Essays

Presidentialism and Parliamentary System in Latin America. Considerations on a Balance to Be Defined

Maddalena Zinzi*

Abstract

The balance among the different types of presidential systems in Latin American countries is an issue of current interest. These Latin American experiences do not respond to the same logic that influences the different forms of government in other systems. The political, economic and social conditions of these countries are still decisive in the search for the separation of constitutional powers, so maintaining the centrality of the president. Therefore, the last constitutional amendments failed to successfully consolidate the democratic transitions, remodelling hyper-presidentialism in parliamentary or semi-presidential systems.

I. Introduction

An intense debate has been going on about the evolutionary tendencies of the Latin American systems, rooted in the contrast between presidentialism and parliamentarism,[1] which has been recently addressed by the Inter-American Court of Human Rights.[2]

Venezuela has been condemned for violating the right to political

* Assistant Professor of Comparative Public Law, Department of Political Sciences 'Jean Monnet', University of Campania 'Luigi Vanvitelli'.

[1] There is a wide range literature on this subject matter. Among others G.L. Negretto, 'La reforma del presidencialismo en América Latina hacia un modelo híbrido' *Revista Uruguaya de Ciencia Política*, 131-151 (2018); C.M. Villabella Armengol, 'Dilema presidencialismo vs. parlamentarismo en América. Apuntes sobre la realidada en el siglo XXI' *Estudios constitucionales*, 15-37 (2018); D. Nohlen, 'Presidencialismo *versus* parlamentarismo. Dos enfoques contrapuestos' *Revista Latinoamericana de Política Comparada*, 61-76 (2013); J. Lanzaro ed, *Presidencialismo y parlamentarismo. América Latina y Europa meridional: Argentina, Brasil, Chile, España, Italia, México, Portugal, Uruguay* (Madrid: Centro de Estudios Políticos y Constitucionales, 2012); J.J. Orozco Henríquez, 'Tendencias recientes en los sistemas presidenciales latino americanos' *Boletín Mexicano de Derecho Comparado*, 793-85 (2008); M.D. Serrafero, 'Presidencialismo y parlamentarismo en América Latina: un debate abierto' *Revista Mexicana de Sociología,* 165-186 (1998); D. Nohlen, 'Presidencialismo vs. parlamentarismo en América Latina. Notas sobre el debate actual desde una perspectiva comparada' *Revista de Estudios Políticos*, 43-54 (1991); D. Nohlen and M. Fernández eds, *Presidencialismo* versus *Parlamentarismo: América Latina* (Caracas: Nueva Sociedad, 1991).

[2] Corte Interamericana de Derechos Humanos 8 February 2018, *San Miguel Sosa y otras* v *Venezuela*, available at www.corteidh.or (last visited 12 March 2019).

participation,[3] so highlighting the persistent difference among the prerogatives of the various constitutional institutions.

The referendum proposal, aimed at revoking the President-in-office, is considered by senior state officials as a clear manifestation of political dissent against the executive branch and is based on an illegitimate dismissal.[4]

This recent event invites us to reflect upon the current balance among political government institutions in Venezuela and, generally, in presidential systems in Latin America. This issue has become even more relevant today after the recent Brazilian events. After all, for a long time the constitutional problems of Latin American legal systems have been debated even by the Italian doctrine, as shown by the so many meetings organized for almost a decade by the Italian Section of the Instituto Iberoamericano de Derecho Constitucional.[5]

The centrality of the presidency is determined by political, economic and social conditions, which not only accompanied the birth of the legal systems, object of this study, but which are still significant in the search for the separation of constitutional powers. The Latin American experiences do not respond to the same logic that influences other types of government, defines their real nature, and often contributes to the democratic consolidation of their legal systems.

This phenomenon has clear historical roots. These systems obtained their independence between 1811 and 1836; all the new-born States made reference

[3] Art 23 (Right to Participate in Government) of the American Convention On Human Rights: 'Every citizen shall enjoy the following rights and opportunities: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c) to have access, under general conditions of equality, to the public service of his country', available at www.oas.org (last visited 12 March 2019).

[4] In this judicial case, the appellants, according to the Court, were civil servants illegitimately fired, since they had signed a petition calling for a referendum to remove then-President Hugo Chavez from office. The reasons given by the members of the government to early terminate the contract of employment, due to the need to reduce costs, were judged unfounded. The Court concluded that the government had acted in abuse of power, also considering that there was a document prepared by the National Electoral Council listing the names of those who had signed a petition. According to the Court, the government did not give any detailed and precise explanation of the reasons for its decision. In these types of cases, the simple evocation of convenience or reorganization is not enough, without giving further explanations; thus the weakness of its reasons reinforces the verisimilitude of the contradictory evidences. For this reason, the Court concluded that the termination of the contract was a form of deviation from power, using this clause as a veil of legality to hide its real motive or real purpose, that is retaliation, to justify a legitimate political power to sign a petition for a referendum to revoke the mandate of the President. Cf. N. Carrillo-Santarelli, 'La responsabilidad de Venezuela por discriminar y perseguir ejercicios legítimos de participación política en el caso Sosa y otras contra Venezuela' *Diritto Pubblico Comparato ed Europeo* (*DPCE on line)*, 792-793 (2018).

[5] Instituto Iberoamericano de Derecho Constitucional is available at https://tinyurl.com/y5u9ktk8 (last visited 28 May 2019). During the 14th Congreso Iberoamericano de Derecho Constitucional, scheduled on 21, 22 and 23 May 2019 in Buenos Aires, the Italian Section debated the theme of the Constitutional Justice, strongly connected to the protection of fundamental rights and the forms of government.

to the American model since then, adopting the presidential system of government. However, while the US system is the 'pure' presidential system, the system adopted by Latin American States has shown some peculiarities right from the start that have changed the reference model of the presidential system and of the executive power, with the inevitable weakening of the role of the legislative branch.[6]

The imbalance of constitutional power in favour of the President of the Republic has favoured, for about a century and a half, authoritarian forms of government, leading to dictatorships.[7] In 1975 Colombia and Venezuela alone were governed by elected leaders, while all the other Latin American Countries were ruled by dictators. The Argentine general election of 1983 kick-started new constitutional reform processes which led Brazil (1988), Colombia (1991), Paraguay (1992), Peru (1993), Ecuador (1998), and Venezuela (1999)[8] to promulgate new constitutions. This process of constitutional reforms has continued in the new drafted Constitutions of Ecuador (2008), Bolivia (2009) and Dominican Republic (2010), while Venezuela is currently rewriting the Constitution.

There is no doubt that since the end of the last century the Latin American countries have been the protagonists of a transitional phase focused on the strengthening of human rights and on the affirmation of the essential elements of contemporary constitutionalism.[9]

Since then the growing, although not complete, reduction of the difference between the formal nature and the effectiveness of the Constitutions has accompanied the process of democratic consolidation, that still exists. This process

[6] M. Duverger, *Institutions politiques et droit constitutionnel* (Paris: Presses Universitaires de France, 1988), 13.

[7] L. Incisa Di Camerana, *I Caudillos* (Milano: Corbaccio, 1994).

[8] There is a wide range literature on this subject matter. Among others: G. Bland, 'Considering Local Democratic Transition in Latin America' *Journal of Politics in Latin America*, 65-98 (2011); J. Vargas Cullell, 'Lacalidad de la democracia y el studio comparado de la democratización' *Revista Latinoamericana de Política Comparada*, 67-94 (2011); J.C. Calleros-Alarcón, *The Unfinished Transition to Democracy in Latin America* (New York: Routlegde, 2008); L. Mezzetti, *Teoria e prassi delle transizioni costituzionali e del consolidamento democratico* (Padova: CEDAM, 2003), 585-756; Id, *Transiciones constitucionales y consolidaciòn de la democracia a albores del siglo XXI* (Bogotà: Universidad Externado de Colombia, 2003); L. Garzón and E. Valdés, 'Constitución y Democracia en América Latina' *Anuário de Derecho Constitucional Latino americano*, 55-80 (2000); L. Anderson, *Transitions to Democracy* (New York: Columbia University Press, 1999); L. Diamond, *Developing Democracy: Towards Consolidation* (London: The Jhons Hopkins University Press, Baltimore, 1999); J. Vargas Cullell, 'Lacalidad de la democracia y el studio comparado de la democratización' *Revista Latinoamericana de Política Comparada*, 67-94 (2011).

[9] C. Villabella Armengol, 'El Derecho Constitucional en Latinoamérica. Un cambio de paradigma', in R. Viciano Pastor ed, *Estudios sobre un nuevo constitucionalismo latino americano* (Madrid: Tirant lo Blanch, 2014), 51-77; C. Villabella Armengol, 'El constitucionalismo contemporáneo de América Latina. Breve estudio comparado' *Boletín Mexicano de Derecho Comparado*, 943-979 (2017); R. Viciano Pastor and R. Martínez Dalmau, 'El nuevo constitucionalismo latinoamericano: fundamentos para una construcción doctrinal' 9 *Revista General de Derecho Público Comparado*, 1-24 (2011); Id, 'Los procesos constituyentes latinoamericanos y el nuevo paradigma constitucional' *IUS*, 7-29 (2010).

finds its central point in the anomalous balance in the relationships among the constitutional bodies, and consequently in a form of government that bears little or no resemblance to the American presidential system. Indeed, the American model, which has over time shown a certain balance of powers among the branches of government, thus preventing the excessive power of the President, has only had a very slight or superficial impact on Latin American systems, where the presidential form of government has been indeed implemented with various changes.

II. 'Pure' Presidentialism and Its Transposition in Latin America

It is well-known that a presidential system of government, in its original conception, is characterized by the concentration of power in the hands of the President, who reflects a direct expression of the will of the people, and by the separation of powers, guaranteed by the non-existence of a trust relationship and of the presidential power to dissolve Parliament.

So all legislative powers shall be vested in the Congress, while the power of the executive branch is vested in the President, who is the Head of State, in a system with a strict separation of powers and which has to pursue the principle of the balance of power. Therefore, the system of 'checks and balances' guarantees that each branch has the power to check and influence each others powers. Therefore, the mutual interference between Congress and the President is different, and it should seek a compromise.[10] This element cannot *generally* be understood from the systems under study.

The parliament approves funds to allocate to the implementation of the President's policy, through the approval of the budget and of the most important spending bills (the so-called stock exchange). Moreover, parliament exercises its 'power of control' through the Permanent Commission and the Commission of Inquiry.[11] Specific powers of control are assigned exclusively to the Senate, which must give its consent to the presidential appointment of federal officials, and it requires that the President shall have power to make treaties with the consent of the Senate, provided two thirds of the Senators present concur.

Finally, the Chamber of Deputies (or House of Representatives) has the power to impeach the President or all executive officers,[12] although this rarely occurs in

[10] Cf M. Comba, 'Gli Stati Uniti d'America', in P. Carozza et al, *Diritto costituzionale comparato* (Roma-Bari: Editori Laterza, 2009), 138-144; M. Volpi, *Libertà e autorità. La classificazione delle forme di Stato e delle forme di governo* (Torino: Giappichelli, 2004), 142-149.

[11] Therefore, *Permanent Commissions frequently hold hearings, also to take account of all interests involved in public policy; on the contrary, both public employees and ordinary citizens might be compelled to give evidence before the Commission of Inquiry*

[12] Impeachment for 'Treason, Bribery, or other high Crimes and Misdemeanors' (US Constitution - Art 2 section 4). In this case, the Senate has the sole power to try all impeachments, and in the event there is a two-thirds vote of the Senate to convict, they shall be removed from

South America, except for the recent events in Brazil. On the other hand, the President has only the power to support congressional activities, but does not enjoy legislative power, which by contrast have Latin American presidents.[13]

The veto power of the President instead assumes a special significance. An act does not enter into force without having been previously approved by the President, since overriding a presidential veto[14] of a bill requires a two thirds supermajority vote of the members of the Congress. On the contrary the Head of State has the power, not envisaged by the constitutional law, to issue executive orders, which have the force and effect of law, but only if delegated by the Congress or in times of crisis (especially during wartime), which differs from the Latin American systems where the President exercises legislative power.

1. Institutional Dynamics

The dual nature of the government, together with the essential nature of the Constitution, especially concerning the roles and powers of the President, ensured that Constitutions have evolved over time, adapting to new circumstances.

At the beginning of the last century the central role of the Congress was so well established that it was defined as 'Congressional Government'. Then a contrasting phase of 'Presidential Government'[15] started, as result of the development of the 'interventionist state' in social and economic sector in the 1930s, following the New Deal policy.[16]

However, another important dynamic has been prevailing since the end of the twentieth century, which strongly affects the functions of the form of government. It is the so-called divided government, when the Presidents have to cope with the opposition party which controls one or both Houses of Congress,

Office.

[13] However, under the *Budget and Accounting Act* of *1921,* he is required to submit a national budget each year. More generally, he shall submit to Congress with his annual budget message of the State of the Union and he shall submit his consolidated federal budget. The President's budget shall also contain budgetary proposals for the legislative and judicial branches. These estimates and proposals are developed by the legislative and judicial branches by independent agencies and government-sponsored enterprises.

[14] If the President does not sign the bill after ten days, it shall become law automatically, unless the President does not return the bill to Congress (for reasons of legitimacy or merit), within a ten-day period, because Congress is not in session. In this case the bill shall not become law (pocket veto). If the President vetoes a bill, the Congress may override his veto by passing the bill again in each chamber with at least two-thirds of each body voting in favour. Once the President's veto is overridden by both Houses, it becomes a law.

[15] President Roosevelt strongly supported it, and then it led to the 'imperial presidency' of Richard Nixon.

[16] It has caused the progressive strengthening of the federal government with respect to the Member States, the loss of the monopoly of the legislative power of Congress and the great growth of the federal public administration, as well as the growing role of the foreign policy, which has gradually become the prerogative of the President and of the executive branch (and this has been determined by the growing role of the United States in world politics).

and this weakens the executive branch.[17]

This flexibility, which is typical of the presidential system of government is not found, however, in the Latin American systems, which are mainly related to the dominance of presidentialism or hyper-presidentialism.

These are systems that clearly mitigate the function of control and counterbalance of the so-called 'pure' model, so neither the Parliament nor the judiciary have the power to control the presidential prerogatives.[18]

Indeed, in some systems, the President has the power to dissolve the Parliament before a general election (as in Uruguay, Peru, Venezuela and Chile) and has also important legislative powers. These are the legislative initiative power and the decree power, as well as the veto power, which can be overridden by an absolute majority of the legislature (Brazil and Colombia) or, in some cases, by the two-thirds majority (Argentina and Chile). Using his veto power, which is a reactive instrument, the President can stop any attempt to change any existing law. On the contrary, using his decree power, which is the best example of a proactive law-making power, he can promote significant legal changes. In this case some Constitutions delegate legislative power to the President.[19]

Moreover, even when the parliamentary majority has the power to repeal a decree, the President still plays a key role. First of all, the presidential decrees, in contrast to the bills passed by the Congress, immediately have the force of law. Secondly, the President can actually circumvent the parliamentary agenda by presenting numerous decrees and determining the priority of the decrees to be examined by the parliament. This has also made the legislative process increasingly difficult and, consequently, it has strengthened the presidential power over the normative function.

Therefore, what occurs between executive and legislature is not a system of 'checks and balances', as, in the in the event of tension between the two constitutional branches, the balance of power moves towards the President.

Thus each branch usually survives in office independently of one another, although the parliament is clearly subordinated to the hyper-presidential system, also because the executive branch continuously resorts to its decree power.

However the authoritarian component has diminished over time, at least on a formal level, because of the greater, although not yet decisive, power conferred on parliaments, which actually have been paying much more attention

[17] It is the so-called divided government, a term used to refer to the situation in which the President is forced to support his policies with individual parliamentary members and to make policy concessions, such as favours and patronage. Cf C.O. Jones, 'It Separated Presidency: Making It Work In Contemporary Politics', in A. King ed, *The New American Political System* (Washington: American Enterprise Institute, 1990), 3.

[18] M.D. Serrafero, 'Precidencialismo y Reforma Politica en América Latina' *Revista del Centro de Estudios Constitucionales*, 207 (1991).

[19] In Argentina, Brazil and Colombia, Presidents can issue decrees that immediately have the force of law. L. Mezzetti, 'L'America Latina', in P. Carozza et al, n 10 above, 479.

to widespread economic interests and to the pressure from new politicians.[20]

III. Constitutional Reforms and Trends in the Parliamentary Systems of Andean Countries

According to the doctrine, some systems seems to be 'hybrid' systems, which combine some features of the parliamentary system,[21] or even more of semi-presidentialism, thus favouring a potential change of the form of government. This is the case of the Andean countries,[22] particularly of Peru, Venezuela and Argentina.

The Constitutions of these legal systems have been recently amended, mainly with regard to the relations between the legislative and executive branches, but also through the creation of new bodies and institutions aimed at controlling public power and at a constitutional protection of human rights. The remedies or 'corrective' measures, introduced to reorganize the form of government, relates first of all to the motion of no confidence, in most cases even against individual members, and to the fiduciary relationship,[23] to which further fundamental duties are added, depending on the case.

The Constitution of Peru amended in 1993, although confirming the main features of the 1979 Constitution, establishes cooperation among the branches, as foreseen in Title IV Chapter VI, with typical features of parliamentarianism. In this sense, not only the motion of no confidence, even individual, and the fiduciary relationship are emblematic, but also the counter-signature (*refrendaciòn ministerial*).

The President has a wide range of powers, and, to exercise them, Art 12024 requires the ministerial counter-signature (*refrendaciòn ministerial*), and in its absence leads to acts being declared null and void. This power basically serves two purposes: to promote consultation between the President and Ministers and to maintain powerful checks on the President himself. This control can either concern the mere formal regularity of the act or be the expression of a complementary measure in the formation process.

[20] A. Perez Liñán, *Presidential Impeachment and New Political Instability in Latin American* (New York: Cambridge University Press, 2007), 202.

[21] This is the form of government of the Italian system, which, however shows 'a weak rationalization', with only limited interventions of the constitutional law being envisaged to provide a stable trust relationship and the capacity of political leadership of the government.

[22] E. Rozo Acuña, *Il costituzionalismo in vigore nei Paesi dell'America Latina* (Torino: Giappichelli, 2012), 399; M. Cameron, 'El Estado de la Democracia en los Andes' *Revista de Ciencia Política*, 5-20 (2010).

[23] This institution, for example, is not expressly provided by the Italian Constitution. Indeed, in the Italian system the constitutional ratio of the issue of trust derives from the regulation of the trust relationship, provided by the Art 94 of the Constitution.

[24] It is one of the oldest institutions of Peruvian Constitutional Law borrowed from parliamentarianism.

Moreover, in order to avoid responsibility for presidential acts, ministers must try, at the very least, to limit any arbitrary presidential decisions, thus appearing as 'presidential excess moderators'.[25] And this is the only function attributed to them since, if they refuse to countersign an act, they might provoke a ministerial crisis with their consequent resignation from office or, even worse, they could be removed by the President.[26]

With regard to the vote of no confidence and the matter involving trust, the disapproval of a ministerial initiative does not carry resignation with it, unless the matter involving trust has been placed on its approval. On the contrary vote of no confidence by Congress forces the prime minister, with whom there is a fiduciary relationship, to resign with a subsequent government crisis.[27] In this case it is interesting to note the fact that within thirty days of the formation of a new government, the new prime minister takes the floor before the Congress to demand a vote of confidence after making a policy statement.[28] This leads us to believe that the fiduciary relationship (between the prime minister and Congress) is presumed, in line with almost all parliamentary and semi-presidential systems.

On the contrary, the President of the Republic has the power to dissolve Congress, according to the 'checks and balances' system (Art 134 of the Constitution), which is a typical presidential prerogative of pure presidentialism, if Congress has passed a no-confidence motion twice or has moved a no confidence motion against an individual minister.[29]

Even the 1999 Constitution of the Bolivarian Republic of Venezuela regulates the no confidence motion against an individual minister; although in this system it is particularly interesting the figure of the Executive Vice-President, which brings this *experience* closer to semi-presidentialism.[30]

This is a figure, which differs from the President, who performs a number of functions, pursuant to Art 239 of the Constitution,[31] such as, among others,

[25] M. Rubio Correa, *Estudio de la Constitución Politica de 1993* (Lima: Fondo Editorial, 1999), 239.

[26] He is responsible for the appointment and dismissal of the Prime Minister and the Ministers.

[27] E. Rozo Acuña, n 22 above, 400-401.

[28] Arts 130 and 133 of the Constitution.

[29] Never used. E. Carpio Marcos, 'Articulo 134', in W. Gutiérrez Camacho ed, *La Constitución Comentada. Análisis artícolo por artícolo* (Lima: Gaceta Juridica, 2005), 451.

[30] Indeed, even before the current Constitution, many reforms were presented, which were based on the semi-presidential system and which consisted of a Vice-President too. See, S. Leal Wilhelm, 'Los ministros en el régimen presidencial venezolano' *Fronesis*, 52 (2012); P.E. Tejera, 'La figura del Primer Ministro' *Revista de la Facultad de Derecho*, 188-189 (1993); R.A. Garrido, 'Ventajas y dificultades del sistema presidencialista en Venezuela' *Revista del Centro de Estudios Constitucionales*, 510 (2011).

[31] He presides over the Council of Ministers and coordinates the relations between the executive branch and the National Assembly, he also proposes the appointment and dismissal of ministers to the President of the Republic and he exercises such powers as may be delegated to him by the President.

presiding over the Council of Ministers with the authorization of the President of the Republic. This prerogative grants, on a formal level, the Executive Vice-President the same powers as the Prime Minister, considering that he is politically answerable to the National Assembly, since a vote of no confidence against the Executive Vice President, passed by a two thirds majority in the National Assembly, leads to his dismissal.[32] Even in this case, just as in Peru, the presumed mutual trust between Congress and Executive Vice President is noteworthy. Another element borrowed by the semi-presidentialist system is the right to early dissolve the National Assembly.[33]

The Venezuelan experience is similar to that of Argentine,[34] where the no confidence motion against an individual minister is not mentioned, but an office similar to that of the Executive Vice President is in place.

This is the *Jefe de Gabinete*[35] (Prime Minister) who supports the presidential office, coordinates the work of the executive branch and *presides over the Cabinet*, with consent of the President.

Even in this context, a figure has been chosen which acts as an intermediary between Congress and whoever is politically responsible to it. Actually, during the *Consejo para la Consolidación para la Democracia* the propensity towards a semi-presidential system was already clear.[36] The *Jefe de Cabinete* is indeed one of the most relevant institutional office,[37] since he has the power to sign presidential orders and a fiduciary duty to the Congress, albeit presumed, just like in Venezuela and Peru.

Colombia, Bolivia and Ecuador are less articulated systems, nevertheless with some interest. The purpose of the Congress to legitimize checks over the Executive branch was in fact mainly promulgated by the Colombian Constitution of 1991.

In this context neither the question of fiduciary duty nor any counterbalancing

[32] Art 240 of the Constitution.

[33] After three no-confidence motions against the Vice President. M. Criado De Diego, 'La forma de gobierno en el nuevo constitucionalismo andino: innovaciones y problemáticas', in H. Cairo Carou et al eds, *América Latina: La autonomía de una región* (Madrid: Trama, 2012), 631.

[34] Some features of this doctrine also show a hypothesis of semi-presidentialism even in this experience. R. Dromi and E. Menem, *La Constitución Reformada* (Buenos Aires: Ciudad Argentina, 1994), 352; N.P. Sagüés, *La Constitución bajo tension* (Mexico: Instituto de Estudios Constitucionales del Estado de Querétaro, 2016), 149; M.A. López Alfonsín and A. Schnitmann, 'Semipresidencialismo e Hiperpresidencialismo en la Reforma Constitutional Argentina de 1994' *Florianópolis*, 53 (2016).

[35] R. Haro, 'El rol institucional del Jefe de Gabinete de Ministros en el Presidencialismo argentino', in J.F. Palomino Manchego and J.C. Remotti Carbonell eds, *Derechos Humanos y Constitución en Iberoamérica* (Lima: Grijley, 2002), 103.

[36] See, Consejo para la Consolidación de la Democracia, *Reforma constitucional dictamen preliminar del Consejo para la Consolidación de la Democracia* (Buenos Aires: Eudeba, 1987), 103; A. García Lema, *La reforma por dentro. La difícil construcción del consenso constitucional* (Buenos Aires: Planeta, 1994), 170; R.R. Alfonsín, *Memoria politica: Transición a la democracia y derechos humanos* (Argentina: Fondo de Cultura Económica, 2013), 234.

[37] C. Gutiérrez Casas, 'Relación entre los poderes legislativo y ejecutivo en los distintos sistemas políticos' *Heurística jurídica*, 94 (2016).

power by the Chairman, who has the power to early dissolve the Congress,[38] as in Peru and Venezuela, was provided. On the contrary, the no confidence motion is significant, as in Bolivia, but only against an individual minister; it is subjected to a particularly strict discipline, since it can be proposed even though, once the session is summoned, the ministers are not present without justifiable cause.

This differs from Ecuador where checks on the Executive are carried out through the impeachment proceedings of both the President and the Vice-President; this impeachment process is quite complex and it is counterbalanced, in terms of balance of power, by the president's power to early dissolve the National Assembly.[39]

Moreover, the concurrence of these two prerogatives, as established by the Constitution, in this experience may even more clearly determine the typical tendency of the relationship between the Executive and the Parliament to hinder each other in the systems being examined, thus clearly restricting the efficiency of the form of government. In fact the Constitution provides that in both cases, that is, after the dismissal of the President or the dissolution of the National Assembly, the people may vote for the election of both. Therefore, logically speaking, the National Assembly tends not to remove the President who tends not to dissolve the Assembly; in this perspective both tend to safeguard their own mandate.

IV. The Deep Difference Between the Formal Data and the Evolutionary Context

Starting from the factual experiences, the detailed analysis of the experiences taken into account shows the limits of the aforementioned evolutionary trends. These limits are still linked to the so-called caudillism,[40] to the congenital weakness of political parties and to the irrelevance of the electoral system of the legislative *branch,* which, although proportional in most cases, does not determine the role of Parliament.[41]

In Peru, for example, the system, as has been reformed, must be assessed especially in light of the election results. If the president retains a parliamentary majority, the parliamentary prerogatives will be further more restricted. Therefore, there is a genuine possibility that the instruments of control over the executive

[38] E. Rozo Acuña, n 22 above, 404.

[39] ibid 408.

[40] A term coined during the independence struggle in northern Latin America, which was used to describe the head of irregular forces who ruled a politically distinct territory (caudillo). During the following two centuries, this term was referred to many Latin American realities, where a strong relationship emerged between military and political forces.

[41] See F. Tuesta Soldevilla, 'Sistemas electorales en América', available at https://tinyurl.com/y3gabymq (last visited 28 May 2019).

branch are weaker,[42] just as the mechanisms of parliamentary government, aimed at limiting presidential power, might be bent in order to support the government majority. But the situation does not change much in the opposite case, that is when the President does not retain a stable majority in parliament, as in the case of the political events of the past fifteen years, since the Parliament has never held such a strength of power as to lead to a paralysis of the system.[43]

Therefore, even in this second case, the Parliament exercises great self-restraint. It is sufficient to underline that, although there is a greater use of the presidential power of observation[44] (Art 108 of the Constitution), the Parliament tends to pass a new bill rather than to provoke a direct confrontation with the President himself; just as the impeachment power (pursuant to the provisions of Arts 99 and 100 of the Constitution) has never been invoked against Presidents in power.

Moreover, the power of impeachment has effectively been applied as a tool to oversee the work of the executive branch, still regarding it as a political instrument against the governmental system.

A similar perception has been observed in Brazil as well, where in 2016 the impeachment of President Dilma Rousseff has had many effects on the young Brazilian democracy. This event was in fact interpreted by some as a real *coup d'état* and the first event of the many others that have paved the way for the election of Jair Bolsonaro. The widespread accusation made up for the absence of crimes of personal responsibility with judgements of a political nature, and of having therefore distanced this institution from its original function of ensuring a balance of powers,[45] has therefore fuelled a broad international interest. This debate has highlighted the differences between the predictions regarding the aims of the 'personal responsibility crimes' and the current parliamentarian trends in the relationship between executive and legislative power, where the only solutions,

[42] J.E. Cavero Cárdenas, 'Notas sobre la disfuncionalidad del Régimen Presidencial en el Perú. Reflexiones en torno a la posibilidad de instaurar un Régimen Parlamentario' *Revista del Foro Constitucional Iberoamericano*, 142 (2005).

[43] M. Rubio Correa, '25 años de Estado peruano: perspectiva social y constitucional', in J. Abugáttas et al eds, *Estado y Sociedad: Relaciones peligrosas* (Lima: DESCO, 1990), 43-80; M.Á. González, *El Perúbajo Fujimori: alumbramiento, auge y o caso de una dictadura peruana* (Madrid: Universidad Complutense de Madrid, 2004), 61.

[44] The bill, voted and passed by the Congress, is then signed by the Chairman of the Congress and finally referred to the President of the Republic for enactment within a fifteen days period. The President of the Republic shall promulgate the law and order its publication or reject it. If the President of the Republic has observations (*observaciónes*) to share regarding the whole or any part of the law passed by the Congress, he shall submit them to the Legislature within fifteen days. Once the law has been reconsidered by Congress, which enacts the law according to the President's observations (*reconsideración*).

[45] I. Jinkings, 'O golpe que tem vergonha de ser chama do golpe' , in Id et al eds, *Porque gritamo sao golpe? Para entender o impeachment e a crise politica no Brasil* (São Paulo: Boitempo Editorial, 2016), 12.

envisaged so far, seem to support broader procedural protections[46] for the President.

The obvious assumption is that the tendency towards a parliamentary system concerning the relationship between the executive branch and the Congress is further strengthened by the use of impeachment as a political tool. Moreover, the performance of presidentialism, which saw its start in Latin America as a result of the democratic transitions of the last century, confirms the fears linked to a 'distorted use' of this tool.

V. The Problems of Semi-Presidentialism and the Crisis of the Systems

Very important anomalies may be also detected in the semi-presidential evolutionary tendencies of Venezuela and Argentina, although there are conditions for a minimum definition of semi-presidentialism. That is the dual structure of the executive branch and the *fiduciary relationship* between the National Assembly and the Executive Vice President in Venezuela and between the National Assembly and the *Jefe de Gabinete* in Argentina.

In any case, neither can the Executive Vice President nor the *Jefe de Gabinete* be considered the 'second head of the eagle', that is of the executive branch, according to *Duverger's* juridical thinking.[47]

They are indeed particularly weak figures, being more comparable to the figure of the Vice President, according to the presidential model, and so entirely depending on the President, who appoints and revokes these two institutional figures in both systems. The executive branch is unipersonal.[48] Moreover, in such circumstances, the typical French constitutional praxis, which appoints the leader of the political party holding a parliamentary majority as prime minister, cannot be regarded as necessarily consolidated.

After all, there has only been one case of cohabitation[49] in Argentina, that has

[46] J. Paraffini, 'Il presidenzialismo brasiliano alla prova delle inchieste e della crisi del bilancio statale: osservazioni sull'impeachment e contro Dilma Rousseff' *DPCE on line*, 557 (2017).

[47] M. Duverger, 'Le concept de régime semipresidentiel', in Id, *Les régimes semi-présidentiels* (Paris: PUF, 1986).

[48] D. Valadés, 'El gobierno de gabinete y el neopresidencialismo latinoamericano' *Anales de la Academia Nacional de Derecho y Ciencias Sociales de Córdoba*, 18 (2003); M.D. Serrafero, 'Presidencialismo argentino: ¿atenuado o reforzado?' *Araucaria*, 138 (1999); M. Llanos and D. Nolte, 'The Many Faces of Latin American Presidentialism' *GIGA Focus-Latin America*, 1 (2016); R. A. Garrido, n 30 above, 526.

[49] This is the case of the *Jefe de Gabinete* Rodolfo Terragno (1999-2000), appointed by President Fernando de la Rúa, who, although from the same party of the President (UCR), supported a different trend, so that it was removed by the President himself. See, S. Cruz Barbosa, *Evaluando las instituciones políticas de gobierno de coordinación nacional en Argentina: el rol del Jefe de Gabinete de Ministros en la Argentina pos reforma. Un análisis desde la Ciencia Política, instituciones políticas, El Fortalecimiento del Alto Gobierno para el Diseño, Conducción y Evaluación de Políticas Públicas* (Caracas: CLAD, 2010), 5; A.R. Dalla Vía, 'Ensayo sobre la

been 'weak'. The Argentine system also lacks of one of the main features of semi-presidentialism,[50] that is the President's power to early dissolve the National Assembly. So far no no-confidence motion *against* a *Jefe de Gabinete*[51] has ever been presented in this system. A *Jefe de Gabinete* emerges from among the leaders of the President's political *party*, without representing the coalition governments supported by the Presidents,[52] as it is evident in Venezuela

In fact, the Venezuela's system is more affected by politics of non-recognition given to opposition parties, while it is actually necessary for the democratic development of the system, which is still trapped in the contrast amigo-enemigo (friend-enemy),[53] encouraged by Chávez and followed on by Maduro. Indeed, Vice-Presidents have always been members of the same party of the President, primarily to provide a successor to the President.[54]

Another element to be considered is that the dynamics of semi-presidential systems should be read also in light of the Constitutional Reform 2008 of the French political system, taken as a reference model by the Argentine and Venezuelan systems. This Reform, aimed at rebalancing the separation of powers, strengthening the role of parliament, with the aim of including the French experience into the trend that has seen the so-called semi-presidential systems or prevalent parliamentary systems[55] dominate for some time.

This element, however, is not found in the cases studied, since the constitutional amendments have not affected the role of the legislative branch nor limited the President's legislative powers. On the contrary it should be remembered that the French Presidents do not hold regulatory power, unless they exercise it indirectly by means of the parliamentary majority of their political party. The parliamentary or semi-presidential systems of the presidential system archetypes of Latin America seem theoretically possible, but similar hypotheses cannot be applied. The constitutional amendments have been unable to determine

situación actual del hiperpresidencialismo' *Revista de la Facultad de Ciencias Jurídicas y Sociales*, 162-187 (2014).

[50] See, A.M. Orihuela, *Constitución de la Nación Argentina Comentada* (Buenos Aires: Corte Suprema de Justicia de la Nación, 2008), 179; L. Sciannella, 'Recenti tendenze evolutive nella forma di governo argentina: dal semipresidenzialismo apparente alla presidenzializzazione dell'Esecutivo', in A. Di Giovine and A. Mastromarino, *La presidenzializzazione degli esecutivi nelle democrazie contemporanee* (Torino: Giappichelli, 2007), 211-238.

[51] J.R. Vanossi, '¿Régimen Mixto o Sistema Híbrido? El Nuevo Presidencialismo Argentino' *Estudios de teoria constitucional*, 53 (2002); M.D. Serrafero, 'Presidencialismo argentino' n 48 above, 138.

[52] M.M. Ollier and P. Palumbo, '¿Casotestigo o caso único? Patrones de la formación de gabinete en el presidencialismo argentino (1983-2015)' *Colombia Internacional*, 53-66 (2016).

[53] M. Fraschini, 'Los liderazgos presidenciales de Hugo Chávez y Álvaro Uribe. Doscaras de una misma forma de gobernar' *Revista de Reflexión y Análisis Político*, 529 (2014); T. E. Frosini, 'Venezuela: Chavez, Il presidente nel suo labirinto' *Quaderni costituzionali*, 872-874 (2007).

[54] See, M. Llanos and D. Nolte, n 48 above, 23; C. Bassu, 'La forma di governo venezuelana: tra presidenzialismo e caudillismo', in A. Di Giovine and A. Mastromarino eds, n 50 above, 239-263.

[55] M. Volpi, n 10 above, 157.

the consolidation of democratic transition, since they have clashed with a completely different practice. Therefore, the assumption that the Latin American systems have copied the US presidential system does not take into account the impact of specific factors. These elements have to be recognized in the different legal traditions, in political practices as well as in the existence of complex and conflicting social and cultural contexts,[56] such as the deep economic and humanitarian crisis in Venezuela.

Thus, the historical and political context plays a key role in these experiences to the extent that it has prevented the enhancement of constitutional instruments which had a different matrix, thus ensuring continuity with the previous regimes.

[56] A. Valenzuela, 'The Crisis of Presidentialism in Latin America', in S. Mainwaring and A. Valenzuela eds, *Politics, Society and Democracy Latin America* (Boulder, Colorado: Westview Press, 1999), 120-139