percent (5%) of the members of the Chamber of Deputies, may be entitled to initiate draft laws and submit such to the Chamber.

Any draft law submitted by the President shall have priority.

Article 35

Agreed text:

...

The Chamber of Deputies shall, during the period of recess thereof, hold an extraordinary session upon the request of the President of the Republic, the Prime Minister or one-third of the members with a view to looking into a specific agenda.

2.6.3 Chairing cabinet meetings

72. In semi-presidential systems, the cabinet is the locus of executive decision-making. The power to chair the cabinet accordingly carries with it the power to shape the public policy agenda. Semi-presidential systems divide sharply on whether the prime minister or the president chairs cabinet meetings. Out of 37 semi-presidential regimes, 21 explicitly confer this right on the president. Fourteen out of this 21 take the president-parliamentary form (Armenia (1995-2005), Belarus, Burkina Faso, Central African Republic, Croatia (1991-2000), Madagascar, Mozambique, Niger, Peru, Russia, Senegal, Sri Lanka, Taiwan and Ukraine (1996-2006)); while the remaining seven take the premier-presidential form (Cape Verde, Georgia, France, Mali, Moldova, Namibia and Romania). In the remaining 16 regimes, four president-parliamentary and 12 premier-presidential, the prime minister chairs the meetings of the government.
73. Not surprisingly, president-parliamentary systems are more likely (78 per cent) to confer this power on presidents than are parliamentary-presidential systems (37 per cent), as it serves as a lever for the president to direct the activities of the government, alongside the power to appoint and dismiss governments. Some countries have revoked this power. Finland, for example, revoked the president's right to chair cabinet meetings in 2000, as did Poland in 1997. However, other semi-presidential systems have changed from president-parliamentary to premier-presidential while retaining the president's power to chair cabinet meetings: Ukraine (1996) and Croatia (2000) – although in Croatia the president may chair meetings of the government only in circumstances of emergency.

Draft Constitution of the Republic of Tunisia

Article 56: Council of Ministers

Second opinion:

1. The President of the Republic shall, in issues over which said has cognizance, preside over the Council of Ministers.

2.6.4 Presidential veto

74. Presidential vetoes are common, in both premier-presidential and president-parliamentary systems. Out of 37 semi-presidential regimes, 34 establish a presidential veto right. Presidential veto powers exist in 12 out of 18 president-parliamentary systems (Armenia (1995-2005), Belarus, Central African Republic, Madagascar, Mozambique, Niger, Peru, Portugal (1976-82), Russia, Senegal, Taiwan and Ukraine (1996-2006)), and 16 out of 19 premier-presidential systems (Bulgaria, Cape Verde, Finland, France, Georgia, Ireland, Lithuania, Macedonia, Mali, Moldova, Mongolia, Namibia, Poland, Portugal, Romania and Ukraine).
75. Once again, some political transitions are worth noting: Portugal and Ukraine retained presidential veto powers through a transition from a president-parliamentary to a premier-presidential regime; while Croatia continued to deny presidential veto powers through a corresponding political transformation.
76. The nature of the veto power varies. Legislative overrides are possible in all cases, although the majorities required differ. 'Suspensive' veto powers allow the president to refuse to sign a bill into law and return it to the legislature with reasons. The president may propose an amended bill that the legislature is obliged to vote upon. The amended bill may be passed with a simple majority. If it is rejected, the original bill may be passed by a simple majority. The 'suspensive' veto, in other

words, can be overturned with a simple majority of parliament. Six president-parliamentary regimes confer suspensive veto powers on the president (Armenia (1995-2005), Belarus, Madagascar, Niger, Peru, Taiwan), while ten premier-presidential systems do the same (Bulgaria, Cape Verde, Finland, France, Georgia, Lithuania, Macedonia, Mali, Moldova, Romania). In Georgia the legislative majority needed to overrule the veto was reduced from two-thirds to a simple majority in 2010. In Belarus and Mongolia the president has a line-item veto power.

77. A supermajority of the legislature is required to override a presidential veto in six president-parliamentary regimes (Central African Republic (2/3), Mozambique (2/3), Portugal (1976-82), Russia (2/3), Senegal (2/3), Ukraine (1996-2006)) and five premier-presidential regimes (Poland (3/5), Mongolia (2/3), Namibia (2/3), Portugal and Ukraine (2/3)). In Portugal, however, a supermajority is required only in respect bills which must be passed with a supermajority in the legislature in the first place, while a simple majority is required with respect to ordinary bills. Supermajority requirements have the effect of augmenting presidential power, in making it more difficult for the legislature to overcome the president's exercise of veto power.
78. In Ireland the president may, after consulting the government, refuse to promulgate a bill passed in the legislature if he believe it is unconstitutional. The bill is submitted to the Irish Supreme Court for a decision on its validity. In Austria the president has no right of veto as such, and where the legislature fears the president may simply refuse to promulgate the bill, it may choose to circumvent the need for the president's promulgation of a bill by putting it to referendum, approval at which has the effect of bringing the law into force. In Weimar Republic the president had a similar power to refer a bill to popular referendum within a month of its passage in the legislature.

Draft Constitution of the Republic of Tunisia

Article 57: Seal

First opinion:

The President of the Republic shall duly seal all laws during a period no less than seven days and no more than fifteen days as of receipt thereof from the Chair of the Chamber of Deputies. The President may, once having received the text of a law, return the law to the Chamber for a second reading.

If the Chamber of Deputies ratifies the law in accordance with the first ratification draft, the Chair of the Chamber shall seal the law.

Second opinion:

The President of the Republic shall duly seal all laws including, inter alia, treaties, as well as issue decrees. The President shall issue such in the Official Gazette of the Republic of Tunisia during a period no later than fifteen days as of the date of receipt thereof from the Chair of the Chamber of Deputies.

The President of the Republic is entitled, during the period designated for the act of sealing, to return a draft law to the Chamber of Deputies for a second reading. If the law is ratified by an absolute majority of the members of the Chamber, with respect to normal laws, and by a majority of two-thirds of the members, with respect to organic laws, the law shall be passed and published within a period of no more than fifteen days as of the date of receipt by the President of the Republic.

2.7 Executive lawmaking

79. The power of the executive to make law without recourse to the legislature redistributes power away from the legislature to the executive. It is helpful to describe three cases of executive lawmaking: legislative delegation of lawmaking power; decree powers; and exceptional lawmaking powers. In each case, the power of executive lawmaking may be in the hands of either the president or the government, or some combination of both.

2.7.1 Legislative delegation

80. Legislative authority can be delegated to the president in a handful of cases, and to the government but not the president, in others. In neither circumstance does the president nor the government have plenary legislative powers: the delegation occurs through statute.
81. In president-parliamentary systems, national legislatures may delegate legislative authority to the president in Belarus, Madagascar, Mozambique, Peru, Senegal and Sri Lanka. Slovenia is the sole example among the sample of premier-presidential regimes that permits legislative delegation to the President. In most of these cases the delegation of legislative authority happens by way of legislation. In systems where the president holds the right of legislative initiative, the president can propose that legislative authority be delegated to him or her (Belarus, Mozambique, Peru,

Senegal, Sri Lanka). In other cases, the delegation is made by a resolution or decision in the legislature (Madagascar).

82. The legislature may delegate legislative authority to the government, but not to the president, in Burkina Faso, Central African Republic, Niger, Cape Verde, France, Moldova, Mongolia, Portugal and Romania.

Draft Constitution of the Republic of Tunisia

Article 32

First opinion:

The Chamber of Deputies may, for a specific period of time and for a specific purpose, authorize **the Prime Minister to issue decrees** intervening in the field of law and submit such for ratification by the Chamber upon the elapse of the specified period of time.

Second opinion:

The Chamber of Deputies may, for a specific period of time and for a specific purpose, authorize **the President of the Republic to issue decrees** intervening in the field of law, *with the exception of in Section I of the Constitution*, and submit such for ratification by the Chamber upon the elapse of the specified period of time.

2.7.2 Ordinary decree power

83. In semi-presidential systems, as well as presidential regimes, it is common for the president to hold the very limited legislative power to bring legislation into force by proclamation. In some cases, the president has the limited power to overrule the legislature by ordinance, and bring into effect a law that the legislature has failed to pass within a specified time or the date of operation of which it has failed to specify (Burkina Faso, Central African Republic). Presidents often hold a similar power to issue decrees, ordinances or regulatory acts implementing or executing legislation passed by the legislature (France, Mozambique, Poland, Ukraine (1996-2006)).
84. But these examples are distinct from presidential powers to enact decrees with legislative effect in respect of enumerated or residual subject matters. This power is rare.
85. Of 18 president-parliamentary systems, only 2 provide discretionary presidential authority to legislate by decree (Iceland and Russia). In Russia, the president's decree power is limited only by the provision that decrees not contravene the constitution or any existing laws; decrees come into force immediately, and do not need to be confirmed by the legislature to remain in force. In Iceland the president holds legislative power together with the legislature, although by convention the power is never used.²⁶ Other cases impose limits to presidential decree power: in Peru and Mozambique, the exercise of presidential legislative authority must be approved by the government. In Belarus, presidential decrees must be submitted to the legislature for approval or rejection, and cannot in any case extend to matters reserved to the legislature (including fundamental rights, freedoms and guarantees), or the budget.

²⁶ Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (n **Error! Bookmark not defined.**), 159; Duverger, 'A New Political System' (n **Error! Bookmark not defined.**); Gunnar Helgi Kristinsson, 'Iceland' in Elgie (ed) *Semi-Presidentialism in Europe* (n **Error! Bookmark not defined.**) 86, 90-91.

86. Only three out of 19 premier-presidential confer any legislative authority on the president: Cape Verde, Lithuania and Mongolia. In Cape Verde the president's decree power is limited to residual matters not reserved to the legislature: the president has no legislative authority in respect of the regulation of the state of emergency and restrictions on rights, for example. In Lithuania the power extends over a limited list of enumerated powers including grants of citizenship and conferral of honours, and must be countersigned by the prime minister or relevant minister to have legal force. In Mongolia, on the other hand, the president's legislative authority is limited only by the requirement that decrees must be in conformity with law. In Portugal, the government, but not the president, has legislative authority over all matters not reserved to the legislature (the list of subjects over which the legislature has exclusive legislative jurisdiction includes elections, the rules of the Constitutional Court, national defence, rules governing states of emergency, and rules governing police and security services). In any case, the legislature retains the power to supervise executive decrees, and may refuse to ratify them.

Draft Constitution of the Republic of Tunisia

Article 37

First opinion:

In the event of the dissolution of the Chamber of Deputies or the impossibility of holding the sessions thereof, the President of the Republic may issue decrees to be submitted for ratification by the Chamber during the subsequent ordinary session thereof.

Second opinion:

The President of the Republic may, during the period of recess of the Chamber of Deputies, issue decrees to be submitted for ratification by the Chamber during the subsequent ordinary session thereof.

The President of the Republic may also issue decrees in the event of the dissolution of the Chamber or the impossibility of holding the sessions thereof.

2.7.3 Executive lawmaking under states of emergency

87. Presidents and governments in many constitutional democracies, whether presidential, parliamentary or semi-presidential, may be able to assume legislative authority under circumstances of exception, emergency or siege, specified in the constitution. Two important questions are: (a) who has the power to declare a state of emergency – the president, the government (in effect, the prime minister), the legislature, or some combination thereof; and (b) the scope of lawmaking authority vested in the executive under states of emergency. Thus, emergency powers raise questions about the distribution of authority between the legislature and the executive, and within the executive itself.

2.7.3.1 Who can declare the state of emergency?

88. In principle, a state of emergency can be declared by: (a) the president unilaterally; (b) the president subject to a requirement of legislative ratification within a tight timeframe; (c) the

president acting in consultation with the government; (d) the government unilaterally; (e) the government subject to a requirement of legislative ratification within a tight timeframe; and (f) the legislature.

Option (a): Of 19 premier presidential systems, France and Mali confer a right on the president to take emergency measures in specific circumstances. Such measures can only be taken in circumstances where 'the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted'. In addition, the president must formally consult the government, the legislature and the Constitutional Council before any measures are taken. In France and Mali, then, the president holds an expansive right to assume wide-ranging lawmaking powers without the formal declaration of a state of emergency. The power is constrained to some extent by the procedural requirement of formal consultation with all three branches of government. In Lithuania and Bulgaria the president may declare a state of emergency unilaterally only where the legislature is in recess.

Of the 18 president-parliamentary regimes, seven empower the president to unilaterally declare a state of emergency (Armenia, Burkina Faso, Central African Republic, Weimar Republic, Madagascar, Niger, Sri Lanka). The broad presidential powers to issue a state of emergency in francophone countries often follow those in France: in Burkina Faso, Central African Republic and Niger, the president need only deliberate with the government before declaring a state of emergency and assuming legislative authority; in Madagascar and Senegal the president need not even consult the government to exercise emergency powers. In Sri Lanka, the president need not formally declare a state of emergency to exercise emergency legislative authority. The Public Security Ordinance, continued in operation by the terms of the constitution, empowers the president to make emergency regulations overriding all law except the Constitution. The president need only make a proclamation for these regulations to come into force.²⁷ In Armenia (1995-2005), the president must consult with the prime minister and the chairman of the legislature before declaring a state of emergency. In Weimar Republic, the infamous article 48 empowered the president to declare a state of emergency in his discretion.

Option (b): Among the president-parliamentary regimes, six regimes empower the president to declare a state of emergency subject to legislative confirmation. In four cases the state of emergency lapses if it is not confirmed by the legislature within a set time period: Belarus: 3 days; Mozambique: 30 days; Portugal (1976-82): 30 days; Senegal: 15 days. In Ukraine (1996-2006) and Russia the declaration of a state of emergency requires only subsequent confirmation by the legislature to remain in force.

Among premier-presidential regimes, six constitutions follow option (b). The president's declaration of a state of emergency lapses unless confirmed by the legislature within set time periods: Georgia: 48 hours; Mongolia and Namibia: 7 days; Romania: 5 days; Ukraine: 2 days. In Macedonia the president may declare the state of emergency only where the legislature cannot meet, but the declaration must be confirmed by the legislature as soon as it can meet, or the state of emergency lapses.

Option (c): Only four regimes follow this design option and empower the president and the government, acting in concert, to declare a state of emergency. These are Peru and Croatia

²⁷ See Radhika Coomaraswamy and Charmaine de los Reyes. 'Rule by Emergency: Sri Lanka's Post-colonial Constitutional Experience' (2004) 2 *International Journal of Constitutional Law* 272.

(1991-2000) among the president-parliamentary regimes, and Croatia and Poland among the premier-presidential. In Croatia, the president exercises the power to declare a state of emergency, on the advice of the government, only where the legislature cannot meet. In Taiwan, the president may exercise emergency powers only upon a resolution of the government and if the legislature is in recess.

This design option requires agreement between the president and the government on the declaration of a state of emergency, by stipulating that the president may declare a state of emergency on the proposal of the government. This is different from the requirement that the president consult with the government before bringing a state of emergency into effect.

Option (d): Slovakia and Slovenia empower the government to unilaterally declare a state of emergency. In Slovenia this power arises only in circumstances where the legislature cannot meet.

Option (e): Ireland allows the government to declare a state of emergency where the legislature cannot meet, although it cannot declare a state of war without the legislature's assent.

Option (f): In circumstances where the legislature is able to meet, the following regimes empower the legislature to declare a state of emergency: Bulgaria, Cape Verde, Croatia, Finland, Ireland, Lithuania, Macedonia, Moldova, Portugal and Slovenia.

Draft Constitution of the Republic of Tunisia

Article 50

Second opinion:

The President of the Republic shall have the following terms of reference:

...

Declare the state of emergency.

2.7.3.2 Legislative powers under a state of emergency

89. Once a state of emergency is in effect, a president may be empowered to take legislative action. Whether this is the case, and the extent or limitations of the emergency legislative action a president may take, are important considerations. They become even more important in those cases where the president has the power to declare the state of emergency him- or herself. Out of 37 semi-presidential regimes, 15 presidential-parliamentary and eight premier-presidential confer emergency legislative authority on the president, with or without a requirement of legislative oversight.
90. In only seven out of 37 cases does the president enjoy wide-ranging power to enact emergency laws that require no legislative approval for their validity. Five of these regimes are president-parliamentary (Burkina Faso, Madagascar, Mozambique, Niger, Russia), while two are premier-presidential (France and Mali). In the five francophone systems (Burkina Faso, Madagascar, Niger, France and Mali) the president is empowered to take 'the exceptional measures required' to remedy the threats to the nation which triggered emergency powers in the first place (see above).

In Russia, the president's emergency powers may not curtail certain rights in the bill of rights, including rights to life, human dignity, privacy, freedom of religion, and rights of fairness in criminal proceedings. A similar limitation exists in Mozambique, where in addition, the duration of the emergency is limited to 30-day periods, renewable three times.

91. In 10 other president-parliamentary regimes, emergency presidential legislative acts must be ratified by the legislature or they lapse. In the Central African Republic, Senegal and Sri Lanka, the president enjoys wide-ranging emergency powers but all legislative acts lapse if not ratified by the legislature within fifteen days. In Belarus this period is three days, while in Croatia (1991-2000) the constitution specified no time limit but required the legislature to consider emergency legislation as soon as possible. In Weimar Republic the president was required to submit emergency legislative acts to the legislature without delay, although they remained in force unless the legislature revoked them by simple majority. Limited emergency powers are conferred on the presidents of Taiwan and Iceland, who may issue emergency decrees only where the legislature is in recess. Further, in Taiwan all legislative acts must be ratified by the legislature within one month, and in Iceland within six weeks. In Armenia (1995-2005) and Ukraine on the other hand, the president enjoys no independent constitutional right to exercise emergency legislative power. Instead, the legislature regulates the legal regime of the emergency by law, and may authorize the president to take emergency legislative measures. In Peru and Portugal (1976-82) the president can exercise emergency powers only in concurrence with the government, while in Austria the president has no such powers.
92. Among the premier-presidential regimes other than France and Mali, six regimes confer emergency legislative authority on the president. In all of these cases, it is a limited power. In Croatia and Portugal, the president exercises only the powers that are expressly delegated to him or her by the legislature, and in Slovenia and Poland the president exercises authority only where the legislature is unable to meet. In Slovenia, the president acts in these cases only on proposals from the government. In Georgia emergency decrees have the force of law for the duration of the emergency, but must be submitted to parliament for ratification within 48 hours, and may not abrogate certain rights in the bill of rights, including rights to life, human dignity, citizenship, and equality. In Namibia, presidential regulations made under the state of emergency lose the force of law unless confirmed by the legislature within 14 days. In the remaining 11 premier-presidential systems, the declaration of a state of emergency does not confer extraordinary decree power on the president or the government. Instead, it allows only the curtailment of certain rights in the bill of rights, through laws of general application. The legal regime of the state of emergency must thus be determined by legislation (Bulgaria, Cape Verde, Finland, Ireland, Lithuania, Moldova, Mongolia, Slovakia, and Ukraine), or the exercise of emergency powers by the government (Macedonia, Romania).
93. An important question is whether the president's emergency powers include the power to dissolve the legislature. Several constitutions expressly prohibit this: Armenia (1995-2005), Moldova, Mozambique, Belarus, Burkina Faso, Central African Republic, Niger, Peru, Russia, Senegal, Cape Verde, France, Mali, Poland, Portugal and Romania. The constitutions of Weimar Republic, Iceland, Madagascar, Namibia, Sri Lanka, Taiwan, Ukraine (1996 and 2006), Bulgaria, Lithuania, Mongolia, Slovakia and Slovenia contain no such explicit prohibition.

Draft Constitution of the Republic of Tunisia

Article 52: Powers in context of imminent danger

Second opinion:

In the event of an imminent danger threatening the entity, security and independence of the homeland in such manner preventing the normal operation of the entities of the state, the President of the Republic may undertake any procedures necessitated by the prevailing circumstances, upon consulting the Prime Minister, the President of the Constitutional Court and the Chair of the Chamber of Deputies. In such context, the President shall address the nation.

The procedures shall aim at securing the reoperation of the general constitutional authorities as soon as possible. The Constitutional Court shall, with respect to such procedures, be consulted. The Chamber of Deputies shall be deemed in a state of continuous convention throughout such period and after the elapse of a thirty-day period as of the implementation of the procedures. The Chair of the Chamber of Deputies, or thirty of the members thereof, are entitled to resort to the Constitutional Court with a view to verifying whether the circumstances specified in Paragraph (1) of the present Chapter still exist. The Court shall issue the decision thereof publicly within a period no later than fifteen days. The Constitutional Court shall pledge to verify, in person, the continuity of the circumstances upon the elapse of a sixty-day period as of taking the decision and at every time thereafter.

In such event, the President of the Republic may not dissolve the Chamber of Deputies and may not bring a motion of censure against the government.

The procedures shall be terminated by termination of the reasons for existence thereof. In such context, the President of the Republic shall address the nation.

2.8 Referendum

94. In many of the cases analyzed here, the president has some form of oversight over the legislature in the form of a veto power. This allows the president to block the passage of a bill into law, at least for a time. A similar mechanism is created in some cases, in which the president has the power to refer a bill passed by the legislature to a referendum instead of simply promulgating it. This is an important presidential power, since it allows the president to hold the legislature to the judgment of the general population. Where the president has concerns that the legislature has overstepped its electoral mandate and approved a bill that is not favored by the electorate, the president can refer the bill to the people in a referendum. If the people return a positive answer in the referendum, the bill is promulgated as law. If they return a negative answer, the bill is defeated and does not become law.
95. It is possible, however, that a president may attempt to use the referendum to thwart the legislature's or the government's legislative program. This opportunity is limited, however, since the people must themselves decide on the bill. The threat of referendum, however, may act as a significant deterrent or bargaining chip in the hands of the president, allowing him or her to coerce the legislature into a course of action he or she prefers.
96. Out of 18 president-parliamentary regimes, eight confer the power to refer bills to referendum (Burkina Faso, Central African Republic, Croatia (1991-2000), Weimar Republic, Madagascar, Niger, Senegal and Sri Lanka). In Croatia, the president acts on the advice of the government,

while in Sri Lanka this power must be exercised with the consent of the government. In Armenia the government but not the president has the power to refer bills to referendum.

97. Out of 19 premier-presidential regimes, only Croatia, France and Mali allow the president to refer bills to referendum. In Croatia, the president acts on the advice of the government, while in France and Mali the president exercises the power with the consent of the government.

Draft Constitution of the Republic of Tunisia

Article 53: Referendum

Agreed text:

The President of the Republic may, directly or upon a request made by the government, submit to a public referendum any draft law on rights, freedoms or general authorities and/or any draft law on the authorization of the ratification of international treaties, provided such treaties are not in contradiction with the Constitution based on the opinion of the Constitutional Court.

If the result of the referendum is the ratification of the draft law, the President of the Republic shall seal and publish the law within a period exceeding no more than fifteen days as of the date of announcement of the results.

The President of the Republic shall submit, for a public referendum, any treaty that may result in the introduction of amendments to the Constitution, after the approval of the Chamber of Deputies, in accordance with the provisions and terms stipulated under the Constitution. The Elections Law shall specify the means of conducting referenda and announcing the results thereof.

2.9 Abstract review

98. A similar power of presidential oversight of the legislature is the power of abstract review, which allows the president to refer a bill approved by the legislature to the constitutional or supreme court, if he or she has fears about its constitutionality. The mechanism allows the president to bring the court into the arena of legislative politics before bills become law, and allows the judiciary to check the power of the legislature, at the instance of the president, before the legislature is fully able to use its legislative power.
99. Like the mechanism of referendum, the opportunities for abuse of the mechanism by the president are limited by the fact that the decision about the constitutionality of the bill must be made by the court itself, not the president. However, in situations where the president has extensive powers of appointment to the high court, it is conceivable that a court packed with judges loyal to the president would consistently return decisions favorable to the president.
100. Abstract review is more common in the premier-presidential systems we survey than in the president-parliamentary systems. Of 19 premier-presidential systems, 12 establish a presidential right to refer bills to abstract judicial review (Bulgaria, Cape Verde, Croatia, Finland, France, Ireland, Mali, Poland, Portugal, Romania, Slovakia and Slovenia). In France and Mali the government as well as the president may refer bills for abstract review, while in Ireland the president acts with the consent of the government. In Finland, the president may obtain a statement of the constitutionality of a bill before deciding whether to exercise veto powers.

101. Out of 18 president parliamentary systems, nine establish a presidential right to refer bills for abstract review (Armenia, Madagascar, Mozambique, Niger, Peru, Russia, Senegal, Sri Lanka, and Taiwan).

2.10 Appointment powers

102. In parliamentary and presidential systems, the allocation of the power to make key appointments to the civil service, the military, the judiciary, and institutions of democratic oversight such as the auditor-general, affects the extent to which the executive can push the boundaries of the powers it is granted and drive its policy program through the deployment of sympathetic personnel. In semi-presidential systems, the additional issue raised is the allocation of appointment powers between the government (in essence, the prime minister) and the president. Where the executive's appointing power is lodged may have dramatic implications for the control of the government machinery as a whole, as well as the alignment of the judiciary and independent institutions.
103. In semi-presidential systems, the president enjoys broad powers to make appointments of key and senior members of the judiciary, civil service, military and security forces, and institutions of democratic oversight – or a combination of them. Of 18 president-parliamentary regimes examined, 16 grant the president wide-ranging discretionary appointment powers (Armenia (1995-2005), Belarus, Burkina Faso, Central African Republic, Croatia (1990-2000), Weimar Republic, Madagascar, Mozambique, Niger, Peru, Portugal (1977-82), Russia, Sri Lanka, Taiwan, Ukraine (1996-2006) and Senegal). Only Austria and Iceland among this group do not so empower the president. Both Georgia and Ukraine removed the power from the president upon converting from president-parliamentary to premier-presidential regimes.
104. A similar pattern emerges among the premier presidential countries. Of 19 countries examined, ten grant discretionary appointment power to the president in respect of at least some offices (Bulgaria, Croatia, Lithuania, Macedonia, Mali, Moldova, Mongolia, Poland, Romania and Niger). In France, on the other hand, the president's appointments must be approved by cabinet, while in Cape Verde the president makes appointments on the proposal of the government.

Draft Constitution of the Republic of Tunisia

Article 50

First opinion:

The President of the Republic shall have the following mandates:

...

Appoint individuals to higher military posts, upon the recommendation of the Prime Minister.

Appoint individuals to posts affiliated to the Presidency of the Republic.

Second opinion:

The President of the Republic shall have the following terms of reference:

...

Appoint the Grand *Mufti* of Tunisia.

...

Appoint and exempt individuals with respect to senior military security positions and public institutions affiliated to the Ministry of Defense, after taking the opinion of the competent parliamentary committee.

Specify higher posts by virtue of a law.

Appoint the Head of the Intelligence Agency, upon the agreement of the majority of the members of the competent parliamentary committee.

Appoint individuals in the senior positions of the Presidency of the Republic and the institutions affiliated thereto.

Article 59

First opinion:

The Prime Minister shall assign civil senior positions.

Second opinion:

The President of the Republic shall, upon the proposition of the Prime Minister, assign civil senior positions after taking the opinion of the competent parliamentary committees. If the opinion of the committees fails to be delivered within a twenty-day period as of the date the file is received by the Chamber of Deputies, the opinion shall be deemed an acceptance.

2.11 Foreign policy

105. The conduct of international relations or foreign policy consists of two major areas: the ordinary conduct of foreign relations during times of peace; and powers to declare war and direct the deployment of the armed forces.

2.11.1 Foreign relations during peace time

106. The first set of responsibilities involves appointments to the foreign service, appointing the foreign minister and defence ministers, speaking on behalf of the country at meetings of international organizations and summits, and entering into treaties on behalf of the nation. Where the president is granted the power or the obligation to fulfill these responsibilities, on a discretionary basis, he or she will have an opportunity to influence the conduct of a country's foreign and international relations. This is a significant power.
107. Examining 19 premier-parliamentary regimes, eight empower the president with a central role in the conduct of foreign policy (Cape Verde, France, Lithuania, Macedonia, Mali, Moldova, Mongolia and Ukraine). Georgia removed this power from the president by constitutional amendment in 2010.
108. Twelve out of 18 president-parliamentary regimes defer primacy in foreign relations to the president (Armenia (1995-2005), Belarus, Croatia (1991-2000), Madagascar, Mozambique, Peru, Portugal (1976-1983), Senegal, Russia, Taiwan, Ukraine (1996-2006) and Sri Lanka).

Draft Constitution of the Republic of Tunisia

Article 51

First opinion:

The President of the Republic shall have the following mandates:

- Represent the country.
- Be the Commander-in- Chief of the armed forces.
- Appoint individuals to positions affiliated to the Presidency of the Republic.
- Adopt, upon the proposal of the government, foreign diplomatic representatives and approve the adoption of representatives of foreign countries in Tunisia.

Second opinion:

The President of the Republic shall lay down the foreign policy of the state and adopt ambassadors abroad, upon the agreement of the majority of members of the competent parliamentary committee. The President shall also appoint the senior officials of the Ministry of Defense and the institutions affiliated thereto, as well as appoint the diplomatic missions and consulates to foreign countries and regional and international organizations, upon the recommendation of the Ministry of Foreign Affairs. The President shall also approve the adoption of representatives of foreign countries and regional and international organizations to Tunisia.

Article 65

First opinion:

...

The Prime Minister, or the representative thereof, shall conclude international treaties. ...

Second opinion:

...

The Prime Minister shall conclude international agreements of technical nature. ...

Other opinions:

No international agreements of technical nature shall be presented to the Chamber of Deputies for discussion. The agreements shall enter into force once signed by the Prime Minister or by the minister concerned in the case of sectoral technical agreements.

2.11.2 Declarations of war and peace

109. Looking at 19 premier-presidential regimes, only Georgia confers a discretionary power on the president to declare or terminate a state of war. In 12 cases, only the legislature may declare a state of war (Bulgaria, Ireland, Lithuania, Macedonia, Mali, Moldova, Mongolia, Namibia, Poland, Romania, Slovakia, Slovenia). In 5 cases, the president makes the declaration of war upon authorization by the legislature (Cape Verde, Croatia, Finland, France, Portugal), and in Ukraine the legislature declares war upon a recommendation by the president. In the cases where the legislature retains the exclusive right to declare war, it tends to retain the power to decide on the deployment of the nation's armed forces. The exception here is Namibia, where the legislature has the power to declare war but the president retains control of the deployment of military forces.

110. The tendency towards presidential power in the president-parliamentary systems is reflected in the propensity to confer the power to make declarations of war and peace on the president. The president has an outright power to do so in three cases: Mozambique, Sri Lanka and Taiwan. In Mozambique, the president must take the advice of the government and the legislature before making any such declaration. In these three cases, the president remains the supreme commander of the armed forces, and decides on the domestic and overseas deployment of the military. In seven other president-parliamentary regimes, the legislature makes declarations of war and peace, but the president retains the power to deploy the military and remains supreme commander of the armed forces (Armenia (1995-2005), Belarus, Central African Republic, Croatia (until 2000), Madagascar, Senegal and Ukraine (1996-2006)). In Armenia (1995-2005), the legislature's decision to declare war or peace is consequent on a proposal by the president. In the Central African Republic, the president may declare a state of siege, and exercise emergency powers consistent with the declaration of a state of emergency. In Madagascar, the president's decision to deploy the armed forces can be taken only after the government and the legislature have voiced an opinion. In Ukraine (1996-2006), the legislature's declaration of war or peace depended on a recommendation from the president, although the legislature retained the power to approve the president's deployment of the armed forces. Of the president-parliamentary regimes examined, the legislature holds the power to declare war and peace and decide on the deployment of the military in six cases: Austria, Belarus, Burkina Faso, Weimar Republic, Russia and Senegal. In the Weimar Republic, however, the president assumed control of the armed forces on the declaration of a state of emergency, the power of declaration of which he himself held. In Niger the government makes the declaration of war and peace. In Iceland the constitution is silent on how war is declared and which branch of government exercises command over the armed forces.
111. In Peru and Russia, both president-parliamentary systems, the power to declare war and peace rests with the government; in Peru the president retains the power to deploy the armed forces, while in Russia the government holds this power.

Draft Constitution of the Republic of Tunisia

Article 50

First option:

The President of the Republic shall have the following mandates:

...

Head the Supreme Council of Security and Defense as the Commander-in-Chief of the armed forces.

Appoint individuals to higher military posts, upon the recommendation of the Prime Minister.

...

Declare war, establish peace, and, upon the approval of a majority of two-thirds of the Chamber of Deputies, exercise the right to grant special pardons.

Second opinion:

The President of the Republic shall have the following terms of reference:

...

Declare war and establish peace, upon the approval of a majority of three-fifths of the members of the Chamber of Deputies as well as send troops abroad, upon the approval of the Chair of the Chamber of Deputies and the Prime Minister provided that the Chamber convene with a view to making a decision on the matter within a period of no more than sixty days.

...

Direct the defense and security policies of the state as well as chair the Supreme Council of Security and Defense.

2.12 Removal of the president

112. The removal of a president is a significant feature of the balance of powers. In semi-presidential systems, the president and the parliament hold separate electoral mandates, meaning that where parliament takes action to remove the president from office it places itself in opposition not only to the president, but also to the voters who elected the president. The constitutional rules for governing the processes for removing the president are thus important, and vary widely within semi-presidential systems.
113. There are essentially two procedures for the removal of the president. The first is impeachment, which although used to describe any process by which the president is removed from power, is more accurately confined to the situation where the president is impeached for crimes he is alleged to have committed, tried by a specially constituted tribunal or the high court, and faces removal upon a verdict of guilt. Removal by impeachment thus involves two processes: the impeachment itself – that is, the bringing of charges against the president, and the trial.
114. The second procedure involves the removal of the president without a trial. Procedures of this kind can allow the legislature to initiate proceedings for the removal of the president without first having to bring charges that the president is guilty of a crime. In this way, these removal procedures are more flexible, and allow the legislature to exercise greater control over the functions of the president.
115. The preference among the sample of semi-presidential states we examine, among both sub-types, is for impeachment. Eleven out of 18 president-parliamentary and 12 out of 19 premier-

presidential regimes allow for the impeachment of the president. The remaining seven president-parliamentary and seven premier-presidential regimes allow for the removal of the president without impeachment and trial. In each case, the procedures vary.

2.12.1 Impeachment in president-parliamentary regimes

116. The president may be indicted by a legislative supermajority, for crimes allegedly committed in all cases except Armenia and Niger, where only a simple majority is necessary. A two-thirds majority of the legislature (or of the lower house in bicameral systems) is required to impeach the president in Croatia (1991-2000), Weimar Republic, Madagascar, Portugal (1976-82), Sri Lanka and Ukraine (1996-2006). In Russia a majority of two-thirds is necessary in both houses to impeach the president and in Senegal a majority of three-fifths of both houses is needed. In Peru the accusation of crimes committed by the president is brought by the Standing Committee of Parliament and approved by a simple majority vote in the legislature.
117. The high court, a special judicial court of impeachment, or a tribunal composed of members of the legislature then tries the president for alleged crimes. The president is removed from office upon a verdict of guilt in Weimar Republic, Madagascar, Portugal (1976-82) and Senegal. In Russia, the supreme court must reach a verdict of guilty, and the constitutional court must confirm that the correct procedures were followed in order for the president to be removed. In Croatia (1991-2000) and Niger the court's verdict of guilty must be supported by a vote of two-thirds of the judges.
118. In the remaining regimes, upon a verdict of guilt the legislature must consider whether to remove the president. This can occur with a supporting vote of two-thirds of the house in Armenia, Croatia (1991-2000), Niger and Sri Lanka, and a supporting vote of three-fourths in Ukraine (1996-2006). In Peru the legislature approves the removal of the president for his crimes with a simple majority vote.

2.12.2 Impeachment in premier-presidential regimes

119. A two-thirds majority of the legislature (or of one house in bicameral systems) is required to impeach the president Bulgaria, Cape Verde, Croatia, Macedonia, Mali, Moldova, Poland, Portugal and Ukraine. In Slovenia only a simple majority is necessary, and in Georgia a vote of one-third of representatives is necessary. In Finland, the attorney-general brings charges against the president which must be approved by a three-fourths majority of the legislature.
120. A trial in the high court follows, except in Cape Verde and Finland where an ordinary criminal prosecution and trial in the ordinary courts is held, and in Poland, where the Tribunal of State, composed of members of both houses of the legislature, convenes to examine the charges against the president. The president is removed from office upon a verdict of guilt in Bulgaria, Cape Verde, Finland, Mali, Moldova, Poland and Portugal. Upon a verdict of guilt, the legislature may remove the president with a supporting vote of two-thirds in Croatia, Georgia, Macedonia and Slovenia, and a supporting vote of three-fourths in Ukraine. The court's verdict of guilty must be supported by a vote of two-thirds of the judges in Croatia, Macedonia and Slovenia.

2.12.3 Removal in president-parliamentary systems

121. In Burkina Faso, the president may be removed from office by a vote in the legislature supported by four-fifths of its members. In Belarus a two-thirds majority in both houses of the legislature

may remove the president. The president is removed by referendum following a vote to remove him or her supported by a majority of two-thirds in Austria and Taiwan, three-fourths in Iceland.

122. The constitution of Central African Republic and Mozambique are silent as to the removal or impeachment of the president.

2.12.4 Removal in premier-presidential systems

123. In Lithuania, the president may be removed by a vote in the legislature supported by a majority of three-fifths. In Ireland and Namibia two-thirds in both houses of the legislature must support the vote. The president is removed by referendum, following a vote supported by a majority of three-fifths in Slovakia, and a simple majority of a joint sitting of the two houses in Romania. In France, one or other house may propose the removal of the president by simple majority. Upon confirmation of the proposal by a majority of two-thirds in the other house, a joint sitting of both houses convenes to consider the removal of the president. The president is removed by a vote in the joint sitting supported by two-thirds of the members of the legislature.
124. The constitution is silent on the removal of the president in Mongolia.

Draft Constitution of the Republic of Tunisia

Article 64: Resignation and dismissal

First opinion:

The President of the Republic may, upon the request of one-third of the members of the Chamber of Deputies, be requested to be relieved of the duties thereof. The President shall not be relieved unless upon ratification of a majority of two-thirds of the members of the Chamber and unless the Constitutional Court is of the opinion that the President was in breach of the Constitution.

Second opinion:

Upon the initiation of one-third of the members of the Chamber of Deputies, the Chamber may accuse the President of the Republic of high treason. A decision in such regard shall not be issued unless approved by two-thirds of the members of the Chamber. In such event, the President of the Republic shall be referred to the Constitutional Court for sentencing. The acts of flagrant abuse of power and intentional breach of the Constitution, by virtue of which the entity of the state and the sound functioning of the constitutional institutions thereof are threatened, shall be considered acts of high treason.

Bribery, financial corruption and favoring the interests of foreign parties to the higher interests of the nation shall also be deemed acts of high treason.

The Constitutional Court may find the accused guilty only by way of ousting.
No President sentenced with ouster is entitled to run for Presidency once again.

III Semi-presidentialism in selected cases

125. Semi-presidentialism is not a panacea. As a form of government, it admits of a great deal of variation. The relationships between the executive, the president and the legislature can be structured in different ways, and the dynamic between the three depends to a great extent on the powers that are accorded to the president, the government and the legislature. As a form of

government, semi-presidentialism is often preferred or proposed precisely because it offers a structural separation of powers between the president, the government and the legislature, and provides a system of effective checks and restraints on the excessive exercise of power within the institutions of government.

126. However, the extent to which any single semi-presidential system is able to achieve these benefits depends ultimately on the specific constitutional arrangements that each regime adopts. An academic and empirical consensus has emerged suggesting that where presidents hold greater powers, as is common in regimes of the presidential-parliamentary sub-type, democratic performance and political stability suffer. President-parliamentary regimes often perform worse on various indices of democracy and freedom, and are more politically unstable and prone to collapse or democratic authoritarianism than premier-presidential systems. The explanation for this phenomenon is that president-parliamentary systems generally create opportunities for the presidential control of the legislative and the policy programme, the frustration or override of legislative actions, and the consolidation of power in the office of the president.
127. In addition to the distribution of powers and structural relationships between branches of government, electoral results, and the electoral system that generates those results, have a significant effect on the performance of semi-presidential regimes. The following section examines selected cases of premier-presidentialism and president-parliamentarism, offering a brief account of the experiences of different democratic sub-types around the world, in the context of their respective electoral politics.

1 France

128. The French Fifth Republic came into existence in 1958, and became a semi-presidential system with amendments allowing for the popular election of the president in 1962. The president appoints the government, but has no power to dismiss it, making it a premier-presidential regime, although the president does have some important powers including dissolution of the legislature, veto, foreign policy and extensive emergency powers.
129. The Fifth Republic came into being in the wake of the terminally unstable Fourth Republic, which had seen 25 governments over the course of only twelve years. The constitution of the Fifth Republic was specifically engineered to address this instability and allow for executive longevity and security. As a result, the powers of the parliament were reduced and those of the government increased.²⁸
130. The French constitution thus creates a constitutional balance between the president and the government, with the resulting distribution of executive power between the two sites referred to as an 'executive dyarchy'.²⁹ Within this dyarchy, neither the government nor the president can exercise exclusive executive power. The relationship between the president and the prime minister or government, and in turn the president and the legislature, is crucial in defining the precise limits of presidential power in France. While the constitution allocated power and sets the framework for the exercise of power, the actual deployment of any of those powers, by either of the twin heads of the executive, depends on the relationship between the two. Electoral politics in France are thus determinative of the practical extent of presidential executive power.
131. Maurice Duverger places presidential power in France along a matrix of two electoral factors: whether there is a majority in parliament; and whether the president is associated with the party

²⁸ Philip Williams, *The French Parliament 1958-67* (George Allen and Unwin, London 1968), 121; Robert Elgie, 'France' in Elgie (ed), *Semi-Presidentialism in Europe* (n Error! Bookmark not defined.) 67, 75.

²⁹ Elgie, 'France' (id).

in the majority.³⁰ The president enjoys greatest effective power when there is a single party majority in parliament and the president is a member of the party commanding that majority. By contrast, the president's power is weakest when he is opposed to a single-party majority. The president's power ranges between these two extremes depending on whether there is a coalition majority in parliament, whether there is a dominant party in the coalition, and what the president's relationship is to the parties in the coalition.³¹

132. The vagaries of the electorate have been largely determinative of the extent to which government has been led by the prime minister or the president in France's Fifth Republic. Certain presidents, with the support of a majority party in parliament, have enjoyed extensive power (De Gaulle, Pompidou, Mitterrand). In other cases, where the president has enjoyed the support of a coalition in parliament, his powers have been less easily exercised (Giscard, Chirac). On the other hand, in situations where a single-party majority in parliament has been opposed to the president, the prime minister has enjoyed greater executive powers (Jospin). In cases where a coalition is opposed to the president, the prime minister has had to be more mindful of the need to accommodate coalition partners, but nevertheless exercises executive powers more easily than the president.
133. It is important to recognize, ultimately, that even within the limits to presidential power that a premier-presidential system like France's establishes, there is a scale of effective presidential powers that depends crucially on electoral politics. There are opportunities for the consolidation of political power if the president is likely to enjoy the support of a strong parliamentary majority.

2. Russia

134. In 1993 President Boris Yeltsin dissolved the legislature and secured the adoption of a constitution that expanded presidential powers. He said on doing so: 'I don't deny that the powers of the president ... are considerable, but what do you expect in a country that is used to tsars and strong leaders?'³²
135. The semi-presidential system in Russia was established in the early 1990s, however, precisely to curb the centralized leadership that had plagued Russia for decades. It was envisaged that a broadly representative parliament could act as a counterweight to an otherwise powerful executive president with powers over spending, legislation and government. Nevertheless, the Russian form of semi-presidentialism is strongly weighted in favour of the president. During the semi-presidential period, Russia has not performed well on various scales and indices of democracy.³³ Both Freedom House and Polity class Russia as a partial democracy for a time after 1993, followed by a collapse of democracy around 2004. Moreover, the regime was not particularly stable during the 1990s, with rapid turnover in prime ministers and governments, legislative impeachment of the president (although unsuccessful), and over 200 presidential vetoes between 1994 and 1999. Government in this period is not inaccurately described as deadlocked, fractious and inefficient. As Elgie argues, under the president-parliamentary system where both the legislature and the president have the power to remove an unsatisfactory

³⁰ Maurice Duverger, *Le Système Politique Français* 21 ed (Presses Universitaires de France, Paris 1996), 511; Duverger, *Echec au Roi* (Albin Michel, Paris 1978), 122.

³¹ John Keeler and Martin Schain, 'Presidents, Premiers and Models of Democracy in France' in Keeler and Schain (eds), *Chirac's Challenge: Liberalization, Europeanization, and Malaise in France* (Macmillan, London 1996).

³² Stephen White, 'Russia', in Elgie (ed), *Semi-Presidentialism in Europe* (n Error! Bookmark not defined.) 216, 217.

³³ Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (n Error! Bookmark not defined.), 147-49.

government, there is little incentive for the two to work together.³⁴ With no 'joint stake' in the system, the president was willing to work against the legislature and vice versa.³⁵

136. The consequence has been a shift towards the consolidation of power in the presidency and a form of electoral authoritarianism. The instability of the relationship between the legislature and the president during the 1990s meant that there was little to lose, and much to gain, from centralizing power in one place. Vladimir Putin was able to begin to do this in 2001, after building a sympathetic majority in the legislature. During Putin's time in office, both as prime minister and president, the regime has been stable but democracy has been sacrificed.

3. Weimar Republic

137. Perhaps the most cautionary example of presidential-parliamentary government is provided by the Weimar Republic which collapsed into Hitler's Germany in 1933. Some of the literature suggests, however, that part of the explanation for the failure of democracy in the Weimar Republic and other president-parliamentary regimes lies in the incidence of minority government (i.e. government unsupported by the legislature but nevertheless tolerated).³⁶ Similar incidence of minority government is observable in president-parliamentary systems in Armenia in 1996, Burkina Faso in 1980, and Mauritania in 2008, shortly before regime failure.
138. Cases of a 'divided minority', where neither the government nor the president enjoy the support of a legislative majority, are the result of electoral politics. This is distinguished from a divided majority, where a clear legislative majority is opposed to the president. In most cases, as in Mauritania, a minority government can be formed because there is no clear majority party or coalition in the legislature that will oppose the president's cabinet. The claim is that in these cases, semi-presidentialism's inherent tensions and flaws are exacerbated, making it the 'most conflict-prone' form of semi-presidentialism and 'the most dangerous for constitutionalism and fundamental rights'.³⁷ The literature explains that in cases of a divided minority, where no viable government can be formed and no stable legislative majority exists, the temptation for president's to rule by emergency or decree, or entirely extra-constitutionally, arises. Semi-presidentialism should be avoided, the argument goes, where electoral politics are fractured.
139. A second explanation argues instead that the basis for democratic failures in situations of divided minorities is not electoral politics, but the existence of a president-parliamentary regime. Under this subtype, the inherent incentives for the president to govern over a fractured or even an unsympathetic legislature may lead the president to attempt to avoid a situation of cohabitation and maintain control over the executive by appointing a sympathetic prime minister – even though the latter will not carry the support of a legislative majority. The logic of president-parliamentarism means that this incentive operates equally in cases of a divided minority and divided majority. The deadlock and tension that is likely to result from such a situation, however, provide an incentive to circumvent politics and consolidate power.
140. Minority government is thus a rational strategy under president-parliamentarism, under the right electoral conditions. The cause for the collapse of Weimar Republic and other states is thus not

³⁴ Elgie, id, 35.

³⁵ Elgie, id, 151.

³⁶ Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton UP, Princeton 2005); Timothy Colton and Cindy Skach, 'The Russian Predicament' (2005) 16 *Journal of Democracy* 113; Cindy Skach, 'The "newest" separation of powers: Semipresidentialism' (2007) 5 *ICON* 93; Alfred Stepan and Cindy Skach, 'Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism' (1993) 46 *World Politics* 1.

³⁷ Skach, 'The "newest" separation of powers', id, 103.

primarily the fact of minority government, but the president-parliamentary system that encouraged it.³⁸

4. Ukraine, Georgia

141. In recent years, a handful of semi-presidential countries have reduced the powers of the president. In Ukraine, for example, the experience of president-parliamentarism in the decade between 1996 and 2006 largely mirrors Russia's, with a government 'sandwiched' between the president and parliament and unable to follow any coherent policy programme.³⁹ Intra-executive conflict between the president and the executive was high at times, with presidents using decree powers extensively to drive policy.⁴⁰ In 2006, constitutional reforms were initiated which culminated in a switch to a premier-presidential form of government and reductions in other presidential powers.
142. In Georgia, following this example, the president's power to dismiss the government was removed from the constitution, effectively making the same change from president-parliamentarism to premier-presidentialism. The same change has been made in Armenia (2005); Croatia (2000); Portugal (1983) and São Tomé e Príncipe (2003). Only Madagascar (1996) and Senegal (2001) have made the change in the reverse direction.
143. The trend in all of these cases, however, is toward the reduction of presidential power within the semi-presidential form of government.

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³⁸ Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (n Error! Bookmark not defined.), 180-82.

³⁹ Andrew Wilson, 'Ukraine' in Elgie (ed), *Semi-Presidentialism in Europe* (n Error! Bookmark not defined.) 260, 270.

⁴⁰ Oleh Protsyk, 'Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine' (2003) 55 *Europe-Asia Studies* 1077; Protsyk, 'Ruling With Decrees: Presidential Decree Making in Russia and Ukraine' (204) 56 *Europe-Asia Studies* 637.