The extent of executive authority of the president under the Constitution of Georgia

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Introduction

Georgia is one of the clear examples of dynamic democracy, as it helps us to claim that we have close “historical relations” with the western democracies or at least announce this in the context of good-neighbor relations. All aforementioned represents apparent manifestation of our aspiration towards the western civilization, as to catch up with their “high-speed” ferry-boat, which is moving from one democratic shore towards the other but only from better to the best.

The established order is a major base of development in the organized society, which is in full compliance with differentiated homogeneous or heterogeneous society and with the nature and peculiarities of their parts. In the mentioned domain established order must become the grounds of democratic stability.

Research on democratic stability is problematic in the newly democratic countries for a number of reasons. Political traditions are not established yet, party systems are changing and electoral formulas are being changed, and in addition, one cannot always separate personal influence of exceptional political leaders from their institutionally-afforded possibilities. In general the totality of these problems may endanger democratic stability.1

Exactly from the democratic stability viewpoint the greatest importance is assigned to the fact how to select an institutional model to attain afore-mentioned regime. This institutional model might become the foundation and the core of system stability or it might cause changes, sometimes even violent ones. The role of the institutional model in the newly democratic countries might even be more important than in the consolidated democracies. In the former, the rules of the game are not yet linked to the traditions of the game and this raises the possibility of unexpected and potentially dangerous decisions and conflicts as political actors are presented with incentives to redefine the powers of their institutions. In one type of institutional model, this situation might be even more dangerous than in other arrangements since they are like no other open to various power configurations. Rules of the game in one model may be applied flexibly with regard to particular political situations and they afford more degrees of freedom in making political decisions.

Democratic instability is divided into three categories:
1. Cancellation of constitutionally required democratic elections;
2. Usurpation of government powers – usually this means actions by the president without the assent of voters;
3. Violent overthrow of the elected presidents instead of their dismissal through impeachment or by other constitutional means.2

If we go deep into these three criteria we will eye that deplorably Georgia gained quite bitter experience in all the above-mentioned criteria. All of them have come into being at last decade of the past century in the newest history of Georgia. This is emphasizing the point how significant it is to seek grounds and core of democratic stability.

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The institutional model of state authority is related to separation of governmental reins between classic branches. Its aim is to identify principal political actor, be it president or parliament, backed with government, as well as to determine the content of the legal relations among these actors. All these directly affect the regime functioning.

The 1980s was a time of growth in a subfield of political science that has come to be known as the “new institutionalism”. Often drawing in a matter sometimes more, sometimes less formal, from microeconomic understandings or rational behavior and individual responses to incentive structures, this subfield has placed political, rather than social or economic or cultural, variables at the center of explanation of political outcomes. There is renewed focus on the importance of political institutions in accounting for the success or failure of democracy. Central and Eastern Europe and other parts of the globe have given impetus to the study of designing constitutions and the consequences of institutional choice.¹

The Georgian government and people are painstakingly looking for „discovering“ an institutional model fitting best the Georgian reality and specific environment. We are standing on the way of state construction, despite a long statehood history. The confirmation of this is the more or less profound amendment, which the Georgian constitution of 1995 has undergone in the course of its 12 years existence. These changes have been aimed not solely at perfection of citizens' constitutional rights, but rather Georgia via partial amendment and alteration has changed the form of governance. The presidential model established in the country (known in theory as super-presidential) has been replaced by semi-presidential, as it is referred to from the institutional view point as one of the lenient forms of government of the mixed forms of state-running. In society (within scientific or political circles) people are incessantly saying that the transformation of the semi-presidential system into the Georgian reality shouldn't have occurred because of our bitter presidential experience, if we endeavored to aspire development from the democratic view point but later on we’ll quite well see that this kind of transformation had fully logical grounds (and was justified). Don't be caught by surprise that this institutional sculpturing process may become protracted, if we bear in mind the experience of foreign countries, for instance, Poland had three constitutions, which affirmed mixed form of government.

Firstly, semi-presidential institutional models create the incentives for inter-institutional conflicts, which might be eliminated or, more realistically, made less likely only by a very carefully designed constitution (we will return to this question latter). Secondly, stability of semi-presidentialism depends on the established traditions while the lack of traditions might be destructive. Thirdly, some features of the presidency as an institution might also be unfavorable to democratic stability. This conclusion leads us to recognize the nonexistence of such traditions in Georgia. This fact makes actual the caution to the formation of institutional model and in general to the creation of constitution, and it also stipulates the necessity of research of the topic by scientific society.

In the scientific society and between theorists of the world there exists diversity of the views on whether a country belongs to a semi-presidential one. The research of this institutional model is so far significant because the variety of its indication pushes the

researchers towards different conclusions. Together with this we can note that the mixed presidential governing form hasn't yet been subject of the in-depth research by the Georgian scientific society, that there haven't been staged wide-scaled and multilateral discussions around it.

A mixed form of governance in Georgia is newly-fledging and it is clear that practice and experience of foreign partners and scientific research has a critical importance for us. We shouldn't forget the fact how should the first example or the first practice run or in the course of installing the system what practices will be yielded to the country. The capital research of the semi-presidential system is also important from the view point that in the wide masses of Georgian public (be it more or less skilled experts of this realm or dilettantes) from the day of its introduction bearing in mind the practical variety, we are facing the process of fortune-telling regarding the model of which country we are approaching, classical French or more, stern Russian or we are creating our own one. The Afore-mentioned points we will touch later on but here to this end we should note that if we look through and scrupulously get ourselves acquainted with the results of scientific activities in the mentioned field, we will eye the fact that comparison of the Georgian model with the French one is a gross error, despite the fact that the both countries are functioning based on mixed presidential governance.

The aim of our work is to more or less clearly form our vision on the contents of a mixed form of governance, distinguish its place between the classic forms of governance, carry out the identification of its merits and drawbacks, and also to analyze the results of wide-scaled discussions in the foreign scientific society, suggest original views regarding different interesting aspects and thus partially engage in this discussion or echo it.

Comparative analyses of semi-presidential models in newly democratic countries (and even in old ones) provide us with definitions of possible dangers to their democratic stability. It is a comparative analysis that enables to trace the institutional dimension of politics and discover the features of semi-semi-presidentialism as a system, i.e. to determine how similar institutional models are able to meet the challenges, not only to study how the challenges themselves affect democratic stability.

All the above-mentioned creates solid basis to well appreciate the Georgian semi-presidential system practices and classification with respect to the best international and negative practices.

Clues of the presented topic is in the exact classification of variety of mixed presidential systems and carrying out comparative-legal analyses with regards to the system, because the explanation of their essence will simplify the process of classification of the operating system varieties and analyses of its consistency. Alongside with this introduction of the mixed form into the Georgian reality enhances potential of institutional analyses.

Proceeding from the all mentioned the topic is divided in two parts. The first one concerns with origination and evolving of semi-presidential concept, but in the second part we will try to define the essence of Georgia's example through the analyses of the Georgian constitution and by employing comparative and other methods.
Chapter I

Generalized and particular semi-presidentialism – Theories and concepts

$1. Definition and content

Subparagraph 1. general review

The Central and Eastern European experience with institutional transformation provides new material for the comparative politics discussion about the role of constitutional choices in democratic development. One aspect of this discussion deals with the potential advantages and disadvantages of particular forms of contemporary democratic regimes.¹

The experience of mankind has shown that pure classical regimes that are both presidentialism and parliamentarism may fail. It is from both these ends, then, that humanity is prompted to seek a “mixed” solution, a political form that stands at the crossroads between presidential and parliamentary systems and draws from both. This mixed form has come to be known as semipresidentialism.²

A second wave of democratization in Europe led to the regime types other than parliamentarism or presidentialism.³

Before discussing the topic, first we consider it necessary to deal shortly with history and content of the title of the mixed form of government.

In a popular context the term “semi-presidential regime” was first used by the journalist and founder of the Le Monde newspaper, Hubert Beuve-Mary in 1959.⁴ In an academic context the concept of semi-presidentialism was first elaborated by the French political scientist, Mourice Duverger in the 11th edition of his textbook on political institutions and constitutional law.⁵

Matthew Soberg Shugart and John M. Carey have noted that the term “semipresidential” implies a regime type that is “located midway along some continuum running from presidential to parliamentary.”⁶ Giovanni Sartori agrees with the mentioned, but notes, that semi is the Latin for half and does not assume any continuum because it precedes continuum-mania by well over two thousand years.⁷ Notwithstanding such

¹ www.ciaonet.org/conf/ece01.pro.html ~Do Institutions Matter? Semi-presidentialism in Comparative Perspective” Oleg Protsyk _ p. 1;
² “Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes”_Giovanni Sartori, Macmillan, 1994, p. 121;
⁷ “Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes”_Giovanni Sartori, Macmillan, 1994, p. 137;
differences with regard to title, main is that semipresidential system simply belongs to neither presidentialism nor parliamentarism and it has developed as a pure type.

Generally, complexity of the topic lies in the fact that himself Duverger, pioneer of the discussion used to change his approaches to semi-presidentialism from year to year. But it should be noted that he polished the regime concept. His books published in different times differently qualify semi-presidential system, though in his essay published in English in 1980 he defined the definition which is universally recognized even today and is regarded as a notion of mixed form of government. The notion has the following content:

1. There is popularly elected President;
2. The president possesses significant constitutional powers;
3. On the opposite side of the president there are premier with other ministers, who carry out executive and governmental powers and can be in authority until parliament opposes.\(^1\)

Of course, there appeared opponents who suggested different interpretations of mixed form. For instance, for O’Neill semi-presidential are systems where executive power are divided between a prime-minister as a head of government and a president as a head of state, and where substantial executive power resides with the presidency.\(^2\) This means that for O’Neill, countries with directly elected but weak presidents (such as Austria, Iceland and Ireland) should not be classed as semi-presidential, whereas countries with indirectly elected but strong presidents (such as Albania, and formerly Czechoslovakia) should be classed as such.

According to Giovanni Sartori one characteristic that any semi-presidentialism must have (by virtue of its name) is a dual authority structure, a two-headed configuration. Thus any semi-presidential constitution must establish, in some manner, a dyarchy between a president, the head of state, and a prime-minister that heads the government. In the 1958 French constitution the premier’s “head” is clearly outlined in articles 20 and 21, which read, respectively, that “the government determines and directs the national policies”.\(^3\) The presidential “head” is outlined, instead, far less clearly and in a more scattered manner in several articles and this scattering corresponds to the fact that, as Duverger noted, “the principal powers of the president... have a spasmodic character... They are not normal prerogatives... but exceptional powers which can be used only infrequently. Furthermore, (most presidential powers) are not powers of decision. They tend either to prevent a decision... or submit the decision to the French people (dissolution, referendum).”\(^4\)

From the all above mentioned we can conclude that there was and it continues even today some extent of disturbance with regard to concepts of mixed forms. Different people add different features to the regime and therefore the list of the countries classed

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\(^3\) “Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes” Giovanni Sartori, Macmillan, 1994, p. 121;

as semi-presidential varies. This makes problems not only for fellows who work in the
sphere, but makes questionable entirely the advantage of the concept.

Matthew Soberg Shugart in his work from a very interesting point demonstrated
the features of the mixed forms and this led him to differentiate the two types from each
other (we’ll discuss this question latter down). For this he referred to method of
comparative analysis and compared the semi-presidentialism and pure classic systems
with each other.

According to Shugart by virtue of its being called semi-presidential, the regime
type in question is clearly identified as a hybrid that is neither presidential nor
parliamentary. If we consider ‘presidential’ and ‘parliamentary’ to be terms denoting pure
types, from both of which semi-presidentialism draws certain characteristics, we need
clear benchmarks as to the features of the pure types.

A “pure” parliamentary democracy should be understood to mean a regime that
can be defined by the following two basic features:

1. Executive authority, consisting of a prime minister and cabinet, arises out
   of the legislative assembly;
2. The executive is at all times subject to potential dismissal via a vote of “no
   confidence” by a majority of the legislative assembly.

These two criteria express a hierarchical relationship of executive to legislative
authority, whereby the executive arises from and is responsible to the majority of the
assembly.¹

Presidential democracy, on the other hand, is defined by the following three basic
features:

1. The executive is headed by a popularly elected president who serves as the
   “chief executive”;
2. The terms of the chief executive and the legislative assembly are fixed,
   and not subject to mutual confidence;
3. The president names and directs the cabinet and has some constitutionally
   granted lawmaking authority.

The defining characteristics of parliamentary and presidential democracy, then,
speak first to the question of the origin and survival of the executive and legislative
branches. In a parliamentary system, executive authority originates from the parliament.
The precise institutional rules for determining who forms a cabinet vary from one
parliamentary system to another, but for a system to be parliamentary, the process of
forming a government must fall to the majority party, if there is one. If there is not, it
must derive from bargaining among those politicians with an elective mandate from the
most recent parliamentary elections.²

In a presidential system, on the other hand, the origin and survival of executive
and legislative authority are separate. The first criterion of the definition of
presidentialism contrasts starkly with that for parliamentarism, in that it denotes the
existence of a chief executive whose authority originates with the electorate. The second
criterion specifies that, unlike in a parliamentary system, the chief executive is not
subject to dismissal by a legislative majority. Furthermore, neither is the parliament
subject to early dissolution by the president. Both branches thus survive in office

¹ http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf _ p. 2;
² http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf _ p. 3;
independent of one another. The addition of the third criterion, regarding the president’s authority, is important for establishing the independence of the president not only in terms of origin and survival, but also in the executive function, for it sets out that the cabinet derives its authority from the president and not from parliament.\(^1\)

It further stipulates that the president has some legislative authority, and thus is not “merely” the executive. It is the fact of separate origin and survival combined with shared lawmaking powers that generates the necessity for the executive and legislature to bargain with one another, such that legislative change is a joint product of both elected branches.

Systems in which there is an elected president differs from the common parliamentary type in that there are two agents of the electorate: a parliament and a president.\(^2\) It derives from that the presidential and semi-presidential systems are sources of conflicts of legitimacies. In parliamentary system there is only one agent, parliament, and government here is an agent of rather parliament than directly electorate. There are myriad ways to design constitutions that vary the relationship of the voters’ two agents to one another, as well as to the electorate. Regimes with elected presidents vary in the ways in which the president may check, cajole, confront, or simply submit to the parliament majority. We even find that some systems give the president so little power relative to the parliament that they are effectively parliamentary. This lead Shugart and Carey to not seeing a presidential regime as being the polar opposite of parliamentarism, as much of the literature implies.\(^3\)

As we noted above, for semi-presidentialism legitimacy is a very problematic issue. We know that in such system exist two institutions that come by popular elections-president and parliament. And both possess independent sources of legitimacy. Problem arises when that in case of their confrontation winner is only president, because he can dissolve the opposed parliament. The parliament can not do the same.

In theory and practice great importance is given to relationships between president and premier. In this regard there are two main patterns. According to the first one, president enjoys solid support of parliamentary majority. In this situation system works under political leadership of the president. He guides the cabinet \textit{de facto}, as well as \textit{de iure}. Premier appointed by president and approved by parliament is under subordination of president. Here prime-minister exercises administrative and technical management under presidential leadership.

In a parliamentary system, the executive is chosen by and may be removed by the elected parliament. In a presidential system, the process of forming the executive is institutionally distinct from the process of filling seats in the parliament, as both branches are popularly elected. In each of the other types and hybrids there is some combination of presidential and parliamentary majority over composition of the executive. As Shugart and Carey argue, in none of the types is it easy to divorce the process of executive formation from the process of voters’ choices for parliamentary representatives. Typically in parliamentary systems, even though it is only the parliament that comes

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1 http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf _ p. 3;
before the electorate for votes, voters make their choices to a significant degree on the basis of what kinds of policies they want addressed by the executive. In presidential systems, too, there may be “coattail” from the presidential races that affect the vote for parliament. Where the voting for the two branches is most clearly separated, as in presidential institutional designs, often the lack of policy agreement between the executive and the parliamentary majority causes stress in regime.

Analysing Shugart’s theoretic approaches, we can dichotomize the relationship of the parliament as fused or separated. Fusion of origin means that the executive emerges from the parliamentary majority, whereas separation means it has its own source of democratic accountability, i.e. popular election. On the dimension of survival of the authority of the executive, fusion means that if the parliamentary majority breaks apart, the executive falls, whereas separation means that the executive serves out a term in office regardless of shifting majorities within the parliament. These are fundamental distinctions between regime types in the structure of authority, and the commonly recognized pure types have the same relationship on each dimension. Parliamentary systems occupy the fused–fused cell (i.e. here origin and survival are both fused), while presidential systems occupy the separated–separated cell.

We mentioned above, that where the voting for the two branches is most clearly separated, as in presidential institutional designs, often the lack of policy agreement between the executive and parliamentary majority causes stress in the regime.

Mixed form of government precisely aims at neutralizing as smooth as possible maxim the results of the lack of political agreement between the two branches, when the system regulates in detail the institutional relations between them.

In our opinion, the substantial feature of the semi-presidentialism lies in its aim. Namely, presidential system simply drops a boundary between the executive and legislative branches, makes them equal in status and legitimacy (though there may be doubts if it makes them equal in power). Here executive is fused and absorbed by the president, thus it is sharply separated from the prerogatives of the legislator. While parliamentarism absorbs executive and the latter is the agent of the former, thereby here executive is abruptly separated from the head of the state which is somehow expelled from this branch.

Semi-presidential system, according to Georgian saying, burns neither piece of meat nor spit (for roasting), attempts to separate from each other and at the same time to provide inter-subordination between executive and legislator. But semi-presidentialism institutionally does this only by sharp separation of one part of the executive from the legislator (here executive is two-headed). This part is president. Herewith by using some specifics of parliamentarism second part of the executive (premier with cabinet) is fused with parliament, and by this fusion with legislator the second head of the executive is not absolutely separated from the first head of the executive – the president. On the contrary, it is more fused with the president by using more specifics of presidentialism, than is fused with the legislative branch by using little specifics of parliamentarism. This is the precise content of the semi-presidentialism. Of course, the extent of the separation and fusion in the system differs from one regime to another, but the separation and combination is the corner-stone of the semi-presidentialism.

The first positive feature of this regime is that it provides the existence of the separate origin of the executive. While in parliamentary republic only the parliament is
elected and then the elected parliament forms government, in the semi-presidential system the president is also elected and they (president and parliament) together participate in government formation. I.e. there is much legitimacy for government, because it has two origins of authority - presidential and parliamentary, and by these two means - popular source.

In presidential republic parliament can not be dissolved, while in parliamentary such power exists. In mixed form parliament can censure government, i.e. equalizer mechanism is added to parliamentary origin of government that president has power to dissolve the parliament itself. This is interaction mechanism.

Giovanni Sartori concludes, that the common denominator of both presidentialism and semi-presidentialism is a popularly elected president, or at a minimum, a president that is not elected in and by parliament. But beyond this common foundation of the two forms radically depart from one another, for semi-presidentialism is “semi” precisely in that it halves presidentialism by substituting a dual authority structure to a monocentric authority structure. In presidential systems the president is protected and insulated from parliamentary interference by division of power principle. Instead, semi-presidential systems perform on a power sharing basis: the president must share power with a prime-minister and, in turn, the prime-minister must obtain continuous parliamentary support. However, author here notes, that the above doesn’t suffice to define semi-presidentialism.¹

Robert Elgie has concluded that because semi-presidential systems simply exhibit various forms of political practice within the same basic constitutional structure, in this way semi-presidential regimes are just as “pure” as presidential or parliamentary regimes which also exhibit equally varying forms of political practice at different times.²

Above mentioned discussion relates to the purposes of semi-presidentialism, to what it serves, why it became necessary to invent it. The survey of the aspirations of mixed form should be started with the review of the approaches of the father of the concept itself.

Duverger has often reiterated that the purpose of the concept of semi-presidential government is to explain why relatively homogeneous constitutions are applied in radically different ways.³ For Duverger, then, the concept of semi-presidentialism is as much a heuristic device as a description of a particular set of constitutional arrangement. For him, the principal advantage of such a device is that it “permits the construction of an analytical model which allows the in-depth explanation of how these regimes function…”⁴

¹ “Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes”_ Giovanni Sartori, Macmillan, 1994, p. 122;
One of the main aspirations of mixed form is to mitigate maximally some problems of presidentialism while merging positive aspects of parliamentarism to the results.¹

Shugart has argued in favor of a strictly institutional definition that takes off from the definition used by Duverger: A popularly elected presidency with considerable powers alongside a prime-minister and cabinet subject to parliamentary confidence. This is a simple definition for a complex regime type, and that is its appeal, as well as its limitation. This Duvergerian definition is appealing because it separates those regimes that have a dual executive—with one executive official originating and surviving separately form the parliament and the other with its survival fused with the parliament—from other hybrids that contain a single clearly “chief” executive.²

Here we should note that it follows from aforementioned that the purpose of semi-presidentialism is not preferential separation of powers in favor of either president or parliament (as it is in presidential or parliamentary systems). Here the content of dualism is that the executive not to be one and the executive to be accountable collegiate institute. Here executive is formed by two indirect popular mandate, on the one hand, by elected personally president, and on the other hand, to make the accountability more constructive, by the popularly elected collegiate representative institute. Thus, the system has some values:

1. It provides the balance between the subjects carrying out executive authority as between of almost subordinative institute of one branch (finally, president stands on higher ground than cabinet in the system).
2. It provides balance between and promotes more or less “transact cooperation” in the execution of authority of two classic branches, but on the one hand the legislator in these relations participates as single institute of one branch and on the other hand, the president as the one part of the another branch.
3. From the second item precisely follows that mixed form of government once and for all serves the smooth operation (or action) of one agent of executive (of the cabinet), because in this system the whole philosophy of presidential-parliamentary relations is directed to the creation of flexible institutional model of origin and survival of executive. Thus, according to its purpose, we can use the term governmentalism (cabinet system) to refer to semi-presidential system. Of course we don’t mean that executive branch represented by cabinet hierarchically stands at a highest stage compared to the rest branches, as parliament does in parliamentary system and president – in presidential one. Here in the term attention is paid to the purpose of the regime, which is concerned with the dual origin and survival of the executive – about the extent of simultaneous participation of president and parliament in the formation and accountability of government.

This defines semi-presidentialism as more the seasoned form of principles of presidential system and parliamentarism rather than simply the mixed form of these principles.

Carlos Santiago Nino attributes two parliamentary and one presidential feature to what he calls a “mixed system”. Firstly, the posts of head of state and the prime-minister

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are separate. Second, the government is formed with the intervention of parliament. Thirdly, the government is formed with the intervention of voters. However, the Georgian constitution states that the president of Georgia is the head of state and it no more refers to him as the head of executive, but in the competentia l section the posts of president and prime-minister are not institutionally sharply separated, that makes sense that premier directly subordinately subjects to president.

This discussion indicates a degree of conceptual ambiguity since there is no agreement either on dichotomous or trichotomous classification, or on regimes which meet the criteria of definitions.

Semi-presidentialism is the case where there are both the head of state and the head of government and where the former is elected universally and serves for a fixed term while the latter is not elected and his (her) term in office is not fixed. It is clear, that the former appears to be genuinely democratic institution, because it enjoys democratic legitimacy and does not tend to potentially usurpation of authority, while premier does not possess the sufficient extent of democratic legitimacy. However the decisive difference between them is that the prime-minister bears democratic accountability (probably dual), and the president does not. On this question we should note that the scientific research and analysis in Lithuania made it clear that the governments, the formation of which was initiated by the parliament, enjoy longer durations and, therefore, becomes more brave and program-oriented, while the presidential governments suffer short durations (and we should pay attention to the fact that in Lithuania works constructive votum).

Semi-presidentialism does not decrease the potential danger of the usurpation of power by the president. Himself feeling to be more legitimate than the parliament, members of which were elected by small constituencies, the president may try to bypass parliament, the cabinet, or any other government institution in case of conflict, claiming that he is backed by the people's support. Viewing himself as a savior of the nation, he may act as if he is the only representative and embodiment of the nation, with the right to disregard any other institution and appeal directly to the people in the case of institutional resistance. This can lead to the establishment of a regime that Guillermo O'Donnell defines as a "delegative democracy." This is an unconsolidated but sometimes enduring democracy in which a president is "above" all political institutions.

A semi-presidential system, according to Shugart, is a mix rather than a mirror, because of its dual executive. Rather than simply combining the two dimensions of origin and survival in the opposite manner from the pure types, or being located somewhere in between them on a continuum, a semi-presidential system actually takes from both of the pure types. One portion of this dual executive - the president - has both origin and survival separated from the parliament, while the other portion—the prime minister (and cabinet) - has its survival fused with the parliamentary majority. Semi-presidential systems vary in the origin of the prime minister, but usually involve considerable

4 www.ciaonet.org/conf/ece01.pro.html "Do Institutions Matter? Semi-presidentialism in Comparative Perspective"- Oleg Protsyk _ p. 16;
separation from the parliament in this stage. The key point is that semi-presidential systems mix elements of the two pure types for each portion of a dual executive structure.

We should also agree with Shugart that semi-presidential systems should not be seen as alternating between presidential and parliamentary ideal types, as both Duverger and Lijphart have argued. Characterizing France or any other semi-presidential system as alternating between two of the pure types is to define regime types by their behavioral outcomes, rather than by their institutional design.¹

Either approach is justifiable, but the two should not be conflated. An institutional approach defines the authority patterns of the executive and parliament and how they are constitutionally related to one another. A behavioral approach, on the other hand, focuses on extra-constitutional factors such as the party system and leadership dynamics. To put it another way, the institutional approach advocated here allows us to predict how changes in the dynamics of partisan competition, for example, would be filtered through unchanged constitutional structures to produce changed behavior; a behavioral approach, on the other hand, starts with the observed behavior and may even assume away the constitutional structure. If it does not assume it away, then how can the same constitutional structure sometimes be “presidential” and other times be “parliamentary”? It cannot. Rather, a semi-presidential system always mixes features of both.

**Subparagraph 2. Patterns of Executive and Assembly Authority Relations: Hierarchies and Transactions**

The basic theoretical underpinning of presidentialism has its origins in *The Federalist Papers*, and here Shugart argues that the theory of constitutional design propounded by James Madison therein provides a basis for comparing semi-presidentialism to both of the pure types.²

Contemporary scholarship in a neo-Madisonian tradition is interested in the organization of government in terms of the hierarchical and transactional authority patterns between institutions. In a hierarchy, one institution is subordinated to another. Hierarchy is thus about vertical relationships, in that one actor is superior to another. Transactional relationships, on the other hand, are among co-equals. Two institutions or actors in a transactional relationship each have independent sources of authority, and must cooperate to accomplish some task, thereby implying a horizontal juxtaposition of co-equals. The neo-Madisonian perspective, as we use it here, specifies the formal hierarchical and transactional juxtaposition of authority between constitutionally defined actors. It then allows for the incorporation of informal or extra-constitutional features that shape the actual behavioral patterns, such as the structure of the party system and the preferences of officeholders, which might temper a formal transaction with elements of hierarchy or vice versa. By analyzing patterns of both formal authority and behavior, we can gain a firmer grasp on which features of regime performance are largely immutable and which are transitory (dependent on election outcomes and leadership).³

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Subparagraph 3. Authority patterns in presidential and parliamentary government

The two pure types of institutional design—parliamentary and presidential—are almost perfectly opposed to one another in terms of hierarchies and transactions. Because of the fusion of origin and survival discussed above, a parliamentary system makes the executive an agent of the parliamentary majority, hierarchically inferior to it because the majority in parliament selects the executive and may terminate its authority. A presidential system, on the other hand, features a parliament and executive that originate and survive separately from one another, and thus must transact, because neither selects the other and neither may terminate the authority of the other. With this passage, then may capture the essence of the distinction between parliamentarism and presidentialism: Fused origin and survival leading to interbranch hierarchy in parliamentarism, versus separate origin and survival leading to interbranch transactions in presidentialism. The American and British systems remain iconic in the comparative literature on executive structure, notwithstanding that neither country really typifies the larger universe of presidential and parliamentary systems.

Thus, we can depict the authority relationships. The formal structure of executive–legislative relations in the parliamentary system is depicted as having a hierarchical chain of delegation, and no transactional relations. Voters select (delegate to) a legislature, and the legislature selects (delegates to) the executive.

The political process of the presidential system is depicted with separate delegation links from the electorate to the parliament and the popularly elected executive; additionally, there is a transactional relationship between executive and parliament, which engage in a horizontally depicted process of interbranch transactions. The only clear hierarchical relationship among institutions is between the president and his or her cabinet, which is appointed by and serves at the pleasure of the president.

As we shall see, the authority relations in semi-presidential systems are much less straightforward than in the pure types. Due to the dual nature of the executive, the executive’s relationship with the parliament may contain mixtures of both transaction and hierarchy.

$ 2. Authority patterns in semi-presidential government

The juxtaposition of an elected president with a cabinet responsible to parliament is the hallmark of a semi-presidential system. This combination was placed in the German Weimar constitution on the advice of the eminent social scientists Hugo Preuss, Robert Redslob, and Max Weber. Preuss justified Weimar’s synthesis of these concepts as follows: The constitution would provide for a president and parliament, each with “an autonomous source of legitimacy.” Yet the Weimar synthesis retained cabinet responsibility to parliament. Such is the very essence of a semi-presidential system.

The subsequent collapse of the handiwork of these German social scientists in the rise of Adolf Hitler has largely discredited their work as the theoretical foundation of contemporary semi-presidential government. Nevertheless, the Weimar founders’ desire for regimes that combine at once a popularly legitimated and more-than-ceremonial president with a cabinet that can be replaced if it loses the confidence of the voters’ other
agents in the parliament remains powerful among constitutional designers today. However, nowadays semi-presidentialism is more closely identified with France and with Charles de Gaulle’s call, in his Bayeux Manifesto of 1946, for a “chief of state, placed above the parties.” There can be little doubt that the political stability that was generated under the Fifth Republic following the instability of the Fourth Republic is a major source of the appeal of semi-presidentialism today. In that context, it is somewhat ironic that de Gaulle actually suggested that the president he envisioned be “elected by a body which includes the parliament but which is much larger”. Only with his plebiscite in 1965 did de Gaulle establish direct election of the French president and thereby create what has become the most famous and emulated semi-presidential system in the world.  

As we’ll see, however, many of the emulators have borrowed rather selectively from the French model, such that some semi-presidential constitutions have rather different logics of hierarchy and transaction with respect to the relationship of the cabinet to the two elected institutions.

It is interesting to pay our attention to the fact that the variety of semi-presidential regimes concerns the historical or politico-cultural context, within which the regime was created. From the point of view there is at least some degree of consensus in the world’s scientific society as to the factors which most appropriately explain the variety of practices to be found in semi-presidential regimes. Namely these are:

1. The constitutional powers of the major political actors;
2. The events surrounding the formation of the regime;
3. And the nature of the parliamentary majority and the relationship between the president and the majority;

We think it won’t be bad to pay our attention to these factors and variables listed and to consider briefly.

**Subparagraph 1. The constitutional powers of the major political actors**

In the first one the constitutional powers of the presidents, prime-ministers and parliaments is meant. They vary from one country to another.

For Duverger, variations in constitutional powers can be captured by reference to three general types of constitutions.

1) The first type is where the president is merely a “controlling force”. In this situation, the president simply acts as the guardian of the constitution and may have the right, for example, to refer laws to the constitutional court and propose a constitutional referendum.

2) The second type represents an intermediate situation in which the president enjoys these controlling powers and also has the unilateral right to dismiss the prime minister.

3) The third type is where the president is a “governing” force. In this situation the president “shares in the running of the country, in collaboration with the prime minister and the cabinet”.

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1 http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p. 11;
However, we should not give imperative importance to these criterions, because constitutional rules and political practice do not always coincide.

Subparagraph 2. The events surrounding the formation of the regime

In this criterion the historical or politico-cultural context, within which the regime was created is placed. It is clear that the factor leads to a uniqueness of each country. Each country operates within a given geographical area, against the background of a particular historical situation and according to the dynamics of a specific constitutional foundation. Nevertheless, certain similarities can be traced from one country to another. Three common types of context can be singled out.

1) The first type concerns the situation where a semi-presidential regime is adopted for purely symbolic reasons. This may occur, for example, when the adoption of semi-presidentialism is associated with the process of national self-determination. For example, if prior to independence the head of state was a foreign monarch, then the subsequent creation of semi-presidential regime with a popularly elected president may be motivated by the desire to reinforce the democratic credentials of the new regime rather than the desire to install a powerful head of state. In these cases, then, semi-presidentialism may coincide with a weak presidency.

2) The second type concerns the situation where a semi-presidential regime is adopted for reasons of governability. This may occur, for example, when a semi-presidential regime is adopted following the collapse of, say, a parliamentary system of government. Here there may be a desire to create a strong leadership figure who gives direction to the new regime and prevent a repeat of previous situation. In these cases semi-presidentialism may coincide with a strong presidency.

3) The third type concerns the situation where a semi-presidential regime is adopted during the transition to democracy. Here, one of several motivations may be present. For example, the presidency may be tailor-made for the leading figure in the democratization process, so creating the conditions for a strong president. Equally, the presidency may be designed so as to prevent one person from assuming too much power, so creating the conditions for a weak president.¹

Subparagraph 3. The parliamentary majority

The nature of the parliamentary majority can take a number of forms:

1. The first case concerns the situation where there is an absolute parliamentary majority. Here, various scenarios present themselves (monolithic or coalition majority);

2. The second case concerns the situation where there is only a relative or quasi-majority in parliament. In this case, one party has more seats in parliament than any other but lacks an overall majority;

3. The final case concerns the situation where there is no parliamentary majority at all. Here the seats in parliament are shared between a large number of small parties and governments are supported by unstable and shifting coalitions.

Just as the nature of the parliamentary majority can take a number of forms, so too can do the relationship between the president and the majority. For example, the president may be the leader of the parliamentary majority or she or he may simply be a member of the majority. Equally, the president may be from the opposition or, alternatively, she or he may be a completely neutral figure altogether.

By themselves, these various situations tell us very little about the practical diversity of semi-presidential regime, rather their combination gives us a possibility to estimate each case. For example, Duverger argues that a president who is the leader of a monolithic majority will emerge as an absolute (republican) monarch.

$3. Semi-presidentialism in practice$

The precise balance of hierarchy and transaction between the two elected branches and between the president and cabinet in semi-presidential systems can vary nearly infinitely, even if we confine ourselves to the formal relationships. It is this variability that has led to controversy in defining what a semi-presidential system is, and has led some to argue against the value of the type.

The practical diversity of the forms of semi-presidentialism led Shugart and Carey to work out and divide the concept into farther two subtypes – Premier-presidential and President-parliamentary subtypes.¹

Subparagraph 1. Premier-presidentialism

Shugart and Carey endeavored to make clear that the premier-presidentialism was not a mere halfway house between parliamentarism and presidentialism, as implied by more common name, semi-presidentialism, but a regime type unto itself.²

According to Shugart, the prime-minister and cabinet are exclusively accountable to the parliamentary majority, while in the president–parliamentary subtype premier and cabinet are dually accountable to president on the one hand, and to the parliamentary majority, on the other. In literature this distinction was not always evaluated, and was somewhat criticized by some scholars.

Nonetheless, authors made it clear that the distinction captures a meaningful dimension of variation. The complexity of the formal institutional relationships is immediately apparent. Thus in a parliamentary system the parliament (or more accurately in actual practice the party or parties comprising the majority) selects the cabinet and also may dismiss it. In a presidential system the president both selects and may dismiss the cabinet. In semi-presidential systems, on the other hand, a key feature is that the institution that selects an agent may not be the same one empowered to dismiss that agent. The Duvergerian definition of semi-presidentialism, which Shugart have adhered to, is vague on this very important point because it does not define what the “considerable” powers of the president are. The subtypes that Shugart and Carey

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introduced define whether those powers include the all-important right to dismiss a cabinet that enjoys parliamentary confidence.¹

Thus in a typical premier-presidential system, the president selects the prime minister who heads the cabinet, but authority to dismiss the cabinet rests exclusively with the parliamentary majority. The fact that a president in such a system cannot guarantee that his or her preferred cabinet can remain in place is both what separates these systems from pure presidential systems and is a feature that restricts the president’s real choice of prime-ministerial candidate to someone he expects to be able to command parliamentary support (or at least acquiescence). Once appointed then a cabinet that enjoys parliamentary confidence is not subordinated to the president but to parliament, and thus the relationship between president and cabinet is strictly speaking transactional. In behavioral practice, the cabinet may be subordinated to the president if:

1. The president and the parliamentary majority come from the same side of an ideological divide, and
2. The president is the de facto head of his or her party.

These conditions have been approximated in various periods in France, especially before 1986, thus accounting for the observation that French government often has been “presidential” in character. In Austria, on the other hand, the first condition has been met frequently, but the second has not, thus accounting for the more “parliamentary” character of Austrian governance. These patterns of presidential relationship to the party system cannot be accounted for by an institutional definition. What an institutional definition allows us to recognize is that it is precisely the relationship of the president to the constellation of parties in the parliament that is critical for determining the extent of presidential dominance, given that, institutionally, a premier-presidential system subordinates the cabinet to the parliament.²

Having established that only the parliamentary majority may dismiss cabinets in a premier-presidential system, we can now consider the remaining questions that introduce “presidential” features in to what would otherwise be just a parliamentary regime, albeit with an elected president. By “presidential” features we mean constitutional provisions that allow the president to act on his or her separate mandate, either in the process of forming governments or in the legislative process.

The president in most premier-presidential systems has some initiative in the selection of the prime minister. If the president does not have this initiative, a premier-presidential regime is barely distinct from parliamentarism. If there is a majority that organizes the parliament, presidential initiative may be meaningless anyway, because the majority’s unrestricted right to vote no confidence will ensure hierarchical subordination of the cabinet to parliament regardless of the president’s preferences. However, when elections have returned no clear majority or a majority subsequently disintegrates, the president can play a brokering role, giving the initiative to one party leader over another to propose a cabinet. If there is also no requirement for investiture (i.e. an affirmative vote by a majority of the parliament in favor of the cabinet), then the president’s leverage is further enhanced. While the cabinet remains subject to confidence, if there need not be

¹ http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p. 12;
² http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p. 16;
an investiture vote, the president may be able to put in office a government that is tolerated by a majority even if not actively supported by it (i.e. a minority government).

There is a further division in the “premier-presidential” regime between systems in which the president’s choice of prime minister takes office without a vote of investiture, and those in which the president has initiative but investiture is required.

Six cases of premier-presidentialism provide the president with initiative over the prime ministerial nomination, but require investiture by the parliament before this nominee and a cabinet may assume office. These systems, which include Portugal and several post-communist countries, somewhat reduce the discretion of the president over the cabinet, but otherwise maintain the separation of selection and dismissal authority.

The remaining cases of premier-presidentialism are much closer to being parliamentary regimes in that the initiative for selecting a prime minister rests within the parliamentary majority, rather than with the president. In fact, the only reason these are not cases of parliamentarism with a figurehead president is that the president has at least one of the following additional powers: dissolution (as in Niger), a veto (as in Bulgaria and Ukraine 2005, as well as Niger), or the right to appoint a prime minister if the parliamentary majority deadlocks (Madagascar).

Ten of the fourteen cases allow the president to dissolve the parliament. In six of these, the president may do so on his or her own initiative (with restrictions on frequency), while in the other four constitutions dissolution power can be exercised only in response to parliament behavior, i.e. a vote of no confidence or failure to invest a new government. Presidents can be expected to exercise this authority only when they expect the voters to take their side in the disagreement and provide a fresh mandate to a parliament more sympathetic to the president than the one dissolved. Of course, presidents can miscalculate, as happened when conservative president Jacques Chirac in 1997 wound up with a Socialist-dominated parliament after dissolution. When the majority expects the president to prevail after dissolution, its mere threat can be a powerful bargaining chip for the president. Nonetheless, as the French example shows, it is the electorate that ultimately determines whether the president’s bargaining authority is enhanced or diminished.

The final form of presidential authority is veto power. Even if the president has no discretion in the forming of cabinets or the right to dissolve parliament, his or her constitutional authority can be regarded as “quite considerable” in Duverger’s sense if cabinet legislation approved in parliament can be blocked by the people’s elected agent.

Such powers are especially relevant if an extraordinary majority is required to override a veto, as in Mongolia, Poland, and Senegal. In these cases, while the government is fully accountable to parliament, it cannot legislate without taking the potentially different policy preferences of the president into account. Even if the veto override requires only an absolute majority (50%+1 of the total membership), the veto may result in a transactional situation that would not occur in a parliamentary system: The inability of a government to pass a law with a plurality while some parties or members either abstain or are absent from the vote. It is such a situation that is the sole

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1 http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p. 12;
2 http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p. 17;
feature that prevents Bulgaria from being a case of simple parliamentarism with a mere figurehead president.

For any of the potential advantages of premier-presidentialism to hold, two assumptions must hold: first that the system will provide for a clear division of presidential from prime ministerial responsibilities. And second, that this division will be respected on both sides, instead of producing competitive dyarchy.¹

As an option for existing presidential regimes, especially those with multiparty systems, premier-presidentialism holds promise as a way to diminish the majoritarian tendencies of presidential executives. Because the prime minister and cabinet are subject to parliamentary confidence, they are more likely than in a pure presidential system to be of a different party than president, when that party does not hold a majority of seats. By employing midterm elections, such a regime can also limit the extent of the presidential “pull” on parliament elections, and thus on the cabinet. Such a design is thus potentially more consensual, but this device risks simply transforming presidential-congressional conflicts into presidential-cabinet conflicts. Thus careful attention should be paid to both the electoral cycle and to ensuring that the premier is able to take over as the real head of government and chief policymaker whenever the president loses his or her majority in the parliament.²

Shugart and Carey noted that they had devoted a great deal of attention to premier-presidentialism in part because it shows considerable promise as an effective constitutional design. In the late 1980s and early 1990s, the design of such regimes certainly appears to be a growth industry, as premier-presidentialism is emerging as the regime of choice in much of central and Eastern Europe and Africa, and has received favorable consideration in Latin America. In a few cases, however, what has emerged is not really premier-presidentialism but, rather, president-parliamentarism. Because of the dubious record of the latter type, it is necessary to devote much care to distinguishing between the two forms.³

Subparagraph 2. President-parliamentary subtype

In a typical president-parliamentary system the president selects the cabinet and also retains the possibility of dismissal. In this sense, this form of semi-presidentialism is much closer to pure presidentialism. Nonetheless, these systems are semi-presidential because the parliamentary majority may dismiss the cabinet even if the president would prefer to retain it. Thus the president and parliament must engage in transactions, but unlike in pure presidential systems these transactions are not only over policy-making. They are ongoing transactions over the composition and direction of the cabinet, brought on by the dual accountability that defines the president-parliamentary subtype.

It is not compulsory that it be possible to dissolve the parliament by the president, because the basic definition of semi-presidentialism or its subtypes does not require that such power be present (or absent). Nonetheless, dissolution clearly is a quite considerable

power, and it is worth thinking about how its existence affects the mix of hierarchy and transaction. Technically speaking, the presence of dissolution power does not make the system more “presidential” because presidentialism by definition means separation of not only origin but also survival. Only if the parliament may remain in office independent of the preferences of the president (and vice versa) can the institutional relationship between them be the purely transactional form. However, despite breaking separation of survival, dissolution provides that it is a mean of reinforcing the president’s ability to serve as a check on the parliament and its parties. It thus makes sense in the context of a system in which the president is denied full control over the cabinet on account of the provision for a prime minister subject to parliamentary confidence. In other words, presidential power of dissolution provides a counterweight to the parliament’s enhanced authority.∗

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

As a result, the parliament parties comprising the majority must consider the preferences of the (usually) broader constituency that empowered the president. Dissolution is thus parallel to the defining characteristic of semi-presidentialism by which the parliament may dismiss the head of the executive branch notwithstanding that it was the voter’s other agent (the president) who initiated the appointment of the incumbent cabinet.

Just the names presidential and parliamentary for common regime types identify what elected institution has authority over the composition of the government, and just as the term “premier-presidential” indicates the primacy of the premier as well as the presence of a president with significant powers, so does the term “president-parliamentary” capture a significant feature of the regime: the primacy of the president, plus the dependence of the cabinet on the parliament. Such a regime is defined thus:

1. The popular election of the president;
2. The president appoints and dismisses cabinet ministers;
3. Cabinet ministers are subject to parliamentary confidence (the Georgian constitution includes mechanisms which are deviated from this criterion, that makes the system inconsistent);
4. The president has the power to dissolve parliament or legislative powers or both;

The definition captures two senses in which these regimes represent neither presidentialism nor premier-presidentialism. First, these president-parliamentary regimes provide equal authority to dismiss members of the cabinet, unlike the other types. In either a presidential or a premier-presidential regime, while both president and parliament may play a role in cabinet formation, by nominating or confirming candidates for

∗ It therefore follows that any (hypothetical) system in which the president may dissolve parliament but the cabinet is not responsible to the parliament majority would work against the principle of checks and balances. The president in such a system would be highly “powerful” but it does not follow that such a system would be more (or hyper- or super-) “presidential,” if we conceptualize presidentialism (pure or semi-) as a system of mutual checks between elected agents of the electorate.
ministerial positions, only one of the powers may dismiss ministers. So there is asymmetry of dismissal powers alongside possibly shared appointment powers.

The second feature captured by this definition is the lack of independent survival of parliament and executive powers, despite the great authority of the president over the cabinet. In a presidential regime, maximum separation of both origin and survival is the norm. Under a president-parliamentary system the ability of the parliament to censure ministers means that the survival of executive power is not separated. This latter point is obviously true in a premier-presidential system as well, but the difference is that under the latter type, it falls to the parliamentary majority to reconstitute the government after a censure, albeit in a process usually initiated by presidential nominations. Under president-parliamentary regimes, presidents themselves reconstitute the government subject, of course, to the possibility of further censures. Moreover, many of these president-parliamentary regimes provide for the power of dissolution in addition to the powers over cabinets, thus meaning that separation of survival is nonexistent.¹

Two questions, asked by Shugart, are especially critical to the differentiation of subtypes of semi-presidentialism: Whether the president has discretion to dismiss a prime minister and cabinet, and whether the parliament is restricted in voting no confidence in a cabinet. The systems classified as premier-presidential all have an indication of “no” for both of these questions. All the president-parliamentary systems have “yes” to the question of dismissal by the president, though they vary on the presence of restrictions on parliament-initiated dismissal (i.e. no confidence).

The crucial distinguishing feature of premier-presidentialism is that the political complexion of the government is always compatible with the parliament whether or not it is simultaneously compatible with the president.

Developing further the nature of relationships between presidents, assemblies, and cabinets in both subtypes of semi-presidentialism and under different party-system characteristics should be a high priority in ongoing research on executive–legislative relations.

The definition has limitations, however, in that it generates a regime “type” that is not nearly as coherent as the simpler types, even if we confine ourselves only to the formal institutional structure of executive and legislative authority. By drawing on Madison’s theorizing about transactions between separate institutions and Bagehot’s contrasting of such separation with the hierarchy of parliamentary government, it appeared that semi-presidentialism contains mixes of transaction and hierarchy in its formal design. Further, it has been proved that the precise nature of institutional juxtaposition in various semi-presidential systems suggests the value of recognizing two clear subtypes. In one, premier-presidential, the president has some role in the formation of governments (and perhaps other independent authority), but the cabinet depends on the exclusive confidence of the parliament. In the other, president-parliamentary, the cabinet is dually accountable to both the president and the parliamentary majority, though several newer examples impose limits on the parliamentary majority’s authority to control the cabinet. The complexity of both of these subtypes of semi-presidential systems means

that, as we noted above, the cabinet’s selection and dismissal principals may differ, unlike in the pure types, where they are the same.\footnote{http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p. 16;}

The proposition of eminent scholar – Cohendet is very interesting. She prefers to distinguish between monist birepresentative parliamentary regimes (in which there are two sources of popular authority but only one controlling power, presidential or prime ministerial), such as Austria, France, Iceland and Ireland, and dualist birepresentative parliamentary regimes (in which there are two sources of popular authority and two controlling powers, presidential and prime ministerial), such as Finland and Portugal.\footnote{http://fds.oup.com/www.oup.co.uk/pdf/0-19-829386-0.pdf, “The politics of semi-presidentialism”, Robert Elgie _ p. 10;}

The last abovementioned approach is shown in a different way in the work of Shugart and Carey of 1992, where they identified the two types of regime precisely under these features _ premier-presidentialism and president-parliamentarism, but unlikely Cohendet, they did it within the concept of semi-presidentialism rather than within the parliamentarism.

However, there appeared opponents to Shugart and Carey. Giovanni Sartori attempted his definition to compare with other ones. He viewed the reasons to break regime into two types (under Shugart and Carey). The first (premier-presidentialism) is characterized by the primacy of the premier over the president, and the second (president-parliamentarism) by the primacy of the president.

Though Sartori did not agree with this approach, because in his opinion, under such a view, the French system breaks in two, for it characteristically switches this “primacy” from president to premier, and vice versa.\footnote{“Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes”_Giovanni Sartori, Macmillan, 1994_ p. 131;}

$4. Conflict within the semi-presidential system

As Sartori notes, the French people have created a bicephalous two-headed system whose heads are unequal but also in oscillation among themselves. More exactly put, the “first head” is by custom (the conventions of the constitutions) the president, by law (written text of the constitution) the prime-minister, and the oscillations reflect the respective majority status of one over the other.

On the last note we are brought back to American problem of “divided government”. Presidential systems cannot easily cope with split majorities. The crucial question thus becomes whether semi-presidential systems founder on the same reefs, or whether their advantage over the presidential ones is indeed that they can handle divided majorities. Let the issue be phrased as follows: is there a difference and what is the difference between presidentialism and semi-presidentialism when it comes to split majorities, that is to say, when the majority that elects the president is not the majority that controls parliament?

There are three possible answers to the question. One is that there ultimately is no difference: in both systems a divided majority inevitable leads to conflict and gridlock. In a presidential system the conflict is between president and congress. In a semi-presidential system the conflict is between president and parliament-supported premier,
but the substance is the same. The second reply is the one suggested by Vedel and Duverger, namely, that semi-presidentialism is not a “synthesis of the parliamentary and presidential systems, but an alternation between presidential and parliamentary phases”. In this interpretation the French system is presidential when the president and parliamentary majority are consonant and parliamentary when they are dissonant. Sartori does not concur with either one of the two interpretations and submits a third one.

Sartori did not concur with the view of Duverger (and others) that French semi-presidentialism adds up to being an alternation between presidentialism and parliamentarism. His first objection was that the two horns of the alternative are both overstated. Sartori has concluded that French system’s first “head” changes (oscillates) as the majority combinations changes.

Certainly, any dual authority structure can become confrontational and thereby stalemate by an executive divided against itself. There is not assurance that this can not and will not happen. Still one must recognize that in this formula the problem of divided majorities finds a solution by “head shifting”, by reinforcing the authority of whoever obtains the majority. And, according to author, this is the most brilliant piece of constitutional witchcraft.\(^1\) In Sartori’s opinion, precisely this witchcraft was significant advantage of the semi-presidentialism compared to other regimes. His main thesis has been that semi-presidential system can cope with split majorities far better than presidential one.\(^2\)

Gomes Canotilho and Vital Moreira argue that the president had and still has a triple task. He is a policeman, controlling the action of the government and the parliamentary majority, in order to respect the Constitution, the functioning of the democratic institutions, the rights of the opposition parties and the morality of the political conduct. He is also a referee of conflicts between the government and the parliament, and between the majority and the opposition. Finally, when the conflicts degenerate into an insurmountable political crisis, the president is a fireman of the system, dissolving the parliament or removing the government from office. The authors sum this all up in one phrase: the president exercises the regulatory power of the system.\(^3\)

“Bermuda triangle”, a term coined by Walesa (former president of Poland) captures the essence of this institutional triangle - its ambiguity. Even ideal semi-presidentialism may not be considered an equilateral triangle. While the parliament-government axis is relatively clear since the government must always command the majority in the parliament, the rest two relations _ between the president and the parliament and between the president and the government _ are potentially conflictual. In the semi-presidential model, conflicts over formal and real powers may develop into dangerous stalemates.\(^4\)

\(^1\)“Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes” Giovanni Sartori, Macmillan, 1994 _ p. 125; 
\(^2\)“Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes” Giovanni Sartori, Macmillan, 1994 _ p 135; 
\(^3\)http://journals.cambridge.org/download.php?file=%2FECLE%2FECLE2_01%2FS1572019606000812a.pdf&code=9ee52bf1013017c0a8274c4fdabc59 _ “The Portuguese semi-presidential system”, Ana Martins _ p. 90; 
In premier-presidentialism, the executive could be divided into opposing segments, the president on the one hand, and a cabinet with parliament support on the other, elected with the separate mandates by distinct constituencies. Where either or both segments fail to recognize the claims to executive authority made by the other, cohabitation could generate regime crisis.

Because the requirement of confidence in the cabinet, parliament elections in premier-presidential systems will always be contested at least partially as judgments on executive performance. Therefore, if either the parliament or the president can claim a more recent electoral mandate, that mandate may be interpreted as a valid claim to exclusive control of the executive. This being the case, the scenarios for crises of cohabitation will be most likely either where:

1. A new parliament is elected with a majority in opposition to the incumbent resident; or
2. A newly elected president faces a sitting cabinet composed of the president’s principal opposition.

In the second instance, if the presidents are allowed to dissolve the parliament, they can do so as a means of petitioning the electorate for parliamentary support. In the first case, parliamentary elections must be interpreted as a repudiation of cabinet performance. To the extent that the president exercises influence over the cabinet (as leader of the previous majority party, for instance), then, it is a repudiation of this leadership.

Semi-presidential institutional model thus often creates incentives for inter-institutional conflicts, especially if the certain constitutional provisions are ambiguous. Even if the constitution provides mechanisms for preventing or resolving such conflicts, semi-presidential arrangements by definition can not avoid fundamental vagueness of executive dyarchy. A conclusion is thus in place that the very logic of this institutional model encourages the possibility of conflicts, even when different institutions represent the same electoral majority. Furthermore, as both the president and the government of parliamentary majority possess (or claim to possess) democratic legitimacy, political conflicts have tendency to evolve into constitutional contests of power, i.e. conflicts upon which state and democratic stability are directly dependent. The situation in Lithuania and Poland is exacerbated not only by constitutional ambiguities but also by deviations from tested and stable models of semi-presidentialism.

The improvement and evolution of the concept of semi-presidentialism during decades was of great importance not only for examining the practicality of its performance in the future, but it also helped to identify the essence of the political regimes already established, while these regimes were facing the choice among several regimes and did not tend to completely realize one of them, however they could not theoretically or practically dissociate from them.

In presidential system as both the parliament and the executive are popularly elected, both can claim a unique popular mandate. Moreover, because the tenure of members of each branch is unaffected by relations with the other, the need for

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cooperation between the president and the parliament is not urgent. Semi-presidential regime somehow tries to regulate such cooperation, when it attempts to provide minimal level of legislator-executive cooperation, while the level of such collaboration in presidentialism may equal to zero, and parliamentarism serves to maximize this level by establishing common origin and survival for legislator and executive.

We should note that mixed form of government is characterized by double institutional dualism. To say it more simply, firstly, we qualify semi-presidential regime as institutionally dual system. Then, we conclude that this institutional dualism is double as it implies dual executive, on the one hand, and counterbalance of powers of president and parliament, on the other hand.

Chapter II

Constitutional executive status of the president of Georgia

§.1 Overall survey

As we mentioned in the introduction, Georgia is a new example of mixed form of government. The Georgian semi-presidential system has begun since 2004 year, when the Georgian Constitution was amended. But existing system must be improved in the future and we should not stop thinking about the system consistence, if our country wants to transform into a European democratic country.

The Georgian semi-presidential system followed 10 year constitutional severe super-presidential experience which caused formation of special political tradition, which we think is not praiseworthy. Important considerable factor is that Georgia’s political experience is presidential, so it influences the material Constitution. Yet the most important fact is that country discovered the more or less right direction in the gradual institutional improvement of government and after presidential experience, when mixed form of government was formed, this process became under the control of theoretical and practical conformity.

In confirmation of the mentioned above, we can use views of many foreign experts or researchers which are not dependent on hypothesis, but on the objective truth.

Giovanni Sartori notes that countries that intend to leave presidentialism are well advised to opt for semi-presidentialism on ground of prudence _ on account of the fact that for a presidential country a leap to parliamentarism is a leap into the utterly diverse and unknown, whereas a switch to semi-presidentialism still allows that country to perform in the ambit of what it knows, of the experience and expertise that it has.1

Today there is and we think it will always be a sharp polemic on the subject of whether presidential or parliamentary democracy is a better form of representative government. Most scientists have spent a lot of time and energy on this subject. Most of the scholarly literature on the subject comes out quite squarely behind parliamentarism as the preferred alternative. However, among practicing politicians, the message is getting through slowly, if at all. Nearly all new democracies in 1970s and 1980s, and in 1990s, have had elected presidents with varying decrees of political authority.

After the collapse of the Soviet bloc in Central and East Europe, only in Chzechoslovakia did the political elite initially opt for a pure parliamentary system with

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1 “Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes” _Giovanni Sartori, Macmillan, 1994_ p. 136;
no popularly elected president. For the supporters of parliamentarism, the bad news is that no existing presidential system has ever changed to a parliamentary system, while several have made the reverse move.\footnote{“Presidents and Assemblies-constitutional design and electoral dynamics” Matthew Soberg Shugart and John M. Carey, Cambridge university press, 1992_p. 3;}

Here we can make a short conclusion that mixed form of government is transitory stage from presidential system to the parliamentarism. It is a transitional mechanism, middle ring where the last rings are not connected to each other. Semi-presidential system is an exit from presidentialism. Also it is a corridor of parliamentarism. The basis of this conclusion is that many scientists consider semi-presidential system to belong to the family of the parliamentary system.

Adriano Giovanelli gives advice us to remember that semi-presidentialism belongs to the family of parliamentary systems. Continental Europe has proved it, when it has found wide practice of the mixed form of government, however has been, so far, reluctant to experiment with presidential systems deriving from the American model.\footnote{www.sussex.ac.uk/sei/dokuments/wp58.pdf “Semi-presidentialism-an emerging pan-european model”, Adriano Giovannelli, 2002_p. 2;}

Liutauras Gudzinskas considers mixed form of government to be an eternally unfinished parliamentary regime.\footnote{http://src-home.slav.hokundai.ac.jp/publictn/acta/23-06_matsuzato.pdf p. 1;}

European commission for democracy through law (Venice Commission) moved forward and in the conclusion of February 6th 2004 year, it adopted on the amendments of the Georgian Constitution, namely, in the fifth paragraph of this conclusion is noted that the semi-presidential system is in fact a parliamentary system with a double executive, President and Government, and the possibility for the President to arbitrate in case of a conflict between the Government and Parliament by means of dissolving parliament.\footnote{www.venice.coe.int/docs/2004/CDL(2004)-004-e.asp;}

But there may be some doubts on the truth of these ideas. As we have mentioned above, one of the most important aspirations of mixed form of government is to mitigate some problems of presidentialism while enjoying some advantages of parliamentarism. If we observe this question from this side, we think, that semi-presidential system must not belong to the family of parliamentary system, as it is announced by the scientists. It is confirmed by the term itself “semi-presidentialism”. The term refers to the president and not to the parliament. But some of scholars such as Linz, Stepan and Suleiman argue that the term “semi-parliamentary” is the synonymous with the term “semi-presidential”.\footnote{http://fds.oup.com/www.oup.co.uk/pdf/0-19-829386-0.pdf “The politics of semi-presidentialism”, Robert Elgie_p. 5;}

Giovanni Sartori considers the terms to have different sense. He marks them off from each other and thinks that semi-parliamentary system is potential alternative type of regime. Sartori refers to semi-parliamentary regime as premiership system and looks for its embryo in German system of government.\footnote{“Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes” Giovanni Sartori, Macmillan, 1994_p. 135;}

Well or badly, Georgia has chosen the way to share world’s experience of the mixed form of government. In this part we are going to discuss the constitutional framework of executive power of the president of Georgia. In order to present this
question completely, we will examine legislative and non-legislative powers of the president. During the analysis we are using comparative research method, of course, in order to compare the Georgian example to presidential and semi-presidential system.

Before discussing the presidential powers, first of all we should mention that the constitution of Georgia by its structure and sequence of topics leaves aside the construction of institutional pedestal and ranges of bodies upon it. This detail though is less effective and not of critical importance but by its symbolic meaning it would be unreasonable not to trust it. This means that in the Constitution of Georgia the chapters referring to the status of the bodies of the separated authority should be arranged from strong to weak, from the highest to the lowest. Though, as we mentioned above it is not arranged so. The Constitution of Georgia, first of all refers to the Parliament of Georgia, then to the President and in the end to Government. The fact that government is the last one in this sequence of institutions is very logical but putting parliament before the president is dually unreasonable. That means that first of all in the mixed form of government on the top of institutional sequence stays the president, which has the supreme power of say. And another, Georgia’s aim towards semi-presidential system makes the role and power of the president stronger. It will be discussed later.

$2. Status of the president and executive powers$

The first and the most important characteristic of mixed form of government, the bicephalous system is well defined in the first paragraph of the article 69 of the Constitution of Georgia, where the status of the head of executive authority disappears from the president’s legal status (at least formally). Dualism of the structure of executive is simply expressed by the detailed analysis of provision of the two articles in the Constitution.

According to paragraph 2 of the article 69 of the Constitution of Georgia, the president of Georgia directs and carries out the internal and external policy of the state. Under the first paragraph of article 78 of the Constitution, government provides the realization of executive authority, internal and external policy of the state according to the legislation of Georgia. From these provisions we can define several important points:

1. If we compare the provisions of the two articles, we will see that there is enough difference between the degree of the power of president and the power of government according to the wording describing the tasks of each subject. The president not only carries out internal and external policy but also directs it, i.e. gives a direction and president acts with the aim that the policy goes strictly in the proper direction. Of course, “to carry out and direct” together means more than “carry out” only.

2. It is very interesting, that we don’t even have “to carry out” by the government. The article 78 states that government provides realization of … policy of the state according to the legislation of Georgia. It looks as the government promotes, cares about, helps, serves someone in carrying policy out. In other words, to provide realization of the policy implies taking part in this process with limited degree.

Here we should take into consideration one more detail. According to the first paragraph of the article 78 it is declared that government provides realization of executive authority, internal and external policy of the state according to the legislation of
Georgia. In this norm the vagueness is created by the legal technique of wording of expression of the functions of government. “Executive authority” is separated from the realization of internal and external policy by comma. It means that there is a clear connection between these two wordings. And it is difficult to find out by which, grammatical or technical reasons “executive authority” is separated from “policy realization”.

We have two versions to make it clear. Firstly, as the question is providing realization of executive authority, the words coming after comma “internal and external policy” seem to imply explanation, description of the above mentioned “executive authority”, i.e. realization of executive authority implies the realization of internal and external policy.

As for the second version, as realization of the executive authority and the policy are separated by comma, they may be of different content and the comma between them makes only a form of certain enumeration.

But the most important is the result of such kind of constitutional norm.

If providing realization of executive authority and on the other hand providing policy realization are the same, and the latter explains and clears abstract content of the former, then president intervenes with “better quality” in executive authority according to the article of the constitution which states that president “carries out and directs internal and external policy”. And the government only provides realization of the mentioned. So, if the definition of executive authority implies internal and external policy, why should not the same term has the same content in another article? Under this approach, the president is much more powerful executor than the premier, which seems to be a weak figure.

And from another point of view, it seems that government provides realization of executive power, the president and government together carry out (government provides) internal and external policy. The president gives a direction to this policy. Here it becomes unclear what does the realization of executive authority mean and whether government and if government has real power, or by the legal technique and other mechanisms the power is abstracted. As presidential powers are more clearly defined, the president becomes the leading figure.

From both considerations we come to the conclusion that the two-headed configuration of executive is not clearly presented by constitutional provisions, which undoubtedly influences on the whole regime of government, and we can say that assists it in not being consistent.

The last sentence of paragraph 2 of the article 78 is very interesting to define the status and the degree of involvement of the president in the executive authority: government and its members will resign before the president of Georgia.

We should note that this is not the demonstration of direction of political or constitutional responsibility, i.e. the consolidation of the accountability of the government before president. This matter is given in the last sentence of the first paragraph of the article. This circumstance reflects subordinative nature of relationship, namely who subjects to whom and which of them dominates. By the fact primacy of President is emphasized and s/he “subconsciously” is at the top of the institutional pedestal of executive authority. This strengthens impulses of president-parliamentary subtype in Georgian reality.
We should relate the provision to the last sentence of article 78 paragraph 1, under which the government is responsible before President and Parliament. By this survival of governmental part of executive authority is fused.

The aforementioned Constitutional provisions taken together have peculiar importance when combined with norms of article 80 of the Georgian Constitution. Under the article term of political authority of government is connected to president’s term of office, in view of the fact that after (re)election of a (new) president and making oath to take office a new government is formed. The case does not seem strange in those conditions where government’s subjection to president is provided by other norms of the constitution. But the question is getting interesting and thinkable when the constitution envisages regular parliamentary elections in the middle of presidential term of office. So there exists an opportunity to electe parliament substantially opposed to president as well as to government (because already operates government politically fused with president). By the machinery provided by the Constitution, in this circumstance parliament is endangered by the fact that in case of the censure of government last say belongs to president politically fused with government. Of course the head of the state will desire to rid of the parliament politically opposed to him (her). This makes clear that the key of inter authority institutional relationship is in president’s hands and institutional mechanisms are joined on his (her) status.

In connection with the aforementioned it would not be bad to identify approaches of foreign countries. We criticized that government’s resignation is combined with presidential elections. This means that after a new presidential election we have a new composition of government, when old composition is resigned before newly elected president despite that the old government enjoys player parliament’s confidence. Toward this direction the decision of Lithuanian Constitutional Court of 1998 is very attractive, which is known as a scientific approach. In the decision constitutional court differentiates two concepts each other put into constitution, namely “giving governmental mandate (persuasion) back to president” and “resignation of government”. Under the decision, government only resigns when a new parliament will be elected (after regular or extraordinary elections). It is clear that government’s dependence on newly elected president is substantially different from the provisions of the Georgian constitution. Particularly the court decision states that “government must return the newly elected president the mandate (persuasion), only for the reason to demonstrate respect.” President is obliged to reappoint prime-minister in power automatically.

One of the most important aspects of relationship of president with another part of the dual executive authority is the extent in which the head of the state participates in the formation of government.

During the survey of common practice of semi-presidential system we mentioned that formation of government may be symmetric or asymmetric depending on whether only president decides on composition of government, or in the process of formation of government at some extent parliament is involved.

It follows from the content of the Georgian constitution that president plays most important role in formation of government. The head of the state is not obliged to take into account correlation of political forces in the highest legislative body when nominating prime-minister. It is true that article 80 of the constitution requires to hold

1 http://src-home.slav.hokundai.ac.jp/publictn/acta/23-06_matsuzato.pdf _ gv.159;
consultation procedures with parliamentary factions (and because under law in force it is enough to create parliamentary factions 10 members of parliament, president may have consultation with many factions), but parliamentary factions don’t possess other levers to influence president and they can not coerce president to change nomination of prime-minister. Because parliamentary investiture is provided for government to take office, this consultation power is a weak preliminary supervision mechanism on the formation of future government and it looks like more informing the parliament so that it could better examine and get ready for accepting the government.

If government nominated by president can not obtain parliamentary confidence and investiture, the president of Georgia is not obliged to nominate a new prime-minister and consequently a new composition of government. Exclusion from the rule is that parliament may oppose to a separate member of government. And actually the last is the one of the most important and influential parliamentary authority which according to some foreign scientists is considered as a strong sign of parliamentary system. If we consider that the thesis proposed by Duverger that semi-presidentialism is synthesis of presidential and parliamentary phases was strongly and sufficiently reasonably criticized by a large number of prominent contemporary scientists (e.i. Shugart, Sartori), inclination of the Georgian constitution to concept of semi-presidentialism of Duverger may appear as prepositions for inconsistency of the system. The abovementioned was directly criticized by the European commission for democracy through law. The commission in paragraph 27 of its opinion of 2004 mentioned that it is not advised parliament to be entitled with the right to resist the individual members of the composition of government determined by prime-minister and president.\footnote{www.venice.coe.int/docs/2004/CDL(2004)-004-e.asp;}

President may for a few times try to get through parliament the “rejected” prime-minister and government, s/he has three attempts. Precisely after the third rejection president is constrained to change nomination of prime-minister or of the whole government or s/he is able to have his (her) own way, to appoint desirable government and dismiss the parliament.

In total, this procedure appears to be inspired (initiated) by president, in view of the fact that as we mentioned the formation of a new government is adjusted on his (her) term of office. This may cause the dismissal of the parliament. This proves that origins of governmental authority derive more from presidential “channel” than from parliamentary one and its drying is depended on the same “channel”, because it comes from presidential discretion not to dissolve government and on the contrary send the parliament home, if the latter opposes to the former.

However, the constitution envisages cases when president is forced not to appoint the rejected government and at the same time s/he can not dissolve the highest lawmaking institution. For these cases whole complex of some components and a few developments coinciding with each other is necessary.

Under the constitution formation of a new government is adjusted on regular presidential election and taking office. In total, approximately 53 days from the moment of declining of all governmental authority in front of president is needed before there a new government is formed, of course with or without dismissal of parliament. However, under the paragraph “a” of 51\textsuperscript{1} article of the constitution provides that the parliament may not be dismissed within six months from holding of the elections of the Parliament. If
parliamentary and presidential elections coincide with each other or there is a short interval between them, newly elected president does not have ability to dissolve parliament within 6 months and appoint prime-minister and government without its approval. In such a circumstance s/he has to make a compromise, unless s/he wants to breach law.

As we outlined in the first part of the topic, dualism of governmental responsibility before head of state as well as before parliament belongs to one fundamental sign of president-parliamentary type of semi-presidential system. First paragraph of article 78 of the Georgian constitution constitutes precisely such a dual accountability. This is the first basis for the conclusion that Georgia belongs to the category of the type.

It is hard to agree with Prof. O. Melkadze where he states that in the fifth republic of France president-parliamentary system successfully works. In this country classic premier-presidential type is constituted. The differences between the two types will be well shown in the Georgian example.

Classification of presidential-parliamentary types is based, on the one hand, on dual governmental accountability before head of state as well as before parliament, and on the other hand, on the fact that where parliament can reject government, it has not say on a new composition of government. Although effectiveness of censure in each case significantly declines presidential control over cabinet, censure doesn’t provide governmental responsibility before parliamentary majority.

Regimes characterized with dual governmental accountability, as marked by Shugart and Carey, are more tended to unsatisfactoriness.

One major point is that ambiguity rises risks that president or oppositional parliamentary majority rejects another’s rights on executive authority. This is true in the cases we defined as presidential-parliamentary. So to be declined conflicts between president and prime-minister, article of “residual responsibilities” should endow the latter with the any unlimited or vague responsibility. Another issue must be recognized by constitutional designers is that accumulation of enough authority in president’s hands by which he can ignore pressure coming from parliament in total is danger formula, and scientist don’t recommend it.

Premier-presidentialism tries to refer and respond to problems of (pure) presidentialism and at the same time maintains superiorities of directly elected president to carry out roles of head of state and arbiter and also to represent will of large electorate in plural political context. The provision that the president of Georgia nominates a candidate for prime-minister, and the latter himself (herself) determines on the composition of cabinet (though with presidential consent) represents character of premier-presidentialism and not of president-parliamentary, because in premier-presidential type prime-minister possesses too significant authority, that can not be told about prime-minister in president-parliamentary type.

The role of president of Georgia as of “unequal and supreme” part of divided executive authority is outlined in article 73 of the constitution. Under the subparagraph “c” of the first paragraph of this article president may remove government by his (her)

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own initiative. This is considered to be a very significant power to dismiss the cabinet which enjoys parliamentary confidence. Herewith president can use this power without motivation and with no explanations. Unfortunately, in our opinion, the provision outlines cabinet’s departmental subjection to president. It is interesting that president on his initiative can remove the whole cabinet. What about his (her) influence on individual ministers, it is restricted to only minister of defence and internal affairs. Under the regulation these two portfolios are singled out from governmental department and they take shelter under presidential wings.

Studies of West European Politics confirm the importance of the role of presidents in government termination. Data from parliamentary-presidential democracies (semi-presidential democracies plus Ireland, Iceland and Portugal after 1982) indicate that government termination is more often connected with conflicts (50.0 per cent of all governments) than in cabinet-type democracies (19.1 per cent), although not as often as in parliamentary democracies (59.7 per cent). Frequency of conflictual termination is explained by presidential interventions. In the two semi-presidential political systems of premier-presidential type (France 1958-1988, and Finland 1947-1989) 10 of 61 government terminations was caused by presidential interventions. By comparison, only 4 governments resigned due to lack of confidence in the parliament, 10 after prime-minister’s resignation, 17 terminations were caused by internal conflicts and 20 by legislative elections.1

Lituanian and Polish institutional models as semi-presidential are characterized by the fact that the presidents nominate the prime-ministers and who must be approved by the parliaments. The governments are subject to parliamentary confidence, and its’ survival depend on the parliament while the presidents don’t possess formal powers to dismiss either individual ministers or government.2 So the extent of difference between institutional models of the European countries and Georgian analog is evident. Under the Georgian constitution president can remove cabinet at any time even with no motivation.

The strong nature and the extent of discretion of president’s authority regarding censure initiated and adopted by parliament is very interesting. Under article 81 paragraph 1 of the constitution if parliament doesn’t give confidence to the cabinet, the president is not obliged to remove the latter. The head of the state can not accept the political will of parliament and may try to ignore and neglect it. In itself it is clear, that presidentialism appears more powerful than parliamentarism. If president doesn’t accept the political will of the parliament and doesn’t dismiss the cabinet, and if the parliament not earlier than 90 and not later that 100 days once again gives no confidence to cabinet, president no longer has power as before to neglect the desire of parliament and to maintain the situation unchanged. However this doesn’t mean that at that time parliament’s power becomes stronger and it wins in struggle with the cabinet. But now the president again has ability to choose between the two decisions, to dismiss the cabinet, or dissolve the parliament. I think the scope of presidential discretion is so large that it significantly declines elements of parliamentarism and in general the role of the representative body.

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The parliament’s respective role as an equal player’s sets in motion when mechanism of unprovisional no confidence starts to work. By this asymmetric power of dismissal of cabinet becomes symmetric. And the survival of one part of executive authority becomes fused.

Problematic systems are those in which the president alone fills cabinet posts, but in which either the president or the parliament can dismiss ministers. These regimes were labeled “confused” by Shugart and Carey, in that the responsibility of cabinet members is unclear and quite possibly contradictory. They can also be characterized as “symmetrical“, since the president alone makes appointments while either branch can disassemble the cabinet. The problem here is that there is no incentive for negotiation and compromise on the part of any player, neither at the stage of filling cabinet posts, nor in dismissing ministers (however there are some difficulties in Georgia, as an incentive remains threat to the parliament, if it doesn’t approves prime-minister, it will be dissolved, thus, it has to accept one of the nominated). The president fills positions without constraint. Thus, the parliament’s only means of affecting the formation of cabinet is to dismiss it. But this is a purely destructive tool, which provides no manner of ensuring that the cabinet or portfolio that follows the dismissal will be acceptable. As cabinet positions need not remain indefinitely vacant, moreover, neither the president nor the parliament can be held directly responsible for a prolonged standoff. Instead, the dominant strategy for each player is to make the next move, creating an appointment-dismissal game in which there is no stable equilibrium. Thus when the president and parliament are to adds, the arrangement encourages the unstable pattern of appointment and dismissal that all people see in Weimar, Cuba, Peru and Chile before 1925. Two newer systems, Colombia 1991 and Namibia, may be expected to encounter similar difficulties.¹

Let us consider the case of cabinet appointments in a premier-presidential system that has the appointment-dismissal game characteristic of France. Here the president nominates the premier, subject to confirmation, and what is important is that only the parliament may dismiss. In other words, we find that the post of premier and by extension, other cabinet seats should be filled by someone closer to the parliament majority’s ideal point than to the president’s ideal point, but that the parliament would not obtain its ideal. We can conclude that in view of the fact that in Georgia president is the only subject who nominates the premier candidate, our system resembles the French model. Moreover, another main resemblance is that defined composition of cabinet then subjects of parliamentary investiture. But what does our system make president-parliamentary? Essential difference is in the fact that in Georgia not only parliament has power to dismiss cabinet (however it may be said that the procedure is too hard and as we’ve seen it mainly depends on presidential discretion), but it is president who can think and do much to change government. I.e. here dual governmental accountability before president and parliament is introduced. Though in our opinion government is responsible more before president, parliament merely can play defined role in this regard, not equally to president. So here we see dual asymmetric governmental accountability in favor of

¹ For an extensive discussion of the mentioned, see “Presidents and Assemblies-constitutional design and electoral dynamics” _Matthew Soberg Shugart and John M. Carey, Cambridge university press, 1992_ p.120;
president (in France this asymmetry is in favor of parliament, and in presidential system, of course, in favor of head of state and executive branch).

We should notice here that Shugart criticized the approach of the French constitution with regard to selection of government and prime-minister. According to his opinion, the potential for a president to risk cabinet crises by refusing to appoint at or very near the parliament’s ideal point is real. In our opinion, the main merit of the system lies in that the evident asymmetry of governmental accountability in favor of parliament is equalized by that the selection of premier and cabinet is asymmetric in favor of president (although nominated premier and cabinet members subject to parliamentary investiture, practically governmental crises, when parliament doesn’t give confidence to newly nominated premier is too rare). Here more or less ideally essential character of semi-presidential system is provided and carried out the, as we noted above, the cabinet’s selection and dismissal principals may differ unlike in the other pure systems, where they are the same (i.e. one principal selects and dismisses the cabinet). Although in the recommended variation selection and dismissal institution don’t completely differ, but hear we precisely imply asymmetry in selection and dismissal in favor of president or parliament. It can not be called the distribution of powers. In France cabinet’s subordinational subjection lies on the mechanism likes weight-machine with the differences of asymmetric preferences.

While in Georgian system the situation is not so gathered and consistent. Although the Georgian constitution has constituted asymmetry either in formation or responsibility of cabinet, but on both cases the asymmetry deviates in favor of president. He (she) selects the candidate of premier, his assent is required for premier to select other members of cabinet. Although then government goes to parliament for investiture, but president has power to dissolve parliament and to appoint desired candidate if parliament rejects proposed composition of government three times. Asymmetry in cabinet’s appointment in favor of president is evident. what about governmental accountability, however parliament can give no confidence to cabinet, but in this case dismissal of the latter depends on president’s potentially unmotivated discretion and he merely can ignore parliament’s such political desire according to the provision of article 81 paragraph 1 of the constitution, under which he has power not to accept the decision of the parliament. Parliament can override the discretion (it may be called as presidential veto over cabinet’s dismissal) by mechanism of unconditional no confidence laid down in the constitution. We may think that by laying down the provision in the constitution the governmental accountability becomes more symmetric, but the complexity of using the mechanism assures us in opposite. Namely, unconditional no confidence as mechanism requires 3/5 majority of full parliament, that practically means action of either one party parliament or existing such a crises when 3/5 majority of parliament is together in limited time and by this unanimity manages to concentrate. This makes us think that in such an extreme situation cabinet’s dismissal is not an instrument to look for ways out of crises, but it tends to be cabinet’s revengefulness.

In Portugal both appointment and dismissal phases of the game involve shared powers. So here are maximum attempts to provide symmetry in the whole game and this contributes to generate consensus cabinets and thus true joint confidence.

Shugart has observed that either presidential or premier-presidential systems give one or the other player in the game ultimate authority through exercise of asymmetric dismissal powers. The arrangements most conductive to clear accountability in cabinets are those that provide for asymmetry in the authority to dismiss governments or ministers. Where only the president may dismiss, cabinets will tend to approximate the president’s preferences. Where only the parliament may dismiss, the parliamentary majority’s preferences will be approximated. When the branch that has sole authority to dismiss is not alone and free to fill the posts, as is the case in France, there is a potentially desirable check by one branch on the preferences of the other, compared to either the pure presidential cases or straight parliamentarism. The advantage of the semi-presidentialism is in that control. However, when powers overlap to the extent that the dismissal game is symmetrical – and especially if the appointment phase of the game is asymmetrical – conflict and instability are severe risks.¹

Dissolution of the parliament by president, in Shugart’s opinion, is a significant deviation from the principle of separation of powers.

The provision of dissolution would seem to provide an institutional resource to resolve the problem of parliamentary deadlock decried by the critics of presidentialism. Indeed, in a parliamentary context, dissolution does just that. On the one hand, the parliamentary executive can use the threat of dissolution as leverage to secure legislative support for cabinet proposals. On the other hand, dissolution is not without risks for the parliamentary executive and therefore cannot be used indiscriminately. The voters may very well return the parliament which will replace the current government. Where the authority exercising the power of dissolution is outside the parliament, there is thereby an external check on parliament and its cabinet. Indeed, a hypothetical form of premier-presidentialism would be one in which the power of dissolution is the only political power that the president wields. If dissolution resulted in the voters’ returning parliamentary majority more to the president’s liking, the president would be able to obtain a cabinet (and therefore policy) likewise closer to his preferences. If, however, the voters return parliamentarians opposed to him, he must accept a cabinet not to his liking. Dissolution takes on a very different characteristic when cabinets are either jointly responsible to president and parliament, or where there are presidential cabinets. In the first instance, dissolution is often allowed only after the censure of ministers. The president then cannot use the threat of dissolution selectively as leverage to secure majorities for governmental policies. In the case of presidential cabinets, the president remains head of government even if a hostile congress (parliament) is returned after dissolution. In such a situation, the problem of deadlock is likely to remain or even to be antagonized.¹

We necessarily must remark here one matter. There is an interesting and clear example that in the presidential power to dissolve parliament and cabinet besides arbitral

role outlines of principle of imperative mandate are laid down. For instance, Sampaio took the most interventionist decision ever taken by a president since the first mandate of President Eanes. The disastrous governance of Santana Lopes’ government, followed by general social discontent, led the president to dissolve the parliament of the Republic and to call for new elections. The decision to dissolve the parliament was politically controversial, taking into account that the Santana Lopes government had majority support in parliament.\textsuperscript{2} If we add that there doesn’t exist president’s political accountability, we can conclude that in semi-presidential system only one bears sovereignty and that is president.

Article 78 paragraph 4 of the constitution of Georgia makes president the principal of the executive branch “in regard with especially important state matters”, though it completely conforms with article 69 paragraph 2. Thereby executive activity is solely exercised by president, because the result of the action and work is displayed in his decision (legal act), and therefore he has responsibility on it.

In regard with the mentioned it is interesting to compare the Georgian example with Finish, where president also presides over weekly meetings of the council. The Georgian president presides over only in case of especially important state matters. In Finland decisions taken on such meetings may refer to only the matters fall under the presidential competency. In the case of Georgia, the term may be interpreted widely and makes risks of dyarchy in the executive branch deviated in favor of president. Thus, it is more relevant to adjust these cases to presidential competency indicated in article which determines president’s status.

Presidential participation in the determination of structure, power and rules of government is also interesting. In other words, this is a question of creation and determination of the type and rules of one component of executive branch, the cabinet, as of the constitutional body and one of the main institution of authority. At first, of course, government is constituted under the constitution and relative law, adopted by legislature. The right to initiate the draft law belongs only to government. The initiated draft law is that submitted to parliament, which uses all legislative procedures and the complete cycle for adoption of law. Presidential control on the draft law is the right of suspensive veto. Though, besides the mentioned, the president’s preliminary parliamentary control over executive branch is constituted. Thus, he (she) has a great influence on the cabinet’s status and its role. Of course, this indicates president’s hierarchical primacy over government in inter branch (and between branch) relationship.

\textbf{\$ 3. Legislative powers of president}

Legislative powers of president include rights of veto, issuing decree, exclusive right to initiate several legislative proposals, budgetary powers and the right to appoint referendum.

The power of the president in premier-presidential systems usually is relegated to the sphere of government formation and possibly dissolution of the assembly. Premier-presidential constitutions rarely provide the president with an effective veto (Argentine

\textsuperscript{2}http://journals.cambridge.org/download.php?file=%2FECL%2FECL2_01%2FS1572019606000812a.pdf&code=9ee52bf1013017c0a8274c4dfabca59_ “The Portuguese semi-presidential system”, Ana Martins_ p. 95;
premier-presidential model would be an exception, requiring a two-thirds override. Almost all such governmental models endowed presidents with strong right of veto (Poland, Portugal), but the situation was streamlined by constitutional reforms. Shugart remarks, that number of president-parliamentary regimes have provided for a two-thirds override on vetoes (Chile, Cuba, Namibia, Georgia).

The right of initiation of draft law of Georgian president is too wide and unlimited. However he/she has the right “only in special circumstances” but “the special circumstances” are product of subjective perception of objective reality and at the same time it is not clear who has to consider the situation as “special circumstance”. Of course, when it is not laid down clearly, such a “special circumstance” is determined by president’s view. The similar consideration is included in the formal opinion (Opinion no. 281/2004) of European commission for democracy through law, in which it noted, that “in the semi-presidential as in the parliamentary system the government has the general right of legislative initiative. The qualification “only in special circumstances” should therefore be deleted. According to the commission, it also seems questionable whether the right of legislative initiative of the president should be retained.¹

One important part of legislative powers is decree powers. We distinguish between two variants of decree authority granted to presidents. The first is the constitutional authority to legislate by decree in specified policy areas, whereby the decree is law unless it is overturned by parliament. The second is the ability to have the authority to legislate by decree (directly or indirectly) delegated by parliament to president.

The first type of decree power allows the president to dominate the agenda by which applicable legislation is considered. However, it would be misleading to argue that all presidents are able to use their decree powers rampantly and without any parliamentary check. In each case, decree powers are embedded within a constitutional structure that imposes many restraints on presidents in other aspects of the legislative process.¹

The Georgian constitution and laws in force grant the president the above classified both types of decrees.

The first one is envisaged in article 73 paragraph 1 subparagraph “q”, under which the president has power between the time of dissolution of parliament and first meeting of newly elected parliament in special circumstances to issue a decree having force of law on the budgetary and taxation matters, which annuls unless newly elected parliament approves it within a month from its first meeting.

The example of demonstration of significant power may be the president’s budgetary decree, whereby he (she) is involved in budgetary field with a great extent. Under paragraph 3 of article 93 of the constitution in circumstances envisaged by paragraph “A-D” of article 51, in cases of not approval of budget by parliament within constitutional time, the president approves the budget by his decree. Besides, under paragraph 7 of the same article, in cases of dissolution of parliament for not approval of

¹ www.venice.coe.int/docs/2004/CDL(2004)-004-e.asp;
¹ For an extensive discussion of the mentioned, see “Presidents and Assemblies-constitutional design and electoral dynamics” _Matthew Soberg Shugart and John M. Carey, Cambridge university press, 1992_ p.131;
budget, again the president approves the budget by his decree and submits it to the newly elected parliament for approval within one month from taking office.

Generally, budgetary powers of president attract our great attention. Under article 93 paragraph 1 of the constitution, government submits to parliament a draft budget law only with the consent of president. Thereby the presidential budgetary authority is reinforced. Potentially president may not give his consent to government for submission of draft budget law because of inadmissible expenditures or revenues (or of their lack). Government is strictly restricted in these cases. Actually the draft budget law is written by government, who necessarily has to adapt the final editorship with president’s desires and political will. Because the budget law is an ordinary law, on which president has a power of veto, it derives from it that the president has both preliminary and final control (supervisory) power on the budget law. Here governmental role in political decision-making is too weakened.

Besides, if the parliament doesn’t approve the account of implementation of the state budget, then president discusses the question of responsibility of cabinet and informs parliament about his well-founded decision within a month (article 93). Here presidential discretion is so wide that under the constitution potential decision is not regulated, will be it dissolution of government or influence on one of ministers. We think that such an “open” nature of the question includes potential risks of conflicts between the parliament and the president. When parliament doesn’t approve the account of implementation of the state budget should consider the might of the presidential power and if it goes to the direction, for now this means opposition to government and may (and logically should) lead to censure of cabinet. In such conditions, if we consider that the president is more powerful there are big institutional chances and opportunities to dissolve undesirable parliament.

The president’s power is very interesting in suspending illegal spending of budgetary sources. The right to demand such a suspending is guaranteed for parliament under article 93 of the constitution in cases it finds illegality of spending by government. It is very interesting that actually government manages and spends budgetary sources, but the right of suspending of the spending is at president’s disposal. This makes an impression that the president is a higher subject of the collegial body, on which he prevails. Besides, if parliament proves illegal spending, president should not be involved in reaction on proved facts. Thereby discretional freedom of president is emphasized. In case of inter branch conflicts president can take definitive decision.

Georgian law in force also envisages delegated legislation, although it directly is not a decree. The article 18 of Georgian law on “Normative Acts” Georgian president in the scope of his competencies may issue edicts even if relevant matter is not regulated under legislation. The provision is some kind of delegation of legislative powers.

In this case presidential edict in direct understanding looses its bylaw nature. I.e. it is no more hierarchically adjusted to any particular legislation. Its source is not such legislation. It is not issued for implementation of any particular law. But in total it doesn’t breach nature of a nonlegislative normative act and it is clear that it remains bylaw act. Thereby president evidently intervenes in regulation sphere of law listed in article 10 of Georgian law on “Normative Acts”. At the same time the head of state also interferes in competency of the highest legislative body, because in the triangle of state authority only parliament has power to adopt a law, i.e. to regulate social relationships that must be
regulated under law. Hence it follows that president regulates the social relationships that flow into the competency of parliament.

In legislative powers also falls such a mechanism of direct democracy, that is referendum. President can potentially play an active role in the matter, for s/he can on his own decide to hold a referendum. Though Georgia differs from other countries as under the constitution to hold referendum for adoption of law is prohibited. Considering this we can not say that this may be the president’s powerful right. Thereby he merely, at least, can verify the extent of the popular support of his political orientation and therefore of legitimacy.

The right of veto is closely related to legislative power. The right of suspensive veto of the president requires too many votes to override. It is determined 3/5 majority for veto on ordinary and organic laws and 2/3 majority for constitutional laws.

Trustworthy is president’s right constituted in article 73 of the constitution. Under this provision the president of Georgia can suspend and annul acts of government and other institutes of executive authority if they contradict to constitution, international treaties and agreements, laws and normative acts of president.

By this power president is higher subject of that bodies whose acts he can annul or he intervenes in sphere of constitutional justice, or both together. With pure legal approach, besides the court contradictory acts of subject body may be annulled by the same body itself or by immediately higher body. I.e. here president exercises authority of justice and plays the role of the direct and immediate head of government.

However, these don’t exhaust the powers of president. Under article 15 of Georgian law on “Status of Autonomous republic of Adjaria” president has power to suspend and annul the acts of government of autonomous republic of Adjaria if they contradict to the Georgian constitution, this law, international treaties and agreements, laws and normative acts of president. Before adopting the mentioned law (on “Status of Autonomous republic of Adjaria) in the opinion of the European commission for democracy through law is noted that this is a legal issue which should not be left to the discretion of a politician. The President of Georgia could appeal in such cases to the Constitutional Court of Georgia. At the most, he could be granted the power to suspend in urgent cases the act pending a decision by the Court.\(^1\)

Generally should be noted that president’s competential approach to formation of regional institutions and to their functioning is not attractive. The European commission for democracy through law criticized the draft law of the Georgian constitution, under which it was proposed that the President would be entitled to appoint President representative in territories defined by Georgian law presented by Prime Minister (although this remark was considered and it was not placed into constitution). The commission noticed that it would be more in line with the aim of strengthening the Government, and the new Articles 69 and 78 giving the Government and not the President the task of implementing the policy of the executive branch, to make this person a representative of the Government to be appointed by the Government. The critic remains in force, for nowadays so called governors are appointed by president. It is interesting that in Portugal the power to suspend the activities of regional authority from president’s hand was shifted to premier’s one.

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\(^1\) www.venice.coe.int/docs/2004/CDL(2005)-003-e.asp;
Conclusion

For conclusion first it is necessary the Georgian example to be adjusted to classical definition of semi-presidentialism – definition of M. Duverger (we should remember the three main characteristics he outlined). Considering the third criterion of the classical definition we should conclude, because of the fact that president can avoid parliamentary confidence, so avoid the third criterion and may individually appoint cabinet, this develops into the presidentialism and goes far from semi-presidentialism. President-parliamentary system only emphasizes the dual accountability of government and not the fact that president can elude government from parliamentary confidence. This weakens degree of legitimacy of government.

First criterion is the popular election of the chief executive, but, unlike under presidentialism, the president under premier-presidentialism is not necessarily the “chief” executive, but rather must coexist with the premier, who is head of the government.

Second criterion is that the president has some political powers. The distinction from presidentialism here is that in premier-presidential systems, presidential powers are not necessarily legislative. There may be authorities such as submitting a bill to the electorate instead of the parliament or referring legislation for judicial review. The presence of other legislative powers, such as veto or unilateral decree, might well lead the president into conflict with the rest of the executive itself, which is dependent on parliamentary confidence. Such powers, however, have existed and do exist in some premier-presidential regimes. More typical – and consistent with the regime type – are powers relating to the formation of governments, such as nominations for ministerial portfolios in addition to the premier, as well as nonministerial appointment powers. Typically, presidents in premier-presidential regimes have the power to dissolve the parliament. The important point here is that premier-presidentialism does not guarantee a legislative check by the president on the cabinet or the parliament. There is, however, one presidential power that moves a regime outside of the category of premier-presidentialism: the power to dismiss ministers unilaterally. Such power would contradict the third criterion of the definition, namely, the dependence of the cabinet on the parliament (together with the already mentioned above). The Georgian constitution allows president to dismiss ministers unilaterally and this is another inconsistency in the regime.

“Cohabitation”

It should be noticed, that under the content of the Georgian constitution, so called “cohabitation” is excluded. However, one incentive for cohabitation is laid down in the constitution, namely, elections of each branch which have authority on the government usually are held in the middle of their term of office (anyway the elections don’t coincide with each other, this happens only once in every 20 years), cohabitation is prevented by the president’s ability not to appoint premier opposed to him and favorable for parliamentary majority. This is envisaged by the following: president himself chooses a candidate of premier (only after the consultations with parliamentary factions, and it is more ceremonial) and submits to the parliament the “project” of the government
composition appointed by premier under presidential consent. Parliament can reject the adoption of the composition of cabinet. But this may happen only three times, because after the third “clash” (here we should consider that for the all the three times there may be nominated the same candidate for premiership) president is endowed to dissolve the parliament. Thus he gets rid of the undesirable parliamentary majority and he’ll try to support to the election of favorite one. Precisely by this mechanism president can very effectively and not within long term avoid the cohabitation. In addition, in our regime the basis of practical exercise of cohabitation is lost by the extent of authority of premier in comparison with the prerogatives of president.

Shugart has proposed 4 point system of definition of presidential powers, in which a higher number indicates more power. He thinks, that considerably weaker are the instances in which the president first nominates a premier, needing parliamentary confirmation (or investiture), and the premier then nominates the rest of the cabinet (with or without presidential involvement). Such cases under Shugart are scored a 1. As to censure, the power of censure is actually, of course, not a presidential but a parliamentary power. However, it directly concerns the authority of the president over the cabinet and is clearly separated from cabinet formation and dissolution (though we can not agree, because censure may be followed by dissolution of government). Here our system is more close to the point 2, in which Shugart means cases, when a vote of censure is tied to a process that leads to dissolution of the parliament.

When speaking about dissolution of the assembly, it should be said that some presidents are permitted to dissolve the parliament at any time, the power that is scored a 4. Others have dissolution powers but with restrictions. If the restriction is defined either in terms of frequency – once a year, for example, as in France – or in terms of time point within the term – not in the last six months of the president’s term, as in Portugal, is scored a 3 by Shugart.¹

Shugart regards the group of regimes he has identified as president-parliamentary as troubled, or even confused, as each has suffered from regime crises and each has broken down at some time or been re-formed to make it conform to one of the pure types, either presidentialism or premier-presidentialism.

Finland and Iceland appear to be intermediate regimes between president-parliamentary and premier-presidential types. While this placement is somewhat surprising, it results from the provision in both constitutions that the president alone appoints all ministers (so we can place Georgia in the same list and at the same time we should remember, that the extent of presidential right to dismiss ministers enjoying parliamentary confidence has great importance. Of course, it is the right to ignore the political will of the collegiate institution at president’s disposal). The feature combined with the provision that only parliament may remove ministers gives the president at least marginally greater influence over cabinet composition. As a result, greater instability of cabinets is a possibility, although as Finland demonstrates, this need not be regime-threatening. Finland and Iceland represent cases that deviate from an ideal type of premier-presidentialism by granting the president marginally greater power over cabinets.

¹ For an extensive discussion of the mentioned, see “Presidents and Assemblies-constitutional design and electoral dynamics” Matthew Soberg Shugart and John M. Carey, Cambridge university press, 1992, p.152;
Today in the European Union, with the exception of monarichies - the presence of which in the EU have decreased even more after the enlargement - all the States have a semi-presidential system of government, except Germany, Italy and Greece; countries which had a negative authoritarian experience.

The concept and the definition of semi-presidential government were introduced in constitutional and political sciences by Maurice Duverger in 1970, with the intent of legitimizing the French turning point of 1962, by demonstrating that the Fifth Republic wasn’t the only country provided with such system and therefore this reform wasn’t an anomaly in the context of European democracies. It is clear, that Duverger tried to justify the expediency of the French model claiming that it was not unacceptable and unfamiliar for western democracies. It is irony of fate that the European commission for democracy through law in its opinion has noted that the intention to replace purely presidential system by a semi-presidential one brings Georgia closer to the usual European practice and can only be welcomed. The establishment of president-parliamentary regime in Georgia is the same natural development as in total constitution of semi-presidentialism is. Namely, a president-parliamentary type is regarded as an alternative of presidentialism (and not of parliamentarism), we moved from the rails of the presidentialism to president-parliamentary regime. If there had been failure of the parliamentarism in the country before this fundamental change, Georgian system would have gone towards premier-presidentialism. This is proved by the examples of the states where parliamentarism collapsed and today semi-presidentialism is working (for instance France). It is a very interesting dynamics and makes it possible to foresee the natural developments of the future transformations.

In the opinion of European commission for democracy through law was said that the aim of the then constitutional amendments was to change the system of government, replacing the present purely presidential system of the present constitution by a semi-presidential system in accordance with the French model. Here in the wording “the French model” we should not mean the identification of institutional features within the frame of semi-presidentialism, but in general the indication of semi-presidentialism and of France, as the cradle of the contemporary semi-presidential system. This conclusion derives from the circumstance that from the theoretical and even from practical view institutional environment of the Georgian and French semi-presidentialism sharply differs from each other. These differences are very significant as such disparities gave impetus for classification of the two types of semi-presidential system in the worldwide scientific society _ premier-presidential and president-parliamentary regimes. French regime belongs to the first type and Georgia to the other.

Georgia with it’s semi-presidential system is similar to France and Portugal only because the president nominates the candidate of prime-minister, although other members of the cabinet are selected by premier (with the consent of the president and parliament).

Duverger’s 1980 essay marked the beginning of the acceptance of a new term, semi-presidentialism, in the comparative literature and also presaged the emergence of this “new political system type” as the dominant constitutional form for new democracies. By Shugart’s count there are fourteen countries among the post-communist

\[2\] www.venice.coe.int/docs/2004/CDL(2004)-004-e.asp;  
\[1\] www.venice.coe.int/docs/2004/CDL(2004)-004-e.asp
states that are democracies. Of these, twelve are semi-presidential in some form. There have been twelve new democracies in Africa since 1980, and seven of them are semi-presidential. Only in Latin America all new democracies have retained a pure presidential form, except Peru (president-parliamentary) and Bolivia (assembly-independent).

Only among the former British colonies has there remained a strong preference for parliamentary systems, though a few have turned towards presidentialism (e.g. Ghana, Malawi, and Nigeria). Semi-presidentialism apparently is a regime type whose time has come.

Historically, premier-presidentialism has emerged primarily as alternatives to parliamentarism. Examples include the several European countries that won their independence from the empires that were weakened or defeated in the early twentieth century, such as Austria, Finland, and Germany. Also in France, premier-presidentialism emerged as an alternative to a parliamentary regime that was regarded as a failure. The major alternative to presidentialism has tended to be president-parliamentarism. In Latin America, several countries, including Ecuador, Peru, and now Colombia, have had experience with such regimes. The experience has not been a happy one, in most cases. Thus, according to this indention we can conclude that the choice of president-parliamentary type of semi-presidentialism by Georgia is not and was not fortuitous and it has its reasons. Georgia moved from presidentialism to this model, but the analysis of similar experiences of other countries is alarming.

Beyond appearances, the countries belonging to the former Soviet Union, with the exception of Lithuania, are not considered as real semi-presidential systems, because in such countries the powers of the Head of State appear to be so strong that it would be possible to think of an unbalanced “presidential” model, derived from the concrete transfer to the President, elected by the people, of the function of political impulse and orientation (these words much resemble the article of the Georgian constitution which defines the status of the president, as of the institute) which in the past belonged to the Communist Party.

Giovanni Sartori tries to answer a question - which system is best? He concludes, that political form is best that applies best. “We are generally justified in criticizing the polity under which we live... However to argue that mixed systems are better than pure ones, is not to argue that among the mixed forms semi-presidentialism is the best one.”

However, Sartori’s argument is not – in the context of parliamentarism – that semi-presidentialism “is best” but, rather, that it is “more applicable”. It is on two different grounds and by two different routes, then, that Sartori ended up with generally recommending semi-presidentialism. Though, the recommendation is not strong. “Semi-presidentialism does leave us with unsettled problems.”

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* The other two are parliamentary: Albania and Moldova (though, Moldova formerly was semipresidential).
1 http://dss.ucsd.edu/~mshugart/semi-presidentialism.pdf, p.23;
It might emerge that semi-presidentialism is indeed a better model than others when it comes to political effectiveness or democratic learning. However as a system it features high probability of conflicts which are likely to become constitutional. Only unambiguous constitutional provisions and political traditions may reduce the dangers posed by such conflicts.\footnote{www.tspmi.vu.It/files/leidpubl/str061.pdf _ “Semi-presidential institutional models and democratic stability: comparative analysis of Lithuania and Poland”, Vykintas Pugaciauskas, 2006 _ p. 23;}

To be sure, exceptional and ambitious personalities are important in any circumstances, but semi-presidential model like no other institutional arrangement elevates the importance of personal characteristics up to the constitutional level. Personal influence might become established as long as long-term political traditions which supplement formal “rules of the game”.\footnote{www.tspmi.vu.It/files/leidpubl/str061.pdf _ “Semi-presidential institutional models and democratic stability: comparative analysis of Lithuania and Poland”, Vykintas Pugaciauskas, 2006 _ p. 7;}

Italian scholar noted that “the caveat is that structures cannot substitute persons. The wrong person will do badly when the structure is right. But wrong structures waste the right person.”\footnote{“Comparative Constitutional engineering-an inquiry into structures, incentives and outcomes”_Giovanni Sartori, Macmillan, 1994 – gv. 158.}

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