

A NEW POLITICAL SYSTEM MODEL: SEMI-PRESIDENTIAL GOVERNMENT

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In 1970, the idea was conceived of comparing the French political system established between 1958 and 1962 with that of the other countries in Europe where a president of the republic, elected by universal suffrage and given personal powers, co-exists with a government resting on the confidence placed in it by parliament. At the same time it was suggested that these forms of government intermediary between presidential and parliamentary systems should be called 'semi-presidential'. In addition to that of Paris, there were then five: four operating in Finland, Austria, Ireland, and Iceland, with the last having operated in Germany from 1919 to 1933 under the Weimar Republic. Since then, another has been set up in Portugal by the constitution of 1975. . . .

The concept of a semi-presidential form of government, as used here, is defined only by the content of the constitution. A political regime is considered as semi-presidential if the constitution which established it combines three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them. . . .

THE DIVERSITY OF SEMI-PRESIDENTIAL PRACTICES

Constitutions which lay down semi-presidential governments are relatively homogeneous. It will be seen that they show con-

Maurice Duverger, excerpted from 'A New Political System Model: Semi-Presidential Government', *European Journal of Political Research*, 8/2 (June 1980), pp. 165-87 (footnotes omitted). Reprinted by permission of Kluwer Academic Publishers.

siderable differences with regard to the powers of the head of state. These differences, however, remain secondary in relation to the general physiognomy of the system. They are far less important than the variety of political practices, which is the essential feature revealed by comparative analysis of the seven countries concerned. Similarity of rules, diversity of games: such is the two-fold aspect of the pleiad formed by the seven countries to which the model applies. In three of them, the president is in practice a figurehead; in one, he is all-powerful; in the other three, he shares authority with the prime minister.

Three Countries with a Figurehead Presidency: Austria, Ireland and Iceland

The constitutions of Austria, Ireland, and Iceland are semi-presidential. Political practice is parliamentary. Although elected by universal suffrage and endowed with personal powers by right of law, the head of state normally behaves in each of these countries like the modern Italian and German presidents or like the queen of England: that is to say, he ratifies all the decisions which the government puts forward to him, his only real prerogative being in his choice of the prime minister, in so far as his choice is not dictated by the result of the elections. However, several differences between the three countries can be observed. In practice, the president uses his personal powers more in Ireland than in Iceland, and more in Austria than in Ireland. . . .

A Country with an All-powerful Presidency: France

Amended in 1962 by the introduction of universal suffrage for the presidential election, the French constitution of 1958 does not give great personal powers to the President of the Republic, except in its Article 16 which allows him to be a veritable temporary dictator in exceptional circumstances: if 'the institutions of the Republic, the independence of the nation, the integrity of its territory or the fulfilment of its international commitments are seriously and directly threatened and if the normal operation of the constitutional Public Powers is interrupted'. These conditions are not easily found together, particularly the second, which presupposes an insurrection, an invasion, or an atomic

attack. Article 16 has been invoked only once, in 1961, after the Algerian military coup of General Challe. It can be disregarded, although much ink has been spilt over its symbolic value.

Apart from Article 16, the President of the French Republic can make decisions on his own, without the counter-signature of the Prime Minister, and without the agreement of the government or of the parliamentary majority, in four cases only: (1) to dissolve the National Assembly, with no further dissolution possible within the same year; (2) to refer to the Constitutional Council laws or international commitments which he judges to be opposed to the constitution; (3) to appoint three members and the president of the Constitutional Council, on the expiry of the term of office of their predecessors; (4) to address messages to parliament.

Furthermore, the President can refuse his signature to the ordinances and decrees discussed in the Council of Ministers. The ordinances are texts having the force of law, adopted by the government, which is authorized to do so by a plenipotentiary law. The decrees concern the appointment of senior officials: Counsellors of State and Counsel-Masters at the Audit Office, prefects, ambassadors, generals, rectors, and directors of central administrations. All the other decrees can be made by the Prime Minister on his own, for he has executive and statutory power. As for the enactments made by parliament, the President is forced to promulgate them after a fixed period, during which he can refer them should he so wish to the Constitutional Council. He can also send them back to the House for a second reading; this decision is subject, however, to a counter-signature, that is to say it cannot be taken without the agreement of the Prime Minister. The President can also refuse to resort to a referendum even though he is asked to do so by the government or parliament. He cannot have recourse to the referendum, however, without the initiative of one or the other.

It will be noted that the principal powers of the President of the French Republic have a spasmodic character. Apart from participation in the appointment of senior officials, they are not, like legislative and governmental powers, normal prerogatives in general use, but exceptional powers which can be used only infrequently. Furthermore, the majority are not powers of decision. They tend either to prevent a decision in order to submit

it to a fresh examination and have its legitimacy checked, or to submit the decision to the French people (dissolution, referendum). They correspond to the concept of arbitration, as referred to in Article 5 of the constitution.

In practice, the French President exerts much greater powers. On 31 January 1964, General de Gaulle interpreted the constitution in a highly debatable manner, by proclaiming 'that the indivisible authority of the State is entrusted completely to the president by the people who elected him, that there existed no other authority, either ministerial, civil, military or judiciary which has not been conferred and was not being maintained by him, and finally that it was his duty to adapt the supreme domain, which is his alone, to fit in with those, the control of which he delegates to others'. These fine phrases fail to take into account that the National Assembly is elected by the people, like the President, and that like him it is a repository of national sovereignty. They ignore the fact that no organ of the state, even though it holds supreme power, has the right to define its own competence and that of the others in relation to itself, since both are laid down by the constitution, which must be observed by all. They also ignore the fact that the government and its head must keep the confidence of the parliamentary deputies in order to remain in office and to exercise their powers, which limits the choice of the President, and the fact that the latter cannot dismiss the Prime Minister, as the General himself had stated to Paul Reynaud.

However, General de Gaulle's successors have exercised almost the same powers as he did. They have exercised directly the prerogatives conferred on them by the constitution. They have exercised indirectly the prerogatives of their prime ministers and governments, by reducing the latter to obedience. They have thus become supreme heads of the executive and real heads of the government. . . .

Three Countries with a Balanced Presidency and Government: The Weimar Republic, Finland, and Portugal

Semi-presidential constitutions lay down a governmental duality. By establishing a president put into office by universal suffrage and endowed with personal powers alongside a prime

minister and a government resting on parliament and charged with executive power, such constitutions introduce dualism into the heart of the state. This dualism, however, remains purely apparent in four cases out of seven, as the president is confined to symbolic functions in Iceland, Ireland, and Austria, while the prime minister in France is reduced to the role of chief of staff. In contrast, dualism operates or has operated in a real sense in Finland, Portugal, and the Weimar Republic. . . .

THE ANALYTICAL MODEL OF SEMI-PRESIDENTIAL FORMS OF GOVERNMENT

As an analytical model, the purpose of the concept of semi-presidential government is to explain why relatively homogeneous constitutions are applied in radically different ways. It has only four parameters: the actual content of the constitution; the combination of tradition and circumstances; the composition of the parliamentary majority; and the position of the president in relation to this majority. . . .

A scale of semi-presidential regimes can be drawn up according to the powers which the constitution confers on the president. The prerogatives of the head of state are depicted in the first column of Figure 1, in descending order from Finland to Ireland; the irregular spaces give a (very approximate) idea of the magnitude of the differences. Juxtaposed (in the second column of Figure 1) is a scale of the powers in fact exercised in the countries concerned. Comparison of the two is revealing.

It shows two aberrant cases, those of France and Iceland. The French president exercises in practice much stronger powers than his counterparts, although very few are granted him by the constitution, since he appears sixth in order, or the penultimate, in this respect. In contrast, the Icelandic president appears second with regard to legal powers, just behind his Finnish colleague, but comes last with regard to prerogatives actually exercised, just after, or on the same level as his Irish colleague. Apart from these aberrant cases, the other countries are classified in the same order on the two scales, but not on the same level, except for Portugal since the initiatives undertaken by President Eanes in 1978. In Finland and in the Weimar Republic, practice

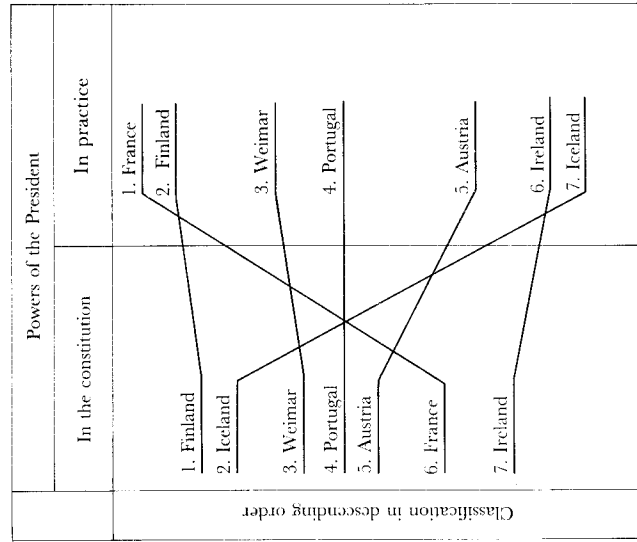


FIG. 1 The powers of the president in semi-presidential regimes

goes a little beyond the constitutional rules. In Austria and in Ireland, it falls behind.

Although the constitution plays a certain part in the application of presidential powers, this role remains secondary compared to that of the other parameters; the cases of France and Iceland show this in an undeniable way. . . .

This leads to discussion of the second parameter, formed by the combination of tradition and circumstances, which are indissolubly linked to each other. In law, the practices of a regime do not really create statute law, unless a general consensus is established in this respect through the course of history. . . . Legal rules which are unapplied, are not dead. They hibernate, and the person who has the necessary skill can always bring them to life again.

The practices of a regime, however, create a factual tradition, which makes it increasingly difficult to restore dormant legal

rules as the years pass by. . . .

In the countries without a parliamentary majority, there is the greatest coincidence between the constitution and practice, the latter putting the president in an intermediary position, neither figurehead nor all-powerful. In the countries where coherent and stable majorities are normally found, there is a disparity between the constitution and practice, the latter placing the president either in a dominant position, or in the situation of a parliamentary head of state, reduced to symbolic status.

Weimar Germany, Finland, and Portugal correspond to the first hypothesis. Between 1919 and 1933 in Berlin, and since 1919 in Helsinki, a coherent and stable majority has never been formed. As a result, the governments are normally ephemeral and divided, in other words, weak. The parliament has a formidable blocking power. It cannot make decisions, in the absence of a majority, but it can prevent the executive from making decisions. It cannot promote and uphold strong governments, but it can make them fall. The president does not have the means to act all the time in place of the government. He can give impetus, exercise controls, remedy deficiencies, but not govern himself, except in quite exceptional circumstances. In law, this dyarchy is somewhat similar to that of the blind man and the lame.

Nevertheless, the head of state possesses a considerable superiority over governments which stem from parliament. He is on his own, and he has durable power. If essential and urgent decisions must be taken and the cabinet, paralysed by the division of the parties which support it, cannot take them, the citizens naturally turn to the president. . . .

In the four countries with a majority or a quasi-majority [France, Austria, Ireland, and Iceland—Ed.], the presidents have in common a practice far removed from constitutional rules. This distancing, however, is done in opposing directions. In France, a very powerful president plays a much more important role than that provided for by the written constitution. In Austria, Ireland, and Iceland, figurehead presidents play a far smaller role than that allowed by their constitutional prerogatives. The difference depends on the position of the head of state in relation to the parliamentary majority. If he is at the head of it, he becomes all-powerful, like the French presidents.

If he is a member of it, without being its head, he becomes a figurehead like the present Austrian president or the majority of the Irish presidents. If he is outside the majority, whether as an opponent or as a neutral figure, he is in a regulatory position, and his actual powers then correspond to the outline of the constitution.