The Parliamentarization of Presidential Systems

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THE PARLIAMENTARIZATION OF PRESIDENTIAL SYSTEMS

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In endearing memory of Ramón de la Fuente,
admired man of science, ideas,
and principles

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EDITORIAL NOTE

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NOTE TO THE SECOND EDITION (IN SPANISH)

This second edition presents numerous additions that include constitutional texts not contemplated in the previous edition, such as those of Francophone Africa, Angola, Haiti, Japan and Mozambique; constitutional reforms related to texts already considered such as those of Ecuador, France and Mexico, in addition to the project in the approval process in Bolivia. I also received valuable opinions, which I greatly appreciate, among which I highlight those of the eminent Peruvian constitutionalist Domingo García Belaunde. I also revised the original wording to clarify some concepts and expressions.

I have also modified the seventh chapter to address the question of the governance of presidential systems, and include, at the end of the work, an outline that synthesizes the multiple variants of parliamentary controls in presidential systems, which may be useful to highlight the richness of options and the nuances that these controls achieve in presidential systems.

The objective of this study is to show that parliamentary institutions of political responsibility and control have been the object of rapid adoption by presidential systems that seek to consolidate themselves through contemporary democratic constitutionalism.

When this panorama is seen to extend itself across Africa, America, Asia and Europe, the new and vigorous trend that characterizes the presidential systems of our time cannot be doubted.

Regarding the method adopted, I have applied those of comparative law and legal sociology to identify the functions of the parliamentary institutions studied. I make this precision because, although I rely on the transcription of the constitutional texts that serve as the basis for the study of each institution, I only carry out a brief semantic examination of their content when it is essential to specify their scope or highlight their successes or deficiencies, but below I do not practice a structural analysis of the norm. In legal research, the method adopted depends on what you want to know. For example, if what is sought is the systematic congruence of the precepts within a constitution, the method to be used cannot be the sociological one; conversely, if what is being investigated is the way in which certain institutions operate in practice, neither can an analytical method be followed, just

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as the use of a comparative method is not appropriate when what is sought is to identify the principles or values contained in a standard. The researcher has to adopt, in each case, the appropriate instruments to achieve the desired objectives. Moreover, in this particular work, I make frequent references to the cultural environment of institutions because it is impossible to understand the functioning of an institution detached from its contex.

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GENERAL EXPLANATION

This work arose from my entrance speech to El Colegio Nacional on February 12, 2007. The original speech, brief by necessity, increased to become this volume. It is a study of comparative law written with Mexico in mind. The social constitutional system founded in 1917 - of which we Mexicans are proud - has not yet been complemented by an authentic democratic constitutional system. With this work I add my voice to that of many Mexicans who aspire to consolidate democracy among us. Upon entering El Colegio Nacional, I evoked the most recent of its missing members, and dedicated my speech to him, as I now dedicate this book to him.

In the following pages I transcribe the constitutional texts relative to each institution alluded to in this study so that the reader has the direct version. In this way, instead of making a summary of each precept, I chose to formulate a cursory analysis of its content considering that the original text is available. Most of the precepts whose language was not Spanish were translated by me, based on the official versions in English, French and Portuguese.

Each item presents examples of various constitutional systems. First of all, Latin Americans and the Caribbean systems are examined to offer a panorama on this matter that allows us to appreciate the trends in the hemisphere as a whole, and then the cases identified in the presidential systems of other continents. In some examples, reference will be made to intermediate systems, which will be pointed out in that sense. Its inclusion is due to the interest of showing to what extent similarities are observed in the design of controls between these systems and those that maintain the classic presidential structure.

The sixth chapter addresses in greater detail the question of intermediate systems that can be considered paradigmatic, as well as others that have tried to qualify their authoritarian nature with the adoption of parliamentary control mechanisms.

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INTRODUCTION

I. Background

In 1998, I published an essay proposing, among other things, the establishment of a presidential cabinet in Mexico, with its corresponding coordinator or chief.[1] These reflections were later expanded in my work *El gobierno de gabinete* (2003), where I exposed the problems that the concentration of power in the presidential systems poses, and the institutional corrective measures that have been applied to remedy this situation. I stressed, as I also do now, that in law there are no perfect solutions, and that the functioning of institutions is closely related to their cultural environment. The critical observations that this work received were examined in the "Addendum" that appears in the 2005 edition. This study complements the one carried out in 2003. Now I address another question that I only left noted in *El gobierno de gabinete: la responsabilidad de los ministros o secretarios de Estado.*

The concentration of power and the irresponsibility of its exercise are not compatible with a constitutional state. Comparative law shows the evolution that has taken place in terms of updating presidential systems. The preservation of these systems does not exclude that they are reformed and updated. Most of these reforms have consisted of adopting and adapting institutions that originate in parliamentary systems. On this point it is necessary to insist that there no longer exist pure systems, if by purity we understand that the systems have maintained their original characteristics without alteration. With the exception of the United States and Great Britain, there are no imperturbable models, alien to the natural institutional contagion that characterizes contemporary constitutionalism. Even the parliamentary systems developed in the orbit of the British Commonwealth have their own nuances. One, the most important, is that they are based on written Constitutions.

[1] "Todo cambio es constancia", *Significado actual de la Constitución*, Mexico, UNAM, 1998.

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II. Parliamentarization of the Presidential System

The Parliament, like numerous other existing institutions, was formed during the Middle Ages. The different expressions associated with it were coined over time. At least from the end of the twelfth century and the beginning of the thirteenth, the voices *parlement* and *parliament* have been identifiable in French and English, almost in parallel: *parlementaire, parliamentarian and parliamentary* appeared in the 17th century, as well as *parlementntarism and parliamentarism* were recorded in the second half of the 19th century.

In Spanish, the *Dictionary of Authorities* identifies the use of parliament by Juan de Mariana (1592) and defines parliamentary in 1737. The Royal Academy admitted *parliamentarism* in 1899. In French and English, *parlement, parliament* first arose to allude to the nascent institution; then *parlamentaire, parliamentary*, to what is proper to parliament; later *parlementarisme, parliamentarianism*, to denote a system, and finally *parliamentarization*, which barely has recent academic recognition in English, to signify a constructive process of the parliamentary system, a tendency towards that system or a political formation similar or similar to said system.

In Spanish, these same voices have later registers. The establishment of Parliament was done later in the Iberian Peninsula, although the idea of Cortes, like its medieval equivalent, had an early appearance in Castile, Aragon and Portugal. However, its derivatives, *courtier, courtesy*, had another meaning, closer to the authoritarian tradition, centered on the hegemonic power of a monarch and his environment.

In this sense, it is not by chance that it was Philip II —and in the wake of his example— Louis XIV, who devised the construction of a residential complex for the monarch and his court. El Escorial, like later Versailles, were spaces where it was possible to concentrate, in an opulent but controllable area, a good part of the aristocracy, the dominant sector of the ruling class. This shrewd decision allowed espionage to reach the highest levels of effectiveness to avoid conspiracies, to exercise strict discipline over the courtiers and to consolidate the absolute power of the monarch.

The evolution of the parliamentary system was accompanied by the construction of its own language. The communication code developed contributed to the institutional shaping of the parliamentary system. This explains why in Spanish the voice of parliamentarism has not yet been accepted by the Academy, because its incidence continues to be low in Spanish-speaking countries. These countries, except for Spain, are organized as presidential systems.

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At present, with the expression *parliamentarization* we mean:

a) the constructive process of a system of a parliamentary nature;
b) the incorporation of institutions of parliamentary origin in another type of political system, with the purpose of assimilating it to the parliamentary one;
c) the adoption of institutions of parliamentary origin but preserving the basic structure of the receiving system.

Therefore, a distinction must be made between parliamentarization of the constitutional system and parliamentarization of the presidential system. In the first case, the entire constitutional structure of political power tends to adapt to the parliamentary system, which is incorporated in an immediate or gradual way, to replace the current system (presidential or traditional); in the second, the existing structure subsists, but some institutions of political control —even modified— of parliamentary origin are added to it.

The voices *parliamentarize and parlamentarization* have not been welcomed by the Academy. The same occurs with *constitutionalize and constitutionalization*, although *legalize and legalization*, of course, appear from the *Diccionario de Autoridades* (1732). The admission of neologisms related to constitutional and political organization has been slow. For example, *nationalize and nationalization* were incorporated in the 15th. edition (1925) of the *Diccionario académico* (DRAE); *democratize and democratization* appear in the DRAE since the 16th. edition (1936) and *politicizing (politizar) and politicization* only entered the 22nd. edition (2001).

Other representative inclusions are *Spanishize*, which appears from the *Diccionario de las Autoridades*, while *Americanize* appeared in the 19th. edition (1970), and there is still no *Mexicanize*. *Christianize*, on the other hand, entered the DRAE in the 4th. edition (1803), but *Christianization* hardly made it in the 17th. (1947).

The Corpus of Reference for Actual Spanish (CREA) of the Royal Spanish Academy contains a journalistic record (Spain) of *parliamentarism*, and four, also journalistic (three for Spain, one for Mexico), of *parliamentarization)*. On the other hand, on the Internet, 728 incidents of parlamentarization appeared only through the Google search engine (June 6, 2007) and 669 of *parliamentarism*. Of this voice, two months later (August 20) there were already 757 referrals.

Regarding *constitutionalising*, CREA records four cases, all of bibliographic origin (two Spain, one Colombia, and one Panama), while consti-

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tutionalization (*constitucionalización*) appears in 22 documents (seven in newspapers and 15 in books) from Spain and several Latin American countries.

Other languages have been more expeditious in the reception of these words. In the case of *constitutionalize and constitutionalising*, in the sense of "converting into constitutional", there is a first registration in 1831, according to the *Oxford English Dictionary*, and *parliamentarization*, understood as "the act or process of becoming a parliamentarian, by the organization or by the means of government", was identified in 1924. This last voice does not appear in the French repertoires. Instead, *constitutionaliser,* with the meaning of "giving to a legislative text [or institution] the value of a constitutional norm", does appear in the *Dictionaire de l'Académie Française.*

III. Renewal of the Presidential Systems

The perception that the president of the United States has considerable internal political power is common. However, if one carefully examines his normal work in matters of domestic politics, it will be seen that his level of influence is lower than that generally exercised by presidents in other systems. Of course, there are exceptions, as was the case with Franklin D. Roosevelt, but in his case, there were also special circumstances. The crisis of 1929 demanded radical measures that Roosevelt did not hesitate to adopt. The New Deal scheme put in the hands of the president a power of intervention over the economy, unprecedented in that country. At present, the list of presidential powers continues to be large, but in no case comparable to that of most presidential systems, especially if the control exercised by both houses of Congress and by the federal system is considered.

The form of election of the president is indicative of the care taken not to erect a dictator. The constituents avoided anointing the president through a plebiscitary election;[2] not so in the case of governors, wherein the plebiscitary principle governs. At the local US level, there have been other factors that mitigate the plebiscite force of the governors, including the federal tax capacity.

[2] This is a recurrent topic in the United States. Some local laws have already adopted mechanisms that link national majority voting with the allocation of electoral votes corresponding to the state, but they condition their validity at the time when the sum of the votes of those states total the majority of the 538 electors required to elect the president. In this way, if a candidate has a lower vote in a state, but a higher number of votes in the country, the electoral votes of that state are assigned to him, even if he did not win it. Cf. New York Times, August 11, 2007, p. 1.

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The greater power of the president derives from the world hegemonic position of the United States, in military and economic matters, and its ability to veto the decisions of Congress. The power of war makes the president a decisive figure in the world and this, by way of reflex, causes his image of power to be projected into the interior of the country. A significant piece of this war power resides in the number of times that the United States troops have intervened abroad and the few occasions in which war has been formally declared.[3] The president, "apart from his authority to appoint various federal officials, lacks other elements to assert his power in purely domestic matters," says Tribe.[4]

The most innovative perspective that has been raised in the United States corresponds to Bruce Ackerman. His thesis of a presidential parliamentary system is highly suggestive and is part of the great renewal trend of presidential systems.[5] This is evident when he expresses his rejection of the Westminster and Washington models.[6] Starting from the antithetical positions represented by these two models, the author proposes another institutional design of separation of powers that corresponds to what he calls "bounded parliamentarism, as a better option for democratic governance. He assures that "intelligent constitutional engineering can translate into stable cabinets aimed at providing effective responses."[7] His proposal, in which he also reviews the electoral and party systems, includes strengthening some mechanisms of direct democracy. This last aspect is not part of the considerations made in my work but, in the other aspects, there are points of agreement between his analysis and mine.

In the Mexican case, the constitutionalist who has studied the presidential systems in greater detail is Jorge Carpizo. One of his works is already

[3] Of the total number of international armed conflicts in which the United States has participated, only eleven cases have there been a declaration of war: Great Britain (1812), Mexico (1846), Spain (1898), Germany and Austria-Hungary (1917), Germany, Italy and Japan (1941), Bulgaria, Hungary and Romania (1942). If the circumstances of these statements are examined, it will be seen that although the statement was made in relation to several countries, it was the same conflict. In this way the effective number is reduced to five.

[4] Tribe, Lawrence H., American Constitutional Law, New York, Foundation Press, 1988, p. 212.

[5] "The New Separation of Powers", *Harvard Law Review*, Boston, vol. 113, no. 3, January 2000, pp. 634 et seq. The author uses the expression "constrained parliamentarianism", which could be translated as "restricted parliamentarism" or "limited parliamentarianism". The Spanish translation has opted for this last modality (*La nueva division de poderes*, Mexico, Fondo de Cultura Económica, 2007).

[6] *Ibidem*, pp. 640 et seq.

[7] *Ibidem*, p. 655.

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a classic: Presidencialismo Mexicano (1978), and his most recent study on the matter is "Características esenciales del sistema presidencial e influencias para su instauración en América Latina"[8] In 1999 he published an important essay[9] in which he stated that he was in favor of maintaining the presidential system in Mexico, renewing it without weakening it. Among the measures he proposed to achieve that goal are the following:

- To ratify some of the presidential cabinet appointments by Congress;
- To introduce the figure of the chief of the cabinet of ministers, responsible to the president and the Congress;
- To create an efficient control body regarding the powers that refer to the "power of the stock market" in Congress;
- To review the constitutional system of responsibility of the President of the Republic so that he does not exercise functions that are alien to him.

I fully agree with those approaches. The fact that, in this essay, I use the term *parliamentarization*, with the scope that has already been explained, in no way implies substituting one system for another. Conversely, one can also speak of the *presidentialization* of parliamentary systems, to the extent that some institutions from presidential systems adopt, especially those that contribute to a better balance between the organs of power and to the political stability of the system. For example, the constructive censorship of the German system, or the popular election of the prime minister in Israel, are measures that tend to *presidentialize* parliamentary systems, while reducing uncertainty regarding the term of the head of government. Without being able to speak of a *dominant trend*, the concerns to seek a new power structure extend to different latitudes. For example, in the United States, in most Latin American countries, in Italy[10] and in France, the rationalization of the exercise of power is a problem about which the same is discussed in academic centers as in political and public opinion circles. One

[8] In Boletín Mexicano de Derecho Comparado, Mexico, no. 115, January-April 2006. This and other important essays on the subject appear in his work *Concepto de democracia y sistemas de gobierno en América Latina*, Mexico, UNAM, 2007.

[9] "México: ¿sistema presidencial o parlamentario?", *Cuestiones Constitucionales*, Mexico, no. 1, july-december 1999, pp. 49 et seq.

[10] See, for example, Mezzetti, Luca and Piergigli, Valeria, *Presidezialismi, semipresidenzialismi, parlamentarismi: modeli comparati e rinforme istituzionali in Itali*a, Turin, Giappichelli Editore, 1997.

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of the most vulnerable points of parliamentary systems is that the heads of government remain in office until they reach the minimum limit of their popularity or until they exhaust their possibilities of leadership within their own party. In general, the destiny of a parliamentary head of government is to conclude his work when he is at a level of majority, popular or partisan rejection. This means subjecting the systems to a very intense game of partisan interests. In a presidential system, the instability factors are different: they are situated in the sphere of the concentration of power and the irresponsibility of the rulers. If these deviations are corrected, the system gains in legitimacy and, therefore, in stability. The parliamentarization of presidential systems does not weaken government power; on the contrary, it strengthens it insofar as government programs and decisions have the support of Congress. What weakens presidential action is the monopoly of power; the highly concentrated exercise of power implies isolation and less ability to form alliances. The presidents become the character to beat. The traditional style only works in closed, authoritarian systems, where the president exercises power according to meta-constitutional powers, as Jorge Carpizo has shown.

IV. Rationalization of Presidential Systems

The rationalization of power can be seen from different angles. For the holder it may mean how to put decisions into practice with the least resistance possible. For the recipient, it may involve a passive attitude: receiving the least harm, or an active position: achieving the greatest influence. These perspectives have in common that the rationalization of power is based on self-interest. But, in a democratic system, there are no perpetual holders or fixed recipients. The free, open, plural game based on electoral activity, makes the interests of holders and recipients have a certain convergence.

Furthermore, the extreme utilitarian position is also nuanced in the practice of constitutional states, insofar as there is no depositary of absolute power. All agents of power exercise different quotas of influence and intervention in decision-making, so that the first search for the maximum possible utility is limited by the data of reality. At this point, the construct on the contractual nature of society and the State, according to which sovereignty corresponds to the entity called the people, is of great help. Consequently, the vectors of rationality have to do with what interests and suits that universe. Even if it is a theoretical elaboration, that is the basis on which institutions are built (these are very specific) in a constitutional state.

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Therefore, let us assume that the members of an integrated community, in accordance with the principles of the constitutional State, are interested in identifying and adopting the elements that ensure the rational exercise of a power of which all are legitimate depositaries and whose exercise results from an express and revocable delegation.

In the first place, it will be necessary to contemplate the distinction between rational and reasonable.[11] In general, in the first case we have someone who acts appropriately (or intelligently) to achieve their objectives; in the second, to those who act in a comprehensive and supportive way as regard to their own objectives and the objectives of others. The unregulated exercise of power implies that the decision of the strongest prevails. This is a primitive arrangement of power. To circumvent this factual situation, the legal system has among its purposes to attenuate the effects of this elementary behavior and to introduce rationality factors in power.

The rationalization of power has allowed the construction of the institutions that regulate the basic processes of access to power and its exercise. The unreserved struggle for power, which implied the destruction of the adversary, the indisputable imposition of ideas and decisions, the hoarding of wealth, discretion, secrecy, collusion, and partiality in the performance of the functions of the power, they were expressions of primitive power. Thanks to a rationalization process, standards were adopted to legitimize access to power and its exercise, in such terms that power was the object of the widest possible acceptance.

This is how the institutions of the constitutional state have been built. But the regressive tendency is always latent, so that even the best designs require occasional corrections that, in addition to amending the distortions, accentuate the rationalizing intention of the constitutional state.

The rationalization of public institutions can therefore be understood in two ways: correcting the errors noticed in the functioning of the institutions and improving the processes of power. The adoption of new standards is a central part of this second option.

Mannheim, taking many of Weber's theses as a reference, decided to explore the problem of how a man thinks, not from a philosophical or psychological perspective, but in terms of public life, politics, and institutions. Mannheim understood that there are rationalized structures where there are standardized procedures to deal with all kinds of situations; For this reason, rationalization translates into a series of successive actions that fol-

[11] See this distinction in Rawls, John, *Political Liberalism*, New York, Columbia University Press, 1993, pp. 48 et seq.

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low an orderly, regular, and predictable course. The central characteristic of modern culture, he concluded, is its tendency to rationality.[12]

However, that approach does not tell us much because, from an aseptic or neutral perspective, all well-structured political systems would be rational. The same an authoritarian system that a democratic system, whose components were adequate to its objective, would be rational. In this sense, when referring to the rationalization of a system, one could think of how to make it more functional to achieve the proposed ends. In an authoritarian system, for example, adopting electoral rules would be contrary to its rationality, unless in parallel the means were built or preserved to make the electoral exercise null and void. In this case we would be facing a fiction, but the rationality of authoritarianism, which supposes the limitation of individual and public freedoms, would not be broken. On the contrary, if the purpose were to build a democratic system, rationality would imply the unambiguous functioning of the electoral system. There would be a process of rationalization of the system if the actions taken were oriented in that direction.

Talking about the rationalization of a system, therefore, can give rise to conflicting perceptions. When using a polysemic concept, it is necessary to identify the elements that allow to connote precisely what is meant. This problem is solved by Weber, by distinguishing between rationality in terms of instruments and rationality as values.[13] There is instrumental rationality or as ends, he says, when the agent uses the appropriate instruments to achieve his ends, according to your intentions, forecasts, and calculations; there is rationality regarding values when the adequacy of that conduct and of those ends corresponds to a transcendent purpose. At this point we can understand that for a constitutional system, what is transcendent is what interests the community, not the holders of the organs of power.

By understanding rationality in this way, it is possible to deduce more easily what the rationalization of a power system means, not as a process to increase concentration and discretion in the exercise of power, but vice versa, to make it more in line with expectations. social. Therefore, rationalization can also be distinguished as a process of updating the mechanisms of traditional domination, or as a process to regulate the structure and functioning of the organs of power, and their relations with their recipients, the governed, according to the principles of freedom and equity. *Instrumental ra-*

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12 Mannheim, Karl, *Ideology and Utopia*, New York, HBJ Book, 1936, pp. 113 et seq.

13 “La naturaleza de la acción social”, *La acción social: ensayos metodológicos*, Barcelona, Península, 1984, pp. 38 et seq.

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tionalization and *legitimizing rationalization* can occur in a complementary manner, while the former concerns the design of the mechanisms to make the latter possible; But the mere instrumental rationalization can lead to misunderstandings and damage to institutional life, such as those mentioned above.

However, another problem would remain: the attitude towards what can be considered rational and reasonable. In this case, as seen above, the solution keys are provided by Rawls. In this work I make frequent reference to the rationalization of power in presidential systems. With this expression I want to denote that p*olitical power must be exercised in a rational and reasonable manner*; that is, the objectives of power must be achieved with adequate instruments and decisions in a free and plural society, and that social equity must be among those objectives. In general terms, it can be understood that the *rationalization of power in a presidential constitutional system implies legitimacy for access to power, and plurality, proportionality, responsibility, cooperation, and equity in its exercise.*

The plurality indicates that the institutions benefit from the deliberation of their holders, without risk of coercion for the dissenting party, or exclusion for the minority. Proportionality implies that the concentration of power is attenuated as much as possible and that there is the greatest symmetry that allows the differentiated and effective functioning of the organs of power. Responsibility implies that no agent of power performs his functions without having to account for his acts or omissions, and without subjecting himself to the consequences of not complying, or preventing others from complying, with the assigned tasks. Cooperation means that power is not part of the patrimony of officials or parties, that institutions are public and that their operation concerns the general interest, so that any form of blocking or exclusion of other institutions, or of the different heads of the same institutions, affects that interest and damages the bases of social cooperation. Equity represents the central objective of the exercise of power, so that its decisions do not generate unjustified benefits or excessive burdens for any member of society.

The institutional design that contemplates these objectives will obey the criterion of rationalization of power. On the contrary, it will be regressive, in the sense of turning towards the rudimentary expressions of power, any design that eludes that advance, or that institutes models that affect the legitimacy regarding the origin of power, or limit its plural, proportional, responsible, cooperative, and equitable exercise.

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V. Adjustments and Controls

Due to the action of the holders of the organs of power and the set of factors, positive and negative, present in a plural and free society, every constitutional system continually experiences tensions and distortions that force it to adopt corrective measures. The adjustment measures have two aspects: control and reform. The controls operate permanently; reforms are adopted when there are structural or functional problems whose solution involves reshaping the institutions. A well-designed system makes it possible to process most of the demands of the environment through the standard means of control, but even so, the most that is achieved is to extend the periods to carry out structural or functional changes through the arbitrations of institutional reform.

Both ways of adjusting are part of the rationalization of a constitutional system. When permanent corrections allow to channel environmental tensions and remedy errors or excesses of power, the system operates smoothly; but when expectations exceed the response capacity due to a restrictive or insufficient institutional design, it is recommended, and sometimes essential, to introduce changes that solve existing problems and, if possible, anticipate those that may arise as the horizon of democratic culture widens. Rationality, therefore, is also exposed to lapses. Even the rationality of values is subject to the changes that occur as the democratic and legal *culture consolidates and spreads*.[14]

The reform of a system allows the scope of the rationality of values to remain in force, when due to different circumstances the institutions that were conceived and adopted to achieve the collective objectives of coexistence in freedom and with equity, are insufficient in the face of unforeseen challenges. The globalization of the economy, for example, has generated adverse collateral effects on workers' rights and accentuated tendencies to concentrate wealth. There has also been an asymmetric relationship between world corporations and nation states, especially those with less political management capacity or less economic density. It is evident that the rationality of the values that serve to structure power must contribute to the adjustments that demand the preservation and achievement of the objectives of freedom and equity of a constitutional state. When referring to

[14] It is common to use the expression culture of legality. The reference to legal culture has a broader content because it goes beyond knowledge and observance of the law. This is the case of the democratic culture, which expands what, as the equivalent of the culture of legality, would be the electoral culture.

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the rationalization of a constitutional system, therefore, reference is always made to its adequacy in accordance with the rationality of values.

VI. The Parliamentary System

Most of the institutions referred to in this study are of British origin. The first, obviously, consists of the participation of ministers in the parliamentary debate, which by its very nature was accompanied by the formulation of questions.

The right to dissolution is of *quasi* republican genesis, while the first to exercise it was Richard Cromwell, in January 1659.[15] Later, in 1715, shortly after the beginning of the reign of George I, elector of Hanover, the right of dissolution was formalized through the law identified as the Septennial Act. This regulation established that the duration of each legislature would be five years, although the monarch could dissolve Parliament at any time. As for the vote of no confidence, the first recorded case also occurred in Great Britain; corresponded to Lord North,[16] in 1782, on the defeat suffered in Yorktown, during the war of independence of the United States. As can be seen, the Parliament's right to censure ministers is subsequent, in time, to the monarch's right to dissolve Parliament. Confidence, expressed in a formal way, was mentioned in the Hansard Commons[17] on June 8, 1846. This does not mean, however, that it was not practiced well in advance.

In the United States, Hamilton addressed the issue of trust (although he alluded to the negative aspect of censorship) in the Senate's appointments of the president.[18] He defended the power of senatorial ratification before those who advocated unrestricted freedom of appointment by part of the president, arguing that the risk of making bad appointments did not strengthen the president and did weaken the Republic. Confidence was not, therefore, a matter alien to the considerations of a presidential system in the making.

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15 Hallam, Henry, *The Constitutional History of England*, New York, Widdleton, 1872, t. II, pp. 258 et seq.

16 A.V. Dicey explains that compliance with the vote of no-confidence corresponds to an act of "constitutional morality", and that if the criteria of the parliamentary majority are not shared, the dispute must be submitted to the voters, through dissolution Parliament and the call for a new election. *Introduction to the Study of the Law of the Constitution*, Indianapolis, Liberty Fund, 1982, pp. 299 et seq.

17 Text in which an account of the British parliamentary debates is reported. The vote of confidence is then known as the vote of want of confidence.

18 Hamilton, Alexander, *The Federalist*, no. 73.

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Censorship, in its contemporary sense of adverse expression to the performance of a cabinet member, has been presented in the United States on two occasions. The first time occurred during the presidency of Abraham Lincoln. Between December 15 and 22, 1862, during the Civil War, the Republican senators made the decision to censor the Secretary of State, William Seward. The episode, which Carl Sandburg identifies as a "cabinet storm," is extensively outlined in the president's biography.[19] The tensions of the war and the president's apparent indecision to lean on his cabinet, led senators from his party to deliberate about possible remedies. They all agreed that the secretary of state was not worthy of his trust and agreed to let the president know. After a first interview in which Lincoln requested time to meditate, the president called a meeting with the presence of his cabinet and the senators.

Seward was not invited to the meeting, because confidentially, knowing that the senators would request his removal, he had anticipated the presentation of his resignation. The president asked his collaborators to freely express his views before the senators, about the way the cabinet works, and then asked the senators to express their disagreements. Six hours later, in the early morning of Saturday the 20th, the meeting concluded without definitive results, but the senators, despite having expressed their wishes that Seward be removed, warned that the president had made no commitment. Hours later, at his first morning meeting, the Secretary of the Treasury, Salmon P. Chase, also submitted his resignation. Sandburg mentions that this fact was recorded in the diary of a witness as of "intense satisfaction" for the president, who immediately exclaimed: *"This solves my problems."*

Indeed, Lincoln, on the verge of accepting Seward's resignation on the occasion of the senatorial demand, found that he either accepted both resignations, thus leaving the senators without a sympathizer in the cabinet (Chase), or he rejected both. He chose not to accept them, and the senators admitted that this was the best solution. The file was closed, not without one of the senators clarifying to the president that the actions of the legislators were based on the constitutional power to advise the president.[20]

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[19] Sandburg, Carl, *Abraham Lincoln. The War Years*, New York, Harcourt, 1939, t. I, pp. 636 et seq.

[20] The advice and consent formula, which appears in article IV section 2 of the United States Constitution, also comes from English parliamentary law. The isolated voices are already present in the Magna Carta and the expression, of customary origin, was incorporated into article 1, section 9 of the Habeas Corpus Act, of 1679. Its reception in the United States text indicates that originally the system parliamentarian was not so distant from the constituents, as is often assumed.

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The second time an attempt was made to formulate a vote of no confidence in the United States was in 2007, against Attorney General Alberto Gonzales. On December 7, 2006, the attorney general removed eight federal prosecutors. Given the generalized versions that it was a decision adopted for political reasons, on May 24, 2007, a group of senators promoted a vote of no confidence against the attorney. The vote took place on June 11. Fifty-three senators voted for censorship and 38 against, but 60 votes were required for the Senate to adopt a non-binding recommendation addressed to the president of the United States. Everyone knew that censorship, as such, is not a current institution in the American constitutional system; however, lawmakers from both parties voted in favor of a critical position for a member of the presidential cabinet.

Before the vote, the attorney general was questioned in public by the senators and received accusations and opinions that inflicted severe political damage on him. Therefore, the failure of the action did not benefit the president or his attorney, nor to the Senate. The former he exhibited in a very negative sense, which had costs for the image of both. He let the Senate be seen as an institution without enough power to even recommend the removal of a challenged and discredited minister. What is significant about this experience is that the US political leadership sees the convenience of having more effective control instruments that limit presidential discretion and establish the responsibility of cabinet members.

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First Chapter

REMARKS ON THE SEPARATION OF POWERS

For the purposes of this study, I understand the presidential system as one where the same person exercises the leadership of the state and the government for a fixed period. The parliamentary mechanisms to which I will refer are questions, interpellations, participation of ministers in congressional debates, question of trust, motion of censure and dissolution of the congress.

To determine whether we are dealing with a full presidential system or one that is only partially so, it is necessary to compare at least five indicators related to the head of the government: the form of his election, the procedures for exercising his functions, the duration of ration of his charge, the responsibilities to which he is subject and the relationship with the head of state.

Having analyzed these factors, I excluded from the study constitutional states where there are systems whose profiles correspond to intermediate structures that qualify them as semi- or quasi-presidential, or parliamentary. For this reason, I dedicate a separate chapter to the control systems applied in Finland, France, and Portugal, for example. The basis of the comparative study that I present is made up of African, Asian, and European countries where presidential systems govern, as well as the Ibero-American countries organized according to contemporary constitutionalism.

Due to various historical circumstances, which they are not necessary to comment on now, the presidential system was affirmed in Latin America throughout the 19th century. From their origin, constitutional systems adopted a rigid position regarding the separation of powers. One of the undesired effects of that decision was the intangibility of the heads of the Executive Power.

In a paradoxical way, in many systems the principle of separation of powers made it difficult for the congresses to carry out political control. The same illustrated argument that had served to configure the autonomy of the Parliament before the monarch, turned out to be functional for the presidents to stop the control actions by the congresses. It was argued that any interference by the organs of political representation in the life of the

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government violated the principle of separation of powers. This instrument to defend the freedom of the representatives before absolutism, became a substitute for democracy.

Today, our own and other experiences show that to rationalize the exercise of power, it is necessary for the political organs of the State to carry out their duties in a responsible and controlled manner; that their relationships obey a model of equilibrium that facilitates their performance for the benefit of the governed, and that the deconcentrating of their functions is carried out without diminishing their effectiveness.

In this study of comparative law, I present an overview of the adoption, by presidential systems, of various institutions that have their origin in parliamentary systems. It is a process of adjustment in which progressive adjustments to the norm are observed, accompanied by changes in the legal and political culture of societies. The intimate association between the normative and cultural processes related to the innovation of numerous presidential constitutional systems is corroborated, as postulated by Peter Häberle.[21] Similarly, regarding the effects produced by the adaptation of the institutions transferred from the parliamentary systems to presidential systems, it is very useful to keep in mind the doctrinal contributions of Dieter Nohlen, according to which the context makes the difference.[22]

I believe that context must be understood in a dual sense: it refers to the cultural environment and the legal system. Each institution interacts, in the social sphere, with the other cultural aggregates, and in the normative space, with the other institutions. For this reason, the same institution presents very different characteristics in each constitutional state. If, in addition, a diachronic analysis is introduced, which is essential when evaluating the functioning of institutions, the variations are even greater. It is essential to bear in mind these circumstances of the institutional function, to avoid the frequent assumption that the transfer of an institution from one system to another produces the same effects in the adoptive system as in the original system.

The contextual explanation of the institutional changes makes it possible to assess the effectiveness of the "grafts" that are gradually being introduced into the presidential systems. Care has been taken not to present them as a panacea, but rather they have corresponded to a phenomenon that results from the increasingly intense exchanges of political and legal ex-

[21] See, among others, *El Estado constitucional*, Mexico, UNAM, 2001.

[22] *El contexto hace la diferencia: reformas institucionales y el enfoque histó rico-empírico*, Mexico, UNAM, 2003.

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periences. Although it is not an unprecedented constitutional issue, assuming that the globalization of forms of government has been a recurring fact throughout history, an increase in the speed and depth of the institutional migrations is observed.[23]

The migratory process of the systems is explained by their adaptability. All institutions vary according to the combinations of which they are part, and according to the cultural changes that take place in their environment. The sole argument that each form of organization is proper and exclusive to a system limits the adaptability of institutions. Most constitutional systems are hybrids, in the literal sense that they result from a combination of elements of different nature. There are presidential systems that are combined with unitary or federal organizations, and with majority or proportional electoral systems, as well as with unicameral or bicameral representative systems; there are those with constitutional courts, and the combinations also include different forms of guarantee for individual and collective rights. In other words, there are no formulas whose orthodoxy is based on the secrecy of systems.

On the other hand, each constitutional system has its own identifiers, regardless of the dominant pattern of its elements. What can be transferred from one system to another is the conceptual and argumentative basis of an institution; but in each constitutional space the interaction with the cultural and institutional environment produces different consequences. For this reason, we now insist on the convenience of comparative studies of cultures and legal systems. This took a long time to understand. Until now the idea has prevailed that tracing institutions is as easy as simply copying a text. It is true that there are constants, but this does not mean that all congresses or all parliaments are the same, for example. Today we can find textual expressions of the US Constitution in the Mexican one, but the similarities end there, because in each system they have produced different results.

Institutional singularities, a product of their adaptation to the environment, do not exclude the existence of standards. Although the first modern federal system is the American one, each of the now existing ones has a peculiar behavior, the same holds for other institutions. There are models whose homogeneous elements allow their identification, but congresses, constitutional courts, and the entire range of known institutions present similarities and differences depending on whether a synchronous analysis is made between different systems, or diachronic within the same system.

[23] On this subject see the useful essays collected by Choudhry, Sujit, *The Migration of Constitutional Ideas*, Cambridge, CUP, 2006.

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A model is the conceptual representation of a form of organization and institutional functioning, which usually varies in space and time; allows to understand its structure and behavior, which is always dynamic. As for political systems, one of its distinctive features is fluidity. The presidential system, like any model, presents common notes, but is subject to modifications that allow it to provide satisfactory responses to the needs of each constitutional state that has incorporated it. One of the advantages of presidential systems over parliamentary systems is that they are showing a greater capacity for adaptation. On the other hand, if a model is understood to be the dominant scheme of an institution, it must be agreed that the current model is different from the one that gave rise to it. In this sense, one could speak of the classical model and the contemporary model of presidential systems.

To compare constitutional institutions is to identify the common traits and the differences inherent to the context in which each institution operates. The culture and externalities that surround an institution are unique to each system. Sometimes there is greater similarity between different institutions, in similar contexts, than vice versa. A suggestive case, in this sense, is the one that results from the principle of separation of powers.

To assess the development of control instruments in Latin American presidential systems, in particular the vote of confidence, the motion of no confidence, the dissolution of congress and the intervention of ministers in congressional debates, it is useful to have an idea of how the principle of separation of powers has been interpreted.

Latin American constitutional systems adopted a very rigid position regarding the separation of functions. One of the effects of this decision was to protect the heads of the Executive Power from acts of congressional political control. The intangibility of presidents, as a characteristic factor of many dictatorships, had its support in a rigorous configuration of the so-called "division of powers".

The beginning of the Latin American constitutional life coincided with its independence, and this followed the great French revolutionary upheaval, which in turn had important constitutional repercussions in Spain, especially in the Cadiz text of 1812. The constitutional discourse underlined the benefits of the separation of powers that in practice operated as a substitute for democracy. Thus, a persuasive argument was found to keep governments untouched; the most radical theses in this matter came from constitutionalism of the nineteenth century.

Among the outstanding notes of the French Revolution were the ideas of republic and equality, as a categorical response to monarchical absolut-

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ism. In this context, it was understandable to postulate the thesis of the separation of powers, to protect the representatives of the sovereign nation from harassment by the monarchs. French parliaments have their roots in the Middle Ages,[24] and tensions with royal power caused these institutions to oscillate between submission and disobedience. When Louis XVI was forced, for financial reasons, to convene the States General, which met in May 1789, he interrupted a long recess of those States that lasted since 1614.

To guarantee the independence of the representatives, the revolutionaries adopted a provision that became one of the basic principles of 19th century constitutionalism. In accordance with article 16 of the Declaration of the Rights of Man and of the Citizen, "Any society where the guarantee of rights is not assured, nor the separation of powers is determined, lacks a constitution." In this way, separation of powers would become the dogmatic basis of constitutional formulations. However, as is well known, in their initial phase all the Constitutions addressed the essential problems for individual freedoms, but the democratic question had not emerged as a political necessity.[25]

Doctrinal criticisms of the separation of powers, such as those supported by G. Jellinek, W. Wilson, R. Carré de Malberg and H. Kelsen, are beginning to find acceptance in contemporary constitutional texts, where little by little a current is making its way which tends to overcome the rigidity originally attributed to this concept. What remains of the idea developed by Montesquieu, which finds numerous precedents in the classical Greek and Latin world, is the need to adopt mechanisms that prevent the concentration of power and that, in addition, allow the control of its exercise. A direct, strict, and unqualified reading of the separation of powers led to an advantageous situation for the holders of government power, because it made them invulnerable to the purposes of control by the collegiate representative bodies.

In many texts the expression "separation" or "division" of powers has even been abandoned. The first constitution of the hemisphere that was detached from the concept was the Ecuadorian of March 6, 1945, which chose to refer to the legislative, executive and judicial functions (articles 23,

[24] *Cf.* Shennan, J. H., *The Parlement of Paris*, London, Sutton Publishing, 1998, esp. pp. 151 et seq.

[25] At this point it is necessary to note that the Latin American Constitutions went further than their French model. In France, the rights of man did not extend to slaves, and the constitutional ban on slavery only occurred until 1848 (Article 6), while in Latin America it figured from the first fundamental norms.

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55 and 84); this nomenclator was maintained in the 1946 Constitution and was replaced by the reference to the jurisdictional function from the 1967 Constitution, being preserved in the successive 1979 and 1998. Title V is entitled "Of the State institutions and the public function", and provides the following:

> Article 118. The institutions of the State are:
>
> 1. The organisms and dependencies of the legislative, executive, and judicial functions.
> 2. The electoral bodies.
> 3. The control and regulatory bodies.
> 4. The entities that make up the autonomous sectional regime.
> 5. The bodies and entities created by the Constitution or the law for the exercise of state authority, for the provision of public services or to develop economic activities assumed by the State.
> 6. Legal persons created by sectional legislative act for the provision of public services.
>
> These bodies and entities make up the public sector.

In Guatemala, the Constitution promulgated on March 11, 1945 —a week after the Ecuadorian— alluded to the legislative power (article 103), exercised by Congress, to the "executive functions", corresponding to the President and the ministers (article 129), as well as the "judicial functions" performed by the courts of the Republic (article 162). The successive constitutions of 1956, 1962, 1966 and the current one of 1985 (reformed in 1993), have preserved, with some modifications, this conceptual line, even though they have added some organs.

The second Panamanian Constitution of 1946 also joined this trend, which preserves the current supreme norm, in force since 1972, and eluded the characterization of the "powers", to adopt that of State organs. The legislative body was established from article 106, the executive, from article 136, and the judicial, from 164 onwards.

The recent constitutions of El Salvador were oriented in the same direction. That of 1982 replaced the expression "public powers" with that of "government bodies", and this has been preserved in that of 1983. Title VI includes the following bodies: legislative, executive, judicial, Public Ministry and Court of Accounts of the Republic.

The Chilean Constitution of 1980, when referring to the government and the congress, avoids qualifying them as "power" and reserves this voice only for the case of the "Judicial Power" (article 73), but without referring to tripartition. It also includes other bodies to which it attributes autonomy:

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the Public Ministry (article 80A), the Comptroller General of the Republic (article 87), the Central Bank (article 97).

> In turn, article 113 of the Colombian Constitution (1991), provides:
>
> They are branches of the public power, the legislative, the executive and the judicial. In addition to the bodies that comprise them, there are others, autonomous and independent, for the fulfillment of the other functions of the State.
>
> The different organs of the State have separate functions but collaborate harmoniously to achieve their goals.

The Portuguese Constitution of 1976 presents a very advanced conceptual elaboration. Article 108 provides that political power belongs to the people "and is exercised in the terms of the Constitution"; article 110 specifies that the President of the Republic, the National Assembly, the government, and the courts are "organs of sovereignty," and then provides that these organs "must observe the separation and interdependence" that the Constitution postulates. In this way, the problem of plurality of powers is overcome and functional separation is consistent with relations of cooperation and control.

The Spanish Constitution of 1978 only qualifies the Judiciary as "power", as it refers to the other organs of the State such as the Crown, the *Cortes Generales* and the Government.

Another suggestive case is the South African. Article 41 of the 1996 Constitution sets out the principles of cooperative government and intergovernmental relations, in the following terms:

> 1. All spheres of government and organs of the State in their areas of competence, must:
>
> a. to preserve peace, national unity and the indivisibility of the Republic;
> b. to ensure the well-being of the inhabitants;
> c. to provide the Republic with an effective, transparent, controllable and coherent government;
> d. to be loyal to the Constitution, the Republic and its people;
> e. to respect the constitutional status, institutions, powers and functions of government of each of the other spheres of government;
> f. to not assume powers or functions except those expressly conferred by the Constitution;
> g. to exercise their powers and carry out their functions without the geographic, functional or institutional competencies of the government invading other spheres of authority, and

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h. to cooperate with mutual trust and good faith
   i. practicing friendly relationships;
   ii. supporting each other;
   iii. informing and consulting with each other, on matters of common interest;
   iv. coordinating their actions and standards;
   v. respecting agreed procedures, and
   vi. avoiding legally contending with each other.

By overcoming the conceptual rigidity of the separation of powers and replacing it with a more flexible scheme associated with the separation of functions and competences, the essence of the original idea of balances developed by Montesquieu and already enunciated by the Greek and Latin classics is retaken. Even when the famous French writer identifies the original sources of the balance thesis in Tacitus, everything indicates that he does not do so because he does not know the texts of Plato, Aristotle or Polybius, but because he attributes the origin of the practice to the Gallic people.[26] The principles of equilibrium were raised by Polybius with a precision unparalleled in antiquity.[27] The need for cooperation between the organs of power appears clearly when he explains the constitutional organization of Rome: "Such is the power that each party has to harm or to help each other... that in any situation this structure remains duly balanced, and it is impossible to find a constitution superior to this one".[28]

One of the tendencies that characterize the new constitutionalism is oriented in the sense of incorporating numerous organs of constitutional relevance that do not correspond to the traditional model of tripartition of power.

In a recent stage of institutional development, the relations between the organs of political power have been modified, and congresses have been

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[26] Tacitus, *Germania*, 7, 8, and 11.

[27] Histories, book VI, 4 et seq. According to the theory of the cycles of Polybius, the forms of government follow one another according to their performance. The pure forms of government are corrupted and give way to being replaced by another pure form which, once distorted, is replaced by another also pure. The Polybius cycle begins with the singular government, which passes from royalty to monarchy; it continues with the collegiate, which goes from the aristocracy to the oligarchy and culminates with the collective, which passes from democracy to demagoguery and then returns to the singular and so on. The beginning of the cycle, however, seems confusing, because the first individual command, to get out of chaos, corresponds to the strongest (monarchy), evolves towards the purification of government practices, and becomes royalty, but then declines again in the form of a monarchy, and it is when it gives way to the aristocracy, as a group that rescues the arts of good government.

[28] *Ibidem*, VI, 18.

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conferred an increasing number of powers of control in relation to governments. This process was consolidated since the conclusion of the Cold War. Before, during the period between the end of World War II and the fall of the Berlin Wall, Latin America was a recurrent scene of dictatorships, mostly military, that took advantage of the bipolar tensions of the time. Even in countries that did not suffer from the presence of a military dictatorship, such as Mexico, it was decided to maintain a series of limitations on electoral democracy that had an impact on the weakening of the representative system.

Thanks to a series of political and cultural changes, today most of the states that have opted for presidential systems have multiple elements of parliamentary control. This is the case in the Eurasian systems and in various countries of Islamic law, although cases such as Indonesia survive, with a traditional authoritarian presidentialism.

By adopting a new understanding of separation of functions and competences and associating it with political responsibility, the classic and modern idea of balances, preluded by Polybius and culminated by Montesquieu, is retaken, and updated.

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Second chapter

PRESENCE OF MINISTERS IN CONGRESS

There are four cases in which the presence of ministers in Congress occurs: when they are required by the legislative body; when they must appear periodically; when they witness the debates, and when they exercise the power to participate in them. Of these four modalities, the most widespread is the first; it is provided for in all current democratic Constitutions, with rare exceptions such as the Dominican Republic.[29] Regular attendance is mandatory in Argentina (article 101) and in Peru (article 129); in Bolivia (Article 103) it is possible to witness the debates but without taking part in them, and the most important development is recorded in cases where ministers are allowed to freely intervene in the debates. This is the case in nine Latin American countries,[30] in addition to the Philippines, Iran, and Uzbekistan, among others.

It is significant that in ten nation states it is possible for ministers to use the parliamentary rostrum. Except for Brazil and Chile, all of them also admit interpellation and, in most, censorship. Conversely, of the countries where these two forms of control are envisaged, only El Salvador, Honduras, Nicaragua, Panama, Paraguay and Uruguay do not contemplate the possibility of members of the cabinet participating spontaneously in the deliberations of Congress.

As can be seen, the number of countries that have incorporated parliamentary instruments in relations between the organs of power is increasing, with tangible results in terms of the stability and effective performance of their institutions. In the case of the intervention of the ministers in the parliamentary platform, it encourages a more intense exchange of points of view and contributes to the political centrality of the representative bodies.

[29] Argentina (article 71), Brazil (article 50), Colombia (article 208), Costa Rica (article 145), El Salvador (article 132), Ecuador (article 156), Guatemala (article 168), Honduras (article 205), Mexico (article 93), Nicaragua (article 151), Panama (article 155), Paraguay (article 193), Peru (article 129), Uruguay (article 119) and Venezuela (article 223).

[30] Argentina (articles 100 and 106), Brazil (article 50), Chile (article 37), Colombia (article 208), Costa Rica (article 145), Guatemala (article 168), Peru (article 129), Dominican Republic (article 38) and Venezuela (Article 245).

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In systems that have not taken that step, cabinet members have no better platform than that offered by the media, with the inherent problems of dependence that result. Access to the media becomes one of the keys to exercising power, giving them an influence that is not offset by that which should also be assigned to congresses.

In addition, the participation of ministers in the debates offers them an opportunity for training in political controversy that would not otherwise occur. Thus, the inertia of bureaucratic behavior and the cryptic exercise of power that has been a constant in Latin American presidential systems is mitigated. At the same time, the representatives have a better chance of having information and knowing first-hand the criteria that guide political decisions in their country. This is an incipient, but promising experience for revamping presidential systems.

The intervention of ministers in debates has become generalized as a parliamentary practice in presidential systems, even without any constitutional provision. In the Mexican case, since 1934 the Regulations of Congress (articles 53 and 130) empower the secretaries to intervene in the debates when they decide; but none have made use of that attribution in the last fifty years.

Of the various political controls of parliamentary matrix, in Brazil the Constitution only contemplates the presence of ministers in congressional debates, if there is an agreement with the board of directors corresponding to each of the chambers. The applicable precept reads like this:

> Article 50.
>
> ...
>
> 1st. The ministers of State may appear before the Federal Senate, before the Chamber of Deputies or before any of its commissions, on their own initiative and with prior agreement with the respective board, to present a relevant matter for their ministry.

This provision appears to limit the freedom of cabinet members to attend Congress on a discretionary basis, although at least it leaves open the possibility that they occupy the rostrum when so agreed with each chamber. In practice, no restrictions are imposed for this type of intervention, and what is wanted is to regulate the turn in the use of the rostrum. It is a rule that also applies in other systems, although it is left to parliamentary regulation. Its inclusion in the Brazilian constitutional text obeys the detail with which numerous precepts of the Constitution have been drawn up.

For other systems, the Philippine Constitution provides:

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> Article VI.
>
> Section 22. The heads of the departments, on their own initiative, with the consent of the President or at the request of either House, in accordance with the provisions of their own regulations, may appear before the chambers and be heard in relation to the department that They lead… When the security of the State or the public interest requires it and the President of the Republic so indicates it in writing, the appearance will be held in secret session.

The precept opens the possibility that the members of the cabinet make the decision to appear before any of the chambers. The structure of the precept indicates that the participation of the ministers is informative rather than deliberative because it is not indicated that they can freely participate in the debates. However, if it were to be used that way, it would be an instrument to facilitate communication between the government and Congress. Such a provision cannot be understood restrictively, so that, even without modifications, the frequent presence of officials could not be considered an intrusion into congressional life.

The following is envisaged in Iran:

> Article 70. [Government assistance].
>
> The President, vice presidents and ministers have the right to participate in the public sessions of the Assembly, individually or collectively. They can also be accompanied by their advisers. If the members of the Assembly consider it necessary, the ministers are obliged to attend. When ministers decide, their statements should be heard.

Even though the Iranian constitutional system concentrates power on religious leaders, the ministers have margins for political operation before the Assembly. Forced to attend when they are summoned, they can also take the initiative to appear before the Assembly and have the right to be heard, thereby reducing the prevailing verticality in the power structure, and facilitating debate among political agents. This is, in essence, the objective pursued by allowing, and in some cases sponsoring, the intervention of ministers in the parliamentary platform.

The Constitution of Pakistan provides: "Article 57. The Prime Minister, a Federal Ministers, a Minister of State and the Attorney General shall have the right to speak and to take part in the debates of each chamber of Parliament, or of their respective committees, but they may not vote".

As discussed in the chapter on censorship, the president appoints ministers from among the members of Parliament. In this sense, it is not surprising that they can make use of the rostrum. However, by being prevented

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from voting, it is denoted that while they occupy a ministerial position, their rights as legislators are suspended. In parliamentary systems it happens the other way around, because the ministers continue to vote in their assembly.

The case of Uzbekistan is regulated as follows:

> Article 80. The President of the Republic of Uzbekistan, the Prime Minister, the members of the Cabinet of Ministers, the Presidents of the Constitutional Court, the Supreme Court and the Court of Arbitration, the Attorney General of the Republic and the President of the Central Bank, they have the right to attend the sessions of the Oliy Majlis [Parliament].

As in any presidential system, the Uzbek constitutional order provides that the President of the Republic is head of state and government (article 89), for which reason he presides over the cabinet of ministers. Despite his nature as head of state, the president is empowered to attend parliamentary sessions. Another original aspect of this rule is that the heads of the jurisdictional bodies, the prosecutor and the president of the central bank also have this right.

Although the Constitution only refers to the right of attendance, it has been understood that it is not a passive presence, as mere spectators. In fact, given the public nature of all congresses and parliaments, a rule is not required that allows officials to be part of the public that watches the debates. The right to attend, provided for in a supreme norm, implies the right to participate in the deliberations. Otherwise, officials not mentioned in article 80 of the Constitution could not even appear at parliamentary sessions, which is incompatible with any democratic constitutional system.

It is necessary to analyze this norm in the context of the Uzbek political system. The president (Islam Karimov) exercises in practice a very concentrated power, which has been perpetuated since 1990. Among his decisions was to proclaim a constitution that incorporates "all democratic requirements" in accordance with current standards. Parliament has been dominated by a hegemonic force that is not put at risk by a provision as open, in the letter, as the one mentioned. This, however, the precedent must be recorded, even if it is only formal, due to its theoretical and practical implications.

The Uzbek Constitution deviates from the principle preventing heads of state from taking part in parliamentary sessions. Due to the symbolic representation of the head of state, it is not recommended that he have a systematic presentation in the political debate, but by conferring this attribution, the Constitution emphasizes that the president is responsible for

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government management. However, intervention in the rostrum of a head of state has more drawbacks than advantages. Inasmuch as in a presidential system the incumbent exercises both heads (of the state and of the government), it could be considered that his participation in the parliamentary platform obeys his function as head of the government. This would be understandable. However, national representation requires a minimum of neutrality, because a president exercises it without distinction of currents of opinion or political factions, even if they are majority.

In addition, all heads of State, both in presidential and parliamentary systems, have political responsibilities for conciliation and balance that they cannot put at risk due to a parliamentary discussion that, in general, leads to conflicting positions. Which is not a significant risk in an authoritarian structure, but it is in an open or aspiring system.

***

The participation of ministers in the parliamentary rostrum tends to be easier in presidential systems. The greater or lesser use of this communication tool depends on the intentions of the government and the skills of the ministers. It is evident that frequent attendance offers the government a very propitious setting to promote its programs and explain its decisions, but it also exposes ministers to disagreements and setbacks. The most common is that the government delegates, in the parliamentarians of its party or coalition, the task of explaining the reasons for its action. Sometimes, it is the allies in congresses who show the greatest resistance to the participation of ministers in the debates, so as not to be displaced as government intermediaries before public opinion and other political forces.

In these circumstances, the constitutional provision serves as an enabling norm whose intensity of use may vary as recommended by each situation or according to the style of each government. From the point of view of classical theory, this possibility represents a more flexible and constructive way of seeing the separation of powers, since the specialization of functions does not translate into political distance.

In accordance with article 135.9 of the Colombian Constitution, which can be consulted in the fourth chapter of this work, the mere "disregard for the requirements and summons of Congress" is a cause for promoting the motion of censure. It is an extreme measure that underscores the growing importance of the presence of ministers in Congress.

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Although, as is examined in the corresponding chapter, in Colombia the motion of censure has been granted an excessive extension in this matter, regarding the summons made to the ministers to appear, it is reasonable that the Congress has the means of urgency that make your means of political control effective.

In other constitutional systems, such as Paraguayan or Peruvian, there is only a sanction when the appointment issued by Congress has the specific purpose of interpellating the minister. In this way, the concurrence before a first call could give rise to a second requirement, in this case accompanied by a means of urgency.

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Third chapter

CONFIDENCE VOTE

The US Constitution empowers Congress to ratify numerous appointments. With this precedent, the congressional ratification of some appointments made by the Executive became general in Latin American presidential systems. However, a distinction must be made between the ratification of the incumbents of certain positions, and the vote of confidence for the members of the cabinet.

Ratification is a decision by Congress to confirm a person in the exercise of a political, technical, judicial, command or representative function. This ratification is based, above all, on the verification that a minimum of professional and ethical requirements are met to carry out the position in question. Confidence, on the other hand, is only expressed in terms of ownership or the performance of political functions; it implies a responsibility for the recipient and generally involves congressional support for a program or set of government measures.

The expression of trust makes society see that between the organs of political power there are shared commitments that facilitate cooperation and, therefore, the adoption of state policies. This has an additional dimension when the state faces challenges, internal and external, that force it to make decisions whose magnitude demands the participation of all currents and trends. On these occasions, a vote of confidence is a manifestation of the unity of the state.

A common aspect of ratification and voting of confidence is that both forms of control are exercised at the initiative of the government. Unlike the motion of censure that, as will be seen, comes from within the Congress, the declaration of confidence corresponds to a petition directed by the government to Congress. In some cases, this request is mandatory, such as when the president presents his work plan to the representative body, the approval of which depends on the integration of the cabinet.

The vote of confidence is foreseen, for example, in the Constitutions of Peru and Uruguay in Latin America; from Belarus, Georgia, Russia, Tur-

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key[31] and Ukraine, in Europe, and from Armenia, Azerbaijan, Iran, Kazakhstan and Pakistan in Asia.

I. Haiti

> Article 158. The Prime Minister, in agreement with the President of the Republic, chooses the members of the ministerial cabinet and appears before Parliament to obtain a vote of confidence regarding the general policy statement. Voting takes place by public scrutiny and requires an absolute majority in each of both chambers. In the event that any of the chambers deny trust, the procedure must be restarted.

This precept contains two different hypotheses: on the one hand, it establishes that the ministers are appointed by agreement of the president and the prime minister; on the other, that the prime minister may request the confidence of the chambers only on the occasion of a general policy statement. The appropriate thing would have been that both provisions were part of separate precepts. According to the first part, the appointment of all the ministers, or any of them, does not imply that the confidence of the Congress is required. As regards the prime minister, he is appointed by the president from among the members of the majority party in Parliament; if no party has a majority, it must consult with the presidents of the Senate and the Chamber of Deputies (article 137). The prime minister and the other members of the government cannot hold a parliamentary mandate (article 164). In addition, the president can remove the prime minister freely (articles 137 and 137.1).

In the next chapter, relative to censorship, it will be seen that article 129.3 refers to “a vote of confidence or censorship”. The dilemma does not imply that both institutions exist, as the question of trust is always raised by the government or by some of its members and therefore cannot be promoted by those who challenge them. Everything indicates that when this reference is made to trust in the context of the censorship regulation, it is a repetitive expression, but not a double institutional option.

[31] In Turkey the president is elected by the Parliament (article 101); However, he has great influence in government decisions because he can freely veto those that he does not share and call legislative referendums (Article 104). This work includes the Turkish case, which from another perspective could be considered parliamentary, considering that it is in the borderline situation, similar to the cases examined in the sixth chapter.

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II. Peru

> Article 130. Within thirty days of taking office, the President of the Council attends Congress, in the company of the other ministers, to present and debate the general policy of the government and the main measures required by its management. He raises the question of trust.
>
> If Congress is not in session, the President of the Republic calls an extraordinary legislature.
>
> Article 132. Congress makes effective the political responsibility of the Council of Ministers, or of the ministers separately, by means of a vote of no confidence or the rejection of the question of confidence. The latter is only raised by ministerial initiative.
>
> ...
>
> The disapproval of a ministerial initiative does not oblige the minister to resign, unless he has made a question of confidence in the approval.
>
> Article 133. The President of the Council of Ministers may raise a question of trust before Congress on behalf of the Council. If trust is denied him, or if he is censured, or if he resigns or is removed by the President of the Republic, the total crisis of the cabinet occurs.

As can be seen, a first problem is that the Constitution sets a 30-day term for the President of the Council of Ministers to appear before Congress and raise the question of trust but leaves the time open for Congress to pronounce.[32] This imprecision generates insecurity in ministerial management, since it is not possible to foresee when the decision of Congress will take place. In general, deliberative bodies have a period to analyze and decide, and the legal relevance of parliamentary silence can even be established. As will be seen in the case of Uruguay, the deadline is 72 hours.

In other presidential systems, a reasonable limit is also set for Congress to decide. In Russia, for example, it is one week (article 111.3); in Egypt there is a reflection period of three days, at the end of which the corresponding decision must be taken (article 126); in Pakistan, the president appoints the prime minister from among the members of the National Assembly, which must pronounce on the same day the presidential proposal is presented to him (article 91). In semi-presidential systems, precise rules are also set. In Portugal, for example, the prime minister has ten days from his

[32] César Delgado has proposed that the ideal term would be 15 days. "La investidura: ¿confianza en la política del gobierno o en el presidente de la República?", in Landa, César and Faúndez, Julio, *Desafíos constitucionales contemporáneos*, Lima, Pontificia Universidad Católica del Perú, 1996, p. 103.

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nomination to present the government's program, and the National Assembly has three days to pronounce itself (article 192).

A government program is not submitted to Congress, but only the general policy and the "main measures" that will be adopted for its application. In any case, it allows Congress to know and rule on a government proposal that carries an implicit question of confidence. In the draft of the Constitution formulated by Congress in 2002, it was specified that the government should examine "the main political and legislative measures" required for the development of its program (article 182), thereby offering Congress the opportunity to assess their own participation in the actions of the national government.

According to article 133, the President of the Council of Ministers can raise a question of confidence, and the first and last paragraphs of article 132 provide for another hypothesis: that the ministers make a certain matter - including a bill - a question of confidence. On the other hand, ministerial initiative is exercised frequently, but it is the minister's discretion to make it a matter of trust. The refusal of confidence, which proceeds by a simple majority, causes the resignation of the cabinet or the minister, as the case may be.

In the Peruvian case, the singular phenomenon occurs that the vote of confidence appeared after the motion of censure, which has been in place since 1856, while confidence was introduced by the Constitution of 1933.

The conduct of political agents has been an essential factor for this type of institution to function. Domingo García Belaunde rightly warns that political parties bear a great responsibility for the success or failure of parliamentary controls.[33]

III. Uruguay

> Article 174.
>
> ...
>
> The President of the Republic may request an express vote of confidence from the General Assembly for the Council of Ministers. To this end, it will appear before the General Assembly, which will pronounce itself without debate, by the vote of the absolute majority of the total of its components

[33] From his point of view, "The great challenge facing the political parties and the Peruvian political class is to make the good performance that the Peruvian political system currently has - started some five years ago - work, be operational and above all that it is an effective instrument of government". See "Evolución y características del presidencialismo peruano", presentation presented at the Meeting of the Ibero-American Institute of Constitutional Law, "La democracia constitucional en América Latina y las evoluciones recientes del presidencialismo", Universidad Externado de Colombia, Bogotá, April 23-25, 2008.

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> and within a period of no more than seventy-two hours that will run from the receipt of the communication from the President of the Republic by the General Assembly. If it does not meet within the stipulated period or, meeting, no decision is made, it will be understood that the vote of confidence has been granted.

In this case, it is noted that the vote of confidence is not essential, and it is up to the president to request it. This vote does not give rise to a debate, and thirdly, once the 72-hour period has expired, if the Assembly has not spoken, its silence will be considered approving by the Council of Ministers.

From the Peruvian and Uruguayan constitutional experiences, the following conclusions can be drawn:

a) It is advisable to set a reasonable time to cast the vote of confidence. Between three and five calendar days may be adequate, to avoid tensions that harm political coexistence and to protect the different ministers from intrigues that affect the viability of the ratification of the cabinet as a whole;
b) it is convenient to establish the effects of congressional silence once the term established for voting has elapsed;
c) it is prudent to avoid a debate on minor government decisions, which can lead to peculiarities that distract the assembly and prevent it from analyzing issues related to general policy positions;
d) it is necessary to distinguish whether trust is placed in the chief of staff or in the group of ministers. The Peruvian scheme has reduced the political dimension of the President of the Council of Ministers, affecting the effectiveness of his performance. In the other cases in which the Constitutions establish similar figures (Argentina and Venezuela permanently, and Chile, Guatemala, and Nicaragua circumstantially),[34] the vote of confidence does not proceed.

In other constitutional systems there is a wide range of modalities regarding the question of trust.

IV. Angola

> Article 88. The National Assembly may:
>
> ...
>
> n) vote on motions of confidence or censure of the government.

[34] See Valadés, Diego, *El gobierno de gabinete*, Mexico, UNAM, 2004, esp. pp. 47 et seq.

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> Article 99.
>
> ...
>
> 3. The prime minister and the members of the government will attend the plenary sessions of the National Assembly when there is a debate on motions of confidence or censure in the government, or when the National Plan or the general budget of the State is discussed.
>
> Article 116.
>
> ...
>
> 5. The government may request a vote of confidence from the National Assembly, the approval of which will be required by the majority of the members present.
>
> Article 118. The following are causes for removal from the cabinet:
>
> ...
>
> g) Failure to obtain the vote of confidence requested by the government from the Assembly.

The doctrine agrees as to the presidential nature of the Angolan system. The president appoints the prime minister after listening to the parties that make up the National Assembly and removes him freely (article 66 a and c); his hierarchical position in the constitutional structure of power is explained in the fifth chapter, related to the dissolution of the Congress. On the other hand, although he must listen to the parties to appoint the prime minister, the other ministerial appointments are not subject to any approval process.

The question of confidence and the motion of censure have a collective effect; no individual cabinet member can be the subject of a parliamentary decision. This structure of political controls inhibits their frequent use, although it can help to attenuate the authoritarian notes of a concentrated presidential system, provided that other assumptions of democratic pluralism also exist.

V. Algeria

> Article 80. The head of government submits his program to the approval of the National People's Assembly, which discusses it in general terms.
>
> The head of government can adapt his program, in light of the debate that has taken place.
>
> The head of government presents to the Council of the Nation a communication on his program, and the Council can issue a resolution.

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> Article 81. In the event of disapproval of the government program by the National People's Congress, the head of government presents his government's decision to the President of the Republic, who appoints a new head of government in accordance with the provisions of the Constitution.
>
> Article 82. If the approval of the National People's Assembly is not obtained on a second occasion, the Assembly will be dissolved by right.
>
> The existing government will remain in office to handle ordinary affairs, until the election of a new National People's Assembly, which must be elected within a maximum of three months.
>
> Article 84. The government presents annually to the National People's Assembly a declaration of general policy.
>
> ...
>
> The head of government may request a vote of confidence from the National People's Congress. If the motion is not voted, the head of government will present the resignation of his government.
>
> In that case, the President of the Republic, before accepting the resignation, may make use of the provisions of article 129.

In Algeria, the President of the Republic, elected by universal suffrage, appoints and removes the head of government, and presides over the sessions of the Council of Ministers (article 77). At the proposal of the head of government, he appoints the other members of the cabinet (article 79). The Parliament is integrated by the Popular Assembly and by the Council of the Nation, the central authority in matters of control rests with the former. The Assembly does not express an investiture vote, but only approves or rejects the program or the general declaration proposed by the head of government who, on the other hand, is free to incorporate into the program the parliamentary observations that he deems appropriate, but if he does not persuade to the Assembly to support him, he must present his resignation. In this case the process is repeated under the leadership of a new prime minister, and if the result is the same, the dissolution of the Assembly occurs by operation of law. Note that the Constitution rewards the conciliatory effort of the ministry and Parliament and imposes on the president the obligation of new elections if a satisfactory solution is not reached. In the case of approval of the program, a simple majority of the deputies present is sufficient.

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VI. Armenia

Article 55. The President of the Republic:

...

4) In accordance with the distribution of seats in the National Assembly and the consultations held with the parliamentary fractions, he will appoint as prime minister the person who enjoys the confidence of the absolute majority of the deputies; If this proves impossible, the President of the Republic will designate as Prime Minister the person who has the confidence of the greatest number of deputies.

Article 75.

...

The government can present a question of confidence simultaneously with the approval of a bill. If, within twenty-four hours of the request for confidence, a minimum of one third of the total number of deputies does not promote a resolution proposal denying trust to the government, or if no resolution is produced by the majority of the total number of deputies, denying the confidence, within the period established in article 84, paragraph 3, the government's initiative will be considered adopted.

The government will not promote a vote of confidence associated with a bill on more than two occasions during the same session.

Article 90.

The government will present the draft budget to the National Assembly at least ninety days before the beginning of the fiscal year, and may request that it be voted on before the end of the term of the previous one, with the amendments that are adopted. The government can raise a question of confidence in relation to the budget. If the National Assembly does not deny the trust in accordance with the provisions of article 75 of the Constitution, the budget will be deemed approved. If the National Assembly denies confidence in the government regarding the budget, the new government will submit a bill to the Assembly within ten days after the approval of its program. This project must be discussed and voted on by the National Assembly within the next thirty days, in accordance with the procedure established by this article.

In Armenia there is an intermediate system that to a certain extent follows the French model. However, it confers important powers on the president, in relation to the government. For example, it is a unique case in which the president can promote a motion of censure (article 84.2), in addition to validating different government decisions, such as the removal of regional governors (article 88.1). The president can also convene and preside over

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the cabinet in cases related to foreign affairs, security, and defense, and even suspends acts of government or challenges them before the Constitutional Court (article 86).

Regarding the appointment of the prime minister, a double mechanism is envisaged: first, it is required that he have an absolute majority of the total number of members of the Assembly, but if this option is not feasible, then the president can designate who have a simple majority. This provision increases the influence of the president in relation to the government. The Constitution does not establish the term for the president to exercise this power, so it is left to political practices. Such flexibility is suggestive because it offers ample margins for negotiation. On the other hand, when considering the possibility of the president using a simple majority, an incentive is introduced for the Assembly to reach an agreement that allows it to appoint the prime minister. This has the advantage that the official thus appointed is in a reasonable position to advance a government program with sufficient parliamentary support.

Articles 75 and 90 put in the hands of the government a valuable instrument to pass bills. The link between a bill or budget and the question of trust can be a risky maneuver for a government, but it also gives it the possibility of operating successfully even when it is in the minority in the Assembly. For this reason, the precept itself limits the application of this mechanism, regarding the approval of laws, to a couple of occasions per session. In this way, the government is allowed to prioritize its legislative actions and avoid the risk of a systematic blockade by the Assembly. Thus, the great government proposals are not interrupted, and neither is the political function of the opposition, nor the political value of the agreements, sterilized.

VII. Azerbaijan

> Article 95. Of the competence of the *Milli Mejlis* [Parliament] of the Republic of Azerbaijan.
>
> The Milli Mejlis of the Republic of Azerbaijan is competent in the following matters:
>
> ...
>
> 9) Give consent to the nominated candidate for the post of Prime Minister of the Republic of Azerbaijan, at the proposal of the President of the Republic;
>
> ...
>
> 11) Appoint the Attorney General at the proposal of the President of the Republic, and authorize his removal at the request of the President;

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> ....
> 14) Give its confidence to the Cabinet of Ministers of the Republic of Azerbaijan;
> Article 118. Appointment of the Prime Minister of the Republic.
> The Prime Minister of the Republic of Azerbaijan will be appointed by the President of the Republic in coordination with the Milli Mejlis of the Republic.
> The president will discuss the candidacy for the post of prime minister no later than one month after he has assumed office, or two weeks after he has resigned from the cabinet of ministers of the Republic.
> The *Milli Mejlis* of the Republic shall give its consent to the candidate for the post of Prime Minister no later than one week after his candidacy has been submitted. If this deadline is not met, or consent is denied on three successive occasions, the President of the Republic may freely appoint the Prime Minister.

The Constitution facilitates the possibility of negotiating agreements with the political forces over the course of a month, which runs from the moment the president appoints the prime minister until the moment he submits his appointment to parliamentary confidence. The term is reduced to two weeks if it is a question of a prime minister who replaces another who has resigned, and in relation to the ministers the moment in which the appointment of him must be submitted to the parliamentary confidence is not specified. In turn, legislators have one week to cast their vote, and in the case of not doing so, parliamentary silence is considered to be effective and the president is free to retain the same prime minister, or to designate another, which would no longer have to be submitted to the investiture vote.

The final part of article 118 could involve a risk for Parliament and the President, if the power it confers is misused. It is established that when on three successive occasions trust is denied to as many proposals, the president is free to make the direct appointment of the prime minister. Apparently, this provision could induce the president to formulate three unviable proposals, to finally carry out the one that might interest him the most. The file, however, would not be functional, because the country would be without a head of cabinet for a prolonged period, and the president himself would be exposed as he did not have parliamentary support after three consecutive attempts. The constitutional mechanism, therefore, does not aim to encourage misconduct by the president or the Parliament, because the political costs for both organs of power may outweigh the advantages of repeatedly denying trust, and of using the freedom of appointment which results at the end of that process.

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VIII. Belarus

Article 84. The President of the Republic may:

...

6) Appoint the Prime Minister of the Republic of Belarus with the consent of the House of Representatives;

Article 106. The Executive Power in the Republic of Belarus will be exercised by the government; the Council of Ministers of the Republic will be the central organ of the administration of the State.

The government will report to the President of the Republic and will be accountable to Parliament.

The Prime Minister shall be appointed by the President of the Republic with the consent of the House of Representatives. The House will decide within two weeks to follow the nomination of the prime minister's candidacy. If the House rejects the proposed candidate on two successive occasions, the president will directly appoint an interim prime minister, dissolve the House and call new elections.

The prime minister will lead the activities of the government. For this purpose he must:

...

3) Submit the government program to Parliament, within two months of its appointment. In the event of being rejected, he must present a second program in the following two months.

The prime minister can ask the House of Representatives for a vote of confidence in relation to the government program or on some other matter that the House should know. If the House does not grant its confidence, the president may accept the resignation of the government or dissolve the House of Representatives, within the following ten days, and call new elections. If the resignation of the government is not accepted, he will continue in office.

The president is empowered to freely dismiss the government, or to remove any of its members.

The Belarusian Constitution empowers the president both to freely choose the candidate for prime minister that he proposes to Parliament, and to remove him at any time. As for the other members of the cabinet, the president has full freedom in the appointment and replacement of them. To avoid governmental paralysis, the representatives are obliged to confirm or deny the appointment over the two weeks following the nomination; in the case of a double rejection, the president, in addition to appointing an interim, must dissolve Parliament.

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In this way, the president has an important instrument of persuasion, since it is not often that parties are exposed to an election before a sitting president, who generally has an influential propaganda apparatus.

Likewise, the Constitution gives the prime minister a reasonable period of two months to present the government program; in case of rejection, he must formulate another over the following two-month period. Dissolution is not foreseen when the second program is not approved either unless it is linked to a request for trust.

It must be borne in mind, in this and in all cases in which a government program is presented, that congresses and parliaments cannot modify it. Their attribution consists of approving or not a project that the government formulates and submit to a vote. This allows the negotiation stage to be prior to the formal presentation of the program and ensures that the agreed terms are not modified as a result of the vote. The approval of government programs becomes a very useful mechanism to build consensus, regardless of the ministerial positions that the parties receive in the cabinet.

IX. Russian Federation

Article 111.

1. The President of the Government of the Russian Federation shall be appointed by the Head of State of the Federation, with the prior consent of the Duma.

2. Proposals on the candidacy for the Head of the Federal Government will be presented within two weeks, at the latest, after the inauguration of the elected president of the Federation or the resignation of the federal government, or within one week from the date of rejection of the candidacy for the post by the Duma.

3. The Duma will examine the candidacy for the Headquarters of the Executive presented by the President of the Federation for one week from the date of its presentation.

4. If the candidate for the Presidency of the Government of the Russian Federation is rejected three times by the Duma, the President of the Federation shall appoint the head of the federal government, dissolve the Duma and call new elections.

Article 117.

4. The Prime Minister of the Russian Federation may submit a motion of confidence to the government in the Duma. If the State Duma does not admit it, the president, within seven days, must order the resignation of the government or the dissolution of the State Duma and fix new elections.

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According to article 11 of the Constitution, "state power" is exercised by the president, the Federal Assembly —made up of the Federation Council and the State Duma—, the government of the Federation and the Court of the Federation. Article 80 indicates that the president is head of state, although in its third section it establishes that it corresponds to him to set "the essential guidelines of the internal and external policy of the country", for which he presides over the sessions of the federal government (article 83), and article 81 determines that the election of the president is by direct universal suffrage. Presidential powers include approving the structure and integration of the government (article 112), annulling cabinet decisions, if it considers that they contradict the Constitution, and issuing binding decrees for the government (articles 113 and 115). There is no doubt, therefore, that the president is in a situation of political and legal superiority in relation to the government. Although he is formally only head of state, the constitutional system itself confers on him powers of leadership over the government.

The Constitution took characteristic elements of the semi-presidential systems but conferred a clear preponderance to the president of the Federation. The investiture of the head of government depends on the parliamentary confidence, but not that of the rest of the cabinet; all, in turn, can be removed by the president (article 117.2). In addition, the president decides the request for a vote of confidence for the government, giving him powerful control over the ministry.

X. Georgia

> Article 80.
>
> 1. After the oath of the President, the previous government will resign before him. The President can postpone accepting the resignation and keep the government in office, until the appointment of a new one.
>
> 2. Within seven days of the resignation, resignation or removal of the government, the President of Georgia will consult with the different parliamentary factions to select a candidate for prime minister. Within three days after the conclusion of the consultations, the president shall submit the composition of the government to the confidence of Parliament.
>
> 3. Within the week following the presidential proposal to integrate the government, Parliament must vote on the confidence requested for the composition of the government and for the government program. Confidence must be granted by the majority of the total members of Parliament. The members of the government will be appointed within three days, from the vote of con-

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fidence. The Parliament may not grant the requested confidence or raise the question of disqualification with respect to any member of the government in particular. The challenged person may not be part of the government.

4. In the event that the composition of the government or the government program does not obtain the confidence of Parliament, the President of Georgia shall submit a new composition of the government to Parliament within one week.

5. In the event that the composition of the government or the government program does not obtain the confidence of Parliament for three successive times, the president may nominate a new candidate for prime minister within a period of five days, or appoint the prime minister without the consent of Parliament, and the Prime Minister will designate the members of the government with the approval of the President, within the next five days. In this case, the president will dissolve Parliament and call extraordinary elections.

Article 81.

...

4. The Prime Minister can raise a question of confidence in the government when he introduces the budget, the tax law or changes in the structure, competence or functions of the government. The Parliament will grant its confidence by the majority of the total of its members. In the event that Parliament does not declare confidence in the government, the president will remove the government or dissolve Parliament within the following week, and will call extraordinary elections.

5. Any vote of confidence must be carried out within a period of 15 days from his proposal. In the event that no vote is taken in that period, it will be understood that the trust has been granted.

6. An initiative of law declared relevant can be considered as a matter of confidence by the government.

Article 81 (1).

1. When confidence has been granted to the government and its program and there are changes in the composition of the government, of up to a third of its members and a minimum of five ministers, the President must submit the new composition to Parliament, to request your confidence, within the next week.

2. The declaration of confidence, in the case of the previous section, will follow the procedure established by article 80.

In 1991 Georgia adopted a strictly presidential constitution. The 1995 Constitution modified the structure of power and was oriented towards a strong parliamentarism of its form of government. Regarding the control instruments, the regulation of censorship and dissolution, as can be seen in

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the corresponding chapter, introduced novel modalities whose results have not been successful. Regarding trust, this is a complex rule. The tensions generated by the coexistence of a former autonomous Soviet republic, Abkhazia, a former autonomous region, Ossetia, and Georgia itself, were reflected in a constitution that has sought to regulate dissent without sponsoring consensus. The transcribed standards denote the extent to which the details related to trust were reached. Such an arrangement encourages permanent confrontation, with only three possible consequences: stagnation, because of mutual blockade; the surrender of the president and the advent of an assembly government, or the subordination of Parliament to a president who unscrupulously uses the instruments of political coercion. Either of these extremes is negative from the perspective of the constitutional state because it introduces distortions in the behavior of political agents and affects governance. Rules like these, of apparent rigor, often lead to the breakdown of institutional life.

XI. Iran

> Article 87.
>
> The President must obtain the vote of confidence of the Assembly for the Council of Ministers, as soon as he is integrated. During his term, he may also request a vote of confidence for the Council of Ministers in important and controversial cases.
>
> Article 133.
>
> The ministers will be appointed by the president and will appear before the Assembly to request his confidence. When changing the Assembly, another vote of confidence will not be necessary. The number of ministers and their powers will be set by law.
>
> Article 136.
>
> The President can remove the ministers and ask the Assembly to trust the new ministers. In the event that half of the members of the Council of Ministers change after the government has received the vote of confidence from the Assembly, the government must request a new vote of confidence.

The peculiarities of the Iranian constitutional system are discussed later in the chapter on censorship. Regarding trust, there is a procedure that encourages stability in relations between the political organs of power. The president retains, in all cases, the power to remove the ministers, but he must have the parliamentary confidence to integrate the Council of Ministers

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and to appoint those who will replace those who leave. If the change involves more than half of the ministers, a new vote of confidence is required for the group. This constitutional requirement acts in favor of the stability of the ministers, unless the president has slack in the number of votes required in Parliament. It should be noted that the president has the power to request a vote of confidence for the Council of Ministers in cases that are considered “important” or “controversial”.

Control standards should not lead to a deficit in the ability to govern a country; they should only help ensure that the exercise of power is not carried out in a cryptic and irresponsible way. From this point of view, the objective is reasonably posed in the Iranian case, regardless of the way in which the organs of power operate in practice, depending on the cultural and political environment.

XII. Kazakhstan

Article 44.

1. The President of the Republic of Kazakhstan shall:

...

3) Appoint the Prime Minister of the Republic with the consent of Parliament; remove him; determine the structure of the government of the Republic at the proposal of the prime minister; appoint and remove the members of the government, as well as form, suppress or reorganize the central areas of the Executive that are not part of the government; receive the oath of the members of the government; preside over government sessions when matters of special importance are discussed; entrust the government to present initiatives to the Majilis [assembly] of Parliament; revoke or suspend completely or partially the effects of governmental acts.

Article 53. Parliament, in a joint session of its two chambers, shall:

...

6) Receive the report of the prime minister about the government program and approve or reject it. A second rejection of the program adopted by a two-thirds majority of the total votes of each chamber implies that the government has not been trusted. If that majority does not meet, the government program will be deemed approved.

Article 67. The Prime Minister shall:

...

2) Within the first month of his appointment, present the government program to Parliament and, if rejected, present a new project within the following two months.

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The political strength of the Kazakh president is evident in the structure of the vote of confidence. However, through this institution some unique aspects are also introduced, which at least formally improve the conditions of parliamentary control. Parliament only decides on the appointment of the prime minister, and not the other members of the cabinet, but also approves or rejects the government program. In this case, in addition, the second rejection requires a majority of two thirds of the total votes, with which the government has ample room for maneuver.

XIII. Liberia

The Constitution of Liberia largely follows the American model; establishes that the president is head of state and government, elected by direct universal suffrage (article 50), and appoints ministers with the ratification of the Senate (article 54), but is free to remove them (article 56). The vice president, who is also elected, is a member of the cabinet and can assist the president in the tasks delegated to him (article 51). The only parliamentary instrument that appears in this Constitution is that related to the ratification of the ministers.

XIV. Turkey

> IV. Information and control media of the Grand National Assembly of Turkey
>
> ...
>
> B. Vote of confidence for the investiture.
>
> Article 110. The complete list of the Council of Ministers is submitted to the Grand National Assembly of Turkey. If the Great Assembly is in recess, it must be summoned to sessions.
>
> The program of the Council of Ministers will be read before the Grand Assembly by the prime minister or by another minister, at the latest within the week following the integration of the Council, and the confidence of the Assembly will be requested. Confidence discussions will take place after the reading of the program and after two days of recess; To proceed to the vote, a day of recess will be allowed to elapse, from the conclusion of the debates.
>
> C. Vote of confidence in the exercise of the function.
>
> Article 111. If the prime minister considers it necessary, and after having discussed it in the Council of Ministers, he can raise the question of trust before the Grand Assembly of the Nation of Turkey.

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> The examination of the question of confidence will be carried out after a day of recess of the Assembly, and can only be voted after another day of recess, from the end of the debate.
>
> The question of trust can only be denied by the absolute majority of the total members of the Assembly.

The double distinction of the vote of confidence, for the investiture and for the performance of the government, is common in almost all the systems that have incorporated this institution. In the case of Turkey, the corresponding regulation appears in two different precepts, which has advantages in terms of clarity.

Another relevant aspect is that trust is not requested for the prime minister but for the entire Council of Ministers. Whenever the program is accepted or rejected, the approval of the cabinet is implicit when the same happens with that program. This means that the Assembly cannot distinguish or discuss the Prime Minister or another member of the Council, individually. It seems an appropriate measure because there are no loopholes to generate instability. If the composition of the government and its corresponding program offer aspects that in a dominant way inspire confidence in legislators, even if they have isolated questions regarding people or points included or omitted in the program, the natural thing will be that they give their vote in favor of conferring the trust, or at least they do not issue it against. This offers the prime minister an ample space to negotiate people and content, and thus compose the necessary support to govern.

XV. Turkmenistan

> Article 67. It corresponds to Parliament:
>
> ...
>
> 4) Approve the action plans of the Cabinet of Ministers and adopt censure motions for that Cabinet.

This is the simplest possible expression of trust: it does not involve cabinet members or involve their removal if the program is not worthy of approval. Nor is it provided, casuistically, what happens when the program is not approved in a successive series of votes. This system has the advantage that it leaves aspects that are integrated with parliamentary practice unregulated. The open texture of some institutions, such as trust, allows gradual adjustments to be made to what is most convenient for each system.

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Of course, it also has some disadvantages, above all because it leads to the interpreter introducing biases that favor the president or Parliament, to the detriment of a relationship as symmetrical as possible. Norms of this court are functional when they rule in a context of high political culture, where the conduct of political agents is subject to scrutiny and evaluation by an experienced citizenry. The issue of censorship is discussed in the next chapter.

XVI. Ukraine

> Article 85. The authority of the Verkhovna Rada [Assembly] of Ukraine includes:
>
> ...
>
> 11) Know and approve the program of activities of the Cabinet of Ministers of Ukraine;

In the case of Ukraine, as in the previous one, of Turkmenistan, trust for the investiture is not foreseen. Likewise, in both constitutional systems censorship is contemplated, as will be analyzed in the fourth chapter.

***

In a constitutional state, the institutions that regulate dissent and sponsor consensus are indispensable. Among the former are electoral norms, as regards contests for power, and mechanisms of political control, as regards discrepancies in power. The second, concerned with cooperation, are rarer, and therefore have a special relevance.

Among the institutions studied in this work, censorship and parliamentary dissolution are directly related to political responsibility; they are, therefore, part of the rules of dissent. On the other hand, the participation of the ministers in the rostrum and, above all, do, trust, are institutions that contribute to cooperation between political agents. Questions and interpellations are located in an intermediate territory, which can serve the same purpose of finding points of convergence, as well as those of identifying objectionable weaknesses. The possibility of questioning and challenging the members of a cabinet opens the space to various unknowns. If the exchange results in points of contact between the government and Congress, the opportunities to cooperate multiply; otherwise, obviously, they are reduced. In any case, questions and interpellations serve, as will be seen, to build solid

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cabinets, due to the deliberative capacity and the suasoria aptitude of its members. It often happens that from close and systematic communication between the holders of the organs of power, agreements emerge that, without this proximity, would be more difficult to forge.

When a body of political representation, such as a Congress, expresses its support for a government program, a political decision, a person or a group of people, its position is constructive; it is making common cause with the government and, to that extent, it contributes to governance. Trust allows political forces of different orientations to share objectives. When expressions of trust are produced in a context of plurality, they acquire the meaning of institutional cooperation and radiate to the community the conviction that leaders know how to distinguish between the freedom to fight for power and the responsibility to exercise it.

If the cooperation institutions are well built and operate in an environment of political equilibrium, they facilitate the adoption of programs and public policies that contribute to the general well-being, they allow to reasonably meet the demands that the citizenship poses to the bodies of power and limits, as much as possible, distortions of corruption and abuses of power. Hence the importance of this institution, which is generally seen only as one more form of control.

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Forth chapter

QUESTIONS, INTERPELLATION AND MOTION OF CENSORSHIP

Parliamentary questions are the most popular means of control. Through them, information is requested from the government. Its harmlessness is apparent, because the veracity and timeliness of the responses are a factor that opens cooperative behavior between the organs of power. A well-articulated reply allows the government agent to influence the mood of his interlocutors and transcend public opinion. The content of the question also qualifies the questioner and reveals their general level of information and acuity. In other words, in congresses where there are question periods, there is a tendency to generate favorable environments for collaboration between the organs of power.

Interpellation is a form of controversy about a government decision. Based on the clarifications made by the ministers, a debate is opened from which the proposal for a motion of censure can be deduced. This figure resulted from the political responsibility of the ministers that characterized the French parliamentary system established by the Constitution of 1830 (article 12), but the Constitutions of the III and IV republics gave rise to numerous excesses that affected the stability of the governments of France, which is why in 1958 the Constitution outlawed interpellations, although the motion of censure persisted (article 50).

In various constitutional systems, the motion of censure has a double dimension: it can result in the disapproval of a minister or the entire cabinet. Furthermore, in parliamentary systems, censorship causes the fall of the government, while in presidential systems it may or may not involve the removal of censored ministers.

The motion of no confidence is the institution of parliamentary origin that has the greatest presence in Latin American presidential systems. Eleven constitutions[35] have adopted it, with the variants that will be exposed in this section. On the other hand, interpellation without the possibility of

[35] Argentina, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Panama, Paraguay, Peru, Uruguay and Venezuela.

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censorship is found in four constitutions.[36] Until 2008, only in two other countries, Bolivia and Chile,[37] there were no forms of political responsibility that could be demanded of the cabinet. However, the Bolivian project for a new constitution, in the process of approval, also includes the issue. As for African, European, and Asian countries, the motion applies, for example, in Armenia, Angola, Georgia, Iran, Kazakhstan, Mozambique, Russia, Syria, Turkey, Turkmenistan, Ukraine and in almost all Francophone countries.

I. Argentina

> Article 101. The Chief of the Ministerial Cabinet must attend Congress at least once a month, alternately to each of its chambers, to report on the progress of the government, without prejudice to the provisions of Section 71. He may be questioned at the effects of the treatment of a motion of censure, by the vote of the absolute majority of the totality of the members of any of the chambers and be removed by the vote of the absolute majority of the members of each of the chambers.

The 1994 reform introduced the interpellation and the motion of censure as instruments of congressional control but surrounded them with such precautions that they have made them inapplicable. As noted in the text, only the chief of staff can be held accountable, not the other ministers. This is a very sensitive limitation. In addition, the interpellation is difficult due to the high number of legislators who must promote it: the absolute majority of the totality of the respective members of the chamber where it is presented; to pass censorship requires an analogous majority in both chambers. It is understandable to protect ministers, but not to the extreme of making an institution of control such as interpellation null and void. When reserva-

[36] Honduras, Mexico, Nicaragua and the Dominican Republic. In 2008, Presidents Daniel Ortega, from Nicaragua, and Leonel Fernández, from the Dominican Republic, announced the imminent reform of the respective constitutions. Judging by the contributions of the corresponding consultations, it is foreseeable that in both cases new forms of political responsibility of the cabinet and of parliamentary political control will develop. Edwin Castro, a university professor, and Nicaraguan political leader has proposed substantial changes whose adoption would imply a very deep process of parliamentarization of the presidential system. It includes the figure of the prime minister, as head of the government, the motion of no confidence and the parliamentary dissolution. *Cf.* Parlamentarización del sistema político nicaragüense, Managua (in press).

[37] In the case of the Chilean Constitution, article 52 refers to the political responsibility of ministers, although it does not specify the procedure to make it effective.

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tions of this magnitude are adopted, the instruments are distorted because they only fulfill a declarative function.

II. Bolivia

When preparing this edition, in Bolivia the possibility of adopting a new constitution remained latent. The project was approved by the Constituent Assembly in November 2007, but a month later it was modified. On the president's recall referendum, held in August 2008, the Bolivian head of state and government announced that he would summon the citizens to express his opinion of him on the project. This document presents several vulnerable aspects: it was approved by an assembly dominated by the president's party; it admits successive presidential remission and maintains an extreme concentration of power. Regarding the subject of this study, it admits interpellation and censorship, in these terms:

> Article 159.
> I. The powers of the Plurinational Legislative Assembly, in addition to those determined [n] by this Constitution and the law:
> ...
> 18. Interpellate, at the initiative of any assembly member, the ministers of State, individually or collectively, and agree to censure by two thirds of the members of the Assembly. The interpellation may be promoted by any of the chambers. Censorship will imply the removal of the minister or minister.

As can be seen, the wording of the text coincides with the improper technique of the Venezuelan and Ecuadorian Constitutions, which embrace an alleged gender language. As regards the structure of the precept, there is a carelessness like that of its wording. The original version, dated November, only foresaw the existence of a camera, however, the aforementioned precept referred to "any of the cameras". The project was reviewed in December 2007, and as a result of it, several precepts were modified, including 148, which went to 146 and adopted the bicameral system, so that next to the Chamber of Deputies there is another of departmental representatives. In this way, an attempt is made to attenuate the secessionist tendency posed by some departments. The Departmental Chamber would be made up of 36 members, and the Chamber of Deputies 121. Regardless of the problem that the different configuration of the forces in each of the chambers might generate, the fundamental question would consist in the application of a system very ambiguous. As can be seen, the censure corresponds to the As-

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sembly, but both chambers have powers to promote the interpellation that can culminate in censorship. For it to be approved, two-thirds of the total members of the Assembly are needed, but the majority required for each chamber to carry out the censorship process before the full Assembly, nor the frequency of its possible interposition. With this institutional configuration, instead of a system of political responsibilities of the ministers before the representative body, the possibility of a permanent challenge is favored that can lead to a paralysis of the government, or a frontal confrontation between the government and the Congress.

III. Colombia

> Article 135.9. Propose a motion of censure with respect to the ministers for matters related to the functions of the position. The motion of censure, if applicable, must be proposed by at least one tenth of the members that make up the respective chamber. The vote will take place between the third and the tenth day following the end of the debate, in full Congress, with an audience of the respective ministers. Its approval will require an absolute majority of the members of each chamber. Once approved, the minister will be removed from his post. If it is rejected, another on the same matter may not be presented unless motivated by new facts (original text).

The original text of the 1991 Colombian Constitution introduced a reasonable mechanism due to its flexibility, which allows any of the ministers to be censured. The motion could be presented in each chamber by one-tenth of its total members and, according to the 1991 text, an absolute majority in both chambers was required to succeed. It is important that the right to a hearing is granted to ministers; however, to avoid that it is resolved in an untimely manner, or that the management of the ministry is paralyzed for an excessive time, it is established that it will not be possible to vote before three or after ten days counted from the date of the vote. closed the debate. This period allows to calm the spirits and opens a stage of reflection, while reducing the period of uncertainty as to the fate of the minister.

Even when the possibility of a new motion is conditioned to the emergence of facts other than those that motivated the previous motion, no temporary restrictions are adopted, so that, at least in theory, it is possible to present as many motions as there are facts. liable to be challenged, consider the legislators throughout each year. In this case, it is left to the discretion of legislators to assess the political costs for them to insist on the removal of a minister beyond what may be considered prudent by public opinion.

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In 2007, the Constitution[38] was modified to extend the effects of censorship to all levels of government, including departmental and municipal. In addition, major changes were introduced in the national government. The reformed precept was in these terms:

> Article 135.9. To propose a motion of censure with respect to the ministers, superintendents and directors of administrative departments for matters related to the functions of the position, or for disregarding the requirements and subpoenas of the Congress of the Republic. The motion of censure, if applicable, must be proposed by at least one tenth of the members that make up the respective chamber. The vote will take place between the third and the tenth day following the end of the debate, with a public hearing of the respective official. Its approval will require the affirmative vote of half plus one of the members of the chamber that has proposed it. Once approved, the official will be separated from his position. If it is rejected, another on the same matter may not be presented unless motivated by new facts. The resignation of the official with respect to whom a motion of censure has been promoted does not prevent it from being approved in accordance with the provisions of this article. When one chamber pronounced on the motion of censure, his decision inhibits the other from making a pronouncement on it.

As can be seen, in addition to the ministers, the superintendents and directors of administrative departments were incorporated.[39] This tendency to provide for censorship for holders of administrative positions, which is also observed in other constitutional systems, is exclusive to presidential systems. Parliamentary systems only provide for censorship as an instrument of political responsibility, therefore applicable to ministers, not to those who carry out tasks of a strictly administrative nature. In Colombia the sense of censorship is distorted, because although the organs of political representation must have the means to assess the political performance of the government, it is exorbitant that they extend their powers of control to the management of strict administrative content. Administrative entities are subject to the political leadership of a ministry and to this extent political corrections should only be applicable to the head of the ministry.

The political responsibility of administrative bodies, which tends to generalize, lacks a theoretical foundation, and can lead to misunderstandings, because it diverts the attention that should fall on the ministries, encourages the multiplication of controllable entities, thereby reducing the ability of

[38] Legislative act number 1, of 2007; came into force on the 1st. January 2008.

[39] The superintendencies are auxiliary bodies of the president or the ministries, in the terms of the laws of their creation (article 150.7).

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Congress to concentrate in a few ministries and hinders the possibilities of holding periodic control sessions in relation to the cabinet. In addition, it allows ministers to find a point of escape to avoid their responsibilities.

Another aspect of the Colombian reform that draws attention is that censorship is a power that each chamber exercises autonomously. This mechanism raises delicate problems, which can lead to a confrontation between the two houses of Congress. The Senate has 102 members, of which two are elected by indigenous communities, and the other 100 are elected by a single national constituency; instead, the representatives are elected in 32 departmental districts and the capital of the country. This results in the composition, in terms of political parties, presenting differences. While censorship can be initiated and adopted in any of the chambers separately, the system in force as of 2008 may generate unforeseen tensions between both branches of Congress.

IV. Costa Rica

> Article 121.24. Make interpellations to the government ministers, and also, by two thirds of the votes present, censure the same officials, when in the opinion of the Assembly they are guilty of unconstitutional or illegal acts, or of serious errors that have caused or may cause obvious damage to public interests.

In both cases, diplomatic matters in process or that refer to pending military operations are excepted.

In this case, no limits are established regarding the number of legislators who can present interpellations or a motion of censure. For the motion to be approved, a qualified vote of two thirds of the votes present is required, not of the total of the members of the Assembly. As for the causes that can generate a motion, there are two aspects: the violation of constitutional or legal norms, or the commission of errors that have a double characteristic: their seriousness and the affectation of public interests. In this case, it may be actual or potential damage. The exception is made for issues that may be considered national security. The text leaves open the opportunity for the subjective assessment of the facts that may be considered as an error that harms —or could do so— the public interest. The very notion of public interest is so broad that it also contributes to considerably extend the interpretive discretion of legislators.[40]

[40] This issue is examined in greater detail when analyzing the motion of censure in Panama.

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V. Ecuador

> Article 133. The National Assembly may proceed to impeachment, at the request of at least a quarter of its members and for breach of the functions assigned to them by the Constitution and the law, of the President or President of the Republic, of the Vice President or Vice-President of the Republic, of the ministers or ministers of State, or of the highest representatives of the State Attorney General's Office, the General State Comptroller's Office, the State Attorney General's Office, the Ombudsman's Office, the General Public Defender's Office , of the superintendencies, and of the members of the National Electoral Council and of the members of the Contentious Electoral Tribunal and of the Council of the Judiciary and of the other authorities that the Constitution determines, during the exercise of their position and up to one year after finished.
>
> To proceed with their censorship and dismissal, the favorable vote of the absolute majority of the members of the National Assembly will be required, with the exception of the members of the Electoral Function, in which case two-thirds will be required.
>
> The censorship will produce the immediate dismissal of the servant or servant, except in the case of the ministers or ministers of State, whose permanence in office will be the responsibility of the president or the president of the Republic to decide.
>
> If indications of criminal responsibility are derived from the reasons for censorship, the matter will be brought to the attention of the competent judge.

In the Ecuadorian Constitution of 2008, as in the previous one, of 1998, two different institutions appear in the same text: political prosecution, related to the alleged commission of crimes by senior officials, including the president, and enforceable political responsibility through the motion of censure. This last case is regulated in the third and fourth paragraphs of the transcribed precept. Censorship is not a new figure in Ecuador, where it has existed since its 1906 Constitution (article 34), so this heterodox combination of elements is striking, which was not corrected in the most recent constitution. Ministers can be censored by the majority of the total members of Congress, but that decision has no binding effect and it is the president who decides whether he keeps the minister in his cabinet. Also, there is a contradiction, because the precept establishes that the ministers are only subject to the motion if they incur in violations of the constitutional or legal order, so it is not explainable that in such circumstances the president sustains them in their positions. It is noted that, due to technical oversight, the

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legislator confused the figures of criminal and administrative responsibility with political responsibility.

According to the system adopted in 1906, preserved in 1945, the censored ministers ceased their functions and were disqualified from occupying another portfolio for the following two years (article 92, reproduced in article 77 of the 1945 Constitution). In this way, it was avoided what in other systems sometimes happens when censorship flourishes: that the official ceases in one ministry but immediately goes on to perform another. This also happens in parliamentary systems, where rotation of ministers is common.

The system introduced in 2008 reiterates the technical errors of the standard that preceded it and incurs others. In addition to the equivocal wording that results from including gender distinctions (and that does not prevent them from making mistakes such as referring to "the" members of Congress, instead of "the" members, or "the other officials", in instead of "the other civil servants and officials", which demonstrates the uselessness and practical impossibility of using such wording), several problems of legislative technique are identifiable. When prosecuting the President of the Republic, for failing to comply with the "functions assigned to him by law," it confers on violations of ordinary legislation the same effect as when those violations are of a constitutional nature. It is also striking that an absolute majority is required to prosecute the president, while a qualified majority of two-thirds of the members of the Assembly is necessary to censor the members of the electoral body. The political responsibility of ministers is reiterated in article 153, although in a very vague way.

The control system implemented by the 2008 Constitution is contradictory and may have negative effects on the relationship between the institutions. Article 131 regulates impeachment and 132 the removal of the president. In the first case, it indicates that it is possible to "censor" the president, without considering that this official holds a popularly elected position. On the other hand, the first two grounds for prosecuting and dismissing, in accordance with each of these precepts, are the same: "crimes against the security of the State" (articles 131.1 and 132.1), and "crimes of concussion, bribery, embezzlement and illicit enrichment" (articles 131.2 and 132.2). This problem exhibits haste or carelessness in the drafting of the precepts, especially since it is only possible to process the dismissal on a single occasion, and during the first three years of a legislative period, while the trial has no limitation as to the moment or to the number of times he can be promoted. This disfigurement of parliamentary controls is contrary to their meaning and to the real possibilities of being used in a responsible way.

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The extreme of the ineffectiveness of parliamentary controls in the Ecuadorian system is presented in articles 132.4 and 150. According to the first precept, the Assembly can dismiss the president "due to a serious economic crisis and internal commotion", and according to the second the President can dissolve the Assembly "due to serious political crisis and internal commotion." In other words, the same causes that allow the Assembly to remove the president, empower the president to dissolve the body of representatives. Everything will depend on who acts first.

VI. El Salvador

> Article 131.34. Interpellate the Ministers or those in charge of the office and the presidents of autonomous official institutions.
>
> Article 131.37. Recommend to the Presidency of the Republic the removal of the Ministers of State; or to the corresponding bodies, that of officials of autonomous official institutions, when it deems it appropriate, as a result of the investigation of their special commissions or of the interpellation, as the case may be. The resolution of the Assembly will be binding when it refers to the heads of public security or intelligence of the State because of serious violations of human rights.

> Article 165. The Ministers or those in charge of the office and presidents of autonomous official institutions must attend the Legislative Assembly to answer the interpellations made to them.
>
> Officials called for interpellation who without just cause refuse to attend, will be, for the same fact, deposed from their positions.

The supreme Salvadoran norm extends political responsibility to the heads of the autonomous constitutional bodies; in this way, all senior officials are subject to the political control of the Assembly. This is a seemingly healthy measure, but one that makes the mistake of attributing political responsibility to the heads of organizations that, at least in theory, should be in charge of technical functions (such as central banks, universities or electoral institutes) or that correspond to judgments of opinion (such as the offices in charge of the protection of human rights). By subjecting such officials to a motion of censure, political evaluation criteria are applied to the activities that were entrusted to autonomous bodies to remove them from political traffic. Censorship, as an instrument of control, is explained in the case of governments, but not in that of bodies of constitutional relevance unrelated to political decisions.

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There is also a design error in giving more force to the interpellations than to the censorship itself. The official who does not appear, being required to attend an interpellation, is removed from his position, which does not happen when he is subject to censorship, because this only has the value of a recommendation. Only a couple of exceptions are made, in the case of security or intelligence officials who violate human rights, but the same criterion is not adopted in relation to heads of other areas of government who have also violated those rights. Another striking aspect is that the majority necessary for the censorship to be adopted is not determined, so the rule of general procedure applies: a simple majority of those present.

VII. Guatemala

> Article 166. Interpellations to Ministers. The Ministers of State have the obligation to appear before Congress, to answer the interpellations that are formulated to them by one or more deputies. Those that refer to diplomatic affairs or pending military operations are excepted.
>
> Basic questions must be communicated to the minister or ministers questioned, forty-eight hours in advance. Neither the full Congress, nor any authority, may limit the deputies to Congress the right to interpellate, qualify the questions or restrict them.
>
> Any deputy may ask the additional questions that he deems pertinent related to the matter or matters that motivate the interpellation and from this may be derived the proposal of a vote of lack of confidence that must be requested by at least four deputies, and processed without delay, in the same session or in one of the two immediately following.

> Article 167. Effects of the interpellation. When the interpellation of a Minister is raised, he may not be absent from the country, nor excuse himself from responding in any way.
>
> If a vote of lack of confidence is cast in a minister, approved by no less than an absolute majority of the total number of deputies to Congress, the minister shall immediately submit his resignation. The President of the Republic may accept it, but if he considers in the Council of Ministers that the act or acts reprehensible to the minister are in accordance with national convenience and government policy, the respondent may appeal to Congress within eight days from of the date of the vote of lack of confidence. If he does not do so, he will be held separately from his position and unable to exercise the position of Minister of State for a period of not less than six months.
>
> If the affected Minister has appealed to Congress, after hearing the explanations presented and discussing the matter and extending the interpellation,

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> a vote will be taken on the ratification of the lack of confidence, the approval of which will require the affirmative vote of two thirds parts that make up the total number of deputies to Congress. If the vote of lack of confidence is ratified, the minister will be removed from office immediately.
>
> In the same way, it will proceed when the vote of lack of confidence is cast against several ministers and the number cannot exceed four in each case.

The Guatemalan Constitution confers great power on the deputies, since any of them can present an interpellation, and to transform it into a motion of censure, the request of four deputies is sufficient. This mechanism has advantages in terms of the freedom of legislators, but it also produces a paradoxical effect, because it considerably reduces the political importance of the interpellation and the motion. While the challenging action can be carried out by a single person, or by a small nucleus in the case of the motion, the parties with the greatest political weight may be left out of the political action undertaken by some legislators. In addition, this ease conferred on legislators encourages attitudes of personal exhibitionism, which wear down the instrument of control. There is an incentive to question that goes beyond what is reasonable, if the minister remains rooted in the country. This measure, on the other hand, can be extended simultaneously to four members of the cabinet, which implies that the other ministers are protected against any interpellation or censorship until the issues in process have been resolved.

The Constitution also includes a kind of veto on the motion of censure because it allows the censured minister, with the support of the presidency and the Council of Ministers, to promote the reconsideration of his case before Congress. Only if this body ratifies the decision by two thirds of the total of its members, the censorship is binding. The text is baroque, because although it provides that censorship can be adopted by the absolute majority of the deputies, its effects are achieved until it is ratified by the aforementioned special majority. The minister is obliged to appeal, because if he does not do so, he will be separated from office and disqualified for six months; otherwise, even if the decision against him was ratified, he would be separated but the disqualification would not be applicable. Regarding the exceptions for the origin of the interpellation, two cases are foreseen: diplomatic affairs and pending military operations. Pending should be understood as those that are in progress, not those that are in preparation.

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VIII. Haiti

> Article 129.2. All members of both chambers are recognized the right to question and question a member of the government or the government as a whole about acts of the administration.
>
> Article 129.3. The interpellation must be promoted by five members of any of the chambers. The interpellation can lead to a vote of confidence or censure, adopted by the majority of the corresponding chamber.
>
> Article 129.4. When there is a motion of no confidence related to the government program or a general policy statement of the government, the prime minister must present to the president of the Republic the resignation of the government.
>
> Article 129.5. The president must accept the resignation and appoint a new prime minister, in accordance with the provisions of the Constitution.
>
> Article 129.6. The legislative body cannot adopt more than one motion of no confidence per year on a matter related to the government program or a general policy statement of the government.

Articles 133 and 155 of the Constitution could give rise to some misunderstanding, because they establish that the Executive Power is exercised by the president, whom he identifies as the head of state, and by the government, headed by a prime minister. However, when referring to states of exception, in articles 105, 106, and the inability to exercise the Presidency, in 148, the reference to the president, as head of the Executive Power, is direct and clear. On the other hand, the president heads the Council of Ministers (articles 154 and 166). There is no doubt, therefore, that there is a presidential system in Haiti.

As was already clarified in the third chapter, regarding trust, the inclusion of this expression in article 129.3 only has a reiterative function of the power of the representatives in terms of censuring the ministers, and serves to underline the different effects of censorship: if it is directed at one or more members of the government, it affects them individually; On the other hand, if it is raised in relation to the government program or a general policy statement, it results in the removal of the entire cabinet, including the prime minister. As for the limitation imposed by article 129.6, it is applicable to government censorship, but not to that involving any of its members.

IX. Honduras

> Article 205.22. Interpellate the secretaries of State and other officials of the central government, decentralized organizations, state companies and any

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> other entity in which the State has an interest, on matters related to public administration.
>
> Article 251. The National Congress may call the secretaries of State and they must answer the questions that are made to them on matters relating to public administration.

The Honduran Constitution contains an obligation for officials but does not foresee any sanction if it is not complied with. This norm did not appear in the original text of 1982, and with its inclusion nothing changed, except adding an attribution to Congress that becomes an instrument of control in a germinal state. At least the step has been taken of incorporating an institution that seemed incompatible with conventional presidential systems and that will facilitate, at some point, the development of true mechanisms of political control in Honduras.

X. Mexico

> Article 69. At the opening of ordinary sessions of the first period of each year that Congress is in office, the President of the Republic will present a written report stating the general state of the country's public administration. At the opening of the extraordinary sessions of the Congress of the Union or of only one of its Chambers, the president of the Permanent Commission will inform about the motives or reasons that originated the call.

Each of the chambers will analyze the report and may request the President of the Republic to expand the information by means of a written question and summon the Secretaries of State, the Attorney General of the Republic and the directors of the parastatal entities, who will appear, and they will report under protest of telling the truth. The Law of Congress and its regulations shall regulate the exercise of this power.

> Article 93. The secretaries of the office, after the period of ordinary sessions is open, will report to the State Congress that they keep their respective branches.
>
> Any of the chambers may summon the secretaries of State, the attorney general of the Republic, the directors and administrators of the parastatal entities, as well as the heads of the autonomous bodies, to report under protest of telling the truth when it is discussed a law or study a business concerning their respective branches or activities or to respond to inquiries or questions.

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> The chambers may request information or documentation from the heads of the agencies and entities of the federal government by means of a written question, which must be answered within a term not exceeding 15 calendar days from its receipt.
>
> The exercise of these powers will be carried out in accordance with the Law of Congress and its regulations.

The Mexican Constitution was amended in 2008, to include two modalities of parliamentary controls: the question and the interpellation. In both cases the versatility of these instruments is shown because the Mexican version contains innovative aspects.

Regarding the question, in addition to the usual forecast of being able to formulate it to the members of the presidential cabinet, it is provided that it can also be addressed to the President of the Republic. The uniqueness of this parliamentary question is that it can only be asked on the occasion of the report that the president must present each year. For the first time in the constitutional history of Mexico, the president is relieved of reading his report before Congress; At this point, the French constitutional design is followed, although a reform introduced to the French Constitution, almost simultaneous to the Mexican one, in turn reverses the constitutional tradition of that country and allows the president of France to appear each year before the parliament to report on the results of its management.

The novel modality developed in Mexico allows legislators to formulate questions in writing. Congress itself will set the quota of questions and, most importantly, the effects attributed to the answers. The constitutional text confers the right to ask the president to each of the chambers, not to its members in particular. This means that the proposals must be approved by the respective plenary sessions, reflecting a concern shared by the whole or at least by most of the representatives, and not by a legislator or by a party. In these terms, each question has considerable political force, because it reflects an institutional concern of each chamber.

The internal provisions of both chambers have also established that the respective plenary sessions will express their satisfaction or dissatisfaction with the presidential responses. The Constitution did not set any deadline for the president to answer, which opens the opportunity for the chambers to send him an excitatory response, which does not have the character of a sanction but of a public requirement.

As for the secretaries and other senior officials referred to in articles 69 and 93, the question system is twofold: in the terms of article 93, the question comes in writing, formulated, as in the case of the president, in terms

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collectives by each of the chambers; But since the presence before the cameras of these same officials is also foreseen, it is implicit that in this case the questions and interpellations are verbal and reflect the concerns of the legislator or the party that formulates them.

Another relevant aspect is that, except for the president, the answers of the other officials are given under promise to tell the truth. Although there is no express provision for any type of motion to be derived from the interpellations, it is inferred if any alteration of the truth is incurred.

It will be the regulatory provisions and practice that will define the scope of the amended provisions that, unlike other constitutional amendments, have tended to be developed very carefully. On this occasion, the traditional casuistry of the technique of constitutional reform in Mexico was abandoned, leaving the experience to complement its objectives.

By pointing out that officials must speak truthfully, several hypotheses can be considered. For example, if a fact is referred to, but incompletely, it would be missing the principle of completeness of the truth and could incur an omission in violation of the constitutional obligation set forth in articles 69 and 93. Say a part of the truth, it can imply a relevant concealment. The truth must be complete, not partial; a partial truth can imply a total distortion.

The legal consequence of being untrue may not be the removal of the official, because it is not provided for in the norm, but this does not limit the power of each chamber to make the fact known to the President of the Republic and to the citizens, and in the event of the breach of a constitutional obligation by an official, he could even express an estrangement, leaving the president the decision to keep him or not in his position. Each president will assess the magnitude of the fault and will decide on the advantages or disadvantages of having collaborators who hide or distort the truth.

There is another aspect that only constitutional practice will elucidate. The wording of articles 69 and 93 oblige to tell the truth when officials render reports, but a restrictive interpretation of the last part of article 93 could lead to the understanding that the scope of this obligation does not apply when the involved public servants respond to questions or interpellations. Although the wording of the precept offers this possible reading, it would be highly controversial if the officials in question relied on a subterfuge that gave them the right to lie. In other words, if it were considered that the duty to pronounce truthfully was only applicable to the information, but not to the answers, the decision to deceive Congress would be admitted. It is evident that such a deviation cannot be admitted in a constitutional state.

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XI. Nicaragua

> Article 151.
>
> ...
>
> The Ministers and Vice Ministers of State and the presidents or directors of autonomous or governmental entities, will provide the National Assembly with the information that is requested regarding the businesses of their respective branches, either in written or verbal form. They can also be questioned by resolution of the National Assembly.
>
> The comment made to the text of the Honduran Constitution is applicable to the Nicaraguan case. The original 1987 text did not contain this last paragraph of Article 151 either. However, the Nicaraguan Constitution was added in 2005, in these terms:
>
> Article 138.
>
> ...
>
> If the National Assembly considers the official unfit for the exercise of the position, with a qualified vote of sixty percent of the deputies, it will dismiss him, and will inform the President of the Republic so that within a period of three days he can make this decision effective.

It is a case of binding censorship; however, the resistance that emerged immediately led to the taking of the political agreement to subject its validity to "that a consensus be reached between the main political actors in the country: the two majority parliamentary groups and the government of the Republic". Later, the term was extended again and through Law 610, of 2007, it was determined that the precept would enter into force on January 20, 2008. Days before the term expired, the Supreme Court of Justice declared the postponement unconstitutional and decreed the immediate validity of the precept.[41]

XII. Panama

> Article 155.7. Giving votes of no confidence against the Ministers of State when they, in the opinion of the Legislative Assembly, are responsible for acts of attack or illegal, or for serious errors that have caused damage to the interests of the State. For the vote of no confidence to be enforceable, it is required that it be proposed in writing six days in advance of its debate, by no less than half of the legislators, and approved with the vote of two-thirds of the Assembly.

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41 *Cf.* Castro, Edwin, *op. cit.*, note 36.

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Regarding the procedure to enforce ministerial responsibility, in Panama a period of reflection is set between the proposal and its discussion, with a double requirement regarding the vote: half of the total to support the proposal, and two-thirds for your approval. From the wording of the text, it follows that, in all cases in which it is decided to censor, the ministers will be removed. No limits are included as to the number of ministers that can be involved in a motion, nor as regards the successive occasions in which these motions are promoted.

The most important question appears in the first part of the precept, which admits a very broad interpretation and consequently favors the possibilities of control by the Assembly. Unlike Costa Rica, where the "public interest" is protected, in the case of Panama it refers to the "interests of the State". Both expressions can be convergent insofar as their content is subject to considerations that can vary. This flexibility poses risks, since the extension of the concept can also be oriented towards a more effective protection of public freedoms, rather than in the opposite direction. Under conditions of democratic normality, it is reasonable to use expressions capable of adapting to social evolution; but when there is the danger of involutive processes, undesirable effects can also be generated.

There are no established concepts that specify the meaning of expressions such as those contained in the Constitutions of Costa Rica and Panama. However, the jurisprudential and doctrinal criteria present certain guiding regularities. The Inter-American Court of Human Rights, for example, has accepted advisory opinions in which it is emphasized that the public, collective or general interest is an element of democratic constitutional states through which the essential rights of the people are protected, and their rights are promoted, as well as cultural and material development.[42] National doctrinal and jurisprudential sources, in turn, associate this concept with the recognition and protection of the rights of a community, as well as with actions to preserve and promote its well-being. The contrast is usually established between the public interest and the private interest, as the latter is individualized in physical or legal persons, while the former concerns social groups or the totality of the members of a state.

The determination of the public interest corresponds, in general, to the jurisdictional bodies, but there are cases, such as those mentioned here, in

[42] Opiniones consultivas OC-5/85 y OC-6/86, en García Ramírez, Sergio (coord.), *La jurisprudencia de la Corte Interamericana de Derechos Humanos*, México, UNAM, 2006, t. 1, pp. 917 and et esq., as well 941 and et esq.

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which this power also falls on the bodies of political representation. It could be said that there is a difference between the concept considered in Costa Rica, which would be concerned with the interests of the population, and the one contemplated in Panama, which could refer only to those related to the apparatus of power. However, applying this restrictive interpretation would lead to the conclusion that the motion of censure would proceed when the ministers affected their own interests, which would be absurd. For the same reason, it is possible to affirm that in both cases the same range of interests is referred to, in this case of a collective nature.

When the discussion on the matter is deepened, it will be possible to identify other elements of reference, such as those that result from the even broader concept of public reason or common interest, to denote the relevance attributed to shared values, such as tolerance, impartiality in the functioning of the organs of power, and equity and justice in social relations.[43] In other words, there are social standards that must be respected by the holders of the organs of power, and their infringement it can give rise to the consequent responsibilities, demandable through the representatives of the company itself.

XIII. Paraguay

> Article 193. On the summons and the interpellation.
>
> Each chamber, by an absolute majority, may individually summon and interpellate the ministers and other high officials of the public administration, as well as the directors and administrators of the autonomous, autarkic and decentralized entities, those of entities that administer State funds and those of companies with majority state participation, when a Law is discussed or a matter concerning their respective activities is studied. Questions must be communicated to the aforementioned at least five days in advance. Except for just cause, it will be mandatory for those mentioned to attend the requirements, answer the questions and provide all the information that was requested.
>
> The law will determine the participation of the majority and the minority in the formulation of the questions.
>
> The President of the Republic, the Vice President, or the members of the Judiciary may not be summoned or questioned in jurisdictional matters.

---

[43] In this sense, see Rawls, John, *Teoría de la Justicia*, Mexico, Fondo de Cultura Económica, 1979, esp. pp. 245 et seq .; *Political liberalism*, New York: Columbia University Press, 1993, pp. 212 et seq., *And Justice as Fairness. A Restatement*, Cambridge, Harvard University Press, 2001, pp. 92 et seq.

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Article 194. On the vote of no confidence.

If the aforementioned does not attend the respective chamber, or it considers his statements unsatisfactory, both chambers, by an absolute majority of two-thirds, may cast a vote of no confidence against him and recommend his removal from office to the President of the Republic or to the superior. hierarchical.

If the motion of censure is not approved, another on the same subject will not be presented with respect to the same minister or official mentioned, in that period of sessions.

In a single precept, 193, the bases are set for summoning and questioning senior public officials. However, a confusion arises, because it would seem that all the officials whose appearance it is possible to require, can also be the object of an interpellation. Although in Colombia, El Salvador, Honduras, and Nicaragua the Constitutions provide for the interpellations of the heads of the autonomous entities, in Paraguay the impression is given that this power of the chambers extends to the directors of state-owned companies. It is possible that the confusion originates from not having distinguished between questions and interpellations. In colloquial language they may be synonymous, but in parliamentary terms the question corresponds to a request for information or clarification, while the interpellation is the questioning of a government decision, followed by a parliamentary debate. This is confirmed when the precept itself clarifies that the minority also has the right to ask questions.

The prohibition of questioning the president and vice-president that appears in the final paragraph of the precept, is unnecessary supposing that in the first paragraph reference is made to the people whom it is possible to summon, and in no case does it infer that they include the president and vice president, who are not considered senior administration officials. For the rest, in the context of the established system, the exception applicable to judicial officials is explained.

Censorship appears regulated by article 194 and, despite the high vote required for its approval (two-thirds of those present), nothing else has the effect of a recommendation to the president. At this point there is also a technical error, because all the officials mentioned in the preceding article are subject to censorship, although many of them do not depend on the president and others are not subject to a hierarchical subordination that allows the recommendation to be made effective. In this, as in other cases, censorship is only relevant for the effects of public opinion it generates.

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XIV. Peru

Article 131. The attendance of the Council of Ministers, or of any of the ministers, is mandatory when Congress calls them to question them.

The interpellation is formulated in writing. It must be presented by no less than fifteen percent of the legal number of congressmen. For its admission, the vote of a third of the number of working representatives is required; voting takes place inevitably in the next session.

Congress designates the day and time for the ministers to answer the interpellation. This cannot be made or voted on before the third day of admission or after the tenth.

Article 132. Congress makes effective the political responsibility of the Council of Ministers, or of the ministers separately, by means of a vote of no confidence or the rejection of the question of confidence. The latter is only raised by ministerial initiative.

Every motion of censure against the Council of Ministers, or against any of the ministers, must be presented by no less than twenty-five percent of the legal number of congressmen. It is debated and voted between the fourth and the tenth calendar day after its presentation.

Its approval requires the vote of more than half the legal number of members of Congress.

The Council of Ministers, or the censured ministry, must resign. The President of the Republic accepts the resignation within the following seventy-two hours.

The disapproval of a ministerial initiative does not oblige the minister to resign, unless he has made a question of confidence in the approval.

Article 133. The president of the Council of Ministers may raise a question of trust before Congress on behalf of the Council. If trust is denied him, or if he is censured, or if he resigns or is removed by the President of the Republic, the total crisis of the cabinet occurs.

In this case, the interpellations are subject to a double procedure: the initiative may come from 15% of the total number of congressmen, but for it to be formulated to the Council of Ministers or to a particular minister, 33% of the legislators must agree. The corresponding debate takes place between the third and the tenth day of their admission. This means that although ministers attend Congress regularly, they only do so to answer questions, in the terms of article 129.

The motion of censure, which can also be individual or collective, must be presented by 25% of the members of Congress, and approved by more

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than 50%. The discussion takes place between the fourth and tenth days of your presentation. In all cases, the ministers are removed.

Censorship in Peru has a long tradition; it is even the first presidential system to contemplate it. The Council of Ministers appeared in the Constitution of 1856, and in the regulatory legislation the possibility of questioning and censuring them was admitted. The successive constitutions of 1860, 1920 and 1933, consolidated the presence of that institution.[44] In the explanatory statement of the draft Constitution prepared by the Villarán Commission in 1931, it was stated that "the vote of no confidence is an added piece that does not it fits well into our presidential regime." However, they added paragraphs ahead, "we are not in the case of choosing what theoretically seems best." And then they alluded to the long history of censorship in Peru: "the congresses have already taken the right to censor ministers and it is difficult to imagine that they will abandon it".[45]

The first text that included an institution analogous to censorship was the Lifetime Constitution of 1826 issued by Simón Bolívar. Apart from his motives for political perpetuation and the conservative tone of the text, Bolívar made a constitutional design of unquestionable originality. It contemplated four powers: Electoral, Legislative, Executive and Judicial; the Legislative was made up of three assemblies, but none of them had superimposed powers with the others; It provided that the Vice President of the Republic, appointed by the President with the ratification of the Senate, would be the head of the cabinet at the same time (article 92), and it provided that the Senate could remove the Vice President and the Secretaries of State from their positions. (article 51). This Constitution was valid for seven weeks, but from several points it represents a reasonable institutional arrangement. The powers conferred on the vice president, for example, are explained insofar as Bolívar anticipated a prolonged absence from the country and therefore delegated the leadership of the secretaries of state to him.

[44] See García Belaunde, Domingo, "El presidencialismo atenuado y su funcionamiento (con referencia al sistema constitucional peruano)" paper presented at the International Seminar "Cómo hacer que funcione el sistema presidencial", IDEA-Institute of Legal Research of UNAM, Mexico, 6-8 February 2008. The author also considers that the parliamentarization of the Peruvian constitutional system began in 1856 and culminated with the Constitution of 1933.

[45] See Pareja and Paz-Soldán, José, *Las Constituciones del Perú*, Madrid, Editions of Hispanic Culture, 1954, p. 923.

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XV. Dominican Republic

Article 37.22. To interpellate the secretaries of State and the directors or administrators of autonomous State bodies, on matters within their competence, when so agreed by two-thirds of the members present of the chamber that requests it, at the request of one or several of its members.

Regarding the officials likely to be questioned, the comments made in the case of El Salvador are applicable, and for what it does to its effects, the comments about the Honduran Constitution are appropriate.

XVI. Uruguay

Article 147. Any of the chambers may judge the management of the ministers of State, proposing that the General Assembly, in session of both chambers, declare that their acts of administration or government are censored. When motions are presented in this sense, the chamber in which they are formulated will be specially summoned, with a term not less than forty-eight hours, to decide on their course.

If the motion is approved by a majority of those present, it will be reported to the General Assembly, which will be summoned within forty-eight hours.

If in a first call of the General Assembly, not enough number meets to hold sessions, a second call will be made, and the General Assembly will be considered constituted with the number of legislators that attend.

Article 148. Disapproval may be individual, plural or collective, and must be pronounced, in any case, by an absolute majority of votes of all members of the General Assembly, in a special and public session. However, the secret session may be chosen when circumstances so require.

Individual disapproval shall be understood as that which affects a minister, by plural disapproval that which affects more than one minister, and by collective disapproval that which affects the majority of the Council of Ministers. The disapproval pronounced in accordance with the provisions of the preceding paragraphs, will determine the resignation of the minister, the ministers or the Council of Ministers, as the case may be.

The President of the Republic may observe the vote of disapproval when it is pronounced by less than two-thirds of the total members of the body.

In this case, the General Assembly will be summoned to a special session to be held within the following ten days. If in a first call the General Assembly does not gather the number of legislators necessary to meet, a second call will be made, not before twenty-four hours nor after seventy-two hours of the

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first, and if it does not have a number, it will be considered revoked. the act of disapproval.

If the General Assembly maintains its vote for a number less than three-fifths of the total of its components, the President of the Republic, within the following forty-eight hours, may maintain by express decision, the minister, the ministers or the Council of ministers censored and dissolve the chambers.

In such case, he must call a new election of senators and representatives, which will be held on the eighth Sunday following the date of the aforementioned decision.

The maintenance of the censored minister, ministers or Council of Ministers, the dissolution of the chambers and the convocation of a new election, must be done simultaneously in the same decree.

In this case, the chambers will be suspended in their functions, but the statute and jurisdiction of the legislators will subsist.

The President of the Republic may not exercise that power during the last twelve months of his mandate. During the same term, the General Assembly may vote the disapproval with the effects of the third section of this article, when it is pronounced by two thirds or more of the total of its components.

In the case of non-collective disapproval, the President of the Republic may not exercise this power but only once during the term of his mandate.

From the moment the Executive Power does not comply with the decree calling the new elections, the chambers will meet again with full rights and will regain their constitutional powers as the legitimate power of the State and the Council of Ministers will fall.

If, ninety days after the election, the Electoral Court had not proclaimed the majority of the members of each of the chambers, the dissolved chambers will also regain their rights.

Once the majority of the members of each of the new chambers have been proclaimed by the Electoral Court, the General Assembly shall meet as a matter of law within the third day of the respective communication.

The new General Assembly will meet without prior convocation of the Executive Power and simultaneously the previous one will cease.

Within fifteen days of its constitution, the new General Assembly, by an absolute majority of the total of its components, will maintain or revoke the vote of disapproval. If it maintains it, the Council of Ministers will fall. The chambers elected extraordinarily will complete the term of normal duration of the unemployed.

The Uruguayan law regulates in great detail the question of confidence and the motion of censure. In this case, the veto power conferred on the president stands out, when censorship has been adopted by less than two-thirds of all legislators. To overcome the veto, that majority is required, and

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if the corresponding session is not obtained or does not take place, it is considered that there has been a tacit revocation of the resolution adverse to the government. In addition to the existence of an irreducible discrepancy between the Assembly and the president, the latter has the power to dissolve the chambers for the voters to resolve the dispute. The mechanism of censorship in force in parliamentary systems is applied, in its entirety.

XVII. Venezuela

> Article 222. The National Assembly may exercise its control function through the following mechanisms: interpellations, investigations, questions, authorizations and parliamentary approvals provided for in this Constitution and in the law and any other mechanism established by law. and its Regulations. In exercise of parliamentary control, they may declare the political responsibility of public officials and public officials and request the Citizen Power to try the actions that may be necessary to make such responsibility effective.

> Article 240. The approval of a motion of censure to the Executive Vice President, by a vote of not less than two thirds of the members of the National Assembly, implies the removal of it. The removed official or removed official may not opt for the position of Executive Vice President, or Minister for the remainder of the presidential term. The removal of the executive vice president or executive vice president on three occasions within the same constitutional period, as a consequence of the approval of motions of no confidence, empowers the president or president of the Republic to dissolve the National Assembly. The dissolution decree entails the convocation of elections for a new legislature within sixty days following its dissolution. The Assembly may not be dissolved in the last year of its constitutional period.

Article 222 confuses political responsibility with criminal responsibility, and incurs in a violation of the principle of legal certainty, since it admits that the regulations of the laws adopt other instruments of political control and administrative and criminal responsibilities, in addition to those established in the Constitution. Everything indicates that it is a technical error, insofar as it exposes the high officials to the untimely action of the Assembly. For the rest, the way of exercising controls as delicate as interpellations and censorship, remains unregulated. This is striking in a text that presents very regulatory characteristics throughout its 350 articles. Only in relation to the vice president is it established that the motion of censure must be approved by a special majority.

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The expansion of these institutions of parliamentary control includes an increasing number of constitutional systems. In addition to those that have been seen in Latin America, they have been incorporated in many other countries. Although a distinction must be made between questions, interpellations, and censorship, as noted at the beginning of this chapter, there is a frequent interrelation between the three institutions. There are cases in which only questions are admitted, and others where interpellations are also accepted, without censorship being reached. However, the three control modalities correspond to the same family, so I opted to examine them together. Thus, the combination of the three forms of control, with the multiple nuances that each one can acquire, allows building the balances that best suit the objectives of each constitutional system.

Let us now see what happens in other constitutional systems.

XVIII. Algeria

> Article 84. The government presents annually to the National People's Assembly a declaration of general policy.
>
> The general policy statement prompts a debate on the government's performance.
>
> That debate can lead to a resolution.
>
> The debate may also give rise to a motion of censure by the Assembly, in accordance with the provisions of articles 135, 136 and 137.
>
> ...

> Article 135. On the occasion of the debate on the declaration of general policy, the National People's Assembly may raise the question of governmental responsibility by voting on a motion of no confidence.

This motion must be presented by at least one seventh of the total number of deputies.

> Article 136. The motion of censure must be approved by the vote of two thirds of the total number of deputies.

The vote must take place three days after the motion of censure is presented.

> Article 137. Once the motion of censure is approved, the head of government will present the resignation of his government to the President of the Republic.

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The Algerian constitutional system does not provide for questions or interpellations to ministers; neither can the censorship of the head of government, or a particular minister be promoted. The motion only proceeds on the occasion of the annual discussion of the general policy statement. In this way, the deputies are free to express their rejection of government political decisions within certain limits that allow safeguarding the stability of the government. In addition, according to the constitutional provision, the motion of censure can only be presented once each year.

XIX. Armenia

> Article 55. The President of the Republic:
>
> ...
>
> The President of the Republic will accept the resignation of the government on the day of the installation of the new National Assembly; when a new president takes office; as a result of a vote of no confidence; when approval for the government program is not obtained; when the prime minister resigns, or when the prime minister's office is vacant.
>
> Article 80. The deputies have the right to formulate written and oral questions to the government, and the parliamentary fractions have the right to formulate interpellations. The prime minister and members of the government will attend to answer the questions of the deputies each week. The National Assembly will not adopt any resolution simultaneously with the questions posed by the deputies.
>
> The interpellations will be presented in writing at least ten days before the debate. The procedure for interpellations, debate and adoption of a resolution will be established by the Regulations of the National Assembly.
>
> Article 84.
>
> The National Assembly can censure the government by the vote of the majority of the total number of deputies.
>
> The motion of censure can be presented by the President of the Republic or by at least one third of the total number of deputies. During the validity of martial law or the state of emergency, no motion may be presented.
>
> The motion of no confidence in the government must be voted no earlier than forty-eight and no later than seventy-two hours from its presentation.

Let's start with the questions and inquiries. The former corresponds to a right of the representatives, while the latter correspond to parliamentary groups. This distinction is relevant insofar as the interpellation represents,

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in this case, a possible first step to raise the motion of censure. Furthermore, while the question may obey the specific area of work in which a deputy is involved, the interpellation assumes the position of a party, or at least the parliamentary fraction of the party, in the face of a political decision (or indecision) of the government. In this measure, just as the demand for information may come from a legislator with a special interest in a specific matter, the exercise of the right to question cannot be exclusive to a deputy, because it does not correspond to each person, individually, establish the political lines that must be supported or questioned within the Parliament.

The individual origin of the questions allows them to be formulated verbally or in writing, but the collective nature of the interpellations implies that they can only be posed in writing. As for these, for the same reason, the filing and relief procedure must obey more specific rules, to prevent it from becoming a trivial means that affects the responsible performance of the parties and the stability of the government. The questions, on the contrary, give meaning to the ordinary control sessions, which in the Armenian system entail the weekly attendance of the prime minister and the rest of the government.

The Armenian Constitution provides for the motion of censure with binding effect on the ministers and provides that the lack of support for the government program also implies the removal of the ministers. Article 55 does not specify that censorship can refer to a particular minister and, on the contrary, assumes that it will always be directed against the prime minister, thus involving all ministers in terms of its effects. This procedure makes the exercise of censorship somewhat difficult because it does not expose each of the ministers to evaluation and eventual disapproval by Parliament. As long as the deputies have to jointly assess the performance of the government, the ministers are more protected against possible personal harassment, and the prime minister himself can count on better forms of defense as long as there is at least one sector within the government. meaningful that it offers acceptable results for popular representatives.

The construction of this type of censorship, within a presidential parliamentary system, offers reasonable margins of stability for the cabinet. The same happens with the approval of the government program. It is probable that, as a whole. it does not have, in all cases, the full support of the majority; but to the extent that the component forces of that majority find that there are relevant elements with which they identify, they will be willing to lend their support, if, on the other hand, there are no aspects that give rise to insurmountable discrepancies. This modality allows building very broad

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consensuses, capable of attracting the necessary number of voters in the assembly to provide the basis for the governance of the system.

The most striking aspect of the Armenian system is the possibility for the president to promote a vote of no confidence.

At this point it is an original institution, which means a kind of indirect responsibility of the government to the president. By forbidding the right to remove ministers, the Constitution opens the option of putting them in a position before the Assembly. It is not a satisfactory mechanism, because it fosters latent threats against the government in an agreement concluded between the president and the legislators, but it is the means by which the constitution wanted to strengthen the presidential figure and balance the powers of the ministry.

XX. Belarus

> Article 106.
>
> ...
>
> The government or any of its members may submit their resignation to the President if they consider that it is impossible for them to fulfill the functions entrusted to them. The government will present its resignation to the president if the House of Representatives passes a vote of no confidence.

The structure of the norm makes it possible to distinguish between the resignation of members of the government, which can be collective or individual, and censorship, which can only be directed at the government as a whole. The consequence of the censorship is binding on the government, which must submit its resignation, but the precept does not oblige the president to automatically accept it. It could be considered that the president can reject the resignation, but in such a circumstance the terms of governance would be fractured, since a contested government would lack the elements to promote proposals acceptable to Parliament. It must therefore be established that the margin that the Constitution offers the president consists of having the time necessary for the effects of the resignation to take place from the vote of confidence in the new government.

By allowing the president to keep the resigning government in office until he has the confidence to install the new ministers, reasonable pressure is put on Parliament to pass the new presidential proposal. The representatives face the dilemma of delaying the integration of the new government and keeping the censored in office or speeding up their departure while

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also speeding up the process of trust for those who replace them. With this procedure, Parliament is obliged to make a moderate use of censorship, with the consequent certainty of institutional stability and balance in the relationship between the political organs of power. This is a variant, in a presidential system, of the constructive motion of no confidence.

XXI. Egypt

Article 124.

Every member of the People's Assembly has the right to direct the President of the Council of Ministers, or one of his alternates, questions on matters that refer to his powers.

The President of the Council of Ministers or his alternates, the ministers or their representatives, must answer the questions.

The member of the Assembly can withdraw the question from him at any time, but cannot transform it in the course of the same session into interpellations.

Article 126.

The ministers are responsible to the People's Assembly for the general policy of the State. Each minister is responsible for the affairs of his department.

It is the responsibility of the People's Assembly to withdraw the trust of one of the alternates of the President of the Council of Ministers or of the ministers or their alternates. The question of trust cannot be raised except after an interpellation and on a motion presented by the tenth of the members of the Assembly.

The Assembly cannot make a decision on the matter before three days from the date of its presentation.

The withdrawal of the trust must be voted by most of the members of the Assembly.

Article 127.

The People's Assembly may, at the request of one tenth of its members, challenge the responsibility of the President of the Council of Ministers. The decision in this regard must be taken by the majority of the members of the Assembly.

This decision cannot be taken unless there is an interpellation addressed to the government and at least three days from the presentation of the petition.

In the event that responsibility is established, the Assembly prepares a report that submits to the President of the Republic to whom it participates the elements of the matter and its reasons.

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The President of the Republic may return this report to the Assembly within ten days. If the Assembly adopts the report again, the President of the Republic may submit the conflict between the Assembly and the government to a referendum within thirty days from the date of the last vote of the Assembly. In this case, the Assembly sessions are suspended.

If the result of the referendum is favorable to the government, the Assembly will be considered dissolved. Otherwise, the President of the Republic will accept the resignation of the government.

Article 128.

If the Assembly withdraws its confidence from a deputy prime minister, a minister or one of his alternates, he must leave his functions.

The president of the Council of Ministers will present his resignation to the President of the Republic if his responsibility has been established by the People's Assembly.

Article 129.

At least twenty members of the People's Assembly are allowed to request the opening of a debate on a general question to obtain clarification on the ministry's policy.

Article 130.

It is up to the members of the People's Assembly to ask questions on general matters to the president of the Council of Ministers, a deputy prime minister or one of the ministers.

In Egypt the president is head of state (article 73). Similar to what happens in Syria, the People's Assembly decides on the presidential candidacy and submits it to a popular referendum (article 76), so there is a powerful incentive to exercise political dominance over that legislative body, which results crucial in the struggle for power. Added to this situation are the governmental power to authorize the integration of parties, and the arbitration position of the president, based on the constitutional power that allows him to "determine the limits between powers".

In this context of presidential hegemony, the Constitution seeks to compensate the Assembly by conferring on legislators a broad power to question and interpellate, and by facilitating the motion of no confidence that can be proposed by a tenth of the deputies and approved by the majority. Censorship has two aspects in terms of its addressees: it can be individual and has binding effects as long as the minister is separated from office, or it can be collective, since it involves the entire government. In the latter case, the president can comment on the motion, and the Assembly can ratify

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its decision by an absolute majority of its members. The novelty of the Egyptian mechanism is that it gives rise to a double consultation with the citizens: the first, to decide whether the censorship is appropriate. If the citizen's decision coincides with the Assembly, the president must remove the government. But if that popular verdict is favorable to the ministry, the parliamentary dissolution and the calling of new elections take place. What is striking is that in this way the Constitution converts ministers into subjects of popular election. This erroneous design, which accentuates the plebiscitary nature of the system, can only be explained from the hegemonic control exercised by the presidents.

XXII. Russian Federation

> Article 117.
>
> 3. The State Duma can express a vote of no confidence in the government. The provision on distrust of the government is approved by a majority vote of the total number of deputies of the State Duma. After the State Duma expresses a vote of no confidence in the government, the President of the Russian Federation has the right to announce the resignation of the government or its disagreement with the decision of the State Duma. In the event that the Duma, within three months, again expresses distrust of the government, the President announces the resignation of the government or dissolves the State Duma.

The Russian Constitution does not regulate the procedures for the formulation and relief of the motion of censure, so these issues are subject to parliamentary provisions. The important thing is that no restrictions are adopted regarding the number of legislators who can present it. This is an aspect that cannot be addressed by other provisions because it would imply a limitation of the rights of parliamentarians. The censorship is not binding, except when it is repeated over the following three months. In such a case, the president has the option to accept it, or to dissolve the Duma. The solution is ingenious, because if the new censorship is adopted three months after the first, the president is not obliged to remove the ministry, but neither can he dissolve the Duma. Censorship would operate, in these circumstances, as an expression of disagreement, without jeopardizing the stability of the government or the continuity of the legislature. On the other hand, as can be seen, it is not foreseen that the censorship is preceded by an interpellation.

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XXIII. Philippines

Article VI
Section 22. The heads of the departments, by their own initiative, with the consent of the President or at the request of any of the chambers, in accordance with the provisions of their own regulations, may appear before the chambers and be heard as referring to the department they head. Written questions will be presented to the Speaker of the Senate or Speaker of the House of Representatives at least three days prior to the scheduled appearance. The interpellations will not have to be presented in writing but will be related to the questions. When the security of the State or the public interest so requires and the President of the Republic so indicates in writing, the appearance will be held in secret session.

The Philippine is a constitution that continues to concentrate a significant amount of power in the president. The ministers lack initiative and only at the request of the chambers or with the presidential consent can they appear before Congress to answer questions. In this case the questions must be formulated in writing. The greatest advantage of this system is that it does not offer an excuse to ministers to avoid the answer by denying information because it is not in memory or is not on hand on the day of the presentation. But this mechanism is explained because the appearance of the ministers is random. When the presence is regular and systematic, it is not important that in a control session the minister does not have the data requested, since he is obliged to provide them the next time.

With regard to interpellations, in the Philippine system they have a connotation of reply to the response received. The Constitution specifies that they must be related to the questions, and for this reason they can be formulated verbally in the same session in which the answer to the question is offered. This type of interpellation, which at most can mean disagreement due to the inadequacy of the response, does not entail a questioning of government political decisions and does not correspond, for the same reason, to the traditional meaning of interpellations.

What does correspond to a correct forecast is that, when it refers to security issues, the appearances may be carried out in secret session. This has real advantages for the control system, because on many occasions the ministers are forced to use circumlocution or to spread veils over the truth, so as not to publicize decisions whose generalized knowledge can affect the result of actions related to internal security or outside the state. But while it is understandable that there are certain matters of knowledge reserved for

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the highest levels of responsibility in government management, this should not be a pretext for not offering information to national representatives either. The answers offered in secret sessions cannot be elusive, and those who receive them are bound to the secrecy of the type of session in which the information was communicated to them. In this way, the confidentiality of the most sensitive information is safeguarded, without thereby excluding from its knowledge the members of Congress, or at least those who are members of the official committees.

XXIV. Georgia

> Article 81.
>
> 1. Parliament may approve a motion of no confidence in the government, by most of the total of its members. The motion of censure must be presented by at least one third of the total members of Parliament. Once the censorship of the government is approved, the president may remove or maintain the government. In the event that Parliament repeats its decision, not before 90 days or after 100, the president must remove the government or dissolve Parliament and call new elections. In the event that it is within the assumptions "a" and "b" of article 51.1, the censorship will be voted on again within 15 days from the moment these circumstances have ended.
>
> 2. Parliament can pass an unconditional motion of no confidence in the government. In the event that this decision is adopted by a majority of three-fifths of the total number of members of Parliament, the president must remove the government no earlier than 15 or after 20 days from the resolution. In the event that Parliament does not reach that majority, it will not be able to present a motion of censure within the following six months.
>
> 3. In the case of removal from the government in accordance with the previous section, the President of Georgia may not designate the same person as prime minister in the next composition of the government, nor propose him as his candidate for prime minister.

The Constitution of Georgia does not regulate the formulation of questions or interpellations but does deal with censorship in some detail. This precept distinguishes the effects of censorship based on the plurality of votes that sustain it. According to section 1, if the motion is adopted by a majority of the total votes, it is optional for the president to uphold or remove the cabinet of ministers, and only an analogous decision, taken between 90 and 100 days after the first vote is binding in nature. On the other hand, according to section 2, when the censorship is adopted by a qualified majority, it forces the president to remove the cabinet, in a period that is between 15

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and 20 days from the decision. If Parliament chooses this method, but does not get the required votes, it is not possible to present another motion over the following six months. There is a reservation that refers to article 51. In accordance with this caveat, the motion does not proceed when: a) there is less than six months left for the holding of elections or for the end of the presidential term; b) there is a state of emergency, or c) an impeachment action against the president is in progress.

There is a provision, not always included in this type of regulation, that prohibits the president from nominating or appointing the person who has been censured as prime minister. By the nature of censorship, it seems natural that a censored prime minister should not be nominated to succeed himself. This reference in the Constitution of Georgia does not obey a coherent legislative technique, because when censorship is not binding, the permanence of the prime minister depends on the presidential decision, but when it is binding, it is obvious that if three-fifths of the congressmen voted against one person, he will not have the half that supports him to be reinstated in office. The only explanation is to suppose that a new composition of the cabinet would make it possible to obtain this plurality of votes.

Even so, these express limitations indicate that there is no clear idea of the political relevance of the motion of no confidence. Binding or not, censorship is a very sensitive instrument that makes it possible to assess the level of the relationship between Congress and the government, and the health of the institutions indicates that when a minister has been questioned, his inclusion in a new position may not contravene a norm, but it does pose a political challenge to the parliamentary body.

XXV. Iran

> Article 88. [Questions to the government].
>
> When at least a quarter of the total members of the Islamic Consultative Assembly pose a question to the president, or any member of the Assembly presents a question to a minister, related to matters within their competence, the president or minister shall appear before the Assembly to answer the question. This response should not take more than a month, in the case of the president, nor more than ten days in the case of a minister, except when there is an excuse considered reasonable by the Islamic Consultative Assembly.
>
> Article 89. [Interpellation].
>
> 1. The members of the Islamic Consultative Assembly may interpellate the Council of Ministers or any of the ministers in the aspects they consider

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necessary. Interpellations will be processed if they have the signature of at least ten members.

The Council of Ministers or the minister questioned shall appear before the Assembly within ten days after the approval of the interpellation, to respond and request a vote of confidence. If the Council of Ministers or the minister does not appear, the promoters of the interpellation will explain their reasons and the Assembly may carry out the vote on trust, if it considers it necessary.

If the Assembly does not grant the vote of confidence, the Council of Ministers or the minister subject to the interpellation will be resigned. In both cases, the ministers subject to the interpellation may not be members of the Council of Ministers that is formed below.

2. In the event that at least a third of the members of the Islamic Consultative Assembly challenge the president, in relation to his responsibilities in the performance of the Executive Power and the exercise of the country's government affairs, the president must compare - close before the Assembly within the month following the moment in which the interpellation has been approved for processing, to offer the required explanations. If, after the arguments for and against the members of the Assembly and the response of the president, two-thirds of the total members of the Assembly approve a motion of censure, it will be communicated to the leader for his information and to proceed in accordance with the provisions of article 110.

Article 110. [Duties and powers of the leader].

...

10. To dismiss the President of the Republic, in accordance with the interests of the country, after the Supreme Court declares him guilty of violating his obligations, or after the vote of the Islamic Consultative Assembly, in accordance with the provisions of Article 89 .

Article 137. [Responsibility].

Each minister is responsible for his performance to the president and to the Assembly, but in matters approved by the Council of Ministers, he will also be collectively responsible.

Iran is a sui generis system, because the president is a magistrate of the highest hierarchy; however, there is a supreme power, not elected by popular means, that occupies the leadership of the state,[46] and that according to article 110 can remove the president, "in accordance with the interests of

[46] The religious leader is appointed by a group of experts, elected in turn by the people in number and in accordance with the procedure that they themselves establish, starting from the first Council of Guardians established by the 1978 revolution. To elect the leader,

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the country", after a declaration of the Supreme Court in the sense that the president breached his obligations, or after it is resolved by the Islamic Consultative Assembly (Parliament). In any case, the president, elected by popular vote for a period of four years (article 113), is the head of state and government, and may be assisted by vice-presidents, the first of whom assists him in conducting of the Council of Ministers (article 124.2). The president also represents Iran before the international community, and he is the one who signs the treaties and accredits and receives diplomatic agents. The figure of the leader, therefore, stands above the head of state and government, who otherwise has direct responsibilities before Parliament.

The Parliament or Islamic Consultative Assembly may address questions to the president and ministers, varying the time allotted to respond (one month to the president and ten days to the ministers), and the number of members required to formulate the decisions. questions (a quarter of the total to the president, and each one individually to the ministers).

The president, individual ministers and the Council of Ministers as a whole are also subject to interpellation and censorship. To question the president, a third of the total members of the Assembly are required, and two-thirds to censor him, subjecting his removal to the decision of the religious leader. As for the ministers and the Council, the interpellation can be raised by ten members of the Assembly and the censorship is approved by the majority of those present. Censored ministers cannot participate in the next cabinet.

Iranian constitutional provisions are the only ones that allow censorship of a head of state and government. In addition, in this system the dissolution of the Assembly is not foreseen, so that the presidential power is limited by the political representative body and by the religious leadership that is at the top of power. If it is considered that a part of the members of the Assembly correspond to the different religious confessions existing in the country, it may be concluded that the constitutional system is a combination of secular and religious institutions, with elements of presidentialism, parliamentarism and traditional power.

XXVI. Kazakhstan

Article 53. Parliament, in a joint session of its two chambers, shall:

...

they should value their wisdom, their feelings of piety and justice, their social acumen, prudence, personal courage, administrative skills, and leadership abilities (articles 107-109).

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7) Express government censorship by a majority of two thirds of the total of the members of each chamber, at the initiative of not less than a fifth of the total of the legislators, in the cases established by this Constitution.

Article 57. Each chamber of Parliament, independently and without the participation of the other chamber, may:

...

6) Exercise the right to receive reports from the members of the government of the Republic on matters relating to their activities, at the initiative of no less than a third of the total members of each chamber, and adopt an exhortation, by a majority of two-thirds of the total members of the chambers, directed to the President of the Republic to remove a member of the government for not observing the laws of the Republic. If the President of the Republic rejects this exhortation, the deputies, by a majority not less than two-thirds of the members of each chamber, may request the president to remove the minister, within a period that ends six months after the first exhortation. In this case, the President of the Republic must remove the member of the government.

Article 64.

...

2. The government, in all its activities, is responsible to the President of the Republic and is subject to the control of the Parliament of the Republic, in the case provided for in paragraph 6 of article 53 of the Constitution.

Article 70.

...

5. The acceptance of the resignation will mean the conclusion of the exercise of powers of the government or its respective member. Acceptance of the resignation of the prime minister means the termination of the functions of the entire government.

6. In the event that the resignation of the government or its members is not accepted, the president may instruct the government or its members to continue in their positions. In the event that the resignation of the government is due to a motion of censure, and the president does not accept it, he may dissolve Parliament.

The constitutional structure denotes a considerable distance between the government and Parliament, as it does not foresee regular control sessions. On the contrary, to request governmental information, the request of a third part of the members of the chamber who wishes to exercise this power is necessary. This circumstance implies that the requested reports do

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not correspond to the content of simple questions, but to the work of investigation commissions and even preparatory means for questioning. On the other hand, to promote a motion of censure it is required that the initiative come from, at least, 20% of the total of the members of both chambers.

This Constitution also confuses political responsibility with impeachment, as one of the causes for exhorting the president to remove a minister is that the official has incurred in violations of the law. The political aspects foreseen by the Constitution are analyzed in the chapter corresponding to the vote of confidence.

XXVII. Syria

> Article 72. [Censorship].
>
> Confidence will not be denied to the cabinet or a minister, if he is not questioned. The motion of censure must be made in accordance with a proposal made by at least one fifth of the members of the Assembly. Confidence in the cabinet or in a minister can be denied by the majority of the members of the Assembly. In the case of cabinet censorship, the prime minister must submit the resignation of the cabinet to the President of the Republic. The minister who has been censored must resign.
>
> Article 117. [Responsibility].
>
> The president of the Council of Ministers and the ministers are responsible to the President of the Republic.

As can be seen, this Constitution omits the possibility of regular control sessions. It is a paradox that it dispenses with a smooth control mechanism and adopts a severe instrument. This apparent contradiction is explained because the soft controls are easier to exercise and for the same reason frequent, while the more rigorous ones also become less used. By opting for this solution, constitutional systems give the impression of openness, when it is only a formal attitude with very little possibility of concretion. The democratizing appearance of parliamentary controls is confirmed in highly concentrated presidential systems that adopt institutions typical of advanced democracies but accommodate them in a context that makes them inconsequential or at least very difficult to exercise. The positivity of the norms of political control is one of the main problems of any system; this is seen in cases such as Kazakhstan and Syria, where institutional liberalization is used to legitimize presidential systems that maintain their hegemonic vocation.

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On the other hand, the Syrian Constitution deals with the motion of censure with a great economy of words. The precept includes several hypotheses. In the first place, the minister has a kind of right to a hearing that obliges the members of the Assembly to ask questions that clarify their doubts or confirm their convictions. Secondly, the effect of removal is direct, and thirdly, the simple majority required is reasonable, because in general terms a well-balanced system can be governed by the majority criterion of an assembly.

Regarding the third aspect, it should be borne in mind that the protection clauses that are based on the requirement of qualified votes, confer a veto power to the minority, which in addition to being unrepresentative in a democratic system, generates distortions and even corrupt parliamentary practices. The minority with veto power is exposed to temptation or pressure, with negative consequences for the constitutional system resulting from both forms of extorting the will. Furthermore, when a government is left in a minority, or is placed in such a situation that its permanence depends on manipulating a small number of representatives, the governance conditions are very precarious, and the subsistence of the cabinet does not correspond to its possibilities for effective performance.

XXVIII. Pakistan

> Article 95. Vote of no confidence against the Prime Minister.
>
> 1. At the proposal of at least twenty percent of its members, the National Assembly may adopt a motion of censure against the Prime Minister.
>
> 2. The vote on censorship will take place after three days and before seven days from the proposal.
>
> 3. It will not proceed to promote a motion of censure during the processing of the annual budget.
>
> 4. If the motion is approved by most of the total members of the National Assembly, the Prime Minister will cease to hold office.

In Pakistan, the President is Head of State (article 41.1) and Chief Executive (article 90.1); he is elected by an electoral college, made up of the members of both houses of Parliament, and by the members of the provincial assemblies (article 41.1). The cabinet of ministers assists the president in the exercise of his functions (article 91.1). The president appoints the prime minister (article 91.2) and the other members of the cabinet (article 92.1) from among the members of Parliament. The prime minister must

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also have parliamentary confidence (article 91.2A), and to remove him the president himself must request the ruling of the Assembly (article 91.5). The other ministers are appointed on the proposal of the prime minister (article 92.1).

As can be seen, even though he is both head of state and government, the president has the great restriction of only being able to integrate his cabinet with legislators, so when he sees the need to remove them, they return to occupy their parliamentary seats. There is the double problem of the limitation to select them and the opposition they make to him when he displaces them from the ministerial position. This construction of the parliamentary presidential system has had a very adverse consequence: presidential hegemony over Parliament. It is through the political dominance exercised by the president that he has been able to establish vertical discipline, to the detriment of democratic fluidity and the effectiveness of parliamentary controls.

The Pakistani example allows us to appreciate to what extent a presidential system whose parliamentarization goes beyond what is reasonable, produces an inverse effect on the objectives of the political responsibility of the government and the rational deconcentration of power. When in a presidential system the balance between the president and the Parliament is broken, there is a resurgence of the authoritarian exercise of power, either because an assembly solution or a personalist option is affected. It is not a dilemma that contributes to the consolidation of the constitutional state. This was demonstrated when the military coup that brought Pervez Musharraf to power took place in 1999. For a long time, the political dynamic prevailed over the constitutional requirement, so the supreme charter only had formal validity. Numerous factors (religious problems, border conflicts with India, serious international tensions caused by terrorism and the US military intervention in the area), added to the errors of the institutional design and had an undesirable result. The 2008 elections, held after the shock of Benazir Butho's assassination, forced the president to seek institutional remedies for the crisis; he had to compromise with the opposition and propose as prime minister a former rival, whom he had even kept in prison. The political effervescence did not cease until the president resigned, but at least violence was avoided and the process was conducted in accordance with constitutional provisions.

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XXIX. Turkey

A. General.

Article 98. The Grand National Assembly of Turkey exercises its power of control through questions, parliamentary inquiries, general discussions and motions of no confidence.

The question is to request information from the prime minister or a minister, who must present it in writing or orally, on behalf of the Council of Ministers.

Parliamentary inquiry consists of an examination carried out for the purpose of obtaining information about a specific matter.

The general discussion has as its object a debate of the plenary session of the Grand National Assembly of Turkey on a particular matter that concerns the society or the activities of the State.

The form of presentation, the content and the purpose of the motions referring to questions, parliamentary inquiries and general discussions, as well as the response, discussion and investigation procedures, will be established by the internal regulations. of the Assembly.

B. Motion of censure.

Article 99. The motion of censure can be promoted on behalf of a party or with the signature of at least twenty deputies.

The motion of censure is published and distributed to the deputies within the three days following its presentation; its entry on the agenda is discussed within ten days after its distribution. After deliberation, only one of the authors of the proposal may speak, in addition to a deputy for each of the political party groups, and the prime minister or a minister on behalf of the Council of Ministers.

The date of deliberation of the motion of censure is set at the time of the resolution regarding its registration in the agenda; in any case, this debate will not take place before two or after seven days.

The motions of censure presented by the members or by the parliamentary groups, as well as the questions of confidence formulated by the Council of Ministers in the course of the deliberation of the motion of censure, will be put to the vote after allowing a day to pass.

The censorship of the Council of Ministers or of a minister requires an absolute majority of the total members of the Assembly; after the scrutiny, only votes in favor of censorship are counted.

The internal regulations establish the other provisions concerning motions of censure, in accordance with the principles set forth in this article, and to promote a balanced development of the Assembly's work.

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In contrast to the Syrian Constitution, Turkey's has a higher level of detail. The relationship that these precepts make gives the impression of regulatory standards. The most significant thing, in any case, is that in addition to the minimum of 20 deputies who can promote a motion of censure, the parliamentary fractions are also entitled to present it. This is important, because it may very well happen that some of these fractions do not have 20 legislators, so that this provision is part of what is known as the rights of the opposition.

Regarding terminological aspects, the Constitution does not use the voice interpellation, but as an analogous institution it alludes to general discussions. What is relevant in this case is that constitutional norms can innovate the ways of designating and structuring their control mechanisms, without having to abide by established patterns.

XXX. Turkmenistan

> Article 64. Parliament can be dissolved early:
>
> By decision of a referendum.
>
> By resolution of the Parliament itself, by no less than two-thirds of the total votes.
>
> By the president, if Parliament does not integrate its governing bodies within a period of six months, or if in a period of eighteen months it adopts two motions of no confidence in the Cabinet of Ministers.
>
> Article 67. It corresponds to Parliament:
>
> ...
>
> 4) Approve the action plans of the Cabinet of Ministers and adopt censure motions for that Cabinet.
>
> Article 69. The deputies of Parliament have the right to formulate questions, verbally or in writing, addressed to the Cabinet of Ministers, ministers and heads of other government bodies.

In the corresponding chapter, matters related to the dissolution of Parliament are examined. As for the questions, it is noted that there are no restrictions on the matter of form, and that they can be presented individually by each deputy. In addition, the questions they ask, individually or collectively, may in turn be directed to the government, or to each of the ministers or to the heads of the various government agencies, even if they are not part of the cabinet.

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The formulation of interpellations is not expressly foreseen, but these are inferred from the structure of the norm. What is significant is that, in the absence of special formalities, Parliament is assigned a very broad power of control. The restriction operates by way of dissolution, which can occur when in the 18-month period Parliament censors the government on two occasions. Even when the effects of the censorship are not specified, the provision of parliamentary dissolution indicates that the censorship is binding.

All the above would seem to indicate the existence of a highly parliamentary system. However, the structure of the constitutional system explains the great breadth with which the censorship figures, the possible interpellations, and questions, and even the approval of the government program were received. As will be seen later, in the chapter on dissolution, the Turkmen representative system is characterized by a very weak structure, which is not compensated for by the considerable amount of power assigned to it in matters of controls. Systemic restrictions make the real possibilities of exercising these controls very limited. What is relevant, in any case, is that there was no qualm about introducing these figures into a very harsh presidential system.

The possibility remains that, in a democratizing evolutionary process, future institutional arrangements allow current provisions to swing in the sense of reducing, in parallel, the powers of the President and Parliament, until a reasonable point of balance is found. If only those of the president were reduced, while preserving the powers of Parliament, it would affect an assembly system that seems unfeasible due to the enormous contrast that it would present with the current reality.

XXXI. Ukraine

> Article 85. The authority of the Verkhovna Rada [Assembly] of Ukraine includes:
>
> ...
>
> 13) Exercise control of the activity of the Cabinet of Ministers, in accordance with this Constitution;
>
> ...
>
> 15) Designate or elect for a position, remove from a position, grant consent for the appointment or removal of the positions, of the persons and in the cases indicated by this Constitution.

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> Article 87. The Verkhovna Rada of Ukraine, on the proposal of at least one third of the total of its members, may raise the question of responsibility of the Cabinet of Ministers and adopt a motion of censure, by an absolute majority of the total number of members. members of the Verkhovna Rada.
>
> The question of responsibility of the Cabinet of Ministers of Ukraine may not be considered by the Verkhovna Rada more than once in the same session, nor within the first year after the program of activities of the Cabinet of Ministers has been approved.
>
> Article 113. The Cabinet of Ministers of Ukraine is the highest-ranking body in the Executive Branch.
>
> The Cabinet of Ministers is responsible to the President of Ukraine and is subject to the control of the Verkhovna Rada, in accordance with the terms of articles 85 and 87 of the Constitution.
>
> The Cabinet of Ministers guides its activity by the Constitution, the laws and the decisions of the President of Ukraine.
>
> Article 115.
>
> ...
>
> The adoption of a motion of no confidence in the Cabinet of Ministers by the Verkhovna Rada, has the consequence of removal from the Cabinet.
>
> ...
>
> The Prime Minister of Ukraine must submit to the President the resignation of the Cabinet of Ministers, by decision of the President himself or due to a motion of no confidence adopted by the Verkhovna Rada.

The Ukrainian Constitution provides for an unusual range of appointment and removal powers. Pursuant to article 85, it can directly appoint and remove a group of officials, but it can also authorize other officials to be appointed or removed. They are two different functions, indicating different degrees of control. In the case of the prime minister, or the president of the antitrust committee, the appointment corresponds to the president, with the authorization of Parliament (article 73-12); instead, it appoints and removes in its own right the officials who depend on the Parliament itself, such as the ombudsman or the members of the court of accounts, and others who are outside its structure, such as the directors of the central bank or the radio council and television, and electoral bodies. However, he appoints and removes the president of the central bank at the proposal of the president.

Except for the prime minister, Parliament does not intervene in the appointment of the other members of the cabinet, nor can it remove them individually. The motion of no confidence is only possible in relation to the entire cabinet, provided that the proposal is formulated by a third of the

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legislators and approved by an absolute majority of the total members of Parliament. Furthermore, no more than one motion may be presented in a session, nor over the year in which a government program was approved.

The safeguards adopted in Ukraine are compatible with a presidential system, since they do not compromise the stability of the government, nor do they exempt ministers from responsibility. The temporary limitation that prevents motions during the first year of the approval of the government action program is intended to allow the cabinet to achieve tangible results, without being exposed to parliamentary political pressure; at the same time, it obliges the government to apply the greatest diligence to show progress in that period, so that it is protected against a possible parliamentary challenge.

Another aspect that favors government stability is that censorship, always binding, can only affect the set of ministers and not each one individually. This measure tends to reinforce collegiate functioning, while individual mistakes can translate into a collective decline. For the rest, although the effects are binding and the censored government must resign, the Constitution does not prevent some of the dismissed ministers from joining the new cabinet. In this way, the president and the prime minister will be able to assess who are the direct causes of the censorship to dispense with their participation in the new government cast.

The 1996 Ukrainian Constitution addresses the need to incorporate mechanisms of political responsibility, typical of a democratic system, and introduces them in a transitional cultural context. The authoritarian record left an imprint that had to be overcome with caution. Still, the tensions have been of great magnitude and have put the constitutional design to the test. Governance has not been in danger because of the possibilities of censuring the government, but because of the fragmentation of the vote that has made it difficult to have stable majorities to make the government program approved by Parliament itself viable. For this reason, the political representatives have not had arguments to hold the government responsible for not achieving the goals set forth in the adopted program. Governance problems, therefore, do not result from the system of political controls, but from the electoral system.

General Reflection on Questions, Interpellations, and Censorship

Since its introduction in the 18th century, in the English system, parliamentary questions have undergone an increasing expansion. Of all the monitoring instruments examined in this chapter, the questions represent

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the most dynamic, flexible, and effective. Without putting governance at risk, they keep the ruler in constant communication with the body of political representation and, through him, with the citizenry. In this way, the political centrality of congresses is strengthened without affecting the stability of governments. In addition, the importance of the media is not affected, but congresses act as an important source of information.

However, contemporary constitutionalism goes beyond conventional controls. New normative expressions, such as the right to the truth and access to information, are strengthened by the inquisitive action of the organs of political representation. Although until now it is left to the political sensitivity of the parties and legislators to define which are the issues of interest to the citizens, it is foreseeable that a figure similar to the popular initiative to legislate will appear, which may take the form of the question citizen. I do not see any inconvenience, even without a constitutional provision on the matter, for citizens to propose possible questions to the holders of ministerial positions to the congressmen.

In a democratic society it is of the utmost importance that citizens are familiar with public affairs. Disinterest in politics creates shady areas that can be used by rulers to hide mistakes or, in an even more frequent hypothesis, go unnoticed. The passivity of the ministers is an expansive phenomenon, caused by the lack of demand for answers. Asking why a decision was made or why action is not taken to solve a specific problem is one of the most valuable functions of a body of political representation. Until now, no constitutional system has incorporated the possibility for citizens to suggest to their representatives the issues that they would be interested in seeing clarified by members of the government. The citizen question, as a suggestion or proposal addressed to political representatives so that, if it is considered appropriate, it is posed to the person in charge of a government area, it could be registered in the list of citizen participation figures that arouse so much interest in different constitutional systems.

An adequate regulation of the citizen question would encourage the formation of civic circles to discuss the country's problems. If, for example, it was required that in order to admit a possible question to the analysis process, it had to be suggested to Congress by a group of 500 or 1,000 citizens, for example, the organization and proliferation of informal deliberative nuclei would be stimulated, with the consequent strengthening of interest in public life.

Citizen withdrawal does not contribute to a quality democracy, but the best-known citizen participation institutions have produced very meager practical results. The difficulties in presenting popular initiatives or hold-

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ing referendums, plebiscites, or actions to revoke the mandate, have had the consequence that these institutions have fallen into disrepute. They are usually invoked as a panacea by political leaders, when they only translate one more way of showing the common citizen how little he counts in the daily reality of the State.

On the other hand, the possibility of sending questions and the probability of seeing them answered, would encourage an effective and constructive participation, which could generate a growing movement for the involvement of citizens in public life. In a democratic constitutional system, this is a priority objective. This form of participation would help society realize that access to information and the right to the truth are part of its civic life, and that the representative system is receptive and functional.

While in general the institutions of direct participation tend to be exercised at the expense of the representative system, in the case of the *citizen question*, participation and representation would be enhanced, since the action of citizens would only have results to the extent that their representatives made it theirs. In this way, a new link between voters and the elected would emerge, and there would be a highly decentralized means of control over the government. Furthermore, far from being a problem for governance, it would help to make the population more sensitive to issues of public relevance, and this is a factor that facilitates governance.

Questions are a very functional control instrument in representative democracies, due to their low political cost and the important results it offers. The low cost is that it does not involve a confrontation between Congress and the government. On the contrary, a well-resolved question usually translates into recognition for the one who asks it and for the one who answers it. On the other hand, the question allows government authorities to warn with the greatest opportunity which are the sensitive points of society and in what aspects there is the possibility of a greater challenge.

In many cases, the question anticipates an affirmation, and it is preferable to answer it when it does not yet acquire the dimension of a vigorous demand. Government action is, to a large extent, the ability to anticipate reactions and demands, and to resolve them with the greatest possible opportunity, before they become demands whose satisfaction entails a cumulative difficulty.

The questions also make it possible to avoid the formation of commissions of inquiry, undoubtedly more onerous from a political perspective, because they facilitate obtaining enough information to clarify a dark issue, and because they give the government the opportunity to show a receptive and constructive mood.

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Another positive effect of the questions is that they broaden the rights of the opposition, without this implying altering the balance in Congress. While small parliamentary fractions only have the possibility of making themselves felt when they add their votes to those of other formations, in terms of questions they can mean their acuity, ideological value, analytical capacity and political and even professional preparation.

The fixed periodicity of the control sessions, nurtured above all by the questioning stage, becomes a predictable and expected event, and concentrates the attention of the media and society on what happens in the congress platform. This circumstance allows the parties to offer an image of dynamism that reflects the constancy of their concerns and commitments. It is not, of course, a panacea that solves all the deficiencies of more or less vertical organizations, but it facilitates the identification of citizens with certain political currents. As long as, through the questions, the parties function as transmission pulleys that raise and lower the messages between the governed and the governors, they fulfill a function that keeps them in force as centers of interest for the citizen.

The parliamentary question requires skill on the part of the one who asks it and the one who answers it. Its objective is not to unleash an oratory tournament, but to contribute to the knowledge of the reasons of the government. In Mexico, for example, there is a bad experience with questions directed at cabinet members, the few times that it is possible to persuade them to appear before the plenary session or before the commissions of both chambers. Legislators often use Question Time to set their own positions and ask such a number of questions to the interlocutor, that they leave many easy ways out, because it is impossible to answer as many things as required from the rostrum. This precedent makes the question an unappreciated means of control in Mexico. In other systems, on the other hand, it is the most dynamic form of communication between the organs of power.

In the same way that the parliamentary question is not a substitute for debate, nor is it a mechanism to surprise and expose a minister. For this reason, in numerous constitutional norms it is foreseen that it must be transferred in advance to the government, so that there is no possibility of avoiding the answer, unless it is a reserved matter. Even when the Constitution does not regulate the procedure for formulating questions —and ideally, the supreme rule does not become a regulation— it is common for the internal provisions of congresses and parliaments to do so.

On some occasions, government technical assistants are allowed to intervene, which facilitates precision when the question demands it. This is understandable, moreover, if one considers that the positions in the cabinet

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should have a political and not a technical nature. What is expected of a minister are the political and legal reasons of the government, not learned dissertations on matters of high scientific or technical specialty, which must be known and clarified by auxiliary officials, including those of the civil service. That is why parliamentary questions also produce, as a side effect, that the administrative bodies reach a high professional level.

The mere elucidation of the government's reasons tends to have favorable consequences to facilitate the cooperative behavior of political agents, among other reasons because it makes them co-participants in the decisions and because it clears the reservations that result from the distance between the organs of power. Regarding society, systematic dialogue between the members of these bodies inspires a certain assurance regarding the seriousness with which public affairs are addressed, and raises the hope that, in some cases, constructive attitudes will contribute to solving collective problems.

The regularity and frequency of the control sessions is one of the keys to the success of soft controls, such as questions. The positive effects to which I have referred are diluted if the time that elapses between one session and another is excessive, or if the time allocated and the way of using it become a mere protocol hint or a dense session and, therefore, inconsequential. On the contrary, a good design regarding the frequency and the exact duration of the control sessions can mean that the parliamentary questions attract the interest of the citizens, facilitate the dialogue between the political agents, and force the systematization of the relations between the organs. of power and give vitality to institutional life.

The setting where the question sessions take place is also relevant. Those that are aired in commissions have the advantage of technical punctuality, but the disadvantage of a secondary setting. The government, in general terms, must appear before the plenary session of the chambers. This is how control sessions are usually processed in all systems, reserving for the commissions the cases in which they appear for clarification on a proposal or an investigation.

The options between the question formulated on behalf of the parliamentary fraction and individually —not personally— by legislators, are usually compatible in many systems. Both forms of expression have their own advantages. In the case of the parties, they serve to reaffirm the leadership of those who lead the factions and make present the concerns and positions of each parliamentary group; they also help to consolidate the rights of the opposition. In the case of legislators, they serve to give representatives an opportunity to be identified by citizens and signify themselves to

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their own colleagues. In general, the parliamentary machinery leaves little room for intervention for a good part of the legislators, who end up acting, according to the well-known British expression as backbenchers, due to the lack of responsibilities in the management of their group or of the congressional committees.

The questions are not intended to fill the knowledge gaps of legislators. A correct articulation of the questions makes it necessary to have a good list of party advisers. This is a task that members of the civil service of the chambers cannot carry out because the content and meaning of the questions are linked to the political position of those who present them. Hence, the parties must build a civil service of congressional support, which allows building a political memory of each parliamentary group and giving continuity to their points of view.

There are many possibilities of giving new scope to parliamentary questions. For example, among parliamentary practices, the one to formulate annual reports on the exercise of the right to ask, and the responses received, has not been adopted, to check the veracity of what is reported or what is announced by the ministers in the rostrum. The great debates have their own space in the collective memory, but soft controls require a systematized and cumulative recapitulation, so that the good or bad use that political representatives have done of this resource can be assessed in this way.

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Fifth chapter

DISSOLUTION OF CONGRESS

In Ecuador, Peru, Uruguay, and Venezuela the Congress can be dissolved. The same happens in Armenia, Belarus, Egypt, Georgia, Kazakhstan, Pakistan, Russia, Syria, Turkey, Turkmenistan, and Ukraine. This extreme measure is explained in parliamentary systems although it is exorbitant in presidential ones. The reason why it is applied where the heads of state and government are separated can be understood as an instrument of defense of the head of government against the potential harassment of Parliament. In a parliamentary system, the motion of censure implies the removal of the person who heads the government, but this does not happen in presidential systems, even if the head of the cabinet is the one who is threatened.

In parliamentary systems, the purpose of dissolution is to bring the dispute before the electorate so that citizens can ultimately decide on the permanence of the head of government. This does not occur in presidential systems even when the Constitutions provide for the existence of a cabinet that can be removed by Congress. In presidential systems, the dissolution of Congress strengthens the president's intangibility and undermines the advantages of incorporating other control measures, such as interpellations, the question of confidence, and the motion of censure with limited effects.

The inclusion of some control mechanisms from the parliamentary system should be seen as a means to compensate for the existing asymmetries between the congresses and the presidential parent governments, not to accentuate the weaknesses of the congresses.

The Cuban Constitution of 1940 adopted a parliamentary system compatible with the presence of a president elected by popular vote, and deliberately excluded the most rigorous measures such as the dissolution of the Congress. The author of the draft Constitution offered arguments in the sense of building a prudent system, which he called a "restricted parliamentary regime," which would allow for the implantation of a "healthy"

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balance between Congress and the government.[47] He was right, since the insertion of all the forms of parliamentary control in the presidential systems could upset the balance sheets to the detriment of Congress.

In the presidential system, the head of government is never exposed to being removed by Congress, so the power to dissolve him is a way of exacerbating presidential powers to a limit that not even military dictatorships have reached, with legal grounds. This measure shows that the incorporation of some control mechanisms from the parliamentary system, far from compensating the existing asymmetries between congresses and presidential governments, can accentuate the Caesarist nature of the presidents' power. In a case like this, the institutional interaction is negative.

The argument for putting the possibility of dissolving Congress in the hands of the president is based on the thesis that it should not be left defenseless in the face of political pressure exerted by Congress. It is dismissed that the president does not run any risk when his ministers are censored, and that by granting him an instrument as categorical as dissolution, he becomes the holder of a capital power that tends to inhibit even reasonable actions of control by the Congress.

As for Latin America, in Uruguay there is a long tradition of imposing limits on presidential power, so that the prospect of dissolving Congress does not pose a greater risk; in Peru, on the other hand, the double round system for the presidential election sometimes causes a certain fragmentation in Congress that makes it difficult to exercise the powers of parliamentary control, especially given the risk that the president dissolves it motivated by the expectation of that a new election favors your party; in Venezuela and Ecuador, the accentuated plebiscitary nature of the respective systems acts as an intimidating factor that limits the controlling capacity of Congress.

There is, however, another possible situation: some systems have a parliamentary presidential structure, as will be seen in the next chapter. In such cases, the head of state and government do not correspond to the same person, even when the preeminence of the president is ostensible, and the censorship does affect the head of government, so parliamentary dissolution is admissible. This has happened so far outside the Latin American area, but it is being considered as an option in Nicaragua.

Let's see below how the dissolution of Congress is regulated in Latin America.

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47 Cortina, José Manuel, "Exposición de motivos y bases para reformar la Constitución", in Lazcano y Mazón, Andrés María, *Constituciones políticas de América*, La Habana, Cultural, 1942, t. I, pp. 445 and et esq.

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I. Ecuador

> Article 150. The President of the Republic may dissolve the National Assembly when, in his opinion, it has assumed functions that do not correspond to it constitutionally, after a favorable opinion of the Constitutional Court; or if she repeatedly and unjustifiably obstructs the execution of the National Development Plan, or due to a serious political crisis and internal commotion.

The incorporation of this institution into the supreme Ecuadorian norm denotes an authoritarian excess. The first cause of dissolution invests the president with a power outside the democratic systems, because "when in his opinion" the Assembly acts outside its constitutional powers, the president can dissolve it. In this case, the prior opinion of the Court, which may well be made up of people related to the president, or subjected to government pressure, does not mitigate the authoritarian effects of the institution. The following cause is related to the "repeated and unjustified" obstruction of the development plan, which leaves ample space for presidential discretion, especially if one takes into account that article 143 includes, among the executive functions, that of planning; this decision is corroborated by articles 149 and 279, according to which the president must formulate and present the proposal of the National Development Plan to the National Planning Council, which he presides over. In this way, contrary to what happens in parliamentary systems, in the Ecuadorian case when the congress rejects the government program, it is the representative body who disappears. The third cause is an invitation to struggle between the institutions. As can be seen in chapter IV of this work, the Assembly can dismiss the president in situations of crisis and shock, while the president can dissolve the Assembly in the same circumstances. The system adopted in Ecuador incorporates control mechanisms that, far from contributing to balance and stimulating cooperative behavior between the organs of power, encourages the subordination of the congress in relation to the government, or the confrontation between them.

II. Peru

> Article 117. The President of the Republic can only be accused, during his term, of treason; for preventing presidential, parliamentary, regional or municipal elections; for dissolving Congress, except in the cases provided for in

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article 134 of the Constitution, and for preventing its meeting or operation, or those of the National Elections Jury and other bodies of the electoral system.

Article 134. The President of the Republic is empowered to dissolve Congress if it has censured or denied the trust of him to two councils of ministers.

The dissolution decree contains the call for elections for a new Congress. Said elections are held within four months of the dissolution date, without the preexisting electoral system being altered.

Congress cannot be dissolved in the last year of his mandate. Once the Congress is dissolved, the Permanent Commission remains in office, which cannot be dissolved.

There are no other forms of revocation of the parliamentary mandate. Under a state of siege, Congress cannot be dissolved.

This norm has its origin in the Constitution of 1979, which empowered the president to dissolve the Chamber of Deputies after the trust of three councils of ministers had been censored or denied (article 227). The precept in force, of apparent innocuousness, places in the hands of the president a political weapon of great caliber, assuming that in an extreme situation it would be enough for him to sacrifice a couple of councils of ministers to be able to dissolve Congress. Although this possibility seems unlikely, the fact is that it is not recommended that the Constitutions offer options that may be contrary to the constitutional order itself. Even in unfavorable conditions for the president, the dissolution does not pose any risk to him, because if he were to become a minority again, this would not condition his permanence in office.[48]

III. URUGUAY[49]

When the General Assembly has censured one or more ministers and, after presidential observations, ratifies its decision by a number less than three-fifths of the total number of its members, the possibility arises that the president dissolves the chambers and calls elections. The Assembly that results from this electoral process determines, by an absolute majority, whether to maintain or revoke the ministerial disapproval. In this case, despite the draw-

[48] In Peru, however, the inclusion of this faculty was aimed at preventing the overflowing exercise of censorship and has yielded the desired results.

[49] The text of the applicable precepts appears in the third chapter, corresponding to the interpellation and the motion of censure.

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backs already mentioned, the appeal to citizens is explained in terms of settling the conflict that has arisen between the organs of political power.

IV. Venezuela[50]

The dissolution of the Assembly, in accordance with the final part of article 240, is optional for the president when there have been three removals of the vice president in the same term of government.

Let us now look at other cases.

V. Angola

> Article 66.
>
> The President of the Republic has the following powers:
>
> ...
>
> e) Decree the dissolution of the National Assembly after consulting with the Prime Minister, the President of the National Assembly and the Council of the Republic.
>
> Article 95.
>
> 1. The National Assembly may not be dissolved within the first six months following its election, in the last quarter of the presidential term, during the government of an interim president or when the state of siege or emergency is in force.
>
> Article 102.
>
> 1. When the National Assembly is in recess, it has been dissolved and in other cases that the Constitution provides, it will be replaced by the Permanent Commission

The Council of the Republic (article 76) is made up of the President of the Republic, who heads it, and by the President of the National Assembly, the Prime Minister, the President of the Constitutional Court, the Attorney General of the State, the former President of the Republic, ten citizens appointed by the President of the Republic and the presidents of the political parties that have representation in the Assembly. In 2008 there are 7 parties with members in the Assembly, so the Council has a total of 23 members.

[50] The applicable text, article 240, appears in the third chapter, corresponding to the interpellation and the motion of censure.

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Of these, the president has the vote of the prime minister, whom he can remove freely (article 66 a and c), and of the general counsel, appointed and removed also by the president (article 66 i). It also has the vote of the president of his own party and of the ten councilors he has appointed. In turn, the Constitutional Court is made up of 7 members, of which 3, including its president, are appointed by the President of the Republic (article 135.1 a). Thus, the president has at least 15 of the 22 votes of the Council. In accordance with this regulatory scheme, the fate of the Assembly depends on the president.

VI. Algeria

> Article 82. If the approval of the National People's Assembly is not obtained on a second occasion, the Assembly will be dissolved by right.
>
> The existing government will remain in office to handle ordinary affairs, until the election of a new National People's Assembly, which must be elected within a maximum of three months.
>
> Article 129. The President of the Republic, after consulting with the President of the National People's Assembly, the President of the Council of the Nation, and the head of government, may dissolve the National People's Assembly or call early legislative elections.
>
> In both cases, the elections will take place within a period of three months.

The dissolution of the Assembly proceeds automatically in accordance with the provisions of article 82, which was already examined in the chapter on trust. There is a second hypothesis that leaves the discretion of the president to judge the timing of the dissolution or the early calling of elections. The difference between the two options is that the sole convocation does not relieve the outgoing Assembly from continuing to function until the elections are held and the results are qualified, while the dissolution operates immediately. The president is obliged to consult, but not to follow, the opinions expressed to him.

VII. Armenia

> Article 55. The President of the Republic:
>
> ...

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> 3) He can dissolve the National Assembly in the cases and in accordance with the procedure established by article 74.1 of the Constitution, and calls extraordinary elections;
>
> ...
>
> Article 74.1. The President of the Republic will dissolve the National Assembly if it does not approve the government program twice in a row in a two-month period.
>
> The President of the Republic will also dissolve the National Assembly on the recommendation of the President of the Assembly or the Prime Minister in the following cases:
>
> a) If the Assembly does not attend within a period of three months a bill considered urgent by the government, or
> b) if during a period of sessions, the Assembly does not meet for three months, or
> c) if during a period of sessions, the Assembly does not resolve a debated question for more than three months.

The Armenian Constitution presents original characteristics. The dissolution of the National Assembly is admitted as a means of overcoming a conflict with the government and to solve internal problems of the Assembly itself. In the first case, dissolution can only be achieved when the Assembly does not approve the government program. In this way, the fate of the members of the government is dissociated in relation to the program that the president intends to promote. As can be seen in the section on questions, interpellations and motion of censure, the Assembly can censure all or part of the ministers, but this does not lead to dissolution; on the other hand, the non-approval of the government program, twice in a row in a period of two months, does lead to the dissolution of the Assembly.

This constitutional provision is striking, because when extraordinary elections are called, they are not held due to a dispute between the organs of political power that affected the presence in the cabinet of one, several or all ministers; what is presented to the electorate to settle differences is a political program. According to this same logic, dissolution proceeds when a bill that has been declared urgent is not addressed by the Assembly. This does not mean that it must be approved; it is enough that it has been "attended", that is, ruled, discussed, and decided on it, for the dissolution to be inappropriate. With this mechanism, the president is protected so that his proposals do not go unnoticed, and the Assembly is protected, whose power to decide is not conditioned by government action.

The other original aspect of the Armenian provision is that the request for dissolution could come from within the Assembly itself. This mechanism

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confers great power on the President of the Assembly. Note that a recommendation is alluded to, so the President of the Republic can dismiss the request made by whoever heads the Assembly. But even so, the law allows that high congressional official to exercise effective powers of intraorganic control. If in a given period there is no quorum or the matters that fall within the Assembly are not dispatched, its president may recommend to the President of the Republic that he call new elections. This possibility is debatable and is only understood in an environment where parliamentary disagreements paralyze or slow down legislative activity. Even so, it is an instrument that does not contribute to promoting cooperative behavior and it is a potential source of confrontations with the government.

VIII. Belarus

> Article 94. The term of the House of Representatives may be terminated early when it adopts a motion of no confidence in the government, or when it denies its consent to the appointment of the prime minister on two successive occasions.
>
> The terms of the House of Representatives or that of the Council of the Republic may be concluded in advance by resolution of the Constitutional Court, due to serious and systematic violations of the Constitution by the chambers.
>
> The decision will be made by the president after consulting with the presidents of the chambers.
>
> The chambers may not be dissolved during the state of emergency or martial law, nor during the last six months of the presidential term, nor when the removal of the president is being processed.
>
> Chambers cannot be dissolved during the first year of sessions.

Under article 84, which is discussed in greater detail in the chapter on the vote of confidence, the President is empowered to dissolve the Houses of Parliament, to appoint the Prime Minister with the consent of the House of Representatives, as well as to appoint and to freely remove the vice prime ministers, ministers and all other government officials. As for the dissolution of Parliament, the rules have a certain complexity; in addition to the conventional provisions regarding the dissolution caused by censorship of the government or by denying consent for the appointment of the prime minister on two successive occasions, it includes rare hypotheses.

The Constitutional Court can take the decision to dissolve Parliament when it has incurred serious and systematic violations of the Constitution.

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In this case, however, the decision of the Court is subject to the President endorsing it. Before making a final decision, the president must listen to the presidents of both chambers. The mechanism adopted can give rise to tensions that are difficult to manage in institutional relations, because it is up to the president to act as a kind of review body for the Court. It is contradictory for the Court to determine that one of the chambers, or both, have incurred in serious and systematic violations of the constitutional order, and that notwithstanding the president sustains them in his functions. This attitude of the president would suppose either of two positions: either he determines, against the opinion of the Court, that there were no serious and systematic constitutional violations, or he admits that even if there were, he gives his support to Parliament to continue its functions. In this case, an understanding could occur between the government and Parliament, adverse to the validity of the supreme rule or to the public interest.

We are facing a poorly designed institution because any of the possible options, including dissolution in accordance with the Court's resolution, leads to a process of confrontation between the organs of power. For the conditions to be met that allow a Constitutional Court to reach the conclusions set forth in article 94 of the Constitution, unusual events would have to have occurred. If the Court invented or exaggerated them, or if the president tolerated and covered up them, the crisis would be capital and lacking solutions according to the constitutional text itself. It is difficult for such an episode to be registered in the normal life of a constitutional state, and its inclusion in the legal system suggests that the elaboration of the norm was subject to pressure from public mistrust.

The resulting mechanism is inadequate to preserve institutional stability, even if it has been surrounded by some preventions such as those that prevent dissolution during the validity of martial law, the state of emergency or during the first year of the corresponding legislature like the Russian standard. In the case of the state of exception, the exception is explained because the dissolution under these conditions would eliminate political control over the president. On the other hand, it is difficult to reconcile the provisions of the first and last paragraphs of the precept. There is an obvious contradiction between the prohibition to dissolve Parliament during its first year of sessions, and the failure to grant consent for two successive prime ministerial proposals, which usually occurs in the initial phase of a government and a legislature. The error, in any case, favors the critical capacity of Parliament. The construction of the precept leads one to think that it was developed in this way to make its application almost impossible, perhaps considering that this was the best option to preserve governance.

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IX. Egypt

See both the constitutional text and the comment on the parliamentary dissolution provided for by the Egyptian Constitution, in the section corresponding to this country in the fourth chapter.

X. Russian Federation

Article 84.

The President of the Russian Federation:

...

B. he will dissolve the Duma in the cases and according to the procedure established by the Federal Constitution.

Article 92.

...

3. In all cases where the President of the Russian Federation is unable to exercise his functions, the President of the Government of the Russian Federation shall temporarily exercise them. The acting President of the Russian Federation shall not have the right to dissolve the State Duma, announce a referendum, or make suggestions on amendments to reconsider the articles of the Constitution of the Russian Federation.

Article 109.

1. The Duma may be dissolved by the President of the Russian Federation, in accordance with articles 111 and 117 of the Federal Constitution.

2. When the Duma has been dissolved, the President of the Russian Federation shall fix the date of the elections on the condition that the new Duma begins to sit within four months at the latest from the moment of dissolution.

3. The Duma may not be dissolved, as provided in article 117 of the Constitution of the Russian Federation, for one year after being elected.

4. The Duma may not be dissolved from the moment of filing accusations against the President of the Russian Federation until the approval of the relevant resolution by the Federation Council.

5. The Duma may not be dissolved during the period of martial law or state of emergency decreed throughout the national territory, nor in the course of six months prior to the end of the mandate of the President of the Russian Federation.

Article 111.

...

4. If the candidate for the Presidency of the government of the Russian Federation is rejected three times by the Duma, the President of the Federa-

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tion shall appoint the head of the federal government, dissolve the Duma and call new elections.

Article 117.

...

3. The State Duma can express a vote of no confidence in the government. The provision on distrust of the government is approved by a majority vote of the total number of deputies of the State Duma. After the State Duma expresses a vote of distrust to the government, the President of the Russian Federation has the right to announce the resignation of the government or its disagreement with the decision of the State Duma. In the event that the Duma, within three months, again expresses distrust of the government, the president will announce the resignation of the government or dissolve the State Duma.

4. The Prime Minister of the Russian Federation may submit a motion of confidence in the government to the Duma. If the State Duma does not admit it, the president in the course of seven days must order the resignation of the government or the dissolution of the State Duma and fix new elections.

The Constitution establishes several limitations for dissolution: it cannot be carried out by the acting president. Furthermore, it is inadmissible in four circumstances: within the first year of the legislature, in the last six months of the presidential term, during the trial of the president and while a state of exception is in force. These restrictions, understandable, do not mitigate the draconian nature of the measure in a presidential and even semi-presidential system. In the latter case, a distinction can be made between the head of government and the head of state; even so, when the constitutional structure makes the president prevail over the prime minister, removal from the cabinet does not affect the president. Dissolution is a radical measure whose imminence may inhibit Parliament from exercising its control functions, while at the same time it does not encourage cooperation between political agents.

XI. Georgia

Article 80.

...

5. If the composition of the government or the government program does not obtain the confidence of Parliament for three successive times, the President must nominate a new candidate for Prime Minister within a period of five days or appoint the prime minister without the consent of Parliament,

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> and the prime minister will designate the members of the government with the approval of the President, within the next five days. In this case, the president will dissolve Parliament and call extraordinary elections.
>
> Article 81.
>
> ...
>
> 4. The Prime Minister can raise a question of confidence in the government when he presents the budget, the tax law or changes in the structure, competence, or functions of the government. Parliament will grant its confidence by most of the total of its members. In the event that Parliament does not declare confidence in the government, the president will remove the government or dissolve Parliament within the following week and will call extraordinary elections.

The Constitution of Georgia (article 79) establishes that the prime minister is the head of government; however, the constitutional reforms of February 6, 2004, included a strong presidential nuance.

In order to offer wide margins for political negotiation, the Constitution establishes that, after on three successive occasions the Parliament has not granted its confidence to the government or offered its support to its respective program, the president will have two options: to propose another candidate to the first minister or appoint him freely. In this case, in addition, he must dissolve the Parliament. In other words, the president can choose between submitting to Parliament or facing new elections. It is evident that if his considerations about the correlation of political forces lead him to the conclusion that a new configuration of Parliament may be even more adverse for him, his normal decision will be to seek an understanding with that representative body. This type of calculation is frequent, especially when the fragmentation of political parties makes it foreseeable that the result of an extraordinary election will not make it easier for the electorate to build a stable majority.

Another circumstance that can lead to the dissolution of Parliament occurs when the prime minister presents the question of confidence regarding the budget or the organization of the government, and does not obtain it. In this case, the president will be faced with the dilemma of removing the government and making a new proposal to Parliament, or he supports it, but at the cost of calling elections. The hypotheses adopted by the Georgian Constitution are based on the conventional, but with a prudent attitude that allows the president to sustain a long process of negotiation with Parliament. This mechanism, far from weakening it, strengthens it insofar as it assigns an arbitration function on which the governance of the system depends.

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XII. Kazakhstan

Article 63.

1. The President of the Republic may dissolve Parliament in the following cases: when Parliament issues a vote of no confidence to the government, when Parliament denies the investiture vote to the prime minister on two consecutive occasions, when there is a political crisis due to the insurmountable differences between the two houses of Parliament or between Parliament and other organs of power.

2. Parliament may not be dissolved during the validity of a state of emergency or martial law, in the last six months of a presidential term, and during the year following a previous dissolution.

Article 70.

...

6. In the event that the resignation of the government or its members is not accepted, the president may instruct the government or some of its members to continue in their positions. In the event that the resignation of the government was due to a motion of censure and the president does not accept it, he may dissolve Parliament.

In the dissolution power of Parliament, the Constitution places a considerable quota of power in the hands of the president. Of the anticipated hypotheses, the Kazakh system incorporates two that it shares with other systems: a motion of no confidence, rejected by the president, and the refusal to grant the investiture vote for the proposed prime minister, on two successive occasions. However, dissolution is also possible as a political weapon to bend Parliament. The presence of "insurmountable differences" between both chambers, or between Parliament and the government, is reason enough for the president to call new elections. In this way, the president becomes an arbitrator with powers to assess the conduct of parliamentarians, and to impose a kind of political sanction for their reluctance to understand each other or with the government.

The dissolution of Parliament as an instrument of subordination of legislators radiates another type of pathological behavior towards the rest of the political system. If the president has the almost unrestricted power to dissolve and has an important range of mechanisms to influence public opinion, it is foreseeable that the members of Parliament will adopt obsequious attitudes to avoid a challenge in which their real chances of success are very highly limited. This case illustrates the extent to which the constitutional possibility of dissolving Congress, in a presidential system, fosters

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hypertrophic deformations close to Caesarism. The limitations introduced in article 63.2 only qualify the extension of the power contained in article 63.1, to avoid an overflowing use of an excessive power.

XIII. Mozambique

> Article 136.
> 1. At the beginning of each legislature, the Assembly of the Republic will evaluate the government's program.
> 2. The government will present a revised program that takes into account the conclusions of the Assembly debate.
> 3. In the event that, after the debate, the Assembly rejects the government program, the President of the Republic may dissolve it and call new elections.

According to the Constitution, the President of Mozambique is the head of government (article 117.3). Among his powers are those to appoint and remove the prime minister and the other members of the cabinet (article 121 b and d), and to preside over and convene the Council of ministers (articles 121a and 150.2). The question of trust is not expressly foreseen; however, the government program must be approved by the Assembly of the Republic, and in the event that the majority vote is adverse, the president can dissolve the Assembly (article 120 e) and call general elections (article 120 d). However, when the Assembly does not approve the program a second time (article 120 f), the president is obliged to remove the cabinet, while he cannot dissolve the Assembly twice, within the same legislature. In this way, trust, which is not explicit, appears linked to the approval of the government program.

The Council of Ministers is responsible to the President and to the Assembly, for the conduct of the country's internal and foreign policy, but the effects of this responsibility are not provided for in the fundamental norm (articles 151 and 156). In the terms of 155, transcribed, the possibility remains open for the prime minister to attend the Assembly regularly and, insofar as he must explain government policies and decisions, there is room for questions and interpellations, but without that a motion of censure may be derived from these. The Mozambican scheme makes a dissolution mechanism available to the president that generally affects the balance between the organs of power, but its use is limited at the beginning of government administration.

The intention of the Constituent Assembly was to build a very powerful presidential system, with a dominant party, for which reason two successive

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presidential re-elections are planned (article 118), for periods of five years, with the possibility of allowing a period to pass to be reelected again for two terms. President Joaquim Chissano, for example, remained in office for 19 years (it began before the current Constitution came into force), and was succeeded by Armando Guebuza, also a leader of the same party, the Mozambique Liberation Front.[51] While the Congressional and presidential elections are simultaneous, the president has a mechanism that allows him to have a majority in the Assembly from the beginning of his term; anticipating the event that this did not happen, he could dissolve the Assembly and, with the electoral influence offered by the exercise of the presidency, call a second election. Only if the results of these elections were unfavorable to him, the president would be forced to integrate a coalition government that would allow him to obtain the majority necessary for the approval of the government program. Despite the disadvantages for political balances that the dissolution of the congress into a presidential system implies, the modality adopted in Mozambique is one of the least aggressive.

XIV. Pakistan

> Article 58. Dissolution of the National Assembly.
>
> 1. The President may dissolve the National Assembly if the Prime Minister so advises; the dissolution will take effect within forty-eight hours following the notification made by the prime minister.
>
> 2. The President may dissolve the National Assembly by his own decision, if in his opinion any of the following circumstances arise:
>
> a) there is no member of the National Assembly who can replace the prime minister, when a vote of no confidence was passed; or
>
> b) there is a situation that prevents the government from carrying out its functions in accordance with the provisions of the Constitution
>
> 3. If the decision to dissolve the Assembly is made based on the provisions of numeral 2 b), the president must consult the Supreme Court, which will have thirty days to issue a resolution.

From the way in which article 58.1 is constructed, it is concluded that the dissolution does not proceed after the censorship of the prime minister, because the effects of the parliamentary decision are immediate. When a prime minister is censured, he ceases to serve him and is no longer in constitutional capacity to advise the president. Hence, it is also foreseen that the

[51] In the 2004 elections, the Frelimo party obtained 62% of the Assembly's members.

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president can make the decision to dissolve the Assembly; to avoid presidential discretion, an exorbitant power is included for the Court, which does not rule on a specific controversial case, but on the president's assessment of the prevailing political conditions. The 30-day period seems to be suggested by the convenience of offering a time frame in which the normality of the institutional functioning is restored. The considerations of prudence that may have inspired this modality did not realize the magnitude of the pressures that may be exerted on the Court and the uncertainty that occurs when the organs of power experience a prolonged conflict. In addition to the many inconveniences of dissolution in the presidential base systems, in this case we must add the prolongation of a crisis that can completely damage the power structure and promote processes of rupture like the one in 1999.

XV. Syria

> Article 107.
>
> 1. The President of the Republic may dissolve the People's Assembly, by means of a reasoned decision. Elections will be held within 90 days of dissolution.
>
> 2. The same president may not dissolve the Assembly more than once for the same reason.

This precept does not associate the dissolution to a vote of no confidence rejected by the president, or to the lack of confidence in the government. In the Syrian system the dissolution does not obey the purpose, real or apparent, of balancing the relations between the political organs of power; here there is an unparalleled case of a parliamentary dissolution not regulated by the constitutional order, although the applicable precept requires that the decision be reasoned. Clearly, when there are no legal safeguards, the quintessential reason is force. According to the wording of the precept, any reason is valid.

The only existing limitation does not affect the decision-making capacity of the president; it only raises a requirement of imagination, because it is said that successive dissolution decisions cannot be made for the same reason. As this limitation is not related to the period of the Assembly, but to the presidential one, and there is the possibility of indefinite re-election, the same president must invoke a different reason each time he decides to dissolve the Assembly. This requirement is not difficult to fulfill because, after all, any reason is validated by the constitutional order.

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This mechanism is related to the type of presidential system in force in Syria. In accordance with article 84 of the Constitution, the Assembly proposes a candidate for the presidency, whose approval is submitted to a referendum. If in this process it does not obtain an absolute majority of the total popular votes, the Assembly must nominate another candidate. On the other hand, parliamentary immunity is lost in the case of dissolution, so the president controls who can nominate him for his re-election.

XVI. Turkey

> Article 116. In cases where the Council of Ministers does not receive the vote of confidence for the investiture in accordance with article 110, or has lost confidence in accordance with articles 99 or 111, and if it has not been possible to form a new Council of Ministers within the next forty-five days, the President of the Republic may call new elections, after consulting the President of the Grand Assembly. If a new Council of Ministers cannot be formed within 45 days of the resignation of the Prime Minister, or within 45 days of the election of the Steering Committee of the Grand National Assembly of Turkey, the President of the Republic, after consulting with the President of the Grand Assembly, may also call new elections.
>
> The decision to call new elections will be published in the Official Gazette, and the elections will take place immediately.

With the plurality of circumstances referred to in the Turkish norm, an attempt is made to limit the presidential discretion regarding the dissolution of the Assembly. In the Turkish constitutional system, the president is only head of state; however, he has important constitutional powers of political mediation that make him a significant figure in institutional life. For example, he has a veto, he can submit to a referendum the constitutional reforms approved by the Great Assembly, he can promote before the Constitutional Court actions to annul laws, government decrees and even the internal regulations of the Great Assembly. Furthermore, he is the head of the armed forces and assumes the presidency of the Council of Ministers in the event of a state of emergency (article 104).

The dissolution of the Assembly does not correspond to a decision that the government proposes to the president, who is only obliged to consult it with the president of the Assembly itself. The cases provided for by the Constitution deal with the lack of prime minister for not having obtained the trust for the investiture of him, for having been censured or for not having been replaced by the resigning prime minister. In any of these circum-

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stances, a period of 45 days is foreseen, so that there is a reasonable margin to seek political solutions.

The structure of the precept is aimed at turning dissolution into an extreme act, once all the possibilities of understanding between political agents have been exhausted, and not into an instrument of pressure to reduce Parliament's resistance to government decisions. This constitutional design strengthens the presence of the president by making him an important political arbiter in exceptional circumstances.

XVII. Turkmenistan

> Article 64. Parliament can be dissolved early:
>
> By decision of a referendum
>
> By resolution of the Parliament itself, by no less than two-thirds of the total votes.
>
> By the President, if Parliament does not integrate its governing bodies within a period of six months, or if in a period of eighteen months it adopts two motions of no confidence in the Cabinet of Ministers.

This system is quite original because in addition to being an instrument of control of the president in relation to Parliament, if he adopts two motions of censure in a period of 18 months, or that he does not integrate his board in the course of the six months after his election, it also allows self-dissolution, decided by two thirds of its members, and the referendum to revoke the mandate.

The first hypothesis falls within the conventional instruments of rigid presidential systems that have severe forms of control over the organ of political representation. Control is accentuated by the possibility given to the president to dissolve Parliament for not having defined his directive within six months. These factors would be sufficient to characterize a very strong presidential system and a very weak representative system.

To underline the fragility of the representative system, the Constitution included a People's Council, which it considers the highest representative body (articles 45 and 48), made up of the President of the Republic, the ministers, the heads of the administrative regions, the presidents of the municipal councils, and the popular district councilors, all dependent on the president; it is also made up of the presidents of the Supreme Court, the Commercial Court and all the deputies of Parliament. This Popular Council, where the president has predominance, can call the recall referendum (article 95), at the request of a quarter of its members.

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The self-dissolution of Parliament, which can be agreed to by two-thirds of its members, is just a formal provision for a Parliament whose structure shows extreme weakness.

XVIII. Ukraine

> Article 90.
>
> ...
>
> The President of Ukraine can dissolve the Verkhovna Rada [Assembly] before the end of his term, if he does not hold sessions within thirty days of the beginning of a term.

What is intended to regulate with this precept is a rare situation in which, by not starting its sessions, the body of political representation affects the normal functioning of the institutions and, especially, of the government. It is about preventing a kind of government blockade due to parliamentary inactivity, which is unlikely in practice. The structure of the Constitution confers a clear pre-eminence on the president, which is corroborated by the presidential interference in parliamentary life.

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Sixth chapter

THE UNIQUENESS OF INTERMEDIATE AND AUTHORITARIAN SYSTEMS

I. Intermediate Systems

In its initial phase, the construction of the constitutional state gave rise to the definition of dominant modalities, so that the presidential systems tended to identify themselves with the American model and, from the second half of the 19th century, with the plebiscitary presidentialism of Bonapartist matrix. In turn, the parliamentary systems received the imprint of Westminster, although in other latitudes they experienced the adjustments derived from the presence of several parties that were contending for power and that generated variants of parliamentarism less stable than the British one.

The gradual implementation among the English of a system that began to take shape with the arrival of the incipient Norman parliamentary tradition, became expressed in 1215 and slowly evolved until it was consolidated with the Petition of Rights, of 1628, with the Habeas Corpus Act, of 1679, and with the Bill of Rights, of 1689. That organization, built on the basis of numerous customs and some laws, conferred a characteristic profile on the parliamentary system and on what was identified as "constitutional monarchy" throughout the 19th century.[52] The new republics followed the presidential model and the old monarchies adapted to the English parliamentary model. The expansion of the parliamentary system is associated with the survival actions of monarchies. In a way, the parliamentarization of presidential systems follows a similar logic: to overcome a tradition of strong concentration of power.

At present, it is possible to distinguish between presidential and parliamentary constitutional systems, but there are some that are in an area that

[52] However, the forerunner example of the Swedish Constitution of 1720 should not be omitted, which gave an important decisive force to the Riksdag (Parliament) which, as in other European cases, had its roots in the Middle Ages. The word itself is striking, because literally Riksdag means "the day of the kingdom", that is, of the people. The meaning is similar to the German Reichstag voice.

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is difficult to classify. Although doctrinal efforts are being made to identify some systems as semi-presidential or semi-parliamentary, the characteristic elements of these supposed forms of government have not been able to be defined in a uniform and peaceful way. The reason is simple: any combination of elements from the basic types of government (presidential or parliamentary), admits variable degrees, so that to a large extent each system ends up being unique, insofar as such a degree of originality is possible.

If we look at all the possible variations in the way the organs of power are structured and interrelated, it will be seen that each arrangement responds to different motivations, has its own characteristics, and gives the institutions a peculiar aspect. This study has seen, for example, the function of each parliamentary control instrument within systems of presidential essence, and it has been possible to identify a very high number of variants regarding each of these modalities; adaptations that are accentuated when the interaction between the set of institutions is reviewed.

In addition to the systems that can be framed in the presidential or parliamentary sphere, there are others that are difficult to classify. This happened, in the first place, with the Constitutions of Portugal, of 1911, and of Weimar and Finland, of 1919; and years later with that of France, in 1958, and with that of Portugal, in 1976. In the first three cases there was a transition from an absolute monarchical system (in the Finnish case, as part of the Russian monarchy) to a republican one and democratic; in the French case, it went from an assembly republic to a governable democracy, and in the second Portuguese case, from an autocratic republic to a parliamentary presidential one.

1. *Germany (Weimar Republic)*

The Weimar Constitution replaced the one of 1871, and this one to which the North German Confederation governed, of 1867. Many of the precepts of the monarchical Constitutions presented a great similarity; this happened in the case of the figure of the Chancellor of the Empire (Reichskanzler), who was appointed by the monarch, before whom he responded (article 15). According to the Constitution of 1871, the Diet could only be dissolved by the Federal Council, with the consent of the emperor (article 24), but the Federal Council was made up of representatives of the Prussian states, subject to the duty of obedience. towards those who designated them. The Council was also chaired by the Chancellor (articles 6 and 15). This combination allowed a reasonable use of dissolution power.

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Otto von Bismarck held the Chancellery for almost 30 years, and it was up to him to design the Constitutions of 1867 and 1871. This Bismarckian model, which in a certain way was present when building the Weimar system of government, is explained from the perspective of a conservative political leader of extraordinary ability. His conception of his power did not lead him to rival that of the monarch, but to build the appropriate institutional means to consolidate his authority and thus have wide margins of action. The author of the initiative was not the chancellor, but Rudolf von Bennigsen,[53] a vigorous liberal politician in whom Bismarck found support for German unification.

For its part, the Weimar Constitution is framed by two adverse events: the ominous peace of Versailles and the tragic rise of Nazism. Furthermore, strong social and political turbulence occurred in Germany at the end of the first great war. The emergence of radical movements, the killings of Kart Eisner, Rosa Luxemburg and Kart Liebknecht, the rise of the short-lived Bavarian Soviet Republic, unprecedented inflation, coupled with the aging of a leading group eager to preserve its privileges and the transactions of the nascent Republic headed by Friederich Ebert, generated an atmosphere of suffocating tension. Under these circumstances, the Weimar Constitution was drawn up and came into force.

The constitutional project was prepared by a group of experts headed by a notable jurist, Hugo Preuss, and in which Max Weber also appeared. Preuss's memory was buried by the apparent failure of the Constitution. As for how and why the model of the parliamentary presidential system was conceived, it is usually attributed to the ideas of Preuss. It is even claimed that he was inspired by the Alsatian jurist Robert Redslob, author of a work that seems to have had an influence at the time the constituent was in session and who many years later formulated an analysis of German political leanings.

From Redslob's point of view, the dominant political vocation in Germany was oriented towards the monarchy, accompanied by the instruments that made it reasonable. The Germans, he added, had built a hybrid system that allowed the coexistence of monarchy and democracy.[54] With this same perspective, Redslob had published his central work in 1918:

[53] *Cf.* Weber, Max, "Parlamento y gobierno en una Alemania reorganizada", *Escritos Políticos*, Mexico, Folios, 1984, t. I, p. 68. Weber's father was a member of the National Liberal Party founded by Bennigsen; The two cultivated a close friendship. *Cf.* Weber, Marianne, *Max Weber. Una biografía*, Valencia, Edicions Alfons el Magnànim, 1995, p. 137.

[54] Redslob, Robert, *De l´esprit politique des allemands*, París, Librairie de Medicis, 1947, p. 44.

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Die parlamentarische Regierung in ihrer wahren und in ihrer unechten Form[55] (The parliamentary government in its true form and in its false (imperfect, incorrect) form), where he put forward the thesis that a "well understood" parliamentary system could only exist if there was a balance between the organs of power, but not where one of them was imposed on the other, either by privileging the power of the assembly (parliamentary absolutism) or by ignoring the representative function of the people (monarchical absolutism). These ideas have a certain affinity with the structure of Waimer's Constitution; yet Lehnert and Mueller[56] found no quotations from Redslob in Preuss's works.

On the other hand, in the last part of the 19th century (1890), Preuss published a series of articles under the title Organization der Reichsregierung (The organization of the Reich government), where he supported the need to expand the rules of control and political responsibility. of the ministry, even limiting the powers of war and foreign policy of the monarch.[57] In 1917 Preuss wrote:

> The view has always been held among us that a rigid, well-organized authoritarian system is a prerequisite for Germany in order to retain and exercise its power, by virtue of its geographical position and the pressure on its borders. The bitter experience of the World War has begun to shake the foundations of that thesis, as it shows that, in terms of foreign policy, Germany is not strengthened by the contrast it offers when compared to all other modern states. On the contrary, Germany is weakened, and international pressure rises to unbearable levels. Experience shows that governments based on the popular will are stronger and more apt to act than authoritarian governments, whose authority is based on themselves.[58]

The observations of Lehnert and Mueller were consistent with those parliamentary theses of Preuss, who expressed great signs of sympathy for the British system. That seems to have been his original personal inclination. Although Preuss is usually credited with designing the parliamentary

[55] *Die parlamentarische Regierung in ihrer wahren und in ihrer unechten Form. Eine vergleichende Studie* über *die Verfassungen von England,* Belgien, Ungarn, Schweden und Frankreich, Tubinga, 1918.

[56] Lehnert, Detlef and Mueller, Christoph, *Perspectives and Problems of a Rediscovery of Hugo Preuss*, Baden-Baden, Nomos Verlagsgesellschaft, 2000, p. 28.

[57] Cited by Lehnert and Mueller, *cit.*, Previous note, p. 22.

[58] Preuss, Hugo, "Deutsche Demokratisie-rung", *Staat, Recht und Freiheit*. Aus 40 Jahren deutscher Politik und Geschichte, Tuebingen, edited by Else Preuss, 1926, pp. 339 et seq. (reprinted 1964 by Hildesheim), cited by Lehnert and Mueller, *op. cit.*, note 56, p. 14.

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presidential system, there are elements that indicate that this model was actually inspired by Max Weber.[59] There is a coincidence with a similar system adopted months later in Finland, and there are similar notes with the Portuguese system of 1911 (although the big difference is that in Portugal there was no popular election of the president until 1928), but the argument for this new way of accommodating power, which is expanding in contemporary presidential systems, corresponded to Weber.

When Hugo Preuss, a professor at the University of Berlin - a jurist respected for his brilliant intelligence, culture, democratic orientation and for his work - occupied the Ministry of the Interior and was commissioned to prepare the draft Constitution, he joined a small group of experts among who was included in Weber.[60] By then the sociologist had already published a series of essays in which he pointed out with precision the solutions that were discussed and immediately adopted by Preuss and the other members of the working group.[61]

Apparently, President Friedrich Ebert considered the possibilities of appointing Weber to head the drafting commission of the constitutional project. He leaned on Preuss out of pressure to get the project done as quickly as possible. This was a political imperative, as the country suffered from excessive tensions that could lead, as Weber himself recognized, to a civil war. In a letter to his wife, he tells her that never before has a constitution been written in such a short time. Indeed, the project was ready in a matter of a few weeks. The explanation for this fact is offered by Mommsen: in July 1917, Preuss had already presented a draft Constitution to the Supreme Command of the Army, and this Ebert knew. The presence of the lawyer as head of the drafting group guaranteed accelerated progress, which perhaps would not have happened had Weber been commissioned.

In his articles published in 1917, prior to the fall of the monarchy, Weber defined his position in favor of the parliamentary system and argued against the plebiscitary election of the head of state. This option, he said,

[59] In a letter to his wife, in December 1918, Weber tells her "The Constitution in principle is already ready, very similar to my proposals. They were days of continuous work with very intelligent people, a pleasure...", in Weber, Marianne, *Max Weber. A biography*, *cit.*, note 49, p. 862.

[60] In addition to Preuss and Weber, several officials participated, including two undersecretaries, belonging to the Social Democratic Party. *Cf.* Mommsen, Hans, *The Rise and Fall of Weimar Democracy*, Chapel Hill, The University of North Carolina Press, 1996, p. 53.

[61] Weber's work on constitutional matters appeared in various newspapers in the summer of 1917 (those corresponding to "Parliament and government"), in November 1918 (grouped as "The future institutional form of Germany"), and in February 1919 ("The President of the Reich").

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favors the Caesarist tendencies of the rulers.[62] Circumstances changed, and in November 1918 he addressed the challenges of building a democratic republic.[63] It was necessary, he said, to do "something new and different". Weber examined four possible ways of organizing the government:[64] with a popularly elected president, with a president elected by Parliament, with a collegiate council (as in Switzerland), or with a system that successively alternated representatives of the three länder with the greatest economic and political weight. In relation to each of these options he analyzed the advantages and disadvantages and, unlike the opinion that he had held in 1917, he opted for the plebiscite election of the president. He pointed out, however, some drawbacks that were evident in the United States during the presidential campaigns: excessive spending and division of society. The points in favor consisted of the ability to promote a socialist program, which required a solid popular implantation of the presidential authority.

In February 1919, Weber published a new article, and this time it no longer opened a range of possibilities; he aimed precisely and decisively in favor of a president of universal choice. "Only a president of the Reich supported by millions of votes could have the necessary authority to channel socialization,"[65] he said. In addition, he warned of the danger represented by the interests of the local oligarchies and the strong presence of "particularistic" tendencies that affected the unity of the country; a nationwide elected president would prevent these trends from gaining momentum. His conclusion was overwhelming:

> A Reich president elected by Parliament through an agreement of party groups and coalitions becomes a politically dead man. On the other hand, a president elected by the people who is the head of the Executive Power, of the administrative control apparatus and who has the right to a possible suspensive veto and the power to dissolve Parliament, in addition to being authorized to call a plebiscite, represents the bulwark of true democracy.[66]

Among the theses defended by Weber, the Constitution included the direct popular election of the president (article 41). His recommendation that the period be seven years was also incorporated (article 43). This last

[62] "Parlamento y gobierno…", *cit.*, note 53, pp. 150 and et seq.

[63] "La futura forma institucional de Alemania", *Escritos políticos*, *cit.*, note 53, t. II, pp. 253 and et seq.

[64] *Ibidem*, pp. 276 et seq.

[65] "El presidente del Reich", *Escritos políticos*, *cit.*, note 53, t. II, pp. 303 and et seq.

[66] *Ibidem,* p. 304.

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precept also incorporated the institution of the plebiscite to revoke the presidential mandate. Since 1917 Weber had pointed out that, in plebiscitary election systems, it was necessary to foresee "a peaceful form of elimination of the Caesarist dictator once he has lost the confidence of the masses", and in 1919 he reiterated that the elected should act while preserving the confidence of the masses.[67] What Weber and the members of the commission did not foresee is that, except in exceptional cases, the depositaries of popular power can achieve lasting power and very high levels of popular influence thanks to propaganda instruments and demagogic decisions.

The recall plebiscite could only be called by Parliament, with a two-thirds majority of the total votes. To inhibit the irresponsible use of this means of control, it was established that the effect of the president's victory in the plebiscite was equivalent to his re-election and the automatic dissolution of Parliament.

Another aspect that Weber insisted on was empowering Parliament to integrate investigation commissions. He had done so since his articles published in 1917 and succeeded in getting the commission to adopt his criteria, which, in the end, were consigned in the text (article 33). The right of inquiry,[68] according to Weber, was essential for the balanced functioning of a democratic system. Article 34 of the Constitution broadly developed its scope and empowered Parliament to adopt regulatory norms on this matter.

It was also up to Weber to argue in favor of the referendum as a defense instrument that the president could use in front of Parliament, either to assert his objections or to resolve the contradictions that arose between the Reichstag and the Reichsrat. In general, the Constitution offered a wide welcome to this means of direct democracy, highly valued by Weber. The convocation of citizens proceeded when, in addition to the president, it was requested by a third of the parliamentarians (right of the opposition or of the minority, also postulated by Weber), or a tenth of the registered voters. Voters could overcome parliamentary decisions, if their participation (although not the vote) was majority (articles 73, 74 and 75).

In addition to the part in whose design the influence of Weber is evident, Preuss incorporated other elements regarding the distribution and balance of power. The Reich government was deposited with the chancellor and ministers (article 52), but a nuance was introduced by imposing a double responsibility: before Parliament and before the president (articles 55 and 56). On the other hand, although it was indicated that the chancellor

67 "Parlamento y gobierno...", *cit.*, note 53, p. 151.

68 *Ibidem*, pp. 107 et seq.

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and the ministers would be appointed and removed by the president (article 53), it was then provided that the entire government would require parliamentary confidence, and each one individually would cease their tasks if it was subject to censorship (article 54).

The combination of these precepts implied important powers: the appointment of the ministers was conditioned to the presidential and parliamentary confidence, and their removal to the decision of the Parliament or the president. This meant that the chancellor or the ministers could be censured by Parliament or removed by the president, as independent actions, resulting from the double responsibility that linked them to each of those organs of power. In this way, a relevant political weight was conferred on the president since he was given an instrument to exercise effective leadership powers over the government.

As a corollary of their parliamentary responsibility, ministers had the right to participate in plenary sessions and committees (article 33). It is difficult to understand that ministers are subject to parliamentary responsibility if they do not have free access to their deliberations. This mechanism was present in the Weimar Constitution but is frequently ignored in the constitutions that follow a presidential model with parliamentary instruments of control.

Among the powers of the President was the dissolution of Parliament, although only once for the same reason (article 25). Furthermore, to strengthen his position he was entrusted with emergency powers. The president could intervene with the security forces in the Länder and suspend fundamental rights for a time. To revoke these decisions, Parliament had to reject them by majority.

The Weimar Constitution required the presence of a president with legal capacity to enforce the social meaning of his precepts. The coincidence between Preuss and Weber was indicated by the academic and political trajectory of both. The first steps, in terms of a germinal combination of parliamentary and presidential institutions, had already been taken by Bennigsen. Preuss had been emphatic in his parliamentary vocation, in which Weber still participated before the fall of the monarchy, but the sociologist had to persuade the jurist of the functional advantages that would result from using institutions from the presidential and parliamentary systems.

The Preuss-Weber formula did not have the expected results, because many adverse factors were added to the consolidation of constitutional democracy that they had outlined, but the example remained, and a long time later it became effective again and has demonstrated its viability.

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2. *Finland*

The case of Finland deserves a digression. It is a precursor state of democratic innovations, especially in two aspects: it was the first system in which women had the right to be voted to perform functions of political representation, and it was the first constitutional system that developed institutions that combined elements presidential and parliamentary. In accordance with the electoral system adopted in 1906, still during the validity of the Grand Duchy, in addition to recognizing the right of women to vote (hardly practiced in New Zealand, and with some restrictions in Australia and in two states of the American Union), it was also included the possibility that women could be nominated to join the Diet. As a result of the application of this provision in 1907, 19 of the 200 deputies, almost 10% of those elected, were women.

Regarding the constitutional system, the first republican Constitution of 1919 determined (section 32) that the president would supervise the administration of the State, so he could request information from all areas and even carry out research on its operation. This concept of internal control within the government itself was a welcome innovation. In addition, it conferred a discrete power on the president, who, although he did not directly direct the management of the administrative apparatus, could influence his decisions.

On the other hand, the Council of State was made up of the prime minister and the ministers. The Constitution provided (sections 34 and 40) that the president would make his decisions in Council, at the proposal of the prime minister. Thus, although the figures of the Head of State and the Head of Government differed, the presence of the former was maintained within the political command apparatus. This provision made the Finnish constitutional system highly versatile, as the French Constitution of 1958 has also shown.

In periods of military tension, the president played a prominent role in government management and later, during the postwar period of economic recovery, President Urho Kekkonen, who had broad parliamentary support, acted as the Executive of a presidential Republic.

The Constitution provided (articles 36, 36a and 36b) that the Council of State (cabinet) should have the confidence of Parliament, although once integrated, the president could make minor adjustments in its composition, without requiring parliamentary confidence. If it was about "significant changes", a new parliamentary consultation was necessary. The Constitu-

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tion did not set the limit for these "significant changes," so it granted a margin of relative discretion to the president. In any case, the Council had to present the government program to Parliament. In addition to trust, the Constitution provided for the adoption of motions of censure, general or individual, with a binding character.

Eighty years later, a new Constitution, which came into force in 2000, emphasized the parliamentary nature of the Finnish system. However, it maintains some elements that give it a peculiar character. For example, the president can call early elections (article 26). It was also specified that there would be interpellations, the formulation of which requires the participation of at least 20 deputies; the interpellations can culminate in a motion of collective or individual censure. On the other hand, the principle that the president makes his decisions in Council is preserved, except when he decides on the dissolution of Parliament or on proposals to make appointments in the Council of State itself.

Despite the greater parliamentary emphasis of the new Constitution, the advisability of maintaining political balances for a better conduct of political affairs was taken into account. For this purpose, the president freely designates the attorney general of the Council of State for a period of five years (article 69). This attorney oversees the acts of the Council of State and the president himself, as well as the other public bodies and officials (Article 108). The president appoints the general directors of the ministries and all senior officials who do not have a specific provision for the appointment of him (article 126) and exercises direct command of the armed forces (article 128).

3. *France*

There is a long bibliography about how the French Constitution of 1958 was created, but the most relevant testimonies are those provided by Michel Debré and, of course, by Charles de Gaulle himself.

At 4:30 p.m. on May 29, 1958, General Charles de Gaulle left his residence in Colombey-les-Deux Eglises for Paris.[69] At 7:30 p.m. he was received by President René Coty.[70] This interview resulted in one of the most pronounced changes in contemporary constitutional systems. During the devastating political crisis in France, President Coty summoned the general

[69] Williams, Charles, *A Life of General de Gaulle. The Last Great Fren-Chman*, New York, John Wiley & Sons, 1993, p. 377.

[70] Samuel, Patrick, *Michel Debré. L´achitecte du Général*, Paris, Arnaud Franel, 1999, p. 158.

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to take charge of what would be the last government of the Fourth Republic. As conditions to assume the leadership, the 1st. In immediate June, de Gaulle asked the president for the broadest power, the recess of Parliament and delegated powers to draw up a new Constitution. On June 3, all demands were met, and the political leader set out to undertake the task of remaking the French state.

At the end of the World War, de Gaulle had undertaken a similar task, but without achieving his objectives. In his memoirs, Michel Debré gives an account of his disquisitions, as the general's lawyer, and shows the sympathy of the military man for the presidential system, which contrasted with those of his lawyer, an admirer of the Westminster system. Looking for a meeting point, Debré wrote the first notes that synthesized the points of view of both. Since August 1945, when the draft Constitution of the Fourth Republic was prepared, the government was expected to design it. In addition, the difference between head of state and government was examined in detail. In this case, it was said in a confidential note, it was necessary to consider that the confusion of the two figures occurred when the president obtained his powers directly from the people, the powers of Parliament were limited, and the government did not depend on parliamentary trust.

Then it was added that those circumstances were "difficult to establish in France", so the Constitution had to "be oriented within the lines of the parliamentary regime".

It can be seen that, since the preparation of the 1946 Constitution, the negative effects of the parliamentary system were already noticed, it was pointed out that under the current conditions it was "difficult" to establish a presidential system, and it was decided to follow a parliamentary "orientation".[71] The new Constitution, which did not consider de Gaulle's observations, entered into force on April 19; two months later (June 19) the general delivered a speech at Bayeux, proclaiming the need for a new fundamental charter. In that speech, which he made famous, he announced what would be the 5th, 8th articles. and 9th., of the Constitution of 1958: the president exercises an arbitration function that places him above the political parties; he appoints ministers, including the premier, and presides over the Council of Ministers. All for the sake of a "strong state". With this expression, the speech concluded.

The procedure followed to prepare the current French Constitution was defined by a constitutional law of June 3, 1958. Through this law, article 90

[71] Debré, Michel, *Trois républiques pour une France*, Paris, Albin Michel, 1984, t. I, pp. 457 et seq.

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of the 1946 Constitution was modified, which provided that constitutional reforms should be adopted by an absolute majority of the members of the National Assembly. The law of June 3 established, in addition, the five principles to which the constitutional review should be subject: universal suffrage as a source of the Executive and Legislative powers, the separation of these two powers, the government's responsibility before Parliament, the independence of the judges and the relationship of the Republic with associated peoples.

The same law provided how the new constitutional norms should be formulated: the government was delegated the power to elaborate a project, which it would submit to an advisory committee made up of members of the National Assembly, the Council of the Republic and the government, whose number did not would exceed 39 people. Once the project was approved by the Council of Ministers, it would be submitted to the Council of State, and everything would culminate in a referendum. In this way, a constituent congress was dispensed with, and the approval of the project was submitted to the sovereign people, in accordance with the most rigorous Roussonian tradition. The referendum, held on September 28, was a success: almost 18 million voted yes, four and a half for no and another four abstained. The Constitution was promulgated on October 4.[72]

In 1970 Charles de Gaulle published his autobiography. There, with all clarity, he specified the objectives of the constitutional system that he designed:

> For the State to be, as it should be, the instrument of French unity, of the supreme interest of the country, of the continuity of national action, he considered it necessary that the government should come not from Parliament, that is, from the parties, but, above them, a head directly appointed by the entire nation, and empowered to express its will, decide, and act.

He later he added:

> With a view to the future and before the Assembly was elected, I instituted the referendum, and made the people decide that henceforth their direct approval was necessary for a constitution to be valid; and with this I created the democratic instrument to let me sit a good one, instead of the bad one that was going to be made by and for the parties.[73]

[72] Pierre Mendès France pronounced "no", arguing that the Constitution established a Caesarist system, and François Mitterrand also opposed it, because the new institutions were a kind of "Luis Felipe y de Napoleón III, a la vez". Samuel, Patrick, *op. cit.*, note 70, p. 171.

[73] *Memorias de esperanza. La renovación*, Madrid, Taurus, 1970. The French edition, by Plon, appeared the same year. See pp. 14 et seq.

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De Gaulle's words clear up any doubt: his intention was contrary to all understanding between the parties to define, in 1958 and later, the content of the Constitution.[74] That is why he began by demanding powers of a constituent nature; he also did not want to put the fate of the government within the reach of the parties, hence at first he did not even admit the possibility of subjecting the presidential election to the popular vote, since in this case his party affiliation was inevitable. In addition, to exercise the government, he placed the president above party arrangements.

A well-known socialist leader, Pierre Mendès France, recognized shortly after that the French parties had subordinated their convictions and programs to their circumstantial interests, with the consequent loss of prestige, but warned that without parties it was not possible to make a constitutional democracy work.[75] Likewise, he observed that in the American presidential system the true counterweight of the president was in the federal system, while in France, the Gaullist regime supported its strength in the unitary structure of the country, and in the dissolution capacity of Parliament.[76]

Another critic of the system adopted in 1958 was François Miterrand. According to his point of view, the Constitution of the Fifth Republic invested the president with such powers that he could subordinate the prime minister and the entire cabinet; by assuming political leadership supported by referendums, he also marginalized the representative system. Mitterrand identified this situation as a "permanent coup".[77]

The interpretation that led to cohabitation was much later. It emerged on the 1986 elections, and an enlightening text by Maurice Duverger was immediately published explaining the scope of political cohabitation. After France was governed under what he called a "Jacobin monarchy" established by the 1958 Constitution, the author warned that even many protagonists of French politics were unaware of the interpretative possibili-

[74] In a press interview in 1964, he stated: "It must be well understood that the indivisible authority of the State is completely entrusted to the president by the people who have elected him, and that there is no other authority, or ministries. terial, neither civil, nor military, nor judicial, that is not conferred and sustained by him". Cited by Duverger, Maurice, *Bréviaire de la cohabitation*, Paris, PUF, 1986.

[22.] This statement by de Gaulle is known as "the constituent address". *Cf.* Luchaire, François and Conac, Gérard, *La Constitution de la République Française*, Paris, Economica, 1987, p. 979.

[75] *La république moderne*, Paris, Gallimard, 1962, pp. 222 et seq.

[76] *Ibidem,* pp. 51 et seq.

[77] Mitterrand, François, *Le coup d´État permanent*, Paris, Plon, 1964, pp. 99 et seq. and 113 et seq.

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ties offered by Article 5.[78] He mentioned, for example, that a former prime minister had declared in December 1965, before the electoral process, that "in the event of cohabitation, the government will govern and the president will preside",[79] which showed that he did not know the meaning of cohabitation, a term recently adapted to the then nascent French political reality, which the author himself described as follows: "cohabitation: state of a president of the Republic and of a parliamentary majority of different orientation who live in union".

Cohabitation, therefore, does not mean that the system becomes parliamentary, but only that many of the presidential powers are weakened; conversely, in the fullness of his powers, the president does not act according to the traditional presidential model either, because the presence of the cabinet and the political responsibility of the ministers remain.

One of the central themes of the new Constitution was the structure of the executive body of power and its relations with Parliament.[80] As has been said, De Gaulle favored a presidential system, while Debré favored the parliamentary system. In the end they found a compromise formula: the system would function as presidential when the president had a majority in Parliament, and as a member of parliament when that did not happen. To achieve this flexibility, it was important that the quality of parliamentarian was not required to join the cabinet; it was even established that the simultaneous performance of a function in the government and a parliamentary mandate was incompatible (article 23). With this system, tensions and the eventual blockade of a divided government were overcome. However, even if he did not have a parliamentary majority, the president retained powers of balance and control much broader than those attributed to a head of state in a parliamentary system.

As has been observed, cohabitation makes the president of France the head of the opposition compared to the prime minister, who represents

[78] Article 5 says: "The President of the Republic shall ensure respect for the Constitution and shall ensure, through arbitration, the regular functioning of the public powers, as well as the permanence of the State. He is the guarantor of national independence, territorial integrity and respect for treaties".

[79] Duverger, Maurice, *Bréviaire de la cohabitation*, Paris, PUF, 1986, pp. 45 et seq.

[80] See Maus, Didier *et al.*, *L´ecriture de la Constitution of 1958*, Paris, Economica, 1992. There is a translation into Spanish of the section corresponding to the system of government, *La escritura del Poder Ejecutivo en la Constitución francesa de 1958*, Mexico, UNAM, Institute of Legal Research, 2006. For an analysis of the relations between the government and Parliament, see Andrews, William George, *Presidential Government in Gaullist France: A Study of Executive-Legislative Relations*, 1958-1974, New York, State University of New York Press, 1982.

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the majority.[81] This is an unusual situation, because the prime minister is far from having the support of the head of state, is an active rival. At this point there is an error in the French constitutional design, because while the president is considered to be a kind of arbiter above the parties, when cohabitation is installed and his party remains in the minority, he also becomes an interested part of the political process and ceases to be that impartial and balanced figure. From this perspective, it is not a limited presidential system, but a mutilated presidentialism. This problem arises because of the fact that in the future of the Constitution a distinction was introduced that de Gaulle did not want: the dichotomy between head of state and head of government.

There are numerous testimonies to the effect that de Gaulle did not think of a parliamentary system. On June 13, 1958, when the draft of the Constitution was being drafted, he proposed what would later become Article 5, with this wording:

The President of the Republic is responsible for preserving the independence of the nation and the integrity of its territory.

Assisted by the government, the president defines the general orientation of the country's domestic and foreign policy and ensures its continuity.[82]

The idea that there would be a separate government from the president, puzzled the general, then prime minister but already a candidate for the presidency. The text was corrected in the terms that now appear.

Shortly after, in January 1959, when Prime Minister Debré proposed to submit the integration of his government to the confidence of the Assembly, the President asked him if he was not returning to the errors of the previous Constitution, limiting the power of the Executive. In the end, he accepted the measure proposed by Debré, but noting that it was a "concession", imposed "by reason of circumstances". [83] Years later, when presenting his resignation as premier, Debré indicated that it he did to consider that the time had come to "change government". The president responded categorically that he did not accept that reference because he implied that "the government was independent from the president of the Republic".[84]

The French system has become presidential. At first General de Gaulle was in favor of the indirect election of the president; he had postulated it in

81 Beaud, Olivier y Blanquer, Jean-Michel, *La responsabilité des gouver-nants*, Paris, Descartes & Cie., 1999, p. 302.

82 See Maus, Didier, "L´institution presidentielle dans l´écriture de la Constitution of 1958", in Maus, Didier *et al.*, *L´ecriture de la Constitution of 1958*, *cit.*, note 80, p. 272.

83 Samuel, *op. cit.*, note 70, p. 296.

84 Debré, Michel, *Entretiens avec le géneral De Gaulle*, Paris, Albin Michel, 1993, p. 53.

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his Bayeux speech and so it was established in the Constitution. From the first sessions to examine the progress of the draft Constitution, direct election was ruled out, because it would expose France "to degenerate towards a regime in which the president would have enormous power, towards a possible dictatorship".[85] assigned to an electoral college of enormous proportions (around eighty thousand members). In 1962, already president, De Gaulle modified his criteria and promoted a reform to establish direct popular election. Much later an electoral reform was applied according to which the elections to integrate the Parliament are carried out after the presidential election. The results, predictable since the reform was adopted, have allowed the newly elected president to influence the composition of Parliament, with which the parliamentary trend tends to recede in the French system.

In any case, other aspects remain that give the French system a very peculiar texture. Despite its tendency towards presidentialization, the instruments of control attenuate the authoritarian weight of the presidency. Without a doubt, it is the innovation that has had the greatest impact on other constitutional systems.

The 1958 Constitution has become a contemporary paradigm. Numerous constitutional norms of the second half of the 20th century were inspired by this model, with important results in terms of the institutional stability achieved. I do not find cases of literal adoption, outside the Francophone area; institutional rubbings are neither recommended nor useful. Institutional migration involves acclimatization processes in accordance with the system as a whole and with the cultural environment, which gives them its own characteristics.

Although the Finnish Constitution of 1919 adopted a presidential system with important parliamentary components, it did not have the resonance that, for many other reasons, the French of 1958 did. The powerful French cultural influence is also manifested due to the effects generated by its constitutional system which, among other things, has made it possible to corroborate the adaptability and flexibility of the institutions. The theses of the irreducibility of presidentialism or parliamentarism led to many misunderstandings that were overcome after the Second World War. The Bonn Constitution of 1949 started a trend that has proliferated in parliamentary systems: stabilization through the motion of constructive no-confidence. In turn, the presidential system, modified in Finland, received a new structure

[85] This is what Guy Mollet, of the drafting committee, points out in his working notes. *Cf*. Maus, Didier *et al*., *L´ecriture de la Constitution of 1958, cit*., note 80, p. 41.

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in the French Constitution, which has become a model of contemporary constitutionalism.

Conventional classifications have been overwhelmed by the new constitutional formulas. The French example has been followed in a double sense: for the dynamic and versatile structure that it gave to the organization of power, and for having overcome the traditional schematic limitations. Not all Constitutions after 1958 have adopted the French model, but most have followed the French method. It is a method that translates into a simple lesson: what matters, in terms of constitutional designs, is to have instruments that allow democratic governance.

In the drafting of the 1958 Constitution, it was very clear that there were no limitations of a schematic nature. The objective to be achieved was not to formulate a text more based on orthodoxy, but to find an adequate balance in the functioning of the institutions. The president was assigned the task of arbitrating the processes of power, and a series of mechanisms were chosen to ensure stability in the exercise of government tasks, without diminishing the responsibilities of the incumbents and safeguarding democratic freedoms. After almost 50 years of existence, it is possible to say that this arrangement of power has been successful in France and in countries that have incorporated the same principles. As is evident, the mere translation of the French model and its reception in other constitutional systems have not been and cannot be a guarantee of success; it is required that in the construction of each system the conditions in which it will operate be considered. The text requires context.

Regarding traditional parliamentary controls, trust is not expressly included in the French Constitution, but it is considered included in the first and last two paragraphs of article 49, where the motion of censure also appears, and in article 50:

> Article 49.
>
> The Prime Minister, after discussion by the Council of Ministers, will present to the National Assembly the responsibility of the government for its program and eventually a general policy statement.
>
> The National Assembly will judge the responsibility of the government by voting on a motion of no confidence, which will only be admitted for processing if it is signed by at least one-tenth of the members of the National Assembly. The vote will take place 48 hours after its presentation. Only votes in favor of the motion of censure will be considered, which may only be approved by the majority of the members that make up the National Assembly. Except as provided in the following section, no deputy may sign more than

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> three motions of no confidence in the same ordinary period of sessions or more than one in the same extraordinary period of sessions.
>
> The Prime Minister may, after discussion by the Council of Ministers, raise the responsibility of the government before the National Assembly regarding the vote on a text. In this case, this text will be considered approved, except if a motion of censure, presented within the following twenty-four hours, is approved in the manner established in the previous section.
>
> The Prime Minister will be empowered to ask the Senate for approval of a general policy statement.
>
> Article 50.
>
> When the National Assembly passes a motion of censure or when it disapproves of the program or a general policy statement of the government, the Prime Minister must submit the resignation of the government to the President of the Republic.

Although a direct reference to the institution of trust was avoided, its effects are incorporated in the initial and final parts of the provision. By the expression adopted in both cases, and by the structure of articles 49 and 50, it is inferred that when the approval of a government program or a general policy statement is denied, as well as when a motion of censure is approved, the effects will be binding on the government. While the vote of confidence does not appear in those terms, French doctrine has adopted the figures of the "spontaneous" motion of censure (the traditional one), and the "provoked" (equivalent to trust). As can be seen, article 49 provides for three hypotheses: that of the first paragraph corresponds to what can be considered a question of confidence; the second, to the traditional (or "spontaneous") motion of censure, and the third, to a kind of "joint initiative of the Executive and the Legislative" (this would be the "provoked censorship").[86]

The ministers have the right to speak in the plenary session of the National Assembly and the Senate, in the following terms:

> Article 31.
>
> The members of the government will have access to the two assemblies and will be heard when they request it.
>
> They may be assisted by government commissioners.

It should not be forgotten that cabinet members are prevented by the Constitution from simultaneously holding ministerial and representative po-

[86] Luchaire, François and Conac, Gérard, *op. cit.*, note 74, p. 971.

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sitions. This explains the content of Article 31, which does not appear in Constitutions of a parliamentary nature, where the members of the government are usually members of Parliament.

According to the original text of article 18, the President communicated with Parliament through written messages that did not give rise to any debate. To compensate for this gap, ministers were given access to the rostrum at both assemblies. According to the constitutional revision of July 23, 2008, the power of the ministers subsists, but the new wording of article 18 allows the president to also speak before the full Parliament. His intervention may lead to a debate taking place without his presence, although no vote will result from it. The reform accentuates the process of presidentialization of the French system and poses potential difficulties when there is an episode of cohabitation.

To avoid the risk of antagonistic forces coexisting in the government, the electoral system provides that the election of the members of the Assembly take place a few weeks after the presidential elections. This provides an opportunity for voters to confirm or modify their political support for the president.[87] In this way, the plebiscitary or Bonapartist presidential model is ratified. The coincidence of electoral years was made easier thanks to the 2000 reform, which reduced the presidential term from seven to five years, to link it with the legislative period.

According to the Constitution (article 7), presidential elections must take place between 20 and 35 days before the presidential term expires, and legislative elections are subject to the provisions of the law. The Electoral Code establishes (articles 121 and 122) that the powers of the National Assembly expire on the third Tuesday of June of the fifth year from its election and that, with the exception of elections originated in the parliamentary dissolution, the elections must be held carried out within a period of 60 days prior to the end of the mandate. This procedure encourages the newly elected president to promote the campaigns of his sympathizers, to obtain a parliamentary majority that offers support to his government program.

The cycle can be interrupted if the dissolution of the Assembly takes place; however, a peculiar constitutional provision (article 25) allows the

[87] For example, in 2007 the presidential elections were held on April 22 and May 6 (first and second rounds, respectively) and the legislative elections were registered on June 10 and 17 (first and second rounds, respectively). mind). In 1988, the presidential elections were held on April 24 and May 8, and the legislative elections on June 5 and 12. In 1981, the presidential elections were in May and the legislative elections in June. In all three cases, the president's party had a parliamentary majority.

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duration of each legislature to be defined by law, which even in the case of early elections would make the convergence of the presidential and parliamentary terms viable.

The questions were planned as follows:

> Article 48.
>
> Without prejudice to the application of the last three sections of article 28, the agenda of the assemblies will include, as a priority and in the order set by the government, the discussion of the bills presented by the government. and the proposals of law accepted by him. At least one session per week will be reserved as a priority for questions from members of Parliament and responses from the government. One session will be reserved as a priority each month to the agenda set by each assembly.

The 2008 reform adds and modifies this text, in force as of March 2009. In the part that concerns the questions, it reads as follows:

> Article 48.
>
> ...
>
> For every four weeks of sessions, one week will be reserved as a priority, in the order set by each chamber, for the control of government action and for the evaluation of public policies.
>
> ...
>
> At least one session per week, including the extraordinary period of sessions provided for in article 29, will be reserved as a priority for questions from members of Parliament and for government responses.

The initial paragraph of article 24, also a product of the 2008 reform, establishes that Parliament will henceforth carry out three functions: legislating, controlling the government and evaluating public policies. The distinction between control and evaluation, which is reflected in the transcribed paragraph of article 48, is very significant, because in addition to the traditional governmental responsibility required before Parliament, the political representative body is now empowered to adopt a position, with constitutional foundation, regarding the design and application of public policies. Only practice will give content to this new attribution, but the breadth of the terms in which it is written offers a very promising horizon for political action. The same reform added article 51.2, according to which investigation commissions may be established in each assembly, for the exercise of the powers of control and evaluation.

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The parliamentary tradition of questions in France does not have a constitutional but a regulatory origin. The chambers of deputies and senators adopted this modality from the validity of the Constitution of 1875. The form of presentation of questions is not regulated by the Constitution of the Fifth Republic; this aspect is subject to the internal provisions of the Parliament itself, which distinguishes between oral questions, which are generally not followed by a debate, and questions to the government, in writing and capable of giving rise to a debate.

Regarding the dissolution, the constitutional provision indicates:

> Article 12.
>
> The President of the Republic may, after consultation with the Prime Minister and the Presidents of the Assemblies, agree on the dissolution of the National Assembly.
>
> General elections will be held between twenty and forty days after dissolution. The National Assembly will meet as a matter of law on the second Thursday following its election. If this meeting takes place outside the ordinary period of sessions, a period of fifteen-day sessions will be opened by right. There will be no new dissolution in the year following the elections.

Unlike presidential systems, which always establish the prerequisites required to dissolve Parliament, in this case the rule of parliamentary systems is followed, which do not require specifying the cause of the decision. Dissolution is therefore exercised as an instrument of political negotiation, useful to consolidate the stability of the government and guarantee the existence of a majority that supports the government programs.

On July 12, 2007, in Epinal, the same place from which De Gaulle called for institutional recovery at the end of the Second Great War, President Nicolás Sarkozy announced the start of a process of constitutional changes, for which he formed a commission of experts. Among the changes he outlined, related to the issues discussed here, were empowering the Assembly to ratify a greater number of presidential appointments; review the scope and functionality of article 49.3; specify a system of responsibilities that includes the president, in which he would set out the obligation to report personally and periodically to the Assembly, without debating with legislators; expand the instruments of direct democracy, and strengthen the representative system with the incorporation of some proportional election mechanisms. In other words, on the fiftieth anniversary of the Fifth Republic, an important revision of its constitutional structure was prepared. The reform was adopted in July 2008, as already mentioned.

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4. *Portugal*

With the fall of the monarchy, on the October 1910 revolution, the Portuguese Republic was founded. The 1911 Constitution combined institutions from the presidential and parliamentary systems. The Executive Power rested with the president and ministers (article 36). The president was elected by Congress (article 38), and in turn appointed the ministers (article 47.1). Regarding the other positions, including the military, the appointment was made at the proposal of the ministers (article 47.4). The ministers, for their part, were headed by the president of the ministry (article 53). All members of the cabinet were responsible to Congress, whose sessions they had to attend. In addition to freely intervening in the debates, they answered questions and interpellations (article 52). A reform of 1919 empowered the president to dissolve Congress.

The following Constitution, of 1933, adopted a rigid corporate conception, with the institutional appearance of a parliamentary system that differentiated the heads of state and government. In addition, political practice reversed the relationship between the President of the Republic and the President of the Council of Ministers, since it was the latter who exercised the dictatorship.

In 1976 Portugal adopted a new Constitution, democratic and of high social content. Regarding its organic structure, it took up in a certain way the revolutionary experience of 1911, as it assembled a series of institutions typical of the presidential and parliamentary systems. Regarding the former, the president appointed the prime minister "listening" to the Council of the Revolution and the parties represented in the National Assembly and "considering the electoral results" (articles 136 f and 190.1);[88] the other members of the government are appointed by the president, at the proposal of the premier (article 190.2). The president can also dissolve the Assembly (article 136 e). Another significant aspect is the dual responsibility of the prime minister: before the president, who can remove him, and before the Assembly, which can censure him (article 194).

As regards parliamentary institutions, the most significant are the approval of the government program, the vote of confidence and the motion of no confidence. The government program can be rejected by an absolute majority of the total number of deputies (article 195.4). The vote of confi-

[88] This system changed in 1982, when the constitutional figure of the Council of the Revolution disappeared, thereby strengthening the decision-making capacity of the president.

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dence can be requested by the government, in this case by the prime minister, in relation to a general policy statement, "or on any relevant matter of national interest" (article 196). The rejection of the plan, or the refusal to vote, forces the government to resign.

Censorship (article 197) can refer to challenges regarding the execution of the government program, or to matters relevant to the national interest; the initiative of at least a quarter of the deputies is required, and it must be discussed two days later, but not exceeding another three days. In this way, it is avoided to paralyze government work, faced with the threat of its possible censorship, to avoid prolonging a factor of political tension and to force specific debates. If censorship does not prosper, its initiators are prevented from presenting a new initiative for the same purpose, during the session. This restriction obliges legislators to act with prudence, so as not to exhaust unnecessarily an important control resource.

The president can dissolve the Assembly after it has been approved by the Council of State, and after having listened to the parties represented in it (articles 136 e), 148 and 175). The Council of State was a body created through the 1982 reform, which gave the president an important means of action. It is chaired by the Head of State himself and made up of 16 other permanent members, plus the former Presidents of the Republic who have not been dismissed. Of the 16 members, the president appoints five and the Assembly another as many, in the proportion that corresponds to the parties; the others are the President of the Assembly, the Prime Minister, the President of the Constitutional Court, the Attorney General, and the Presidents of the regional governments. This composition offers the president an area of political influence, while the Council is also the competent body to pronounce on the resignation of the government and to unburden the consultations that the president formulates. (articles 145 and 148).

The Constitution protects government stability against possible systematic harassment from the opposition and allows the president to manage the government sheltered from the variations of the majority. The sense of political preservation makes the parties calculate that the intensity of the attrition inflicted on the government does not revert to an early election, in which its political costs may rise as a consequence of having blocked the government; On the other hand, the government has to do its best to meet its objectives if it wants to avoid the risk of offering reasons to the opposition to take it to elections. The appeal to the electorate represents a greater risk for the party or group of parties that can offer the worst accounts in the context of an early call.

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The characteristics of the Portuguese constitutional system have been considered as typical of a semi-presidential government. Jorge Miranda[89] considers that it is not a classic presidential system because the government is an autonomous body, nor is it a classic parliamentary system, due to the sum of powers available to the president. In a very close sense, J. J. Gomes Canotilho,[90] considers that it is a mixed parliamentary-presidential system. On this concept, it provides a useful schematization according to which instead of presidential or assembly monism, a triadic configuration was chosen: president, prime minister and Assembly, which admits four possible modalities: horizontal, balance between the three components of presidential supremacy, governmental supremacy or parliamentary supremacy. In the author's opinion, government trialism prevails. This useful scheme by Gomes Canotilho allows us to explain how constitutional design and political practice can swing presidential and governmental supremacy.

5. *Francophone Africa*

Almost all French-speaking African countries have adopted a republican organization,[91] and most of them have a parliamentary presidential system, where instruments of political control with designs like those provided by the French Constitution of 1958 are present. Reference has been made to Algeria.[92] The system of participation of ministers in parliaments, questions and interpellations, trust and censorship, are very similar in the constitutions of Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Ivory Coast, Gabon, Guinea, Madagascar, Mali, Mauritania, Niger, Central African Republic, Democratic Republic of the Congo, Rwanda, Senegal, Seychelles, Togo and Tunisia. The fundamental difference is that some constitutions allow individual ministers to be censured.[93]

The Djibouti Constitution does not expressly prevent censorship, although it contains a very broad power for the National Assembly to adopt the proposition it deems pertinent as a result of having questioned the government (article 61).

[89] *Derechos fundamentales y derecho electoral*, Mexico, UNAM, 2005, pp. 142 et seq.

[90] *Direito constitucional*, Coimbra, Almedina, 1995, pp. 715 et seq.

[91] The exception is Morocco.

[92] Chapters third, fourth and fifth.

[93] For example, in the Seychelles Constitution (article 74), the motion de blâme is referred to, which means "censorship", although it could also be translated as "reprobation", "reprimand" or "reproach". The effect is the removal of the minister.

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The exceptions from Francophone Africa are in Comoros, Equatorial Guinea and Mauritius. In the first country, the Constitution established a conventional presidential system, which completely lacks parliamentary elements; in Equatorial Guinea there is an exacerbated authoritarian system, where the supreme rule empowers the president to suspend fundamental rights (article 41) and to declare a state of exception (article 42). Although article 53 establishes that the prime minister is the head of government, article 39 indicates that this official is freely appointed and removed by the president, who also ratifies the president and the board of the House of Representatives. Mauricio, for his part, has a parliamentary system.

The model followed by most of the countries in this area reflects the influence of the French Constitution of 1958 and the way it was adapted to the presidential systems instituted in the former French colonies. Due to various circumstances, outside the constitutional structure, a part of these republics has not been able to consolidate democratic systems; in some, even authoritarianism subsists. This phenomenon corroborates that the distance between the validity and the positivity of the norms does not depend on the norms themselves, but on their environment. Control institutions, by themselves, do not modify the general behavior of a system; but where they work, they improve the quality of democracy and contribute to governability. In conditions of precarious democratic life, the institutions of control can be used as a palliative to blur the authoritarian aspect of power and give it a less harsh appearance.

What is now worth highlighting is the adaptability of French regulations and the way in which they have been accepted by a good part of the republics of the Francophone area. In August 2008, a military coup overthrew the Mauritanian government, which was making an appreciable effort to strengthen democratic institutions in that country. The international community reacted promptly, condemning the attack. In this sense, the action of the International Organization of la Francophonie (OIF, Organization Internationale de la Francophonie), founded in 2005[94] and made up of 55 countries or nations[95] from all continents, has been relevant. The initial objective of this body, inspired by the British Commonwealth, was to mitigate the effects of decolonization. In addition to the commercial and cultural implications, the OIF has contributed to the migration of French constitutional institutions, and their adoption, with variations, by the countries of the Francophone community.

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[94] Its antecedent is the Agency for Cultural and Technical Cooperation (Agence de coopération culturelle et technique), created in 1970.

[95] Some members, such as Québec, do not have country or state status.

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In the same way that the former British colonies tended to incorporate the parliamentary model, in the countries of the Francophone[96] and Lusitanian areas the trend prevailed in favor of the versatile presidential / parliamentary model, inspired, depending on the case, by the French norms of 1958, and Portuguese, from 1976. For the purposes of a comparative law study, this process denotes the possibilities of miscegenation between the presidential and parliamentary systems. The Mauritanian Constitution is an example that illustrates this trend. In the matter at hand, articles 54, 69, 74 and 75 of that Constitution reproduce, literally, the provisions of articles 31, 48, 49 and 50 of the French law.[97] The same could be said of other chapters of both constitutions, and the same of the constitutions of various countries in the area. Aspects related to the political responsibility of the government and ministers present great similarities in terms of their design, although they have been the object of different forms of application. What is relevant, in any case, is that they have been functional for the governance of democratic systems, and when accidents such as the one mentioned in Mauritania have been recorded, they have led to the mobilization of the international community in favor of reestablishment of the constitutional order.

6. *Japan*

In 1889, the Meiji Emperor of Japan granted a constitutional charter whose article 1 established “that the Japanese empire would be reigned and ruled by the dynasty of emperors that extended from time immemorial”; then he added (article 3) that the emperor was “sacred and inviolable”. This Constitution was in force until 1947, when the one still in force was adopted.[98]

[96] At the time of its independence, Belgium withdrew from what is now the Republic of the Congo without providing adequate preparation for its political organization; Although this country had not been colonized by France, it joined the Francophone area and adopted a system based on the 1958 Constitution. In turn, the former German colonies that came under French domination at the end of the First World War, did not followed the parliamentary model, while those that remained under the British flag did.

[97] They can be consulted in the preceding section of this chapter.

[98] The Meiji Constitution represented the latest example of a great theocratic state; Some constitutional structures of a confessional type remain, such as the case of Iran, but there are very few that relate the religious content to a monarchical system. The most representative case in force is that of Saudi Arabia, where article 6 of its fundamental rule obliges citizens to render obedience to the king, in accordance with the Koran and the tradition of the Prophet but does not confer on the monarch a divine character.

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At the end of the Second World War, the occupation troops in Japan were under the command of General Douglas MacArthur, who opposed the prosecution of the monarch and members of the royal family who were involved in real or alleged war crimes; This controversial decision considered the risks of a civil war, and the latent possibility of a political triumph for the incipient Japanese communist movement. The preservation of the monarchy, therefore, was considered as a strategic necessity on the part of MacArthur.[99] To reorganize the political life of the intervened country, the military organized and chaired a working group, which did not include any Japanese jurist.[100] That prepared the current Constitution of 1947.

While the preservation of the emperor was important both to avoid a civil war and to conduct a process of extreme political difficulty, the institutional design consisted in adapting the characteristics of a republican presidential system, within a monarchy that it was only sustained in the formal. As MacArthur himself explained, he was very aware of the presidential system, so that an executive body of considerable political strength was built.

There are clear traces of American constitutionalism in the Japanese Constitution. The formula used in the preamble, "We the Japanese people...", is a good example. Another unmistakable aspect, which as seen in another section of this work transcends from medieval Europe to the Constitution of 1787, is the highly versatile institution, which is synthesized in the expression advice and consent, in the Philadelphia text, and that becomes advice and approval, of the Japanese standard. The substance, however, is in the construction of a presidential system within a parliamentary monarchy; it has even been argued that the true head of state is the prime minister, and not the emperor.[101] Apart from this controversy, what is relevant is that the prime minister appoints and removes the components of the cabinet with complete freedom (article 68), subject only to the requirement that the majority of the ministers must be chosen from among the members of the Diet, made up of the Chambers of Representatives and Councilors.

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[99] *Cf.* Manchester, William, American Caesar, New York, Dell Book, 1979, pp. 536 et seq.

[100] *Cf.* Hook, Glenn D. and McCormack, Gavan, *Japan's Contested Constitution*, New York, Rutledge, 2001, p. 5.

[101] This is the thesis of Professor Miyazawa Toshiyoshi, arguing that article 1o. of the Constitution alludes to the emperor only as a "symbol" of the State, which would seem to be creating a new institution, in addition to the leadership itself. See Ozawa, Ichirô, "A Proposal for Reforming the Japanese Constitution", in Hook, Glenn D. and McCormack, Gavan, *op. cit.*, note 100, pp. 164 et seq.

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The Executive Power rests with the cabinet (articles 65 and 66); but insofar as the prime minister presides and integrates it freely, he has a political force of considerable magnitude. Furthermore, he himself represents the cabinet (article 72). In turn, the formal appointment of the prime minister corresponds to the emperor, who only confirms the appointment made by the Diet (articles 6.1 and 67.1). Some analysts have wanted to see in this procedure an equivalent to the indirect election in the first degree of the American president; however, there is an important difference because the prime minister must be a member of the Diet. In general, the characteristics of the Japanese Constitution do not correspond to a conventional parliamentary system, among other things because it removes the government from Parliament and builds a relationship scheme between both bodies of power like that which has developed in the systems cabinet presidential elections.

MacArthur set out to design a scheme for the decentralization of power, although for strategic reasons he did not do without the imperial figure, to lead the demilitarization of the country and to implant, with the least possible resistance, political rights, the rights of the women and workers' rights.[102] At the end of the war, the imperial concept was no longer applicable to the Japanese reality, but the commander of the occupying forces considered that the preservation of the symbol was essential to avoid the collapse of power political and consequent internal conflict of unpredictable proportions.[103]

II. Authoritarian systems

There are other systems that do not fit into the concept of the constitutional state, but whose presence cannot be unknown. These are the cases of China, Korea, Cuba, the People's Republic of Korea, Taiwan, and Vietnam, which represent forms of a superstitious authoritarianism, with the apparent adoption of constitutional modalities. As will be seen, however, there are contrasting trends. For example, Korea and Taiwan have adopted parliamentary matrix measures that lead to the decentralization of power, while in China, Cuba, the People's Republic of Korea, and Vietnam very rigid structures are

[102] The considerations related to the draft Constitution appear very detailed in the military's autobiography. See MacArthur, Douglas, Reminiscenses, Anapolis, Naval Institute Press, 2001, pp. 267 et seq.

[103] *Cf.* Manchester, *op. cit.*, note 99, pp. 544 et seq.

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maintained where the functioning of the state does not require nor allows the adoption of agreements as a means to govern.

1. *China*

Article 1 of the Constitution states that the People's Republic of China is a "dictatorship of the people", so that the power of the state is fully exercised by the National People's Congress (article 2). Then he reiterates that the organs of power adopt the principle of "democratic centralism" (article 3). On this basis, Congress appoints the President of the Republic (articles 62.4 and 79) and ratifies the appointment that he makes of the Prime Minister or Council of State (Article 80). He can also dismiss both officials, and the rest of the members of the Council of State (article 63).

The Congress has a Central Committee (article 66), whose president is appointed by the Congress itself. The Committee supervises the performance of the Council of State and, at the proposal of the Prime Minister, appoints the ministers when Congress is in recess (article 67). The Chairman of the Committee calls the sessions and leads it (article 68).

Vertical control over the government empowers the president of the Central Committee of Congress to request information from all other organs of the State, social organizations, and private individuals (article 71). Deputies can also ask questions of ministers (article 73), who are responsible to Congress (article 90).

The centralization of political power corresponds to a pyramidal organization that is hardly nuanced by the political circumstances of its daily exercise. It is a system of power arrangements that is based on force transactions, not on balancing mechanisms. In this case, the responsibility of ministers before Congress does not correspond to a task of control between bodies endowed with relative symmetry, but to a position of hierarchical obedience. The President of the Republic is subordinate to the Central Committee (article 80), and in turn has the Prime Minister under his command.

The concept of the "dictatorship of the people" and of the assembly government does not correspond, obviously, to the presidential or parliamentary categories of the constitutional states. The Chinese example is presented only to show the extent to which the extreme concentration of power turns controls into mere instruments of subordination, not organic cooperation.

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2. *Korea (North)*

In the case of the Democratic People's Republic of Korea, the preamble to the 1998 Constitution alludes to Kim Il Sung as "the sun of the nation and the star that guides the reunification of the land of our fathers," and warns that the Constitution of Kim Il Sung "enshrines the ideology of the leader". In this context, the powers attributed to the Supreme People's Assembly (article 87), in terms of appointing the prime minister (article 91.9) and ratifying the other members of the cabinet (article 91.10) are only formal declarations. The same can be said of the constitutional provision regarding the responsibility of ministers before the Assembly (article 125).

3. *Korea (South)*

When examining the current Korean Constitution, one has the panorama of a norm that corresponds to a democratic state, with a presidential system and a cabinet government. The composition and powers of the Council of State (cabinet), always headed by the President of the Republic, are specified in the supreme charter (articles 88 and 89). Free electoral processes, the non-reelection of the president and a balanced system of political and jurisdictional controls are also recorded. But it was not always like this. Although these democratic reforms were adopted in 1987, the original text of the Constitution, of 1948, instituted a highly concentrated, authoritarian presidentialism, the effects of which worsened in later stages. Presidential reelection was allowed in 1952, and two years later the lifetime presidency. The process to reduce the effects of authoritarianism began in 1960, when the figure of the cabinet was introduced, but this reform was quickly unknown, and was left without effect the following year; the lifetime presidency was strengthened by the 1972 reform, under the aegis of President Park Chung-Hee. The assassination of this leader in 1979 led to a radical change in the organization of power, and in 1980 a cabinet system was reestablished, with a unicameral congress and a weakened presidency. This turnaround was not satisfactory either, because it affected governance.

The reforms adopted in 1987, in force since 1988, offer a different picture. The president, elected by popular vote for a period of five years, is not re-eligible (articles 67 and 70). He is, at the same time, Head of State and Government (article 66); however, in order to carry out governmental tasks, he must be assisted by a cabinet (Council of State), headed by a prime min-

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ister. The prime minister is appointed by the president with the consent of the Assembly (article 86) but is freely removed (article 78). The premier is also responsible to the National Assembly and recommends to the president the appointment of the other ministers (article 87).

All ministers, including the premier, are obliged to attend the Assembly or its committees to answer questions (article 62). In addition, there may be a recommendation for removal (article 63), which must be promoted by at least one-third of the legislators and adopted by most of the members of the Assembly. If it is a recommendation, the president is at liberty to accept it; in turn, he is not empowered to dissolve the Assembly, under any circumstances.

The Korean Constitution has been an effective instrument to build a regime of freedoms and to structure a political system of reasonable flexibility. The original authoritarian conception gradually gave way, until finding an expression that articulates plural electoral procedures with a government mechanism that facilitates the configuration of a majority support for the government, with additional mechanisms of political control.

4. *Cuba*

The 1976 Cuban Constitution presents the characteristics of a supreme norm in which the power of a party prevails. The preamble to the Constitution specifies that "with the Communist Party at the forefront [it] continues with the objective of building a communist society", and in article 5, it confirms that the Party is "the leading force of society and the State". This scheme of power does not correspond to the model of the constitutional state which, by definition, is plural. On the other hand, if, apart from the prominence conferred on the Communist Party, the structure of the organs of power is taken into account, it will be noted that the National Assembly elects, from among its members, the Council of State (article 71), that it is the body that represents the Assembly when it is in recess (article 89) and that the President of this Council is both Head of State and Head of Government (article 74). In this way, the institutions of the assembly government and the presidential system are linked.

The President of the Council proposes to the Assembly the appointment and removal of the members of the Council of Ministers (article 93). On the other hand, the Council of State and the Council of Ministers are responsible to the Assembly (articles 74 and 99). These forms of responsibility are not specified, while the vertical structure of power establishes a

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hierarchy that rises from the Council of Ministers, the Council of State, the National Assembly and the Communist Party. Here the controls do not reflect a system of balances, but rather a hierarchical domain.

5. *Libya*

Libya, since the assumption of power by Muammar Al-Gaddafi in 1969, has been governed by a short text called the Constitutional Proclamation, with just 37 articles, by virtue of which the Republic is established and the general lines of the organization of power are offered. Its transitory nature is established, until a "permanent Constitution" is adopted (article 37). This Proclamation prescribes that the supreme authority rests with the Council of the Revolutionary Command, which appoints the president, the prime minister, and the Council of Ministers (articles 18 and 19). The latter is responsible to the Revolutionary Council, and the resignation of the prime minister implies the resignation of all other members of the cabinet. In such a case, the control institutions have a formal presence, and that the system does not rely on holding free elections. The inclusion of the cabinet and the prime minister only obeys a functional administrative purpose, in a highly hierarchical and authoritarian structure.

6. *Taiwan*

In its original wording, from 1947, the Constitution of the Republic of China (Taiwan) identified the president as head of state (article 35), with a considerable range of powers that included the supreme command of the armed forces (article 36). A striking aspect was that it left the secondary law to determine the way to elect the president (article 46). On the other hand, the Constitution devoted Chapter V to "administration" (not government) and established that the Executive Yuan (executive body) would be "the highest administrative body of the State" (article 53). At the head of this body was a president, who was nominated before the legislative body by the President of the Republic (article 55). The other ministers were appointed by the President of the Republic, at the proposal of the President of the Executive Yuan (article 56). All members of the cabinet were accountable to Parliament, whose members could ask questions (article 57).

The Constitution has been subject to reforms (1991, 1992, 1994, 1997, 1999 and 2000), through which the presidential nature of the system has

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been strengthened, while new institutions with a parliamentary matrix have been incorporated. At present, in accordance with the 10 additional articles adopted in 1994, as of 1996 the president and vice president are elected by direct popular vote (article 2), the presidential power to appoint and remove the president of the organ was reiterated. executive, with the "confirmation" of Congress, and legislators were empowered to question any of the ministers (article 3). In 1997 this precept was reformed to suppress the requirement of congressional ratification for the chief of the cabinet, but in return Congress was empowered to cast votes of no confidence in the cabinet; for this reason, the President of the Republic may dissolve the legislative body, after consulting the President of the Congress himself.

In Taiwan there is a kind of zigzag evolution, while parliamentary and presidential institutions have been combining at various scales. Although the notes of presidentialism were present from the very origin of the Constitution, they were affirmed in the course of time; for their part, the provisions for parliamentary control were expanded to the extent that the presidential system was consolidated.

7. *Vietnam*

The Vietnamese Constitution of 1992 contemplates the National Assembly as the highest organ of state power (article 83), with broad powers to appoint and remove the Prime Minister, the Ministers and, in general, all officials, including the judiciary (article 84.7). The Assembly can even revoke decisions adopted by the cabinet or by one of the ministers (article 91.5). The deputies have the power to question the president, the prime minister and the other ministers (article 98). The president, on the other hand, can attend the sessions of the Assembly (article 105), and the entire cabinet is accountable to him (article 117). Notwithstanding the foregoing, central political power resides in the Communist Party of Vietnam (article 4).

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Seventh chapter

THE GOVERNANCE OF PRESIDENTIAL SYSTEMS

One of the main differences between the parliamentary and presidential systems is that the former was the result of an evolutionary process and the latter of a circumstantial decision. However, there are some elements of the parliamentary system that are present in the presidential one, from its origins. Others, on the other hand, were not considered when the first Presidential Constitution was adopted in Philadelphia, due to the understandable fact that they were not yet sufficiently developed in the parliamentary system itself. For example, political parties, which in their contemporary version were formalized only in 1832, in England, with the Reform Act, have a different function in presidential and parliamentary systems. In the latter they have become indispensable because the formation and functioning of the government depends on them, which does not happen in the presidential systems of the classic and plebiscitary model; in the cabinet, on the other hand, the parties tend to play a new role, closer to that of parliamentary systems.

In a certain way, the assembly experience has its roots in the phases that correspond to the archaic and ancient state. The formidable investigation coordinated by Mogens Herman Hansen and Thomas Heine Nielsen,[104] located 1,035 political communities that could be considered poleis. Of these, 95 had a territory of about 25 square kilometers but another 61 extended beyond 500 kilometers. The political meeting areas (ekklesiasteron, bouleuterion, etc.), which are included under the common denominator of "political architecture", have been identified through archaeological remains or documentary testimonies. The first add up to 47 and the second 53; public policy discussions were taking place in many of these sites. In addition, it is known that in other spaces (temples, theaters, markets, stadiums, etc.) access to speakers was also facilitated; there are 337 archaeological remains of this type of architecture, and 57 more documentary sources. This shows that the intensity of political life was of a magnitude greater than that which

[104] An Inventory of Archaic and Classical Poleis, New York, Oxford University Press, 2004, pp. 53 et seq., 70 et seq. and 1336 et seq.

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has been recognized for centuries, especially when thought only in terms of Athens.

As for the origin of the modern Parliament, there is a record of the presence of parliaments in Normandy since the Middle Ages, and it could be considered that the English tradition begins with the Norman William the Conqueror, from 1066. At various points In Europe, collegiate deliberation bodies became common, especially in the late Middle Ages. However, only English evolved to become a Parliament in its modern and contemporary senses.

During the reign of Henry III, towards the middle of the thirteenth century, the operation of the colloquia or parliament was already known, to refer to the collegiate and deliberative activity presided over by the monarch.[105] Later on, a distinction began to be made between the *magnun concilium* (council of magnates) and the *consilium privatum* (collaborators of the monarch) .[106] At the end of the century, Edward I sponsored a growing presence of commons, with the aim of eroding feudal power and consolidating the monarchy. It was the first time in the Middle Ages that the legitimizing function of having the support of representatives of the common people was noticed. Although there are reports that the commons met alone around 1283, it was from 1341 that their deliberations were separated from those held by the magnates, and from 1352 they met in the chapter house of Westminster Abbey.[107] In France the States General were developed; the Cortes, in Spain, and the Diet, in the German Roman Empire.[108]

The emergence and expansion of germinal parliaments facilitated the also incipient process of secularization of political power. The tax powers claimed by those deliberative bodies and recognized by the monarchs, implied a limit for the acts of exaction exercised by religious corporations. The

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[105] Jolliffe, J. E. A., *The Constitutional History of Medieval England*, London, Adam and Charles Black, 1954, p. 287.

[106] *Ibidem*, p. 368.

[107] See Stubbs, William, *Select Charters and other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward the First*, Oxford, Clarendon Press, 1913, pp. 454 et seq. Winston Churchill mentions that in 1343 the prelates and magnates, and the knights and representatives of the bourgeois, met in two different chapels in Westminster, known as the White Chamber (for the former) and the Painted Chamber (for the latter). The most important thing, however, was that in that year the figure of the spokesman or president (Speaker) of Parliament appeared. *Cf. A History of the English-speaking peoples*, New York, Dorset, 1956, t. I, pp. 358 et seq.

[108] This is an aspect that Henry Hallam, one of the most important historians of English constitutional law, delved into. See *L'Europe au Moyen Age*, Brussels, Gregory, Wouters et Cie., 1840, pp. 189 et seq.

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tensions between the political authority and the religious authority were evident above all in France, where King Philip IV and Pope Boniface VIII staged a hard confrontation. In February 1296 the pope issued the bull *Clericis laicos,* denouncing the "horrid abuse of secular power", which demonstrated "how the laity are hostile to the clergy" and, therefore, deserved excommunion. In response, the French monarch summoned in 1302 the first States General, made up of the three estates: noble, ecclesiastical, and plain, so that in addition to recognizing him as sovereign, they would authorize him to exclusively collect taxes in the kingdom territory.

The English and French experiences show that parliament arose at a singular historical moment, which gave it a double and paradoxical function: on the one hand, it served the interests of the subjects, before the monarchs, to mitigate the effects of the decisions on tax purposes. On the other, it served the interests of the monarchs, to escape the tributary power of the popes.

The impulse that transformed the English Parliament into an institution of the modern state, occurred with the Petition of Right, of 1628, through which King Charles I was asked to respect the powers of Parliament and the cessation of arbitrary acts by part of the monarch's collaborators. The text concluded by saying: "all your collaborators and ministers must serve you according to the laws and statutes of the kingdom". There begins a cycle of institutional adjustments that culminated with the Bill of Rights, of 1689, which enshrined the supremacy of Parliament.

On the other hand, when they ascended to the throne that same year, Mary and William of Orange were simultaneously anointed queen and king, but considering that William was a foreigner, Parliament adopted a law of succession in 1700, in which article 4 established that all decisions "relating to the good government of the kingdom" (things relating to well governing of this kingdom) should be approved by the King's Privy Council, and in article 6 he added that no foreigner could be a member of that Council. However, as the composition of the Privy Council was very large, gradually, the ministers (also members of the Privy Council) began to deliberate separately and in a smaller place, the cabinet council.[109] In examining this intense period, Pocock corroborates the "constitutional persistence" that characterizes English history.[110]

[109] See Creasy, Edward, *The Rise and Progress of the English Constitution*, London, Richard Bentley and Son, 1892, pp. 330 et seq.

[110] Pocock, J. G. A., *The Discovery of Islands. Essays in British History*, New York, Cambridge University Press, 2005.

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For their part, when building the presidential system in Philadelphia, the constituents included aspects of a parliamentary nature that did not transcend the Latin American presidential systems that emerged a few decades later. Article 2, section 2, of the Constitution of 1787 provides that the president "may request the opinion, in writing, of the main official of each one of the Executive departments, regarding the matters of their respective branches." and that, with the advice and consent of the Senate, he will appoint government officials, except in specific cases where the law exempts him from this obligation.

The *advice and consent* formula is characteristic of English parliamentary institutions, and it was before the collegiate decision-making bodies in the Middle Ages. It appears in various capitulations dictated by Charlemagne in 802; in the ordinances of Guillermo I, of 1087; in the famous The Dialogue Concerning the Exchequer, of 1180; in the Magna Carta, of 1215, for example. Then it appeared in the *Bill of Rights*, of 1689. In American law it was used in the Charter of Maryland, dictated by Charles I of England, in 1632. It is unequivocally a striking expression of the parliamentary function that, although it was incorporated in the Constitution of 1787, did not transcend the Latin American presidential systems that were formed because of its independence from Spain.

Although I refer here to the evolution of institutions, it must be borne in mind that between their conceptual development and their practical exercise, there tend to be differences, sometimes very pronounced, due to cultural factors, resistance to change, and deviations caused by corruption and the usual effects when large interests are involved in the struggle for power. It took a long time to purify the functioning of the parliamentary and presidential institutions. If we only saw the constitutional statements, we would be left with a superficial impression of the institutional reality.

To get an idea of the concentration of power in the adjustment phases of the British system, we could take as indicative the data at the beginning of the 19th century: of a population close to 25 million, only half a million had the right to vote, and the vote did not it was secret; the so-called pocket districts subsisted, where a landowner or a small group decided who would be the representative of the commons; elsewhere, elections were auctioned.[111]

In the United States, cases of corruption were highly identifiable until well into the 20th century. There the figure of the so-called bosses, manag-

111 The highest price was reached in York in 1811, where it cost £ 200,000 to be elected. See Watts, Duncan, Whigs, *Radicals and Liberals 1815-1914*, London, Hodder & Stoughton, 2002, pp. 22 et seq.

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ers and controllers of votes was developed, and doubts about the legitimacy of several presidential elections, numerous governor elections and a considerable number have not been strange to its political history. The influence of special interests in elections and in governmental and legislative management is still the subject of acrimonious discussion in the 21st century.

The study of these outcomes corresponds to other disciplines, such as political science, for which reason only a reference is made here so that the mere examination of constitutional institutions does not produce the false impression that in all cases their functioning real matches its abstract statement. The convergence between norm and normality is, of course, the dominant aspiration in constitutional states. The important thing about institutional designs is to facilitate this process; conversely, poorly constructed institutions, or misconceptions repeated only routinely, or appropriate for a given time or circumstance, but dysfunctional at other times or places, can cause frustrations that are not always understandable, even though they are explainable. Sometimes, this type of setback produces disenchantment in relation to the constitutional State when everything that has been produced does not go beyond constructive errors in the arrangement of the pieces of an institution.

Political control is one of the traditional functions of constitutional systems, but the design of its instruments and procedures has varied. In its initial phase, the constitutions conferred a role of special relevance to the separation of powers, which made its influence felt in the Congress of Philadelphia and in the Declaration of the Rights of Man and of the Citizen, whose article 16 became the axis of normative formulations and doctrinal reflections throughout the nineteenth century and much of the twentieth.

The theoretical construction of the separation of powers was explained when the important thing was to have a construct that would allow dismantling the prevailing monarchical absolutism. It is understandable that Montesquieu's arguments were directed in the direction of counteracting the concentration of power that characterized the modern state, organized around the figure of the monkey, with the exceptions of the United States and, gradually, the British.

The constitutional monarchy was a phenomenon typical of the nineteenth century, and its fundamental elements resided in the subjection of the monarch to foreseeable forms of political control. In the presidential systems, which developed mainly in Latin America over that century, the instruments of control also took shape. However, the principle of separation of powers adopted content and nuances that were both functional to vindicate public liberties and to strengthen dictators. The argument of the

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separation of powers was useful for those who tried to inhibit the control actions of the organs of political representation.

The separation of powers took on an amphibological aspect. On the one hand, it was useful against absolutist systems, but in the same way it was building the arguments for the new holders of power to protect themselves against the supposed interference of congresses and parliaments. Insofar as it is considered as a functional separation, Montesquieu's scheme corresponds, legally and politically, to the doctrine of specialization that Adam Smith would advocate shortly after in the economic sphere, and which Immanuel Kant immediately adopted as his own.[112]

The concept of functional separation was accompanied by constitutional constructions of progressive rigidity, according to which any hypothetical interference of one state organ in the activity of another was forbidden. This isolation caused the power concentrated in the person who occupied the government to prevail over the power of the congresses; power that is generally dispersed, declarative and with a strong tendency to inner conflict.

Congresses suffered from fragmentation problems, and at this point they are still vulnerable; yet it is neither possible nor desirable to dispense with the internal blocks. The power of the government is usually vertical, and its holder exercises effective control over subordinates, has decision-making capacity and offers a coherent, homogeneous and disciplined position abroad, while congresses often debate without deciding, and their determinations Regulations are subject to the application of them by governments. When, on the contrary, the congresses are homogeneous, it is usually at the expense of their freedom and independence, either because of their political subordination in relation to the government; either by the hegemonic exercise of power by a party or a charismatic leader.

The functions of political control, the axis of any democratic system, encounter resistance from governments, especially in those organized as presidential systems. In addition to the factors associated with government cohesion and congressional fragmentation, propaganda actions have a distorting effect on the relations between the two organs of power. The most

[112] Smith published The Wealth of Nations in 1776; Kant, in his Foundations of the metaphysics of customs, published in 1785, expressed: "Every industry, trade and art has gained from the division of labor. An artisan does not do all the trades, but each one is limited to carrying out a job that, due to its characteristics, can clearly differentiate itself from any other, with the result of achieving greater performance and greater perfection. Where the jobs are not divided and where each one is a multifaceted craftsman, the trades are still in the greatest barbarity". See the Spanish edition, Madrid, Santander, 1996, p. 14.

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common is that, due to the availability of technical and economic resources, and due to the characteristics of vertical discipline, governments are more effective in terms of propaganda than congresses, where the action of plural committees and operational limitations make the media results appear leaner.

The government machinery is heading in different directions. It is common for it to have a spokesperson who transmits the position of the whole of that body of power, while in Congress there is a spokesperson for each fraction, which also does not always have the full support of its members. In any case, in the face of unity of action and government position, Congress, in the best of cases, exhibits natural contradictions in an organ made up of forces opposed to each other. The ability to articulate media support is more affordable for the government, through agreements that are not always in accordance with the public interest. The same happens with the main economic groups, which have direct interests in the media, as partners, or indirect, as large advertisers.

To circumvent the controls, many times you choose to discredit the controller. This action affects parties and congresses, inseparable elements of representative systems. Complaints of corruption against parties and ineffectiveness against congresses produce a cumulative effect that contributes to weakening the real possibilities of control over the government. Once this negative current is unleashed, governments warn that the greater the loss of prestige of their controllers, the less popular support will be for the controlled exercise of power. This translates into risks of arbitrariness and impunity in the actions of the rulers.

The conjecture about who controls the controller is resolved in constitutionalism through an operational form according to which the controller controls his controller. When this relationship of reciprocal controls is the object of a reasonable construction, it generates a constructive balance that encourages each of the bodies involved to satisfactorily fulfill its own functions. For this reason, in constitutional systems, two varieties of political controls are identifiable: improper, formal, or apparent controls and their own, material, or real controls. The former generates institutional dysfunction, because to the extent that they only fulfill an appearance, they lack positivity and evade the principle that in a democratic system there cannot be an organ of political power that is not subject to political control. The latter are those applied effectively, and in this case, what must be examined is the gradient in terms of compliance, which can range from maximum tolerance to extreme demand. Improper controls have no effect, and proprietary controls can have counterproductive effects if their use is distorted

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by excess or by default. Hence, the nature of the controls is associated with their normative statement and the form of their effective application.

One of the greatest democratic aspirations is expressed through the "one man, one vote" principle, coined in England at the beginning of the 19th century by John Cartwright.[113] But it is known that electoral formality does not reflect the actual situation of the exercise of power. Universal, free, direct, secret and periodic voting is exposed to influences derived from the dominance of interests over the media; the circumstantial impact of advertising messages; to the cultural filters that result from the religious, environmental, labor, educational and even emotional factors of the voters; to the personality of the candidates; to the dominant perceptions about institutional life; to the susceptibility of voters to be influenced by the use of public policies; to the evaluation of the performance of the institutions, and to a series of unforeseen events that generate fluctuations in the mood of a community. Electoral sociology studies highlight the vulnerability of the voter and the impossibility of having aseptic or neutral environments when making decisions that, on the other hand, are usually preceded by strong emotional charges and even animosity.

Constitutional institutions can offset the growing stresses generated by electoral systems. There are two levels of electoral competition: one, the one centered on the contrast between personalities, which is more accentuated in the internal selection processes of the parties (pre-campaigns), while there the differences in programmatic matters tend to be nuanced; another, the one that arises on antithetical programs. A highly competitive system can process an electoral contest between programs, but confrontations related to issues of personality are much more complex in terms of their consequences. Discrepancies based on programs are an invitation to reason, while those referring to questions of personality are a summons to passion. The struggle of personalities cannot be dispensed with, but good institutional design can mitigate its negative effects.

Just as the level of concentration of wealth in a country or region can be identified, accurate indices have not been developed to measure the concentration of political power. Not even studies related to ruling elites offer anything more than a transitory approximation regarding the way in which the exercise of power is distributed. In these circumstances, the best option

[113] *Cf.* Paul, Alexander, *The History of Reform. A Record of the Struggle for the Representation of the People in Parliament (1884)*, London, Routledge & Sons, p. 19. Cartwright was a staunch opponent of corrupt political practices and saw universal suffrage as a solution. See Pocock, J. G. A., *The Machiavellian Moment*, Princeton, Princeton University Press, 1975, p. 547.

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to get an idea about this problem is to determine the characteristics of the representative system and how efficient it works. This also does not exclude the distortions that may affect the integration and operation of the representative bodies, but at least it offers a reference from which it is possible to infer, along with other indicators related to the quality of democracy, how they are being processed. the demands and meeting the needs of a political community. The next step would require establishing the relationship between the distribution of political representation and the ownership of the governing bodies.

In presidential systems, the cabinet government modalities, according to which a nexus is drawn between the congresses and the government, translated into majority support for the program and for the ministers, at least in design, attenuates the effects of the concentration of political power and they sponsor the governance of these presidential systems.

The governance of a political system is related to its results, rather than its conceptual design and normative structure. The dilemma of choosing between a model that produced governance for a period, and a new model, whose effects are subject to testing, is resolved from the fact that an established system presents decreasing disadvantages.

You can distinguish between the opportunity and the need for a change. The first occurs when political agents identify a propitious moment to anticipate responses to foreseeable systemic problems; the need for change, on the other hand, occurs when these problems were not noticed or corrected in time. The attitude of the political agents and the governed varies if, after introducing the changes, the institutional conditions suffer a deterioration that is attributed to the change itself and not to the process of decline of the previous phase.

Not all institutional changes translate into immediate improvements, because it takes time to fit a new institutional assembly to the cultural environment. This phenomenon entails the paradox that changes to cement governance can produce a governance deficit during the adaptation phase of institutions and behaviors. The effects of the transition from one cycle to another were described in a very graphic way by Plato: when the universe reverses the direction in which it rotates, before it begins to move in the opposite direction, there is a moment when all movement ceases.[114] With this myth he illustrated the implications of a change: when what existed ceases to function and what is being built barely appears, there is an arrest; a stage of apparent paralysis that preludes to the new beginning. In the renovation

[114] *El político*, 270.

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of the institutions that have become dysfunctional, there is an adjustment that must be foreseen so as not to frustrate the expectations that a change arouses, and so as not to affect governance.

By governability I understand *a process of legal, reasonable, controllable, and effective decisions, adopted by legitimate authorities, in an area of freedom, equity and institutional stability, to guarantee the population the exercise of their dignity and their civil rights political, cultural, and economic-social and to meet the requirements of society through regular, sufficient and timely benefits and services*.

The constitutional elements to achieve governability reside in three factors: public liberties, political responsibility, and institutional cooperation. When any of these elements are missing, a governance deficit, or even ungovernability, can be registered. The base is represented by the set of freedoms for society to exercise its rights, with the limitations resulting from the environment, the effects of which must be reduced to the minimum possible. Furthermore, to complement the space of freedoms and enhance its effects, it is essential to build a system of political responsibilities. Only in this way is the capacity of the representative system strengthened and the exercise of public freedoms strengthened. Contrary to what is often claimed, the mechanisms of direct or semi-direct democracy generally expose society to manipulation of emotions. The handling of images and media of collective influence, direct or subliminal, reduces freedom of choice and turns voters into recipients of political marketing. On the other hand, the representative system, despite its imperfections and the agonistic nature of politics, allows at least to have suitable mechanisms to rationalize the relations between the organs of power. There is no constitutional state where the governed are not free and the governors are not responsible. The political irresponsibility of the rulers is a limitation on the freedom of the ruled.

This problem was identified from the dawn of constitutional democracy by Constant. In his Principles of Politics, he[115] pointed out the factors that should give rise to the responsibility of ministers: the arbitrary use of power; the commission of illegal acts that affect the public interest; and attacks on freedom, security, and property of the governed. From his point of view, it was essential to empower the assemblies to declare ministers "unworthy of public trust." With this, Constant differentiated legal responsibility from political responsibility. Acts contrary to the law gave rise to ordinary prosecution, while the political performance of a position could be assessed by parliament. In this case, his expression would translate into trust or censure.

[115] Constant, Benjamin, *Principes de politique (1st ed., 1815*), in *Écrites politiques*, Paris, Gallimard, 1997, chs. IX and X.

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Interpreted in the opposite sense, it can be said that where there is no public responsibility of public servants, a patrimonial sense of power prevails that symbolizes a kind of private appropriation of the public function.

The third factor that contributes to governance in a constitutional state is institutional cooperation. This is a difficult element to achieve because the electoral struggle implies the legitimate exclusion of the adversary, and because the political controls suppose the reciprocal limitation of the contenders. But governance is not based on tensions, but on forms of cooperation that allow building solutions for coexistence, that alienate the cohesion of the community (original sense of politics), and that are translated into effective satisfiers for the communities. community needs. Without instruments that contribute to institutional cooperation, governance is unfeasible.

Those mechanisms include the cabinet government and the reelection of legislators. Coalitions and agreements between parties become viable when leaders realize the need for long-term decisions. On the contrary, the pressures of permanent containment reduce the options for mutual understanding. The greater the propensity for electoral confrontation, which includes referendum arbitrations, the lower the institutional capacity to promote cooperative behavior among political agents.

In this study we have seen that the main parliamentary instruments to promote political responsibility are questions, interpellation, and the various forms of censorship. In turn, an ideal instrument to sponsor institutional cooperation is trust, translated into support for a government program or a set of shared policies, and for the people who must answer for its success. These mechanisms produce different effects, because while some have a restrictive purpose, others have a constructive one. A well-articulated constitutional system must effectively combine these ingredients.

A formula analogous to the Pareto optimum may be adequate to design constitutional institutions that guarantee democratic governance. In this sense, there will be a reasonable constitutional situation when to define the structure and functioning of the institutions the criterion is adopted that one situation is preferable to another, if no democratic institution is affected and at least one improves, this effort will be compensated by the greater collective well-being, by the best guarantee of the rights of the governed, and by the best opportunities for the governors to cooperate with each other, without prejudice to the political responsibility that incumbent upon them.

The viability of parliamentary instruments depends on the characteristics of the presidential systems. I identify three models: the Philadelphia

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model, the Bonapartist or plebiscite model, and the cabinet model. The first, which corresponds to the American Constitution of 1787, is based on an electoral system that differentiates between the electoral legitimacy of the president and that of Congress, and that confers on the latter powers of control like those that were already common in England in the middle 18th century. The Philadelphia model was built with all the necessary reserves to avoid the risks of the monarchical exercise of power.

The Bonapartist or plebiscitary model arises in the French Constitution of 1848, according to which the people "delegated" the executive power to a president elected directly and by the majority, for which a second round was even foreseen if in the first nobody got that plurality of votes.

All the Latin American constitutions, the first in the world to embrace the presidential system, gradually abandoned the Philadelphia model and introduced the Bonapartist, more functional for the personal exercise of power. Bolivia adopted it in the Constitution of 1851; Peru, in 1856; Venezuela, in 1858; Ecuador, in 1861; El Salvador, in 1864; Honduras, in 1865; Brazil, since its first republican constitution, in 1891; Panama, since its first Constitution, in 1903; Colombia, through the 1905 reform to the 1886 Constitution; Uruguay, in its second Constitution of 1918. In general terms, there was no great urgency, because ways had been found to violate the electoral power of citizens, manipulating the results according to the will of the political leaders. local or national.

In the case of Mexico, the organic electoral law of 1857 was hardly subject to discrete adjustments over the following decades, and it did not represent an obstacle to the reelections of President Benito Juárez or President Porfirio Díaz, for example. However, in 1917 within the strategy announced by Venustiano Carranza and seconded by the deputies, the presidential figure was strengthened, giving a plebiscitary base to its origin. In his speech on the 1st of December 1916, Carranza clearly showed the effects of the plebiscite system that he proposed:

> If the president is appointed directly by the people, and in constant contact with him by respecting their freedoms, by the broad and effective participation of the latter in public affairs, by the prudent consideration of the various social classes and by the development of legitimate interests, the president will have his support in the same town; both against the attempt of invading chambers and against the invasions of the Praetorians. The government, then, will be just and strong.[116]

[116] Constituent Congress, *Diario de debates*, Querétaro, 1st. December 1916, t. I, no. 12.

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Republics with presidential-parliamentary systems appeared in the last third of the 19th century. After the French Republic was proclaimed in 1871, a set of three laws passed between February 24 and July 16, 1875, made up the Constitution of the Third Republic. The election of the president was entrusted to the National Assembly (Law of February 25, article 2), the government was deposited in the cabinet, headed by the president (article 3 of the aforementioned Law), and the ministers held political responsibility (Article 6 of the aforementioned Law). The characteristics of brevity and generality of these norms, which were adopted with a transitory sense, and the intensity of the electoral politics of the time, gradually led to the consolidation of a full parliamentary system.

Although for different reasons, in Spain a process like the French one developed, almost at the same time. In February 1873 the Republic was proclaimed, extinguished in December of the following year. In that period, five presidents governed, who had responsible cabinets before the congress. The draft Constitution of 1873 was never approved, it provided for a presidential-parliamentary system according to which the executive power would be exercised by the Council of Ministers, whose president would be freely appointed and removed by the president of the Republic (articles 71 and 82). The President of the Republic would be the holder of the so-called "relational power", according to which he could call the Cortes to sessions, appoint and remove government officials, and "personified the supreme power and supreme dignity of the Nation" (article 82). The ministers, for their part, could not form part of the Cortes or attend their sessions, except when summoned (article 65), and would have been responsible before the Senate (article 66).

The cabinet model, which was already foreshadowed in those cases of France and Spain, would appear better defined a few years later, in the constitutions of Germany, Finland and Portugal, and has expanded rapidly in the constitutionalism of the 20th century and the beginning of the 21st century. This is proven by the reception of parliamentary institutions in presidential systems.

The debate on the adoption of the parliamentary system has been present throughout Latin American political history, in a very special way during the 20th century. In Mexico it was an issue that was widely discussed during the revolutionary period, in the run-up to the 1916-1917 Constituent Congress. It is a question that was also aired, on different occasions, in Brazil, Chile, Cuba, Ecuador, Peru and Venezuela, for example.

The origin of the controversy over the presidential system is not in the objective deficiencies of this system, but in the arbitrary form of its exercise

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and in the numerous and painful episodes of abuse that this performance has caused. For this reason, rather than suggesting the change of the system based on the inconsistencies and defects that characterize it, the possibility of renewing and rationalizing it has opened. This is, to a large extent, the purpose pursued with the incorporation of control institutions from parliamentary systems.

The rational design of these instruments must be carried out with a rigorous calculation of the desirable effects. Both the overflows that turn parliamentary politics into a frivolous spectacle, as well as the rigidity that makes the mechanisms of political control inapplicable, must be avoided. Both are extreme inconveniences that result from the dogmatic use of controls and that in practice affect their positivity. When they are introduced into the constitutional norm only with a spirit of political brilliance, but without a clear objective of their advantages, the result is negative. The use of controls must be surrounded by precautions that ensure their effectiveness and seriousness, at the same time.

The lack of legal consequences of the control mechanisms can make them a kind of opinion institutions, if their effects are contracted to expressing a point of view that, in the best of cases, supports or strengthens political currents. It is true that in a representative democracy even the fact that a point of view is generalized is important, but the functioning of political institutions demands a minimum of efficiency. In these cases, the use of parliamentary controls should be viewed with interest, because at least it proves that the distances between the presidential and parliamentary systems are narrowing and that in successive stages of development it will be possible to adopt more effective political control mechanisms.

Several Latin American constitutions consider the public, general, collective or state interest as the basis for the inclusion of political controls of parliamentary origin. However, most of those same constitutional texts do not specify the characteristics of this general, collective, or state interest. It is a type of norm with a very open texture, in relation to which legislators could rely on the jurisprudential criteria, national or international, related to these concepts. This is a valuable option, because to the extent that the political control exercised by the congresses incorporates considerations of jurisprudential origin, it will be taking a significant step in the development of a new modality of balances between the organs of power. In this way, the presence of the courts would influence one of the essential functions to preserve freedoms and legal security, which consists of controlling the exercise of power.

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The effects of political controls are related to the majority that prevails in the body of political representation. In parliamentary systems, it is essential that the government have the support of that body, even if it is a minority government, while this political support is not essential in presidential systems, except where approval of the program of government is required and the confidence of the Congress for the investiture of the cabinet or whoever heads it. The foregoing means that in the parliamentary system, interpellations and motions of no confidence tend to be less frequent than in the presidential ones, since in the latter their formulation does not jeopardize, in all cases, government stability, while in parliamentarians they translate to the loss of the majority or the breakdown of the agreements that support a minority government.

The use of political controls of parliamentary origin is more flexible in presidential systems than in parliamentary systems, among other things because they do not usually put the permanence of the head of state and government at risk. Under these conditions, controls are not a factor of political instability, as they have been, when used stubbornly, in parliamentary systems. The models of parliamentary control adopted up to now by the Latin American presidential systems come from a generation of European norms that tried to remedy the excess assembly members, especially from the experiences of the 3rd and 4th French republics. The highest level of precaution corresponds to the German model of constructive censorship, which has made wide school in today's parliamentary constitutionalism.[117]

For the same reason, parliamentary controls could be less limited in presidential systems; systems that, by their very nature, are quite rigid. The simpler application of the forms of parliamentary control, especially questions and interpellations, would facilitate the relationship between Congress and the government because, without jeopardizing its stability, it would offer the opposing political forces the opportunity to make assert your reasons about running the country. For this reason, adopting in presidential systems the same prevention structures in the face of political controls that have become generalized in parliamentary systems would add degrees of difficulty to the exercise of those controls and would create the illusion that presidential systems they have been modernized when the opposite would be happening.

It is important to carefully examine institutional interactions, to see to what extent the simple transfer of a range of parliamentary institutions

[117] The censorship mechanism adopted by the German Constitution (article 67) has found an echo in the Constitutions of Belgium (article 46), Spain (article 113), Hungary (article 33 A) and Poland (article 158), for example.

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rationalizes presidential systems. In many cases the opposite happens: the feeling of frustration at the lack of the expected results affects the social perception of the Constitution and lowers the levels of trust in institutions and politics.

When acts of control produce practical consequences, their authors tend to apply them with greater responsibility, while the exercise of controls that only have a declarative scope fosters an exhibitionism that is contrary to the sobriety of a mature democracy.

The advantages of incorporating instruments of political control from the parliamentary system can be minimized by not carrying out an analysis that allows us to warn of possible negative institutional interactions. This is evident in the case of the dissolution of Congress, which, far from rationalizing the presidential systems, contributes to deepening its hegemonic powers.

The models of parliamentary control incorporated into Latin American constitutionalism have considered the militaristic experiences suffered by most countries in the hemisphere. This explains, in part, the lower urgency for its adoption noticed in Mexico.

Regarding the presidential systems of some African, Asian, and European countries, the motivations for adopting instruments coming from the parliaments have been different. In many of these cases there has been a transition from authoritarian forms of exercise of power to progressive democratization schemes. By adopting the presidential organization combined with parliamentary controls, a governable transition has been sought, without exposing ourselves to recurrent personalism. For this reason, a large part of the states that were governed by Soviet law adopted presidential systems with important elements of parliamentary control. The same occurs in several countries of Islamic law.

An examination of contemporary presidential experiences reveals errors and successes in institutional designs. Although it seems a contradiction, parliamentary controls may be less limited in presidential systems, because there they facilitate the relationship between Congress and the government without putting governmental stability at risk. These controls contribute to the balance between the organs of power, without diminishing the capacity of each one. Its function is not to diminish the power of the constitutional organs, but to rationalize their performance and facilitate institutional cooperation.

In a good part of the presidential systems where parliamentary instruments of political control have been incorporated, the results have been less

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innocuous than it seems, since at least they have contributed to shaping a culture of greater demand in terms of the responsibility of the rulers. It can be said that there are parallels with the normative statements in electoral matters, which in general terms also preceded democratic electoral practices. Available empirical evidence shows that there are viable options that lead to the rationalization of presidential systems, without exposing societies to failure.

Additionally, it should be emphasized that political controls of parliamentary origin imply the presence of a responsible party system and therefore also controlled, with internal discipline that encourages cooperative behavior and strengthens the representative system. To achieve these objectives, it is necessary to contemplate the mechanisms that favor transparency in terms of the structure and functioning of the parties, inhibit circumstantial and contradictory alliances that disconcert citizens, and regulate such striking phenomena as transfuguism.

A distinction is usually made between parliamentary, presidential, semi-parliamentary and semi-presidential systems. Most of the systems built after the war, and even more emphatically those that have been developed after 1989, tend to incorporate elements that mitigate the deficiencies and enhance the advantages of those systems, without pretending preserve the hypothetical orthodoxy in the design of each system. With few exceptions, there are no systems that can be considered "pure", if the traditional models in which the parliamentarian and the presidential were inspired are considered. In our time there are only governable and ungovernable systems, and generally the former has to adopt as many operational instruments as experience recommends.

The phenomenon of globalization has brought about an unusual exchange of experiences that include institutional ones. Familiarity with the forms of government that occur throughout the world is something that characterizes the world citizen of our time. That citizen does not distinguish so much the peculiarities of each system, as the capacity of the systems to produce satisfactory results. The new governance indices measure social demands and government responses, without differentiating between systems. For this reason, what counts is that the systems have the means to ensure democratic governance, without looking at the nomenclator that identifies them. The problems of our time go beyond institutional nominalism; they concern the political and legal realism that allows societies to achieve, consolidate and develop their democracies.

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FINAL REMARKS

As a method, comparative law is one of the best instruments available for institutional design. In this study, in addition, I have incorporated some elements of historical and sociological analysis to appreciate the effective performance of the institutions. It would seem pretentious to have explored all the tendencies towards parliamentarization that presidential systems present; what I have wanted to show is that it is not an idiosyncratic behavior, in which only constitutional systems grouped in a certain geographic area participate, but rather a generalized response to find solutions to one of the most pressing problems that must resolve the constitutional state: governability.

There are clear constants that are noticed wherever reforms or new constitutional texts are debated: harmonizing the different political expressions within a plural society, or that tries to be so; control the acts of power and provide conditions for an effective exercise of governmental action. The first of these aspects has to do with public liberties and social equity; the second, with avoiding authoritarian relapses and avoiding the distortions caused by corruption, bureaucratic hypertrophy, and excesses of power; the third, with the real possibility of offering the satisfiers that concern the state: legal and physical security; individual and collective justice; political and economic stability; benefits and social development.

It has been common for constituents to analyze the success or failure of other analogous companies, and to engage in the discussion of legal, political, and social theories from which specific forms of constitutional organization can be derived. The review of other people's experiences, or of one's own antecedents, has been present in almost all the great constituent debates. When these experiences have not been found in a stage close to the moment in which the deliberation takes place, the gaze has turned to the classical world.

Unlike those foundational or original constituent processes, at present, doctrinal or historical references are not always found in constituent debates. Instead, it alludes to what is happening in other systems and the specific demands that political agents pose to each other are analyzed. The interest in knowing what happens in other systems is evident, even if they are

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geographically and even culturally distant. Somehow the phenomenon of globalization, of a communicational and economic essence, also transcends the universe of institutions.

Hence, it is necessary to identify the changes that are taking place in the forge or reform of contemporary constitutions. One can see how the constants to which I alluded are shaping a new aspect of the constitutional state. It is not that one engages in irrepressible pragmatism, or that one acts without sources of inspiration or bases of conviction; generally, a democratic mood prevails, or at least a democratizing appearance. What is attempted is to resolve the complex issues of political coexistence, social development, and governmental efficacy. It is for these reasons that I tried to identify the parliamentary institutions that have been incorporated into the presidential systems, and to note how this trend has intensified in the last four decades.

The *pragmatic variant* consists in that the constituent exercises have been detached from the original matrices of the systems. Adducing the *purity* of a system or the application of a doctrine, such as fencing to avoid institutional change, is something that happens infrequently. Arguing, for example, that the incorporation of the vote of confidence or the motion of no confidence affects the presidential system, or that it violates the principle of separation of powers, is irrelevant when what is being examined is how to make the exercise more rational power.

It is true that sometimes you hear the echo of the old constituent debates, but when things are looked at better, the conclusion is reached that the constituents of Philadelphia, imaginative and enlightened as they were, could not have dictated the only ways possible to make a presidential system functional. When Locke and Montesquieu are reread, and even their classical precursors, Aristotle, Polybius, and Seneca, their greatness cannot be ignored, but neither can the only possible key to shaping public power be attributed to them. Furthermore, when article 16 of the Declaration of the Rights of Man and of the Citizen of 1789 is invoked, it cannot be ignored that the same Assembly that proclaimed and reiterated it in 1791, also adopted a constitution where, in application directly from that precept, it was said that "the person of the king is inviolable and sacred" (Chapter II, Article 2).

It turns out that the constituents of Philadelphia and the French revolutionaries, such as the enlightened philosophers or the forerunners of the classical world, could not foresee certain institutions characteristic of our time. Political parties, electoral litigation, constitutional justice, international tribunals, and many other contemporary legal realities have emerged to

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complement, not to distort, the accumulative process of experiences and knowledge that allow the construction of a new type of state. Advocating for the immutable purity of systems is legal, as a doctrinal or political position, but it does not find support in contemporary institutional reality, nor is it necessarily the best option to provide an institutional channel for the democratic state.

When the reception of institutions from other systems is carried out trying to avoid the effects of negative institutional interactions, the advances become affordable. This form of fertilization has been used in other stages and today it is part of the common heritage of institutional systems. For example, constitutional courts emerged within parliamentary systems, but have found greater diffusion in presidential ones; the constitutionalization of political parties is also typical of parliamentary systems, but it has spread to presidential systems, with significant advantages for the consolidation of the constitutional state.

Democracy is known to be a peaceful procedure for electing rulers who are deemed legitimate. It can be said, equally, that the presidential and parliamentary systems are ways of organizing power in each state. Although I have a predilection for the presidential system, and I find the advantages to which I have referred in this study, I do not believe that the British or the Swedes, to mention two cases, could gain something by adopting it, and if instead they would lose a lot.

The preferable system is one that can be improved through an exercise of intelligence and collective responsibility. Innovations that generate insurmountable contrasts in the cultural environment in which they are produced and that are based on processes that are incomprehensible to their addressees are counterproductive. Building a parliamentary system to remedy the defects of a presidential system is very absurd. Who could design a good parliamentary system, about which they have no experience, if they cannot correct a bad presidential system, with which they are familiar? In other words, if what is known cannot be corrected, how can we build what is unknown. I am in favor of the rationalization of the processes of power, not of the irrationality of substituting at its roots what may well be amended.

Furthermore, when models are imported that lack implantation in a cultural milieu, there is a negative effect: the new instruments are only known to a few. This concentration of knowledge is contrary to any democratic project since it has exclusionary consequences for the other members of society. When a political system is built only for those initiated into the new institutions in place, the results are far from what could be wanted and expected.

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This does not happen when parliamentary instruments of control are adopted by presidential systems, for various reasons. In the first place, because the worst that can happen is that they are not used, and things remain as they were. If the ministers do not make use of their right to occupy the parliamentary rostrum, or the representatives do not ask or question, it means that the change was only skin-deep. Even so, institutions remain latent in life, and at any moment new circumstances may arise that activate them. Second, this type of institution has the virtue of functioning as a vector of democratic education. Society begins to familiarize itself with one of the essential forms of democracy: public deliberation. This fact means going from a *passive democracy* —only characterized by the freedom and objectivity of suffrage (in the best of cases)— to an *active democracy*, where citizens recognize themselves as the center of the debate.

There are numerous forms of direct democracy whose adoption is compatible with a representative system. Those who believe in the benefits of the representative system, including myself, must admit that to preserve the representative system it is necessary to include instruments typical of direct democratic systems, because the democratic culture is strengthened by stimulating public deliberation. Only it should be done, as in the parliamentarization of presidential systems, without triggering negative interactions.

The concentration of power, on the part of any body, exacerbates the propensity to subordinate others, and fosters excess power with its corollaries of arbitrariness and corruption. Hence, the rationalization of the presidential system contributes to attenuate the components of personal domination and the excesses to which it is prone in the exercise of power.

Well-balanced constitutional designs make it possible to correct the behavior of institutions, but they are by no means infallible, and a large part of their success depends on the appropriate interaction with other factors. Among the elements external to the normative system, which make up the set of constitutional externalities, the most relevant are the cultural context, the operation of the economic system and the general demands on the institutional apparatus. The traditions, behaviors, and perceptions of society contribute to shaping the characteristics of institutions.

The economic system, in constant interaction with the political system, can generate deformations in the power structure or can contribute to its success. It is evident, for example, that the distribution of wealth in the United States, Great Britain, Germany, or France, to mention only a few countries, gives their respective constitutional bodies a more comfortable space in their performance and development, than that available in places

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where the high concentration of wealth gives the circle of economic power a greater capacity to influence political decisions.

All forms of concentration or deconcentration of power (economic, media, union, intellectual, ecclesiastical, etc.), are *constitutional externalities*, alien to the structure, organization and functioning of the organs of power, which project their effects on the behavior of institutions.

Only a part of the power relations is subject to the constitutional requirement; beyond the political space regulated by law, there is another broad network of interests that, depending on their position, magnitude, ability, and decision to take risks, influence, sometimes in opposing and exclusive senses, to guide institutional action. For this reason, in the process of parliamentarization of the presidential systems, the results are very different. In states that come from an authoritarian tradition, with a high concentration of income and a low cultural level, the effect of constitutional changes could be of low impact; on the contrary, in systems where there is a democratic tradition, a lower concentration of income and a high cultural level, even slight changes produce sensible results.

In these cases, the reforms adopted by States with a lower level of legal and political development have another function: to set the direction to be followed by society, in the sense of increasing its cultural level, and to reform, over time, the other factors that act as externalities in relation to the constitutional system. If the institutional changes are not used to promote other adjustments in the context, it would succumb to the surrounding conditions and the negative effects of the concentration of power would be perpetuated. Conservative attitudes generate other types of outcomes because they prevent a gradual adaptation of the institutions and their environment, and ultimately produce very closed systems that end up restraining, in a factual way, the rest of the social actors.

Constitutional externalities have a greater record in open systems; In closed systems, the hegemonic force of political power is imposed or prevails over other agents. This process is not always understood, and therefore two positions are incurred, antithetical, equally unsuccessful: the conservative, which in the face of the scarce possibilities of achieving reasonable changes, prefers to maintain the status quo, and the radical, which due to analogous considerations he believes that reforms must be so resounding that change is inevitable. In both cases a similar result is unleashed: the renewed concentration of power. If the power does not change, it hardens; If it changes in a drastic sense, to impose itself on the environment, it also tends to rigor. The two extremes often lead to a similar fate, regardless of the intentions of their promoters. Except for revolutionary changes, the apparatus of power

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can only be mobilized, successfully for its promoters and without risk for its recipients, by making it more rational and reasonable.

Constitutional theory has not yet identified how the adaptation of institutions to the context occurs, and vice versa. This is a highly complex issue in which at least two aspects must be analyzed: institutional interactions, within the constitutional system, and constitutional externalities. This need has been overshadowed by the study of constitutional models, which do not always include a holistic perspective that encompasses the design of institutions and ongoing cultural processes, the patterns of behavior that are intended to be corrected or induced, and the magnitude, direction, intensity, and duration of the resistances that may be faced.

Policy decisions, like political decisions, are often supported based on agreements and persuasive media actions. Sometimes, when they respond to express demands from society or a sector with a special interest in regulatory decisions, a third factor also occurs: spontaneous acceptance and even adherence to change. All this, however, does not always occur, and sometimes the opposite situation arises: the benefits of the rule are not easily understood by its recipients, or they involve costs that most agents refuse to pay. Under these conditions, wear and tear falls only on the promoters of the measures, and those who did not subscribe to them reserve themselves to later capitalize on any resulting advantages.

In a variant of Gomes Canotilho's thesis, it can be said that in presidential systems, political power relies on three possible forms of organization and functioning: *monist*, where the presidency is dominant; *dual*, where there is the greatest possible symmetry between the presidency and Congress, and *triadic*, where the presidency, the government, and the congress are distinguished with their respective areas of competence. The first of these forms corresponds to a highly concentrated model, such as the Mexican one; the last, to a very decentralized model, adjacent to the parliamentarian, such as the Portuguese. In the central zone there remains the possibility of balancing, as far as possible, the relationship between the organs of political power. I emphasize that this is sought *as far as possible*, because the very nature of a collegiate, plural body, without operational powers, whose decisions are usually of a general nature, which discusses in public view and exhibits its contradictions, has a lower level of cohesion, secrecy, and discipline than the government, even if it is exercised in the cabinet and presents traits of pluralism. Government deconcentration is strengthened when, in a presidential system, a cabinet government is adopted. This does not mean that there is a duality between president and government; the president is still head of state and government, but in government functions he has collabo-

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rators who also answer to the representative body. The constitutional norms that transfer to the collaborators the indemnity that only corresponds to the head of state, are not adapted to the rationality of a democratic and republican system. For these purposes, I understand *as democratic the system that has legitimacy in terms of its origin, and republican the one that acts in accordance with the law*. In one case the interest of the people, the demos, is present, and in another the interest of the state itself, the *res publica*. The presidents are linked by their democratic origin and their republican performance; his collaborators, who have not been elected but appointed, are only bound to the republican performance of their function.

Presidents cannot be subject to the political control of congresses because it is not within the power of the representatives of the nation to alter the electoral decision of the nation itself; on the other hand, in a republican system there should not be any limitation that limits the control actions of the representatives of the nation in relation to the assistants of the president. The intangibility of the head of state only extends to his collaborators in authoritarian regimes.

It is advantageous for every ruler that the institutional loyalty of his collaborators is associated with two levels of control: that exercised by the president, and that which, from another perspective and with other forms of perception, is carried out by national representatives. The rulers are exposed to the fact that, in the cryptic exercise of power, they themselves are victims of the concealment of the truth by their ministers; this has been a constant of power. When this possibility is reduced to a minimum, those who are at the apex of power have instruments that give them greater capacity to lead and amend in relation to those who receive their trust.

The political construction of Machiavelli did not go in that direction, because the nascent state demanded a very concentrated power, whose success was subject to the personal capacity of the prince. But the *modern prince* must cope with a multiplicity of factors that were not foreseeable five centuries ago for the classical prince; the complexity of the state has reached levels that were unpredictable, and if certain aspects of the political mechanics noted by the Florentine genius are still in force, many others have appeared and demand a different way of conceiving power. The idea of strength or weakness of the rulers, therefore, cannot be measured according to the scale established at the dawn of the modern state.

Today, we can point out that the monistic and triadic extremes imply weakness for the presidential institution. In the first case, the extreme concentration of power makes him vulnerable, which, while granting him pow-

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ers to act without counterweights, also makes him responsible for all the mistakes and deviations of power incurred by his collaborators, about whose actions he does not have. effective means of information and correction; in the second case, his weakness results from not operating the government's devices, and whoever manages them does not enjoy the advantages offered by an investiture that comes from the popular democratic decision. In the intermediate space, of a dual structure, balanced in rational and reasonable terms, there is the possibility of a democratic power whose strength depends not on secrecy and concentration, but on openness and concertation.

The strength of a system is related to the stability of the institutions and the reliability of the agreements. Political understandings become volatile when they lack an institutional reference that gives them certainty and makes them durable. The success of a government requires, among other things, a long-term program that has stable support, at least equivalent to a legislature. Otherwise, each decision is subject to negotiation, and each negotiation may be more eventful than the preceding one. Alliances would vary continuously, making their outcomes unpredictable. This situation would affect the necessary loyalty of those who offer political support and even those who oppose it, and it would prevent the drawing up of a master plan to which government action would be subject. If this risk is not overcome through the proper design of institutions, it is difficult for there to be governance.

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STRUCTURE OF PARLIAMENTARY CONTROLS IN PRESIDENTIAL SYSTEMS

As I pointed out in the introductory part of this work, there are many difficulties in developing models about the way in which each of the analyzed mechanisms of parliamentary control is regulated. For this reason, the multiple variants that these controls can present are presented below as a catalog. The versatility of these instruments in presidential systems shows that their adoption opens a wide possibility of enriching them.

- Attendance of ministers to Congress.
  - Mandatory, only for the chief of the cabinet, before the plenary session, by appointment.
  - Obligatory for all ministers, before the plenary, by appointment.
  - Mandatory for all ministers, before the committees, by appointment.
  - Mandatory for the head of the cabinet, with periodicity (weekly, biweekly, monthly, bi-monthly).
  - Mandatory for all ministers, with periodicity (weekly, biweekly, monthly, bi-monthly)
  - Access to the rostrum, optional for the head of the cabinet before the plenary session.
  - Access to the rostrum, optional for the chief of the cabinet before committees.
  - Access to the rostrum, optional for all ministers, before the plenary, only in matters within their competence.
  - Access to the rostrum, optional for all ministers, before committees, only in matters within their competence.
- Questions to the ministers.
  - Formulation:
    - ~ Individual.
    - ~ By parliamentary group.

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~ With authorization of the board of directors.
~ Without authorization from the board of directors.

— Presentation:

~ Verbal.
~ Written.
~ In writing in advance of the session.
~ Verbal in the development of the session.

— Periodicity:
— Fixed, in control sessions:

~ Weekly.
~ Biweekly.
~ Monthly.
~ Bimonthly.
~ Occasional.

— Place:

~ In plenary session of a single chamber.
~ In plenary session of both chambers indiscriminately.
~ In commissions of a single chamber.
~ In commissions of both chambers, indistinctly.
~ In plenary sessions and in commissions.

- As determined by the applicable standard for each specific case;
- As determined on each occasion by the chamber, chambers or commissions.
- as chosen by the minister questioned.

~ In public session

- Of the plenary session.
- Of the commission.

~ In secret session (or confidential)

- Of the plenary session.
- Of the commission.

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- Presentation of the answer:
  - ~ Verbal.
  - ~ Written.
  - ~ Either way, depending on how the question was asked.
  - ~ Either way, at the choice of the minister.
  - ~ In writing, with verbal extension.
  - ~ Verbal, with written extension.
- Duration of verbal questions
  - ~ Limited.
  - ~ Indefinite.
- Duration of verbal responses
  - ~ Limited.
  - ~ Indefinite.
- Deadlines for submitting written questions
  - ~ Three days.
  - ~ Five days.
  - ~ One week.
  - ~ Ten days.
  - ~ A fortnight.
  - ~ One month.
  - ~ Undefined.
  - ~ Depending on the type of information required, between three days and one month.
- Person who responds
  - ~ Always the chief of staff.
  - ~ Always the minister questioned.
  - ~ Either one, at the choice of the government.
  - ~ A specialized undersecretary (vice minister).
  - ~ A delegated technician.

• Confidence vote.

- Promotion:
  - ~ President.
  - ~ The chief of the cabinet.

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  - ~ The cabinet.
  - ~ A minister.

- — Circumstance:
  - ~ At the beginning of a government period.
  - ~ When the chief of the cabinet is appointed.
  - ~ When each minister is appointed.
  - ~ It is linked to the approval of the government program.
  - ~ It is linked to the approval of a bill.
  - ~ It is linked to the approval of the budget.

- — Procedure:
  - ~ It is presented only before a chamber of congress.
  - ~ It can be presented to any camera.
  - ~ It is analyzed in both cameras, successively.
  - ~ It is analyzed in a joint session of the cameras.
  - ~ A period is set for its relief (never less than 48 hours or more than two weeks).

- — Modalities:
  - ~ Tacit trust
    - - If it is requested and not voted on, it can be considered denied.
    - - If it is requested and not voted on, it can be considered granted.
  - ~ Explicit trust.

- — Majority required to grant it:
  - ~ Simple majority, present or total.
  - ~ Absolute majority, present or total.
  - ~ Qualified majority, present or total.
  - ~ Absolute majority in the first vote and simple majority in the second vote of those present or of the total.
  - ~ Qualified majority in the first vote and absolute majority in the second vote of those present or of the total.

- — Effects of the denial of investiture:
  - ~ Present another candidate, indefinitely.
  - ~ Present a second candidate, and then free appointment.

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  - ~ Present a second candidate, and then dissolve parliament.
  - ~ Present a third candidate and then free appointment.
  - ~ After three candidates, free appointment, and dissolution.

- — Effects of the refusal to request a trust:
  - ~ Free assessment by the president.
  - ~ Present a new initiative (or program).
  - ~ Resignation of the chief of the cabinet.
  - ~ Resignation of the minister who has been denied.
  - ~ Resignation of the cabinet.
  - ~ Dissolution of Congress.
  - ~ Resignation of the chief of the cabinet and dissolution of Congress.
  - ~ Resignation of the cabinet and dissolution of Congress.

- Interpellation.
  - — Formulation:
    - ~ Individual.
    - ~ By parliamentary group.
    - ~ With authorization of the board of directors.
    - ~ Without authorization from the board of directors.
  - — Presentation:
    - ~ Verbal.
    - ~ Written.
    - ~ In writing in advance of the session.
    - ~ Verbal in the development of the session.
  - — Frequency:
    - ~ Indefinite.
    - ~ Determined by the Constitution.
    - ~ Determined by law or regulation.
  - — Place:
    - ~ In a single chamber.
    - ~ In both cameras.
  - — Effects:
    - ~ A simple motion

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~ Initiate a motion of censure.
~ None.

- Censorship.

— Formulation:

~ A parliamentary group.
~ A parliamentary group of a certain size.
~ A percentage of the total members of a chamber.
~ A percentage of the total members of both chambers.
~ With authorization of the board of directors.
~ Without authorization from the board of directors.

— Limitations:

~ The same group cannot present more than one (two, three, etc.) motion (motions) per session.
~ The same group cannot present more than one (two, three, etc.) motion (motions) per legislature.
~ None

— Relief session:

~ Ordinary session of the competent chamber.
~ Extraordinary session of the competent chamber.
~ Successive sessions of both cameras.
~ Joint session of both chambers.

— Procedure:

~ Regarding the quorum:

- approval by absolute majority of those present;
- approval by an absolute majority of the total of the members of the chamber;
- approval by an absolute majority of the present members of each chamber, in successive votes;
- approval by an absolute majority of the total of the members of each chamber, in successive votes;
- approval by an absolute majority of the total of the members of the congress, in joint session;
- approval by a qualified majority of those present;

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- approval by a qualified majority of the total of the members of the chamber;
- approval by a qualified majority of the total of the members of each chamber, in successive votes;
- approval by a qualified majority of the total members of each chamber, in a joint session.

~ Regarding the rules of the process:

- with audience of the minister;
- without audience of the minister.

~ Regarding the deliberation:

- debate and resolution, in the same session;
- debate in one session and resolution in a later session.

— Modalities:

~ It only proceeds against the head of the cabinet.
~ It only proceeds against a minister.
~ It only proceeds against the entire cabinet.

— Frequency

~ Regulated:

- once per year;
- a maximum per session;
- a maximum per legislature.

~ Not regulated.

— Procedure:

~ You must vent after (24, 36, 72) hours after being presented, and before (3, 4, 5) days, from its presentation.

— Effects:

~ Resignation of the head of the cabinet
~ Resignation of the cabinet.
~ Resignation only of the censored minister.
~ Resignation (of whoever proceeds), when he is censored twice.
~ Resignation (of whoever proceeds), when he is censored on

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two occasions, in the same period of sessions.

~ Resignation (of whoever proceeds), when he is censored three times.
~ Resignation (of whoever proceeds), if the president does not object to the censorship.
~ Resignation if the president objected, but the censure was ratified in a second ballot (generally, with a majority higher than that required in the first ballot).
~ The resignation (of whoever proceeds) is optional by the president.

- Dissolution of Congress.

— Not allowed.
— It proceeds when Congress denies trust to the chief of the cabinet, on the occasion of the investiture.
— It proceeds when Congress denies trust to the chief of the cabinet, due to a government program, a political declaration, a bill, or a budget project.
— Proceeds when Congress censures the chief of the cabinet.
— Proceeds when Congress censures the chief of the cabinet for the second (third) time.
— It proceeds when Congress censures the chief of the cabinet for the second (third) time, in a specified period of time.

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Constitutions Consulted

In parentheses is the date of the most recent reform
in the subject matter of this work

Country	*Date of issue (of reform)*
1. Germany	1919, 1949
2. Angola	1992
3. Saudi Arabia	1992
4. Algeria	1989
5. Argentina	1994
6. Armenia	2005
7. Azerbaijan	1995
8. Benin	1990
9. Belarus	1994
10. Bolivia	1994
11. Brazil	1988
12. Burkina Faso	1991 (2002)
13. Burundi	2005
14. Cameroon	1996
15. Chad	2005
16. Chile	1980
17. China	1982
18. Colombia	1991 (2007)
19. Comoros	2001
20. Congo	1992
21. Korea (North) (People's Republic)	1998
22. Korea (South) (Republic)	1988
23. Ivory Coast	2000
24. Costa Rica	1949

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Country	*Date of issue (of reform)*
25. Cuba	1976 (1992)
26. Djibouti	1992
27. Ecuador	1998
28. Egypt	1980
29. El Salvador	2000
30. United States	1787
31. Philippines	1987
32. Finland	1919, 1999
33. France	1958
34. Gabon	1991
35. Guinea	2003
36. Equatorial Guinea	1998
37. Georgia	1995
38. Guatemala	1994
39. Honduras	2001
40. Iran	1979 (1992)
41. Kazakhstan	1995
42. Liberia	1986
43. Libya	1969
44. Madagascar	1992
45. Mali	1992
46. Mauritius	1968
47. Mauritania	1991
48. Mexico	1917 (2008)
49. Mozambique	1990
50. Nicaragua	2000 (2005)
51. Niger	1999
52. Pakistan	1999 (2004)
53. Panama	1994
54. Paraguay	1992
55. Peru	1993
56. Portugal	1976
57. Central African Republic	2004

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Country	*Date of issue (of reform)*
58. Democratic Republic of the Congo	2006
59. Dominican Republic	1994
60. Rwanda	2003
61. Russia (Russian Federation)	1993
62. Senegal	2001
63. Seychelles	1993
64. Syria	1973
65. Taiwan	1947 (2000)
66. Tajikistan	1994
67. Togo	2003
68. Tunisia	1959
69. Turkmenistan	1992
70. Turkey	2001
71. Ukraine	1996
72. Uruguay	1967
73. Uzbekistan	1992
74. Venezuela	1999
75. Vietnam	1992

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