

Constitutional Political Economy, Vol. 16, No. 4 (December 2005).

CONSTITUTIONAL ORIGINS OF DICTATORSHIP AND DEMOCRACY

CINDY SKACH

ASSOCIATE PROFESSOR OF GOVERNMENT
HARVARD UNIVERSITY

DR CINDY SKACH
DEPARTMENT OF GOVERNMENT
HARVARD UNIVERSITY
27 KIRKLAND STREET
CAMBRIDGE, MA, 02138

Phone (617) 495-4303 x259
Fax: (617) 495-8509
EMAIL SKACH@FAS.HARVARD.EDU

CONSTITUTIONAL ORIGINS OF DICTATORSHIP AND DEMOCRACY

ABSTRACT:

Many emerging democracies across the globe are scrambling to craft new constitutions. The modal constitution being chosen in this most recent wave of democratization is a rather unknown, and under-theorized, type: semi-presidentialism. This article brings semi-presidentialism back to comparative constitutional theory, distinguishing it from presidentialism and parliamentarism, and guarding against its hasty export to new democracies. This article details when, and why, semi-presidentialism can be problematic, from the standpoint of democracy, constitutionalism, and the protection of fundamental rights; and the conditions under which it can be supportive of them. After establishing the analytical framework, this article compares developments in two important historical cases of regime change under semi-presidentialism, cases which have also been among the most influential countries for European politics in the twentieth century: the French Fifth Republic and Weimar Germany. My concluding section draws the evidence together.

KEYWORDS: SEPARATION OF POWERS, SEMI-PRESIDENTIAL, PRESIDENTIAL, PARLIAMENTARY

JEL CLASSIFICATION :

After the collapse of communism, some thirty countries crafted democratic constitutions, and the modal constitution chosen was semi-presidentialism—an undertheorized type that is most often associated with the French Fifth Republic. This constitutional type combines a popularly elected head of state, with a head of government who is responsible to the legislature. Belarus, Croatia, Poland, Romania, Russia, and Ukraine, among many other countries, adopted semi-presidentialism. In the 1990s, semi-presidentialism was also considered for import by countries in Africa, Asia, and even in Latin America.

In spite of its recent and growing popularity, however, semi-presidentialism has been rather absent from legal and political science scholarship on constitutional design and democracy. Semi-presidentialism has either been dismissed by leading scholars in these fields as a “type of one,” or dismissed on the grounds that it is no third type at all, but rather, “...an alternation of parliamentary and presidential phases.... [t]his has become the most widely accepted concept of semi-presidential democracy.”¹

This article brings semi-presidentialism back to comparative constitutional theory, distinguishing it from presidentialism and parliamentarism, and guarding against its hasty export.² This article details when, and why, semi-presidentialism can be problematic, from the standpoint of democracy, constitutionalism, and the protection of fundamental rights; and the conditions under which it can be supportive of them. After establishing the analytical framework, this article compares developments in two important historical cases of regime change under semi-presidentialism, cases which have also been among the most influential countries for European politics in the twentieth century: the French Fifth Republic and Weimar Germany. My concluding section draws the evidence together.

RE-INTRODUCING SEMI-PRESIDENTIALISM

The two most common constitutional frameworks in the world are parliamentarism and presidentialism. These two types are conceptual opposites. Parliamentarism is a system of mutual dependence between the executive and the legislature.³ Presidentialism is a system of mutual independence between the executive and the legislature.⁴

We can try to fit all the consolidated democracies, near democracies, and transitional states into either of these two constitutional types. Yet many countries, such as France and Poland, meet one of the defining criteria for presidentialism (a popularly elected president with a fixed term), while also meeting one of the defining criteria for parliamentarism (a prime minister who is subject to a vote of no confidence in parliament). In short, there are many countries in the world that have the following constitutional characteristics in common:

1. The head of state is a directly or indirectly elected president with a fixed term of office.
2. The head of government is a prime minister, usually appointed by the president, and who is responsible to the legislature.⁵

No presidential system combines these two characteristics, and no parliamentary system combines these two characteristics. At this level of abstraction, this is a different analytical category and constitutional type: semi-presidentialism.⁶

The outstanding feature of semi-presidentialism is the existence of two executives. Executive power is shared between the president and prime minister, and sharing by definition *excludes* a neat division of power, leading to ambiguity.⁷ Moreover, the legitimacy, accountability and responsibility of the two executives are fundamentally different. The prime minister emanates from the legislature and is responsible to it, whereas the president has greater autonomy from the legislature and can survive without its approval. This autonomy sets up incentives for the president to push his own agenda, even if it means invading the prime minister's domain.

In times of disagreement between the president and the prime minister, it is often not clear which executive has final decision authority. The president almost always has constitutionally-granted emergency powers, and a very important power vis-à-vis the military and the intelligence community as chief commander. In crisis situations, it is possible that the president and the legislature issue conflicting orders to the military or the intelligence community, but the military may decide against the majority and in favor of its chief commander—the president. The consequence may be extended military rule and the suspension of democracy, especially in countries with a history of military intervention in politics.

The greater the president's scope of powers—particularly decree, veto and emergency powers—and the lower the limitations on these powers in the context of an immobile parliament, the greater the president's possibility to govern without the prime minister, or alternatively, with a hand-picked, non-responsible cabinet. Presidents who choose to rely extensively on these powers over an extended time move the regime out of semi-presidentialism into constitutional dictatorship.⁸ In constitutional dictatorship, the

extended use of emergency and decree powers violates the democratic principles of participation and inclusion. It concentrates decision-making in a small, opaque group of individuals under the tutelage of the president, and thus violates Robert Dahl's eight institutional guarantees for polyarchy, particularly guarantee number eight, "institutions for making government policies depend on votes and other expressions of preference."⁹ One observable characteristic of constitutional dictatorship is the packing of the cabinet with non-party, technocratic specialists rather than political party representatives. This technocratization of the cabinet distances it from both citizens, and their political party representatives in the legislature. The legislature may try to veto the technocratic cabinet and presidential decrees, but the president in the semi-presidential type usually retains dissolution power with which she can threaten a non-cooperative legislature.

When are these shared powers, but the unequal legitimacy and accountability of the two executives, likely to structure empirically verifiable tensions into democratic governance?

THE THREE SUBTYPES OF SEMI-PRESIDENTIALISM

The presence of a legislative majority, and an amicable relationship between the president and that majority, can minimize the probability that these tensions emerge as serious institutional conflict. Here I introduce three qualitatively different, electorally generated subtypes within semi-presidentialism. These subtypes arise from the interaction of constitutional structures and procedures, on the one hand, and a country's voters and party system characteristics, on the other hand.

CONSOLIDATED MAJORITY GOVERNMENT

The best subtype for minimizing institutional conflict in semi-presidentialism is that in which the prime minister has a legislative majority, and the president is from this majority. I call this consolidated majority government. See **Table 1**. A legislative majority increases the chances that governments will be more stable, which in turn lends governments a greater time horizon for accomplishing their agendas. The chances that the president and the prime minister will have the same policy agenda, and will cooperate to accomplish their joint agenda, are maximized.

[Table 1 here]

This subtype is not immune to conflict; if the president and prime minister are from different parties or factions within the majority, conflict may develop.¹⁰ Because the tensions in the model are structured into the semi-presidential constitution by the division of the executive into two, there is always potential for conflict. Personality differences between the president and the prime minister may lead to increased disagreements over policy and over who should direct government. Or, a president's particular beliefs about his leadership role and separate legitimacy may lead him to completely dominate his prime minister, who in turn might resist this domination, setting off a spiral of power-demonstrating moves. Alternatively, a president may decide to dominate because he loses confidence in his prime minister and doubts his capacities.¹¹ After forty years of experience with semi-presidentialism, French political and constitutional scholars admit that "even in times of

habitation [consolidated majority government] it's difficult to know who makes the decisions, and things don't always work out that well."¹²

Yet, this type of executive-legislative conflict is still logically more likely to emerge and have greater consequences for government legitimacy, efficacy, and effectiveness in the subtypes where there is no legislative majority, or where the presidential and legislative majorities do not coincide. The consolidated majority is thus the least risk-prone for democratic breakdown because the potential for institutional conflict is minimized, and so then is the system-blame that could accompany such conflict.¹³

DIVIDED MAJORITY GOVERNMENT

In divided majority government, there is a stable and coherent majority in the legislature, made up of either a single party or a coalition, but the president is from a party that opposes the majority, or is from no political party at all.¹⁴ The divided majority is often referred to in the French literature as *cohabitation*, conveying the idea that two non-compatible fellows are forced to live together.¹⁵ Since there is a legislative majority to support the government, some continuity and government viability are expected. Yet, this subtype is more prone to conflict than consolidated majority government. If the president has her own agenda and is not willing to yield to the prime minister, as is most probable when the ideological (or other) cleavage separating the legislative majority and the president is deep, or when the president is determined to exercise her powers fully, then the tensions in the model may lead to conflict. In this case, the president often retains access to decree and emergency powers and direct command of the armed forces. A president may use these powers to counter-balance the prime minister's legislative majority.

DIVIDED MINORITY GOVERNMENT

Finally, I come to what I argue is semi-presidentialism's most conflict-prone subtype. None of the existing literature on semi-presidentialism distinguishes this subtype. Here, neither the president nor the prime minister, nor any party or coalition, enjoys a substantive majority in the legislature.¹⁶ The absence of any clear majority in semi-presidentialism can predictably lead to an unstable scenario, characterized by shifting legislative coalitions and government reshuffles, on the one hand, and continuous presidential intervention and use of reserved powers, on the other hand.¹⁷ It can be a vicious circle: the greater the legislative immobilism, governmental instability, and cabinet reshuffling resulting from the minority position of the government, the more justified or pressured the president may feel to use his powers at their constitutional limit (or beyond), for a prolonged period of time. This is particularly true when a country's economic situation demands rapid legislation to solve crises, as in postcommunist Russia, where failed legislative majorities prevented important legislation from being drafted, passed and implemented, and resulted in domination by the president as a means of getting any legislation passed at all.¹⁸ Such problems may be exacerbated when pressure from international funding agencies for economic restructuring, which meets with resistance from political and civil society, pushes a president to choose between his public and the international constraints. Siding with international constraints and pressures, he may resort to emergency powers and decrees to pass laws that pacify international demands. If the president victimizes political parties in the process, parties that are weak, or predisposed to anti-system behavior, may in turn begin to question not only the legitimacy of the president, but also the validity of the institutions, and even of the regime. When the regime is questioned by a significant part of the political system, a disloyal opposition emerges, and

democracy is at risk.¹⁹ I call this most volatile subtype of semi-presidentialism divided minority government. This subtype is, in effect, the combination of the potentially most problematic subtype of presidentialism, divided government, with the potentially most problematic subtype of parliamentarism, minority government. A president is frozen into this scenario for his full term or until a majority in the legislature can be formed. The president can usually call early elections in an attempt to get a majority, but there is no guarantee that a majority can be formed if the party system is not amenable to majorities or coalitions, and especially if the parties have already been victimized by an anti-party president.

AVOIDING DIVIDED MINORITY GOVERNMENT: BRINGING PARTIES BACK TO CONSTITUTIONAL THEORY

If a polity can produce legislative majorities, if presidents are integrated into the party system, and if certain institutional and social-psychological factors related to elections help presidential and legislative majorities coincide, semi-presidentialism can indeed operate in a minimally conflictual way within consolidated majority government, thereby increasing the chances of democratic consolidation and democratic stability. The party system can be a crucial determining factor for helping build these majorities, and helping the presidential and legislative majorities coincide.²⁰ Here let me distinguish three party system conditions, conditions that are related to one another, but are also conceptually and analytically distinct from one another.

THE INSTITUTIONALIZATION OF THE PARTY SYSTEM

The institutionalization of a party system is indicated by several factors:²¹

- regularity in the pattern of party competition (low volatility)
- stability of party roots in society and of citizens' strong and consistent attachment to parties
- citizens and other organized interests' perception that parties are "the way to go," and acceptance of them as the legitimate intermediary and means of influence in the democratic process
- stability of party organization, with party influence at both national and local levels, and party elites' loyalty to their parties

Institutionalized party systems are important for building and sustaining stable and coherent majorities, because "where the party system is more institutionalized, parties are key actors that structure the political process; where it is less institutionalized, parties are not so dominant, they do not structure the political process as much, and politics tends to be less institutionalized and therefore more unpredictable".²²

Building sustainable majorities within a non-institutionalized party system is problematic. Low levels of predictability, and high party fluidity and volatility, impede actors from having the necessary information about their strengths and the strengths of their opponents. This lack of information makes bargaining, the key to coalition formation, extremely difficult.²³ And unless a polity can produce single party majorities, coalitions are often necessary, and thus so is bargaining.

Extreme non-institutionalization, as well as extreme institutionalization, can be problematic for democracy. However, poorly institutionalized party systems alone do not seem to be sufficient for democratic breakdown, as attested to by the numerous Latin American democracies having survived the 1990s, including Bolivia and Brazil, without well-institutionalized party systems.²⁴

THE MAJORITY BUILDING CAPACITY OF THE ELECTORAL SYSTEM

Besides party system institutionalization, electoral systems are important for achieving majorities. The formulae vary, but there are two basic and often competing objectives guiding electoral system design. The first objective is the production of majorities in the legislature. Thus, majoritarian electoral systems help encourage, or even manufacture, legislative majorities. Variations of majority electoral formula include the absolute majority system with a second round limited to the top two candidates (*ballotage*); the absolute majority system with a plurality rule in the second round; the alternative vote; and the first-past-the-post (or plurality) system.

The second, competing objective is the representation of parties in proportion to their popular support, as expressed through votes. Thus, non-majoritarian electoral systems include a variety of proportional representation (PR) systems, and semi-PR or intermediary systems. PR systems, unlike majoritarian systems, aim at mirroring the diverse interests in a polity, not at encouraging majorities. PR systems vary in their degree of proportionality, depending on the mathematical method used to distribute seats, which varies from the very proportional Sainte-Laguë method to the less proportional d'Hondt formula. In cases where PR is chosen by a polity, its fragmentation-permitting effects can be limited by employing a less proportional method of seat allocation; applying a high threshold that requires parties and party lists to meet a certain percentage of votes in order to be counted in the distribution of legislative seats; or by reducing district magnitude.²⁵

This is not to say that majority electoral systems and corrected PR are, overall, a better choice for a polity than purer forms of PR.²⁶ In fact, the exclusion of a party through barriers such as thresholds and majority electoral formulae may lead to frustration with the

institutions and push excluded parties to adopt an anti-system attitude, which may in turn threaten democracy. Moreover, a polity's choice of electoral system is often a negotiated decision, and some countries prefer to give more equal representation to different political groups through PR. For example, countries emerging from periods of one-party, non-democratic rule are often under pressure to choose proportional representation as the default electoral system, in order to encourage the development of a multi-party system, and demonstrate a commitment to party pluralism. In other cases, proportional representation may be the bargained outcome of democratization negotiations. The crucial point here is that majority electoral formulae seem to be necessary for non-conflictual semi-presidentialism, because they are more likely to put a country into consolidated majority government. And yet, these majority electoral formulae may be incompatible with the goals and norms of a particular polity and its citizens.²⁷

The mode of presidential election is also important for structuring majorities. Leaving aside the many modes of indirect election, we can distinguish two basic types of direct presidential election: the absolute majority with two or more rounds, and the plurality system. The two-round majority system, used in several semi-presidential countries, has been advocated by some scholars as a majority-building tool.²⁸ However, the incentives in a two-round presidential electoral system do not have a single, simple logic, but rather, are multiple, complicated, and even contradictory, and also depend on the context within which they function. As Parodi notes, "...the two-round game induces in electoral campaigns a certain extermination of the first round and a certain centralization of the second...[t]he contradiction [of rounds] is naturally attenuated by the anticipation during the first round campaign of the strategic necessities of the second."²⁹

If the incentives Parodi distinguishes operate together as anticipated, two majority blocks are expected to form, and these blocks are expected to lean towards the center. But these incentives can only be expected to work as such when the party system is institutionalized and where two main ideological or programmatic blocks already exist or have the potential to form (which is unfortunately not the case for many transitional democracies).³⁰ If the voter distribution is bi-modal with two concentrations on either far end of the spectrum, as in most new democracies, or if there is high voter abstention or indecision, then the two-round electoral competition may exacerbate existing voter divisions. Then, a two-round electoral system has little chance of bringing the blocs closer together.³¹ Moreover, if the party system is inchoate and volatile, a majority run-off election can exacerbate the polarization and fragmentation within the polity. This is so because the first round under these circumstances seems to encourage a “go for broke” attitude. Recalling the incentives in this system, the first round is designed as a primary in which candidates from the same block try to distinguish themselves from each other, and thus candidates are induced to push themselves (programmatically or ideologically) away from one another. When there are no blocks, when the system is so polarized and fragmented that minimal winning coalitions are impossible, the second round cannot be expected to pull anyone together or towards the center. Thus the majoritizing incentives of the second round are made obsolete, and the extremizing effects of the first round become the *only* effects of this electoral system.

A two round, absolute majority electoral system may also inflate the president’s actual legitimacy, especially when there are many candidates in the first round. This is problematic for semi-presidentialism, particularly once a country enters divided minority

government. To illustrate, assume a first-round candidate having won 21% of the popular vote is admitted to the second round because he is one of the two front-runners. He then wins the second round with 53% of the vote. Is it accurate to count this 53% as a measure of his legitimacy, or is the 21% a more accurate reflection? His 21% in the first round seems to be the more accurate measure, given that the restriction in the second round to only two candidates inflates actual electoral popularity.³² This inflated legitimacy can also encourage anti-party behavior, and then *turn problematic* when a president finds himself in a conflictual subtype of semi-presidentialism (e.g., divided minority or divided majority), and uses this inflated legitimacy to push his powers beyond their constitutional limits, as a substitute for a legislative majority, and at the expense of the prime minister and the legislature.

In sum, the majority-building capacity of the electoral system is a crucial condition for avoiding divided minority government. There is no evidence to suggest that in and of itself, the absence of majority-building electoral systems and the use of proportional representation lead to democratic breakdown. In fact, PR was an important part of political life in postwar Italian democracy until 1994, and continues to be in Israel and Finland. Moreover, some of the recently democratized Latin American democracies that combine PR with a poorly structured party system (such as Brazil) have not yet broken down. If a party system is at least minimally structured and institutionalized, then majority-building electoral formula can begin to manufacture legislative majorities. Yet only in the joint presence of a third and final condition, the president's integration into the party system, can these two conditions help countries operate under consolidated majority government.

THE INTEGRATION OF PRESIDENTS INTO A COUNTRY'S PARTY SYSTEM

For non-conflictual semi-presidentialism, a “party man” president, integrated into the party system and both supported *by* and supportive *of* parties, is necessary. Presidential candidates that act as independent, non-party personalities are more likely to emerge in non-institutionalized or weakly institutionalized systems where political society is underdeveloped. Since parties do not play an important channeling role in non- or weakly institutionalized systems, the presidential door is open for independent candidates who may even employ an anti-party rhetoric and campaign on an anti-party and even anti-system platform.

There is almost no safeguard to ensure that independents do not run for presidential office, and independent presidential candidates do emerge in institutionalized systems as well (as did H. Ross Perot in the United States in 1992). Neither semi-presidentialism nor pure presidentialism has any institutional mechanism to ensure that chief executives are “party men.”³³ This lack of party control at the presidential level may lead to the “outsider” phenomenon.³⁴ When an outsider or anti-party president is actually elected, he must then face a legislature in which he will predictably have no initial party support, and may find it difficult to build this necessary support if his presidential campaign rested on anti-party discourse, which is typical of independent candidates. Without party backing, such a president is immediately in the more conflictual subtypes of semi-presidentialism.

A non-party president alone, however, is not a sufficient condition for democratic breakdown. If a president is not integrated into the party system of a particular country, as long as the party system is relatively institutionalized, and if majority-building electoral formula regularly produce legislative majorities, a country can still operate within divided

majority government. Indeed Weimar, as I explore below, survived almost eight years under the anti-party President Hindenburg, as his anti-party behavior alone was not sufficient for breakdown. In this vein, a president's constitutional powers alone do not explain conflict within the semi-presidential model, for such powers remain constant over time, and yet the president's *de facto* power vis-à-vis the legislature, and thus the degree of institutional conflict, varies.³⁵ What seems most crucial, rather, is that when constitutionally powerful presidents are non-party, when party systems are non-institutionalized, and when electoral formula fail to produce legislative majorities, a country is most likely to spend a great deal of its life-span in divided minority government. The dynamics of this constitutional subtype—legislative immobilism, presidential-legislative deadlock, and the resulting use of presidential decree to counteract immobilism and deadlock—gradually erode the legitimacy of the legislature; remove incentives for responsible party behavior; and result in the abdication of political parties to constitutional dictatorship. This is the dynamic of divided minority government that leads to democratic breakdown. It is to this dynamic in my empirical cases that I now turn.

THE CASES

My argument so far has been that the semi-presidential constitution, under certain party conditions, may not be self-enforcing, but rather, may provide incentives for presidents (and other actors) to transgress democratic boundaries.³⁶ I suggested that instead of staying at the level of the constitution, we look at constitutional subtypes to see how constitutional rules interact with the realities of a country's party system. This level of analysis, I argued, gives us greater explanatory power for understanding the merits and drawbacks of constitutions. In

this section, I now present some cases of regime change under semi-presidentialism.³⁷ I show how varied placement in the semi-presidential subtypes had qualitatively different effects on democracy, and particularly, how the causal dynamic of divided minority government over time increased the chances of democratic breakdown.³⁸

THE FRENCH FIFTH REPUBLIC

The French Fifth Republic was born in 1958 in divided minority government. The party system was in a state of change after the collapse of the Fourth Republic, and remained poorly institutionalized for the first few years of the Fifth Republic. The majoritarian electoral system had been used for the first time in 1958, but political actors were still adjusting to its rather complicated incentives. The first President Charles de Gaulle, for his part, was committed to building a democratic Fifth Republic. He was less committed, in the first years, to do so via political parties, as he refused to join any party in existence. As a consequence of these factors, coherent and stable legislative majorities did not exist. The pro- de Gaulle party, *Union pour la nouvelle République* (UNR), governed with support from the *Algérie française* legislative faction in the first years of the Republic. This alliance soon dissolved, leaving President Charles de Gaulle, and his Prime Minister Michel Debré, in divided minority government.

Relations between the government and the legislature in this period were turbulent. At least three important anti-democratic developments bordering on constitutional dictatorship occurred. First, de Gaulle and Debré relied heavily on restrictive legislative procedures, such as Articles 44(3) and 49(3) of the Constitution, to limit parliamentary debate and pass legislation without compromise. In response to the use of Article 49(3) to

constrain the legislature, deputies often walked out of parliament.³⁹ This institutional conflict raised questions about the legitimacy of the new regime, as policy questions were often overshadowed by questions about the viability of the new institutions. Second, in 1961, in response to the “Crisis of the Generals” coup attempt in Algeria, de Gaulle instituted a period of presidential rule under the auspices of Article 16. Although the crisis in Algeria lasted only four days, de Gaulle extended his use of emergency powers for five months, during which period he issued sixteen substantive decrees.⁴⁰ Third, in 1962, de Gaulle used referenda power in what was seen as a controversial, unconstitutional way of bypassing the divided legislature to change the constitution.⁴¹ De Gaulle proposed the direct election of the president, an amendment that made de Gaulle and successive presidents directly accountable to the electorate rather than the National Assembly, and accountable only once every seven years.⁴² In response, the National Assembly voted a motion of censure against the government, noting, “the President of the Republic is violating the Constitution of which he is guardian.”⁴³ De Gaulle, utilizing his constitutional power, dissolved the Assembly. During this conflictual period of divided minority government from 1959 to 1962, which often bordered on constitutional dictatorship, public opinion regarding the new institutions was often negative. When asked in 1962 whether they agreed with the statement that “in France, democracy is in danger,” 43% disagreed, but a substantial 35% agreed. Among this 35%, 11% felt that the threat was emanating from de Gaulle.⁴⁴

But France gradually began to develop a party system that became institutionalized and depolarized over time, evidenced in part by a steady decline in electoral volatility.⁴⁵ See **Table 2**. Moreover, the strongly majoritarian electoral system in place since 1958 began to encourage two, center-leaning majorities in the party system.⁴⁶ President de Gaulle gradually

became more integrated into the party system, increasingly relying on support from the UNR.⁴⁷ The successive presidents of the Fifth Republic followed suit. These conditions encouraged the coincidental presidential and legislative majorities that kept France operating in the least conflictual subtype of semi-presidentialism for over 60% of its life-span to date.⁴⁸ See **Table 3**.⁴⁹

[Tables 2 and 3 here]

Importantly, the election of 1962 gave President de Gaulle and his Prime Minister Georges Pompidou a 60% majority in the National Assembly, and France spent the crucial years from 1962 to 1969 in consolidated majority government. With the president and prime minister enjoying the same majority, the potential for divided alliances within ministerial departments was reduced.⁵⁰ This aided in the co-ordination, rather than confrontation, of policy. Due to the consolidated majorities of these years, the National Assembly “ran its full term—an unprecedented occurrence—with no change of Prime Minister”.⁵¹ Moreover, de Gaulle had little incentive to use presidential power and prerogatives against the legislature, since he enjoyed legislative majority support. The type of institutional conflict which had beset the 1959-1962 period was reduced, strengthening political society and increasing governmental efficacy and legitimacy. Pompidou and his Gaullist majority in the legislature concentrated their efforts on regional development and long-term policy plans to encourage investment and technological change.⁵² De Gaulle, while still concerned with domestic affairs, was able to concentrate on the complicated international decisions facing the French, including the veto on England’s entry into the Common Market, France’s relationship to NATO, and France’s public criticism of the American intervention in Vietnam. De Gaulle’s

perceived success in these areas was profound, as public opinion data for this period show that “General de Gaulle had satisfied the absolute majority of French people, both sexes, all ages, of all educational backgrounds and of all professions, without exception.”⁵³

Since then, France has entered the divided majority subtype three times, resulting in some institutional conflict—none of it regime-threatening.⁵⁴ During the most recent period from 1997 to the present, tensions emerged between center-right President Jacques Chirac, and center-left Prime Minister Lionel Jospin, delaying important legislation, particularly in the area of judicial reform.⁵⁵ Even during consolidated majority government in France, the permanent tensions in the model have sometimes been felt, as individual presidents have asserted their constitutional powers and prerogatives.

THE WEIMAR REPUBLIC

When the Weimar Republic was founded in 1919, Germany had just emerged from four years of devastating war. Members of the three main, so-called democratic parties in 1919—the Social Democrats, the *Zentrum* Party and the German Democratic Party—embarked on the challenge of constructing a democratic order and crafting a liberal constitution. This constitution was semi-presidential. Weimar’s party system at the time was built on a complicated cleavage structure, with a strong left-right polarization, a strong secular-religious polarization, and a division of parties into mutually exclusive groups of actors that were either loyal, semi-loyal, or disloyal to Weimar’s institutions.⁵⁶ The almost “pure” proportional representation electoral system used at all levels of the federation allowed systemic fragmentation to be reflected in the *Reichstag* and *Landtage*, making coalitions difficult to build and sustain.⁵⁷ Moreover, social divisions, reflected in the party

system, also made building certain types of coalitions a difficult game.⁵⁸ Yet, early in the Republic, several parties were able to broker majority coalitions. This cooperative party behavior was reinforced by President Friedrich Ebert, the first president of the Weimar Republic, who was elected by the *Reichstag* in 1919. Ebert, as a member of the *Sozialdemokratische Partei Deutschlands* (SPD), was an established party man who worked with, and through, political parties. Ebert was committed to supporting the SPD during his presidency. For example, the first three chancellors under Ebert, Philipp Scheidemann, Gustav Bauer, and Hermann Müller, were members of Ebert's own SPD party. Moreover, over the course of Ebert's tenure, a plurality of his cabinet ministers were SPD men, not non-party technocrats.

The first directly elected president of the Weimar Republic was the anti-party Paul von Hindenburg, who assumed the presidency in 1925 following his election.⁵⁹ Hindenburg never came to appreciate the necessity of working through political parties, and showed a clear preference for non-party ministers in his cabinets. This alone was not sufficient for Weimar's collapse. However, without the coalition-building potential of Ebert, the SPD gradually began to refuse coalitions with the center parties. This was extremely problematic. The SPD's center-left and pro-system placement in Weimar's complex party system made it one of the most important and viable coalition partners throughout the Republic. In terms of both votes and seats, the SPD remained the strongest party until 1932.⁶⁰ Without the SPD's participation in government coalitions, divided minority governments became more common. Weimar, very contrary to France, operated in the most difficult subtype of semi-presidentialism—divided minority government—for over 50% of its life-span. See **Table 4.**⁶¹

[Table 4 here]

As the conflictual dynamic of divided minority government ensued, parties began to abdicate responsibility by remaining in the opposition and tolerating unpopular governments that ruled by decree. A majority in the *Reichstag* was constitutionally empowered to question these decrees, but resisted in order to avoid parliamentary dissolution. Parties eventually began to abdicate their responsibility for controlling the government, contributing to the erosion of democratic legitimacy in the political system at large.

This abdication of responsibility, and the consequences for democracy, are best demonstrated by the behavior of the SPD over the course of the Republic. During the early years of the Republic under Ebert, the SPD participated in coalitions with the *Zentrum*, the *Deutsche Demokratische Partei* (DDP), and occasionally, the *Deutsche Volkspartei* (DVP). But from November 1923 onward, the SPD began a practice of tolerating unpopular governments and allowing the president to govern by decree.⁶² The SPD preferred to remain in the opposition, rather than form a coalition government, allowing other parties to risk future electoral defeat by governing in hard times. Because the SPD preferred to remain in the opposition, in spite of the fact that it remained the strongest party and the most centrally located party in this complex cleavage structure, other “middle of the road parties tended to bring the right wing into their governments.”⁶³ This process exacerbated party system polarization and centrifugal party competition.

In this context of increased polarization, by 1930, unemployment reached critical levels, and the world economic crisis pushed revenues in Germany well below budget projections.⁶⁴ There was no clear consensus within political society for balancing the budget,

and conflict emerged between the DVP and the Social Democrats over the unemployment scheme. President Hindenburg, facing once again the paralysis of divided minority government, and frustrated with the immobilism over the budget, appointed *Zentrum* Party man Heinrich Brüning Chancellor of the Republic, and asked him to form a cabinet with “no ties to parties.”⁶⁵ The SPD agreed to tolerate this non-party cabinet, fearful of dissolution and new elections during economic hardship, rather than either supporting it actively by joining the government, or turning it out of office through a no-confidence vote. Through this toleration, the SPD allowed, even encouraged, Hindenburg and Brüning to legislate by decree. In June 1932, Hindenburg removed Brüning and appointed the extreme right General Franz von Papen Chancellor.⁶⁶ Von Papen formed a government that contained four non-party technocrats (von Neurath, von Schleicher, Warmbold, and von Krosigk) and two members of the anti-system *Deutschnationale Volkspartei* (von Gayl and Gürtner).

The non-party cabinets became accountable in these last years from 1930 to 1933 exclusively to the president. See **Figure 1**. One outcome of this move to hyperpresidentialism was the so-called *coup* by the *Reich* government against the State of Prussia in 1932: Hindenburg and von Papen forcibly displaced the SPD caretaker government of Prussia in a move that was judged by the State Court to be partly unconstitutional.⁶⁷ With the Social Democrats removed from the Prussian government, the ban on the Nazi paramilitary group, the *Sturm-Abteilung* (SA), was lifted in this strategically important state, paving the way for full democratic breakdown and the subsequent takeover by the National Socialist government in 1933.⁶⁸ The causal mechanism of divided minority government and democratic breakdown had run its full course.

[Figure 1 here]

Had Weimar managed to remain in consolidated majority government, with the Social Democrats as the main partner in centrist coalitions, the dynamic of divided minority government could have been avoided. By incorporating the middle-of-the-road parties into these coalitions, centripetal competition in the party system would have been strengthened, and centrifugal tendencies reduced. The president would have had less justification, therefore, for bypassing the legislature and ruling by decree via the infamous Article 48 of the Weimar Constitution. Without the presidential decrees, in turn, the parties – and especially the crucial SPD – would have had more incentives to accept parliamentary responsibility and cooperate in government coalitions, or turn unpopular coalitions out of office, rather than tolerating presidential *Fachkabinette* and remaining in an irresponsible opposition.

CONCLUSION

Stephen Holmes suggests that “[c]onstitutions contain various inducement mechanisms, devices for focusing attention, sharpening awareness of options, mobilizing knowledge, involving citizens and guaranteeing that future choices will be made under conditions where alternatives are discussed, facts are marshaled and self-correction is possible.”⁶⁹ This article suggests that semi-presidentialism is a growing constitutional force that needs more theoretical and empirical investigation. The article has shown that semi-presidentialism’s structures can work in ways that encourage democratic development in countries over time; but it has also cautioned that these structures can also preclude options, mobilize confusion,

involve citizens in battles against democratic institutions and increase the chances that future choices will be made under conditions where alternatives are not discussed, facts are rearranged, and self-correction is impossible. The former scenario characterizes the last years of the French Fifth Republic, and the first years of the Weimar Republic. The latter scenario characterizes the first years of the French Fifth Republic, and the last years of the Weimar Republic. If a democratizing country is not able to build legislative majorities and ensure that presidents are integrated into an institutionalized party system, it will most likely operate under divided minority government. Given that most new democracies have poorly institutionalized party systems, presidents that (at least initially) present themselves as above parties, and electoral PR electoral formula designed to encourage political parties, semi-presidentialism may not be the most prudent constitutional choice.

More generally for the study of constitutional theory and practice, the argument and evidence in this article demonstrate the importance of bringing party systems, and the social and historical conditions that give rise to them, back into the growing debate on constitutions and democracy.

TABLE1: THREE ELECTORALLY GENERATED SUBTYPES WITHIN SEMI-PRESIDENTIALISM

Subtype 1:	Subtype 2:	Subtype 3:
CONSOLIDATED MAJORITY	DIVIDED MAJORITY	DIVIDED MINORITY
President and PM have same majority in legislature	PM has majority, President does not	Neither President nor PM has majority

TABLE 2: AVERAGE ELECTORAL VOLATILITY FOR EARLY FIFTH REPUBLIC LEGISLATURES (1962-81) AND COMPARATIVE EUROPEAN AND LATIN AMERICAN COUNTRIES

<20	>20	
Austria (1962-1983)	3.1	
Ireland (1961-1981)	6.1	
UK (1964-1983)	6.6	
Germany (1961-1983)	6.8	
Italy (1963-1983)	7.4	
Belgium (1961-1981)	8.5	
Netherlands (1963-1981)	10.3	
France (1969-1981)	10.6	
Columbia (1970-90)	8.5	
Uruguay (1971-89)	9.1	
France (1962-1969)	11.5	
Argentina (1983-1993)	12.7	
France (1945-1958)	15.7	
Chile (1973-1993)	15.8	
Venezuela (1973-1993)	17.7	
Costa Rica (1970-1990)	18.2	
Weimar (1919-1933)	18.8	
	Ecuador (1978-92)	32.5
	Bolivia (1979-93)	33.0
	Brazil (1982-90)	40.9
	Russia (1993-1995)	47.0
	Peru (1978-90)	54.4

Source: Data for Latin America is taken from Mainwaring and Scully (1995, 8). The volatility score for France is adapted from data in Bartolini and Mair (1990, 323-358). The volatility score for Russia was calculated from data in White, Rose and McAllister, (1997, 237-239). This table and subsequent tables and figures herein are adapted from Skach (2005).

TABLE 3: ELECTORALLY GENERATED SUBTYPES OF SEMI-PRESIDENTIALISM, FRANCE 1959-

2002

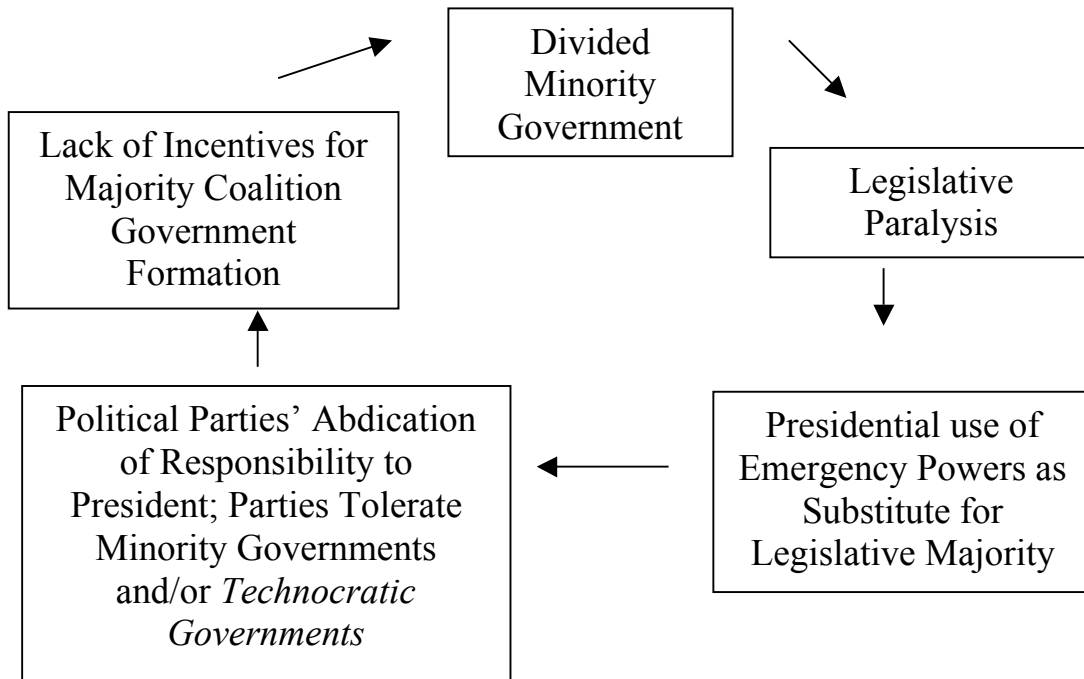
CONSOLIDATED MAJORITY	DIVIDED MAJORITY	DIVIDED MINORITY
President and PM have same majority in legislature	PM has majority; President doesn't	Neither President nor PM has majority
9,455 Days	3,361 Days	2,975 Days

TABLE 4: ELECTORALLY GENERATED SUBTYPES OF SEMI-PRESIDENTIALISM AND OUT-OF-TYPE MOVES, WEIMAR GERMANY 1919-33

CONSOLIDATED MAJORITY	DIVIDED MAJORITY	DIVIDED MINORITY	CONSTITUTIONAL DICTATORSHIP
President and PM have same majority in legislature	PM has a legislative majority, president doesn't	Neither PM nor president has a legislative majority	Continual activation of emergency or decree powers as substitute for a legislative majority
406 Days	1,174 Days	2,468 Days	1,037 Days



FIGURE 1: CAUSAL MECHANISMS OF DIVIDED MINORITY GOVERNMENTS



NOTES

¹ AREND LIJPHART, PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT 8 (1992). Also see Armel Le Divellec, *Die dualistische Variante des Parlamentarismus: Eine französische Ansicht zur wissenschaftlichen Fata Morgana des semi-präsidentiellen Systems*, 27 ZEITSCHRIFT FÜR PARLAMENTSFRAGEN 145-51 (1996); and Lijphart, *Trichotomy or Dichotomy*, 33 EUROPEAN JOURNAL OF POLITICAL RESEARCH 125-28 (1997). There is to date no English language monograph on semi-presidentialism. The existing treatments of semi-presidentialism include two chapters of WERNER KALTEFLEITER, *DIE FUNKTIONEN DES STAATSOBERHAUPTES IN DER PARLAMENTARISCHEN DEMOKRATIE* (1970); MAURICE DUVERGER, *ÉCHEC AU ROI* (1978); and *LES RÉGIMES SEMI-PRÉSIDENTIELS* (Maurice Duverger, ed., 1986), which was written before the French experiences with co-habitation; and Chapter 4 of MATTHEW SOBERG SHUGART AND JOHN M. CAREY, *PRESIDENTS AND ASSEMBLIES* (1992). Newer works include two chapters in GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING* (1994); Winfried Steffani, *Semi-Präsidentialismus: ein eigenständiger Systemtyp? Zur Unterscheidung von Legislative und Parlament*, 26 ZEITSCHRIFT FÜR PARLAMENTSFRAGEN, 621-41 (1995); ORESTE MASSARI AND GIANFRANCO PASQUINO, *SEMPRESIDENZIALISMO: ANALISI DELLE ESPERIENZE EUROPEE* (1996); Horst Bahro, Bernhard H. Bayerlein and Ernst Veser, *Duverger's Concept: Semi-Presidential Government Revisited*, 34 EUROPEAN JOURNAL OF POLITICAL RESEARCH, 201-24 (1998); and the useful conceptual cleaning and empirical contributions in *SEMI-PRESIDENTIALISM IN EUROPE* (Robert Elgie, ed, 1999). Indeed, some authors have hastily generalized from France's rather exceptional experience with semi-presidentialism. Jonathan Zasloff, for example, remarks that "[s]emi-presidentialism's record, to the extent that it can be determined, is promising, or at least, not unpromising." See *id.*, *The Tyranny of Madison*, 44 UCLA L. REV. 795,

820 (1997). *Also see* Samuel H. Barnes, *The Contribution of Democracy to Rebuilding Postconflict Societies*, 95 *Am. J. Int'l L.* 86, 95 (2001).

² For a more comprehensive treatment, see my *BORROWING CONSTITUTIONAL DESIGNS: CONSTITUTIONAL LAW IN WEIMAR GERMANY AND THE FRENCH FIFTH REPUBLIC* (2005).

³ Governments can be single-party or coalitional, and have majority or minority status. Majority governments seem to be the most viable, whereas the least viable seem to be minority governments. *See* MICHAEL LAVER AND NORMAN SCHOFIELD, *MULTIPARTY GOVERNMENT* 142 (1990); and PAUL V. WARWICK, *GOVERNMENT SURVIVAL IN PARLIAMENTARY DEMOCRACIES* 97 (1994). *Also see* John D. Huber, *How Does Cabinet Instability Affect Political Performance? Portfolio Volatility and Health Care Cost Containment in Parliamentary Democracies*, 92 *AMERICAN POLITICAL SCIENCE REVIEW* 577-91 (1998), for the argument that minority governments have increased portfolio changes across parties, limiting governmental effectiveness. And although Michael Laver, in *Government Formation and Public Policy*, 33 *PS: POLITICAL SCIENCE AND POLITICS* 21-23 (2000), argues that neither coalition governments, nor minority governments, need be weak and unstable, the literature on coalition and minority governments has almost exclusively concerned itself with consolidated democratic systems, and has ignored their impact in transitional democracies.

⁴ These tensions are maximized under divided government, when the president does not enjoy a majority in the legislature, and minimized under unified government. *See* *THE POLITICS OF DIVIDED GOVERNMENT* (Gary W. Cox and Samuel Kernell, eds., 1991); Morris Fiorina, *Coalition Governments, Divided Governments, and Electoral Theory*, 4 *GOVERNANCE: AN INTERNATIONAL JOURNAL OF POLITICAL ADMINISTRATION*, 236-49 (1991); FIORINA, *DIVIDED GOVERNMENT* (1992);

CHARLES O. JONES, *THE PRESIDENCY IN A SEPARATED SYSTEM* (1994); and John. J. Coleman, *Unified Government, Divided Government, and Party Responsiveness*, 93 *AMERICAN POLITICAL SCIENCE REVIEW* 821-35 (1999).

⁵ See ELGIE (1999).

⁶ MAURICE DUVERGER, *LE SYSTÈME POLITIQUE FRANÇAIS : DROIT CONSTITUTIONNEL ET SCIENCE POLITIQUE* 500-01 (1996), claims to be the first to use this term. In later works, Duverger went on to suggest that semi-presidentialism was in fact an alternation between presidential and parliamentary phases of government.

⁷ See YVES MÉNY, *LE SYSTÈME POLITIQUE FRANÇAIS* 98 (1996), who notes in the French constitution, “[t]he powers of Head of State are indefinable, literally indefinite, without end....[w]ho could in fact resist such a temptation?”

⁸ CLINTON ROSSITER, *CONSTITUTIONAL DICTATORSHIP: CRISIS GOVERNMENT IN THE MODERN DEMOCRACIES* (1948). On the relationship between semi-presidentialism and constitutional dictatorship, see SKACH, *BORROWING CONSTITUTIONAL DESIGNS*, pp. 12-30, and 49-70.

⁹ ROBERT A. DAHL, *POLYARCHY: PARTICIPATION AND OPPOSITION* 235-36 (1971).

¹⁰ That is why François Mitterrand altered the structure of his Socialist Party in an attempt to eliminate various factions within it. See Philip Cerny, *Democratic Socialism and the Tests of Power*, 6 WEST EUROPEAN POLITICS 188-202 (1983).

¹¹ This was the case with Georges Pompidou and his prime ministers. This was also the case in Poland during the first two periods of consolidated majority government.

¹² Didier Maus, Comment at Round Table discussion of the 40th Anniversary Colloquium, Lectures et Relectures de la Constitution de la V^e République (Paris, October 7, 1998).

¹³ SHUGART AND CAREY, *supra* note 1, miss this point. Their emphasis on *de jure* presidential power as a contributing factor to democratic breakdown obscures the fact that political conflict within semi-presidentialism varies over time, although the *de jure* presidential powers remain constant.

¹⁴ A majority is stable when it lasts for the entire duration of the legislature, and coherent when “the parties, groups and individuals which compose [the majority] are in agreement concerning essential political trends,” DUVERGER, *supra* note. 1, at 91. Theoretically, either the prime minister or the president can enjoy the legislative majority during cohabitation. Empirically, it is usually the prime minister, due to constitutional stipulations or convention, which ensure that the president chooses a prime minister from the largest party or coalition in the legislature.

¹⁵ DUVERGER, *supra* note 1; MARIE-ANNE COHENDET, L A COHABITATION: LEÇONS D’UNE EXPÉRIENCE (1993). Interestingly, MICHAEL LAVER AND KENNETH A. SHEPSLE, MAKING AND BREAKING GOVERNMENTS: CABINETS AND LEGISLATURES IN PARLIAMENTARY DEMOCRACIES 269

(1996) argue that “...when the executive does not control a legislative majority in a parliamentary democracy, minority government is, in effect, divided government.” Similarly, ALBERTO ALESINA AND HOWARD ROSENTHAL, *PARTISAN POLITICS, DIVIDED GOVERNMENT, AND THE ECONOMY* 257 (1995) state, “...the similarities between the French and the American cases of divided government are more striking than the differences.” However, there are crucial conceptual and analytical distinctions between the divided government, minority government, and what I call divided majority government. For example, presidentialism’s divided government is for a fixed term, whereas parliamentarism’s minority government can be for a variable term. This crucial difference creates different incentives, and one of the complications with semi-presidentialism’s divided minority government is that these different incentives are combined. These distinctions become acute in democratizing countries where political institutions tend to be weaker, and party systems more polarized, than in consolidated settings. Also see Laver and Shepsle, *Divided Government: America is Not ‘Exceptional* 4 *GOVERNANCE: AN INTERNATIONAL JOURNAL OF POLICY AND ADMINISTRATION* 250-69 (1991), and FIORINA, *supra* note 4.

¹⁶ KAARE STROM, *MINORITY GOVERNMENT AND MAJORITY RULE* (1990), suggests a useful conceptual differentiation between formal minority governments, which receive external legislative support and approach majority status, and substantive minority governments, which remain minority governments even when external support is counted. I follow Strom’s distinction, counting formal minority governments as the functional equivalent of majority governments.

¹⁷ The arguments in *id.*, and LAVER, *supra* note 3, that minority government “need not be feared” with respect to democracy are not applicable here. First, their analyses concern parliamentary, and not semi-presidential, systems. Second, they assume (among other things) stable political institutions,

and well-organized and resourceful political parties, whereas I am interested in how minority governments fare in situations of uncertainty when political institutions are neither stable nor well developed (i.e., in democratic transition and re-equilibration).

¹⁸ The longer treatment of the Russian case is found in Timothy J. Colton and Cindy Skach, *The Russian Predicament*, 16 JOURNAL OF DEMOCRACY 113-126 (2005). Also see Scott Parrish, *Presidential Decree Authority in Russia, 1991-95*, in EXECUTIVE DECREE AUTHORITY 62-103 (John M. Carey and Matthew Soberg Shugart, eds.1998).

¹⁹ JUAN J. LINZ, C RISIS, B REAKDOWN, & REEQUILIBRATION, part of THE BREAKDOWN OF DEMOCRATIC REGIMES 27-38 (Juan J. Linz and Alfred Stepan, eds., 1978). See *id.* at 27, who states, “[c]hanges in regime occur with the transfer of legitimacy from one set of political institutions to another. They are brought on by the action of one or more disloyal oppositions that question the existence of the regime and aim at changing it.”

²⁰ There are also two conditions that do not explain or predict a country’s placement or movement among the different subtypes of semi-presidentialism, but rather, influence whether—once in a subtype—conflict will be exacerbated or mitigated. One condition concerns powers constitutionally granted to a president, on the one hand, and the extent to which a president uses these powers, on the other hand. A second condition concerns the set of specific legislative and agenda rules which affect the power of governments vis-à-vis the legislature, and those determining the role of a country’s constitutional court as a moderating power.

²¹ Giovanni Sartori, *Political Development and Political Engineering*, 17 PUBLIC POLICY 261-98, 293 (1966); and BUILDING DEMOCRATIC INSTITUTIONS: PARTY SYSTEMS IN LATIN AMERICA 20 (Scott Mainwaring and Timothy R. Scully, eds., 1995).

²² *Id.*, 22.

²³ See WILLIAM RIKER, THE THEORY OF POLITICAL COALITIONS (1962), especially his discussion of bargaining through side-payments, 105-123.

²⁴ MAINWARING AND SCULLY, *supra* note 22.

²⁵ DOUGLAS W. RAE, THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS 114-25 (1967); SHUGART AND CAREY, *supra* note 1, at 226-229; and AREND LIJPHART, ELECTORAL SYSTEMS AND PARTY SYSTEMS: A STUDY OF TWENTY-SEVEN DEMOCRACIES, 1945-1990 21-46 (1994).

²⁶ Majority formation is only one possible goal of electoral system design. Accurate reflection of minority parties in the legislature is another—often opposite—goal. See DIETER NOHLEN, WAHLSYSTEME DER WELT: DATEN UND ANALYSEN, EIN HANDBUCH 13-18, 48-56 (1978); and LIJPHART, *supra* note 25, at 10-56.

²⁷ Another factor within electoral system design is the relative timing of presidential and legislative elections. Evidence to date indicates that presidential and legislative elections held simultaneously are more likely to give a president a majority in the legislature, other things being equal. In semi-presidentialism, constitutional prerogatives often allow presidents to call early legislative elections shortly after taking office (or during the term) to try to re-equilibrate the presidential and legislative

majorities, as Mitterrand did after his election in 1981. But as SARTORI, *supra* note 1, at 179 notes, “[c]oncurrent elections cannot fabricate undivided majorities that are not potentially in the works; but staggered elections do facilitate divided majority outcomes”. This said, it does seem to be the case that the electorate is encouraged to vote for the same party in concurrent elections. Also see SHUGART AND CAREY, *supra* note 1, at 229-258 and Appendix B.

²⁸ DOMENICO FISICHELLA, *ELEZIONI E DEMOCRAZIA: UN’ANALISI COMPARATA* 274-86 (1982); and SARTORI, *supra* note 1, at 61-69.

²⁹ Jean-Luc Parodi, *Le nouvel espace politique français*, IN *IDÉOLOGIES, PARTIS POLITIQUES, ET GROUPES SOCIAUX* 49-60, 55 (Yves Mény, ed., 1991).

³⁰ Although, see ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957); Downs’ model suggests that electors vote for policies, and that parties are political entrepreneurs who will alter their policies (those they are not particularly attached to) in order to attract the greatest percentage of votes. Also see IAN BUDGE AND HANS KEMAN, *PARTIES AND DEMOCRACY: COALITION FORMATION AND GOVERNMENT FUNCTIONING IN TWENTY STATES* 26-31 (1990).

³¹ In other words, “... a bipolar [party] system assumes a normal, bell-curve distribution (a Gauss-Laplace curve) of where the electors place themselves along a left-right (or other) continuum, whereas bipolarization assumes a double-peaked distribution of political opinion with an almost empty center.” See SARTORI, *supra* note 1, at 14.

³² This is the actual percentage the French presidential candidate Jacques Chirac won in the first round presidential elections on April 23, 1995. The second round, limited to the two front-runners, which included Chirac and Socialist Party candidate Lionel Jospin, gave him 52.63%.

³³ Only parliamentarism has such incentives, via executive responsibility to the legislature. At the legislative level, closed party lists give parties more control over candidates, reducing the personalization of campaigns, enhancing the value of the party label in local elections, and enabling the party to reward the most loyal rank-and-file members by placing them on the list. *See* SHUGART AND CAREY, *supra* note 1, at 171.

³⁴ Actual “outsiders” have included the aforementioned Perot in the United States, Fujimori in Peru, and Tyminski in Poland’s 1990 presidential race. Tyminski, described as an “unknown Polish expatriate businessman,” running on an anti-party campaign, was able to pass up the previous Solidarity prime minister Tadeusz Mazowiecki in the first round election by a 3.1% margin, and advance to the second round against Lech Walesa. *See* FRANCES MILLARD, *THE ANATOMY OF THE NEW POLAND: POSTCOMMUNIST POLITICS IN ITS FIRST PHASE* 128 (1994).

³⁵ Thus neither SHUGART AND CAREY, *supra* note 2, nor George Tsebelis, *Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism*, 25 *BRITISH JOURNAL OF POLITICAL SCIENCE* 289-325 (1995), are adequately able to explain the causal mechanism of regime instability in semi-presidentialism. Tsebelis is interested in presidents’ constitutional veto power over legislation, ignoring other important presidential powers such as emergency and decree powers. Moreover, legitimacy erosion and democratic breakdown can emanate from a president’s reaction to his position of impotence vis-à-vis the legislature, which itself

emanates from the president's poor relationship to, or ideological distance from, parties in the legislature.

³⁶ In this sense, the semi-presidential constitution may not be an effective coordination device which constitutions must be if they are to contribute to democratic consolidation. On coordination devices see Barry R. Weingast, *Constitutions as Governance Structures: The Political Foundations of Secure Markets*, 149 JOURNAL OF INSTITUTIONAL AND THEORETICAL ECONOMICS 286-311 (1993); and *id.*, *The Political Foundations of Democracy and the Rule of Law*, 91 AMERICAN POLITICAL SCIENCE REVIEW 245-63 (1997). On constitutions and commitment, see Peter C. Ordeshook, *Constitutional Stability*, 3 CONSTITUTIONAL POLITICAL ECONOMY 137-75 (1992); and Russell Hardin, *Why a Constitution?* in THE FEDERALIST PAPERS AND THE NEW INSTITUTIONALISM 100-20 (Bernard Grofman and Donald Wittman, eds., 1989).

³⁷ Democratization is, at a procedural minimum, the "...process whereby the rules and procedures of citizenship are either applied to political institutions previously governed by other principles..., or expanded to include persons not previously enjoying such rights and obligations..., or extended to cover issues and institutions not previously subject to citizen participation." See GUILLERMO O'DONNELL AND PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 8 (1986). Here I am concerned not only with democratization so defined, but also, with the consolidation and stability of democracy, which has attitudinal and behavioral dimensions in addition to procedural ones. See JUAN J. LINZ AND ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE (1996).

³⁸ This is a contribution, given the almost complete lack of existing knowledge concerning semi-presidentialism's relationship to democracy. Once more evidence becomes available from the new and existing semi-presidential democracies, further testing of this relationship through large-n statistical analysis could be undertaken. See GARY KING, ROBERT O. KEOHANE, AND SIDNEY VERBA, *DESIGNING SOCIAL INQUIRY: SCIENTIFIC INFERENCE IN QUALITATIVE RESEARCH* 214-15 (1994). For the merits of crucial cases, see Harry Eckstein, *Case Study and Theory in Political Science*, in 1 *HANDBOOK OF POLITICAL SCIENCE, POLITICAL SCIENCE: SCOPE AND THEORY* (Fred I. Greenstein and Nelson W. Polsby, 1975); and GIOVANNI SARTORI, *Comparing and Miscomparing* 3 *JOURNAL OF THEORETICAL POLITICS* 243-57 (1991).

³⁹ DOROTHY PICKLES, *THE FIFTH FRENCH REPUBLIC* 209-10 (1966).

⁴⁰ JOHN D. HUBER, *RATIONALIZING PARLIAMENT: LEGISLATIVE INSTITUTIONS AND PARTY POLITICS IN FRANCE* 234-35 (1996).

⁴¹ PICKLES, *supra* note 43, at 209-210; BERNARD CHANTEBOUT, *DROIT CONSTITUTIONNEL ET SCIENCE POLITIQUE* 493 (1988); JEAN GICQUEL, *DROIT CONSTITUTIONNEL ET INSTITUTIONS POLITIQUES* 590 (1997); VINCENT WRIGHT, *THE GOVERNMENT AND POLITICS OF FRANCE* 16 (1996); and John D. Huber, *Executive Decree Authority in France*, in *EXECUTIVE DECREE AUTHORITY* 233-53 (John M. Carey and Matthew Soberg Shugart, eds., 1998).

⁴² The presidential mandate was changed, by referendum, to five years in September 2000.

⁴³ *KEESINGS CONTEMPORARY ARCHIVES* 19159 (1963).

⁴⁴ SONDAGES: REVUE FRANÇAISE DE L'OPINION PUBLIQUE 85 (1963).

⁴⁵ On the development of the party system, see COLETTE YSMAL, LES PARTIS POLITIQUE SOUS LA VE RÉPUBLIQUE (1989).

⁴⁶ From 1958 to 1986, and then from 1988 to the present, a majority-plurality formula has been used for the National Assembly. This system requires an absolute majority for victory in the first round, or a plurality for victory in the second round. The second round is limited to parties having passed a threshold, which has increased from 5% of the registered electorate in 1958, to 10% in 1966, and 12.5% in 1976. See DUVERGER, *supra* note 6, at 495-500; and PIERRE MARTIN, LES SYSTÈMES ELECTORAUX ET LES MODES DE SCRUTIN 121-33 (1994).

⁴⁷ Over de Gaulle's tenure, the percentage of ministers and secretaries of state from the UNR increased steadily: 31% under Debré, 34% under Pompidou I, 54% under Pompidou II, 55% under Pompidou III, and 84% under Couve de Murville in 1968. Data from KEESINGS CONTEMPORARY ARCHIVES (1959-1969). After 1967, the UNR was transformed into the *Union des démocrates pour la République* (UDR).

⁴⁸ Formally, there was a minority government from 1988 to 1993; but as the Socialists governed alternatively with support from the Communists and the Gaullists, they substantively enjoyed majority status. On these years see Robert Elgie and Moshe Maor, *Accounting for the Survival of Minority Governments: An Examination of the French Case, 1988-1991* 15 WEST EUROPEAN POLITICS 57-74 (1992); and HUBER, *supra* note 40.

⁴⁹ Calculated from data in ASSEMBLÉE NATIONALE, LES GOUVERNEMENTS ET LES ASSEMBLÉES PARLEMENTAIRES SOUS LA V^e RÉPUBLIQUE (1996); and *KEESING'S CONTEMPORARY ARCHIVES*.

⁵⁰ JEAN CHARLOT, THE GAULLIST PHENOMENON 146 (1970).

⁵¹ DOROTHY PICKLES, THE GOVERNMENT AND POLITICS OF FRANCE: VOLUME II, POLITICS 70 (1973).

⁵² On economic planning in this period, see PETER HALL, GOVERNING THE ECONOMY: THE POLITICS OF STATE INTERVENTION IN BRITAIN AND FRANCE 146-49 (1986). In 1963, the Pompidou government created the *Délégation à l'Aménagement du Territoire et à l'Action Régionale* (DATAR), which was meant as a center of knowledge for regional planning. See PETER ALEXIS GOUREVITCH, PARIS AND THE PROVINCES: THE POLITICS OF LOCAL GOVERNMENT REFORM IN FRANCE 102 (1980); and JONAH D. LEVY, TOCQUEVILLE'S REVENGE: STATE, SOCIETY, AND ECONOMY IN CONTEMPORARY FRANCE 32, 39-41 (1999).

⁵³ JEAN CHARLOT, LES FRANÇAIS ET DE GAULLE 46 (1971).

⁵⁴ Roy Pierce, *The Executive Divided Against Itself: Cohabitation in France, 1986-1988* 4 GOVERNANCE: AN INTERNATIONAL JOURNAL OF POLICY AND ADMINISTRATION 270-94 (1991); and Jean V. Poulard, *The French Double Executive and the Experience of Cohabitation* 105 POLITICAL SCIENCE QUARTERLY Vol. 105 243-67 (1990).

⁵⁵ See Jean-Marc reproche à Jacques Chirac de bloquer la réforme du CSM, LE MONDE, December 29, 1998, at 7; and Thierry Breheir, *La V^e République menacée par la cohabitation*, LE MONDE, January 1, 1999, at 1.

⁵⁶ WALTER TORMIN, GESCHICHTE DER DEUTSCHEN PARTEIEN SEIT 1848, 23-45 (1968); Rainer M. Lepsius, *Parteiensystem und Sozialstruktur*, in DEUTSCHENPARTEIEN VOR 1918, 40-63 (Gerhard A. Ritter, ed., 1973); and *id.*, *From Fragmented Party Democracy to Government by Emergency Decree and National Socialist Takeover: Germany*, in THE BREAKDOWN OF DEMOCRATIC REGIMES: EUROPE, 34-79 (Juan J. Linz and Alfred Stepan, eds., 1978).

⁵⁷ F. A. HERMENS, DEMOCRACY OR ANARCHY? A STUDY OF PROPORTIONAL REPRESENTATION (1941); Friedrich Schafer, *Zur Frage des Wahlrechts in der Weimarer Republik*, in STAAT, WIRTSCHAFT UND POLITIK IN DER WEIMARER REPUBLIK: FESTSCHRIFT FÜR HEINRICH BRÜNING, 119-40 (F. A. Hermans and T. Schieder, eds., 1967); and NOHLEN, *supra* note 26, at 209-213.

⁵⁸ See the discussion in ENID LAKEMAN AND JAMES D. LAMBERT, VOTING IN DEMOCRACIES 155 (1955); also see the discussion of Lakeman and Lambert, and omitted variable bias in analyses of PR's role in Weimar's breakdown, in KING, KEOHANE, AND VERBA, *supra* note 39, at 190.

⁵⁹ JOHN W. WHEELER-BENNETT, HINDENBURG: THE WOODEN TITAN (1936); ERICH MARCKS, HINDENBURG: FELDMARSCHALL UND REICHSPRÄSIDENT (1963); and ANDREAS DORPALEN, HINDENBURG AND THE WEIMAR REPUBLIC (1964).

⁶⁰ See the data collected in 109/110 INFORMATIONEN ZUR POLITISCHEN BILDUNG: DIE WEIMARER REPUBLIK, (1988).

⁶¹ This data is drawn from SKACH (2005), calculated from data in DIE WEIMARER REPUBLIK, 1918-1933 (Karl Dietrich Bracher, Manfred Funke and Hans-Adolf Jacobsen, eds., 1988). Also see KARL-DIETRICH BRACHER, DIE AUFLÖSUNG DER WEIMARER REPUBLIK: EINE STUDIE ZUM PROBLEM DES MACHTVERFALLS IN DER DEMOKRATIE (1984) (1955).

⁶² Hans Mommsen, Die Sozialdemokratie in der Defensive: Der Immobilismus der SPD und der Aufstieg des Nationalsozialismus, in SOZIALDEMOKRATIE ZWISCHEN KLASSENBEWEGUNG UND VOLKSPARTEI, 106-33 (*id., ed.*, 1974).

⁶³ KARL DIETRICH BRACHER, THE GERMAN DICTATORSHIP: THE ORIGINS, STRUCTURE AND CONSEQUENCES OF NATIONAL SOCIALISM 77 (1971).

⁶⁴ HORST MÖLLER, WEIMAR: DIE UNVOLLENDETE DEMOKRATIE 288 (1997).

⁶⁵ WILLIAM L. PATCH, JR., HEINRICH BRÜNING AND THE DISSOLUTION OF THE WEIMAR REPUBLIC 72 (1998).

⁶⁶ On Brüning's dismissal, see PATCH, *supra* note 66; and Hans Mommsen, *Heinrich Brüning's Politik als Reichskanzler: Das Scheitern eines politischen Alleinganges* in WIRTSCHAFTSKRISE UND LIBERALE DEMOKRATIE. DAS ENDE DER WEIMARER REPUBLIK UND DIE GEGENWÄRTIGE SITUATION 16-45 (Karl Holl, ed., 1978).

⁶⁷ Carl Schmitt defended the *Reich* government before the court. His defense is found in SCHMITT, *Die Verfassungsmässigkeit der Bestellung eines Reichskommissars für das Land Preussen*, 15 DEUTSCHE JURISTEN ZEITUNG, 954-58 (1932). The court's decision is found in PREUSSEN CONTRA REICH VOR DEM STAATSGERICHTSHOF: STENOGRAMMBERICHT DER VERHANDLUNGEN VOR DEM STAATSGERICHTSHOF IN LEIPZIG VOM 10. BIS 14. UND VOM 17. OKTOBER 1932 (1932). Also *see* David Dyzenhaus, *Legal Theory in the Collapse of Weimar: Contemporary Lessons?* 91 AMERICAN POLITICAL SCIENCE REVIEW 121-34 (1997); PETER C. CALDWELL, POPULAR SOVEREIGNTY AND THE CRISIS OF GERMAN CONSTITUTIONAL LAW: THE THEORY AND PRACTICE OF WEIMAR CONSTITUTIONALISM (1997); and JOHN P. MCCORMICK, CARL SCHMITT'S CRITIQUE OF LIBERALISM: AGAINST POLITICS AS TECHNOLOGY (1997).

⁶⁸ BRACHER, *supra* note 63; and HENRY ASHBY, TURNER, JR., HITLER'S THIRTY DAYS TO POWER: JANUARY 1933 (1996).

⁶⁹STEPHEN HOLMES, PRECOMMITMENT AND THE PARADOX OF DEMOCRACY, IN CONSTITUTIONALISM AND DEMOCRACY 95-240, 237 (Jon Elster and Rune Slagstad, eds., 1993), as quoted in SKACH (2005).