

**Bartłomiej Nowotarski\***

# **HOW TO BUILD NEW DEMOCRACIES AND PROTECT THEM AGAINST EROSION**

**What Can Really Mean the Recent Worldwide Transitional Experiences for  
a New Post-revolutionary Countries?**

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## **CONTENTS**

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\* Note about author: **Bartłomiej Nowotarski (Poland)** is a Constitutional lawyer and political scientist at Wrocław University of Economics. He was one of the leaders of the anticommunist students' strikes in 1981 and the Students Independent Organization affiliated with the "Solidarność" movement. He was jailed in 1982, after Marshall Law was introduced. He served as the Secretary of the Constitutional Committee of the Polish Parliament after democratic breakthrough. He was one of the authors of the draft of the Polish new constitution and political parties law as well as the author of the Polish parliamentary electoral law. He served as Deputy Mayor of the city of Wrocław for five years and was city councilor for sixteen.

He co-founded the Institute for Islamic Studies in Poland and is an expert of the European Solidarity Centre and the Polish Institute of Public Affairs. His main interests are worldwide democratic transitions and institutional (constitutional) design for young democracies, especially in Muslim-majority countries. His most recent book is: *How to Build and How to Destroy Democracies: The Study on Consolidation of New Democracies in the 20<sup>th</sup> and 21<sup>st</sup> Centuries*. He is the former president of the Premiership soccer club - "Śląsk" Wrocław.

PREFACE	3
1. WORLDWIDE EXPERIENCES IN SHORT	4
2. DEMOCRATIC TRANSITIONS EXPERIENCES	15
3. TOWARDS THE DEMOCRATIC CONSOLIDATION	18
4. TWO MODELS OF BUILDING DEMOCRACY	21
5. BETWEEN SCYLLAS AND HARIBDAS. REAL DILEMMAS OF THE INSTITUTIONAL DESIGNING	26
6. ECONOMIC REFORMS AND JUSTICE IN YOUNG DEMOCRACY	33
7. LETHAL (SUPER)PRESIDENTIALISM AND <i>WESTMINSTERIAN</i> PARLIAMENTARISM	39
8. THE EROSION OF DEMOCRACY AND THE RULE OF LAW UNDER THE ATTACK	41
9. THE REMEDY OF SEMIPRESIDENTIALISM	49
10. PARLIAMENTS SHOULD BE STRONG IN YOUNG DEMOCRACY	65
11. SUMMARY	71
APPENDIX: The veto-actors and veto-players game	72
BIBLIOGRAPHY	73

## PREFACE

Since the beginning of 1974, when general Ernesto Geisel gave up the Brazilian junta, and just after a while dictators collapsed in Portugal and Greece, about 90 worldwide countries have been travelling from tyranny to the harbor known as democracy. The both, either the great optimism or substantial pessimism have been coming from those journeys. The optimistic is that nearly fourteen hundred million people have been liberated from that time and now have influence on their states and societies. The pessimistic, that only 27 percent of those countries successfully consolidated their democracies. The rest got stuck somewhere between autocracy and democracy. In some kind of hybrid regimes where the formal institutions are, to some extent, democratic but the practice is not. And even those institutions are permanently abused and manipulated because of their weakness and discretion. Unfortunately, mainly by incumbents democratically elected to govern. Very often it was ominous autocratic heritage which burdened either democratic institutions designing or every day practice.

This small book consists on some additional approaches, descriptions and conclusions based on my, just published in Poland, book titled: “HOW TO BUILD, HOW TO DESTROY DEMOCRACIES. The Study on Consolidation of New Democracies in 20<sup>th</sup> and 21<sup>st</sup> Centuries.”<sup>1</sup> The book made the attempt to show and then sum up almost forty years experiences in consolidating new democracies in: Latin America, Central and Eastern Europe, and Central Asia in order, first, to show why they are hybrid and not consolidated and, second, to advance hypothesis about the most optimal institutional, especially constitutional, design in fledgling democracies. In societies with former dictatorship trauma and taking special account into Muslim-majority countries.

This essay is to be taken into consideration by future institutional designers in new democracies.

While we are beginning from the first Chapter, there are some concluding remarks included.

## 1.

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<sup>1</sup> B. Nowotarski, Jak budować, a jak burzyć demokracje. Studia nad konsolidacją nowych demokracji w XX i XXI wieku, Wydawnictwo Sejmowe, Warszawa 2012.

## WORLDWIDE EXPERIENCES IN SHORT

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The basic hypothesis is as following: free and equal human beings, in situation when and where the dictatorship has been overthrown, should build: strongly balanced and well de-concentrated democratic regime for themselves. The some kind of *semi-presidential* model is supposed to be optimal formula. Namely, this one shaped in presidential scenery but within parliamentary logic. These both things happen when popular elected president never even tries to take part in every day governing. And this last entirely belongs to government which is exclusively accountable to parliament. Leaving other less important things aside, so called *premier-presidential* is thought to be most proper for new democracies.<sup>2</sup>

There is also another one, from the young democracies point of view, crucial thing which decisively lessened their quality as democracies because resulted in “executive dominance” syndromes<sup>3</sup>. It was, the first of all, because of frequent the *separation of powers* principle breaking. This is just *semipresidentialism* which can bring back this fundamental rule to the political regimes. This exactly happens when a head of state has enough strong veto power to be overruled necessary by qualified number of deputies’ votes bigger than governing majority in parliament. This is real achievement of *semipresidentialism* because this exact weak point of *parliamentarism* can be here overcome. Government (and its

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<sup>2</sup> It is on about, of course, regime, to the contrary, called first time by Matthew Soberg Shugart and John Carey *president-parliamentary* in: *Presidents and Assemblies. Constitutional Design and Electoral Dynamics*, Cambridge University Press 1992.

<sup>3</sup> About „executive dominance” syndrome see: A. Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven 1999. But Lijphart takes into account only executive duration. In this book I add two other categories: “organizational” power (to appoint and dismiss other *checks and balances* organs) and “legislative power” (for example to issue unilaterally decrees or to hold referendum). To be developed later in text. In this last aspect of “dominance” I was inspirited by John Tsebelis and his: *Veto Players. How Political Institutions Work.*, Princeton University Press 2002.

majority in parliament) no longer has legislative power which is handed back over to parliament.<sup>4</sup>

What is interesting in the same time: semipresidentialism can help to overcome the second danger for young democracy, just mentioned, “executive dominance” syndrome, also. What I am thinking about is what I call “organizational dominance” over the game of appointment-dismissal, namely. Because in this exact regime the democratic practice is to share this kind of power between two branches of executive power: president and separated government.

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Montesquieu, unfortunately, in his “De l’esprit des lois” said only half of true when he wrote that everyone who has the power is prone to abuse it. He did not say that everyone is prone to abuse it before they have it, during the transactional process to establish state power. That transactional position coming from *ancien régime* will be used: chairmen of post communist supreme councils, politicians appointed by military juntas, “coup d’état” winners, and the last: winners of first democratic elections. That democratization can be only *by product* of transactional games of power achievement in order to impose power of ones on others. That such a process brings us the erosion of democracy from the very beginning. While only consensually (not polarized) divided and representative social elites, subordinated to *rule of law* regime, gave the chance to consolidate democracies. It was competitiveness which counteracted to discretionary law giving keeping the risk that such law can be used by opposition in their own political purposes after taking over the power. This happened when incumbents were under permanent threat to lose coming elections.

In this context, are very interesting prospects and challenges facing the new democracies of Tunisia and Egypt. We already know that transition from dictatorship to democracy can be “top down”, that is completely controlled by the forces of the *ancien régime* (eg, Brazil, Chile), a revolutionary “bottom up”, that is controlled by the former

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<sup>4</sup> Honestly speaking this can appear in the every case so called *veto players* introduction. When it can enlarge parliamentary majority, for example: upper chamber of parliament.

opposition (eg, Czechoslovakia, Poland by the end of 1990, Argentina) or in a situation of balance of the various elites so, transactional. The first two cases indicate, rather, that the future of the state and democracy formula will reflect the political interests of dominant elites, and the third, a formula negotiated, or compromise.

At first sight, it seems that it will be easier in Tunisia to design the constitution with sufficiently well-balanced and decisive democracy. The unicameral parliament, which received one year of adoption of the constitution, is a leading center (Al Nahda and coalitional partners which keep parliamentary majority), where they also know what they want. Meanwhile, confusion reigns in Egypt. Muslim Brothers said something about the parliamentary system, but the Supreme Military Council carried out elections to the bodies (parliament, president), which powers have not been corrected democratically (the president) and in part has come from the old time. Mubarak did not even, as in the case of the upper house of parliament (Shura Council), but President Anwar Sadat. The best proof that confused people here responded in very low voter turnout in 2011/12 elections. There was real hope relating to Egypt. However Mubarak's Democratic National Party evaporated and did not transformed itself to new opposition, situation looked enough balanced. The power of Supreme Council of Armed Forces was limited by Muslim Brotherhood, at least, in Egyptian parliament where they achieved majority with Salafists. Additionally, Tahrir Square still played the role difficult to overestimate in mass mobilization. Unfortunately, almost everything was changed after the Mohamed Morsi, coming from Brothers, success in presidential election. New president sent army to barracks and started to rule by self-decrees. First move was ransomed by the constitutional provision which gave military the post of Minister of Defense and very influential National Defense Council. In turn, politics of decrees issuing bypassed the parliament and led Morsi to the superpresidential position in the state what was confirmed by the new Egyptian constitution. According to this constitution the president is allowed to as well nominate 20 percent of senators as unilaterally hold the referendums. Needles to say that such a power completed by dominant party syndrome (post-Islamic party in Muslim-majority society) really can result in sliding back to some formula of autocratic rule in Egypt.

Though this be madness, yet there's method in it. In this "Egyptian madness" may be however a method. Specifically - the method of transactions. Well, now occupied in the elections institutions: the lower chamber, the higher or the new president will, at the forum of

Constituent Assembly, I hope, clash with each other in defending their own competences. The phenomenon of *autonomization* of the institutions will appear. More or less, as was the case in Poland in the period before the adoption, in 1992, so- called Small Constitution. Each will use its position trading in the battle for the future prerogatives, thus, comes to designing a well balanced - as semipresidential - democratic constitution. Where, in the language of Montesquieu's "The Spirit of Laws", the power will restrain the power. Meanwhile, the lack of such transactional scenario, forcing the parties to the negotiations, may just result in the case of Tunisia, the democracy with the weak *checks and balances* system, and therefore the democracy of inferior quality. May result in parliamentary democracy which will protect postislamic party dominance in the Muslim-majority society. And in addition, equipped with the institutions, not so much negotiated with other weaker options, but pushed through by a simple majority. Finally, a possible referendum only just such a democracy, of course, will perpetuated.

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The executive dominance appeared in Latin America, Eastern Europe and Central Asia. It became the clear enemy of so called *horizontal* and *vertical* accountability of powers mechanisms.<sup>5</sup> The are three contexts of dominance in which the differences in power of presidents, for instance, in Argentina or Uzbekistan are possible to be depicted. First, this is the government duration, more simply speaking, how long this or another executive cabinet can survive and control legislative agenda. Second, the concentration of power based on dominant or hegemonic political party. Third, relating to the controlling legislative agenda capabilities. There were presidents who used to often decree power (in Latin America, Eastern Europe, Central Asia) or unilaterally held the referendums (in Francophone sub-Saharan Africa) to bypass their parliaments. There were also presidents and prime ministers with their dominant or hegemonic parties (parliamentary majorities), what happened in Slovakia during Vladimir Mečiar premiership (1994-98) and in "westminster presidentialism"<sup>6</sup>, in turn, in

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<sup>5</sup> I think here about checks and balances systems. See for example: *The Self-Restraining State. Power and Accountability in New Democracies*, ed. A. Schedler, M.F. Plattner, London 1999.

<sup>6</sup> This concept comes from O. van Cranenburgh and J. Bureo. See: O. van Cranenburgh, 'Big Men' Rule: *Presidential Power in Anglophone and Francophone African Countries*, Paper prepared for Panel: Presidentialism in Comparative Perspective, Pissa, 6–8 September, 2007.

Anglophone sub-Saharan Africa. All those deviations consisted of the particular *veto-actors* and *veto-players* elimination from legislative processes which worked for intensity of clientelism, neopatrimonialism, state capture and its exploitation for the strict political purposes by incumbents. The independence of judiciary often was threatened also to reduce transactional costs of political procedure.

The informal attempts by executives to violate *horizontal* as well as *vertical* accountability and therefore *rule of law* principles became common also. “Delegative” and illiberal democracies<sup>7</sup> spread (see Part about democratic and rule of law erosion). *Checks and balances* arrangements were infringed upon at the expense of other organs and oppositions. Public spaces and civil societies shrank dramatically and social dialogs were constrained to the relations which could guarantee holding the power or at least re-electing of the incumbents. The *rule of law* and constitutions, instead of constrain the power, fell prey to political practice.

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There is no doubt that democratic transitions are burdened by autocratic heritage. The prognosis are better when historical experiences with own state and democracy existed in the past.

Unfortunately, the autocratic heritage strengthened in social routine the “winner-take-all” and “zero sum game” mentality. What means that people are not prone to negotiate and compromise. There is nothing unexpected that among post communist societies, in ninety years, about 57 percent populations well or very well estimated their *ancien règimes* and in 38 percents supported strong rulers. In Latin America, to the same extent, people were poisoned by so called *caudillo* tradition. There is enough serious danger that *welfare state* authoritarianism would be accepted. Turkish middle class can be the best evidence.

By and large, we have a substantial problem with understanding the public opinion scrutiny related to supporting democracy in new democracies. People too often have a vague concept. It is difficult to discern between supporting democracy as such and in practice. For

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<sup>7</sup> Both concepts come from Guillermo O’Donnell and Fareed Zakaria. See respectively: G. O’Donnell, *Delegative Democracy*, „Journal of Democracy” 1994, vol. 5, no. 1, F. Zakaria, *The Rise of Illiberal Democracy*, „Foreign Affairs” 1997, vol. 76, no. 6.



example only the few people mention *checks and balances* as important for democracy. Every day practice seems to be decisive. Where people were convicted that politics was corrupted only 22 percent of them supported their democracies, where were not such opinions as much as 68 percent. The level of satisfaction or not with present government was dominating factor.

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Islam, especially Sunni, is not the obstacle to build well balanced democracy. There was not Islam which stood across the way to attend it in North Africa. Larry Diamond, well known American political scientist, no longer than one year before “Arab spring” wrote about five reasons against possible democratization in this region. Among them “oil curse” was most meaningful.<sup>8</sup>

During the missions of democratization in Arab societies appeared clear that, coming from “Solidarność” Movement, polish representative found common ground with Arabs. First, as *The Arab Human Development* reports showed Muslims in 94 percent hated dictatorship as well secular as religious. Second, that the most problematic in their history was, like in communist regimes, peaceful rotation of political power. Third, that *sharia* thanks modernistic interpretation (*ijtihad*) can play creative, even similar to *rule of law*, function, at least is not against ( because strictly forbids only few things) well balanced and organized democratic state and regular exchanging of rulers.<sup>9</sup> Unfortunately, the problem with such a *ijtihad* among Shiites seems to be more controversial and less optimistic.

Should not surprise that postislamic parties (for example founded by Muslim Brothers) win elections in Muslim-majority societies. Because, they were the hard oppositionists against former dictators and past regimes. Besides, the syndromes of pro-religious voting appeared even in catholic and Christian orthodox post communist new democracies. As Pippa Norris

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<sup>8</sup> L. Diamond, *Why are there no Arab Democracies?*, „Journal of Democracy” 2010, vol. 21, no. 1, pp. 93-104.

<sup>9</sup> The conclusions coming from conferences and political meetings in Tunisia and Egypt in which the author took part in 2011 and 2012 year. In missions of democratization participated also former “Solidarność” leaders: Zbigniew Bujak, Jan Lityński and Henryk Wujec.

and Ronald Inglehart wrote: only wealthy societies became more secular, while the world more religious.<sup>10</sup>

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The erosion of democracies occurred in two areas: *horizontal* and *vertical* accountability. Electoral laws were often dishonest and unfair. In Latvia and Estonia, Russian speaking and borne after second World War people for few years were excluded from voting. In Kyrgyzstan, president Askar Akayev diminished the membership of parliament in 70 percent in order to abuse the oppositional clans chances. In result Uzbek population got three times less MPs than earlier. In 2003 the proportional electoral law was completely suspended. The *winner-take-all* philosophy visibly won.

The excessive concentration of executive power became the phenomenon of young democracies in last forty years of democratic transitions. Basing on some econometric models ( for instance Witold Henisz ones)<sup>11</sup> it achieved the level of 64 percent in Latin America, 77 percent in post communist countries and even 87 percent in sub-Saharan Africa. The juxtaposes of worldwide presidential power showed that Latin American presidents have two (and in legislative power even three) times more power than US and Finish heads of state, and five times more than president of France. In turn, South American presidents became two times (and three times in legislative power) outdistanced by Central Asian executives.<sup>12</sup> It means clearly that this is executive dominance, mainly in legislative procedures, which can be recognized as main reason of the erosion of young democracies. Executive dominance very often caused by dominant or hegemonic party syndrome. Thus, in the first place, the violation of both mechanisms of the balance of powers: the *horizontal* and *vertical* ones. But the basic

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<sup>10</sup> P. Norris, R. Inglehart, *Sacred and Secular. Religion and Politics Worldwide*, Cambridge 2005

<sup>11</sup> See W.J. Henisz, *The institutional environment for infrastructure investment*, „Industrial and Corporate Change” 2002, vol. 1 , no. 2. W.J. Henisz, *The Institutional Environment for Economic Growth*, „Economic and Politics” 2000, vol. 12, no. 1.

<sup>12</sup> See B. Nowotarski, *Jak budować a jak burzyć...*, pp. 147-150, 252-276, 384-393, 399.

question arises: what would cause such an accumulation of power in executive branches? In the area of post-communist states (observations confirmed in the areas of Latin America and Sub-Saharan Africa), *prima facie* evidences suggested high concentration of short-term benefits and dispersion of short-term costs of economic reforms in larger part of these societies. This occurred in situations where reform was partial and inconsistent. The significant correlation was found among freezing process of reform and increases the Gini index (illustrating the growth of income disparities in the society), a weak party system, or its absence, and a high concentration of executive power, mainly in the office of president. However, a causal relationship between the presidential system and the increase in the Gini index has not been confirmed. But evidences of the opposite were rather confirmed. In a situation of rapid short-term income inequalities the beneficiaries of reform could freeze them, investing politically not in parties, but in a strong executive power (in terms of its stability and control over the legislative agenda), which would protect their interests, by isolating the power from the claims of short-time losers. One of the researchers (Hellman) even bolder hypothesized that not the desire of power isolation from the frustration of losers was the cause of the excessive concentration of the executive power, but mainly the elites' expectations that their short-term benefits are secure and will become permanent. Sharp rise in the Gini Index, the significant concentration of executive power and oligarchy in large part of young democracies have become facts.

Thus, the premises of justice of the "well ordered society"<sup>13</sup> in young democracies and the phenomenon of partial economic reform demonstrate the potential role of the "short-term losers" to participate in the reform processes. Why? If, as can be justified on the grounds of political economy, the democratically elected government is guided by its interest, which is based on re-election, maintaining power, and indirectly keeping the social peace, it is likely that governing politicians will be based on cooperation and satisfy only such groups (simpler: "winners"), which this social calm and re-election are stand in their guarantee, however, to the detriment of other communities. So if the losers are not a threat to the processes of reform, but short-term beneficiaries who may soon create a flawed (because reduced significantly) middle class, and all of this together results in the dominance of the executive, which, in turn, could mean the erosion of democracy, we have a ready-made conclusion to the constitutional design. So, it would be very important, also with the respect for the *rule of law*, to admit the

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<sup>13</sup> The concept comes from J. Rawls, *A Theory of Justice*, Harvard University Press 1972.

losers to the transactional process of decision making within a pluralistic organization of power. This was more successfully demonstrated a significant correlation between the positive result of market reforms (eg privatization), a coalitional style of governance (Hellman<sup>14</sup>), and more generally, greater number of opponents with different options involved (Gehlbach, Henisz, Malesky, Metelska-Szaniawska)<sup>15</sup>. I also hope that it could be shown that no justice paradigm really correlates with domination of the executive power, with its concentration, duration and dominance over the legislative process.

Unfortunately, the countries that have started since the seventies of the twentieth century to its democratic transformation, only 27 percent consolidated it with success. Where others found their way? Got stuck somewhere in various forms of democratic illusions, in the hybrids between autocracy and democracy.

This is a constitutional law which may be charged with democratic erosion when clearly build legislative and organizational dominance of the executive power but also possibly opens up such a opportunities for exploitation. The constitutional law which was not conducive to the development of political pluralism (of the political parties), but on the contrary, which supported the personalization of the electoral law (mainly in single member constituencies) and the same time nonpartisanship, clientelism, instead of the program and organizational compactness of the parties. As well their excessive fragmentation and finally *vice versa* - domination or hegemony. That breaking of political pluralism, then “separation of purposes” can be considered as the second - after the legislative dominance of the executive branch - the cause of the democratic erosion. Finally, because of the well established culture of the *winner – take – all* principle, also needed to be impeached the lack of the respect of the *rule of law* mainly among the elected politicians and the practice relating to so-called “delegative” or illiberal democracy.

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<sup>14</sup> J.S. Hellman, *Winners Take All: The Politics of Partial Reform in Postcommunist Transitions*, „World Politics” 1998, vol. 50, no. 2.

<sup>15</sup> See the Bibliography and also: S. Gehlbach, E.J. Malesky, *The Contribution of Veto Players to Economic Reform*, “Journal of Politics” 2010, vol. 72, no. 4, W.J. Henisz, op. cit., K. Metelska-Szaniawska, *Konstytucyjne czynniki reform gospodarczych w krajach postsocjalistycznych*, Warszawa 2008.

Transactionality of the process of transformation in new democracies, justified theoretically and practically involvement of the short-term losers, polyarchy goals, on the other hand, excessive concentration of executive power which, in turn, threatens democratic consolidation, suggest a paradigm shift in the constitutional design for the new democracy. General discourse of the two great models: the presidential and parliamentary, due to political practice seems to be in the new democracies to lose its importance in favor to the detail-arrangement of individual *veto-actors* and *veto-players* (the concept will be specified later) of the system of *checks and balances*. This is their veto power and the number which can defend against the political hegemony, to decide the fate of the losers, make politics more stable and representative, and also conducive to economic reform, at least at first, however very important, period of transitions.

Because of the weakness of the parliamentary opposition, which of course is usually in the minority - a new paradigm would include the standard coalitional governing. Because the coalitional partner is the important partisan veto-player. The proposed paradigm, as I mentioned at the outset, suggests to the young democracies a semipresidential system regarding to the constitutional design. This is due to the possibility of departing from a “singular chain” of delegation and accountability of government and the introduction of the transactional game. In contrast to the New Institutional Economics, which refers negatively to transaction costs in economy, in politics such a costs are the advantageous. They, along with a veto-actors and veto-players stabilize and mitigate the policy, as well the macro, as the micro level. The constitutional design of veto-actors and veto-players gives interesting value to a new more flexible democratic system, not the least because of different provenances of elites who are compromising or competing.

Now it is necessary, to repeat, the version of semipresidential system, in which the president in any case does not participate in the current government. So he or she is not the head of government, has no decrees, no influence on the government: neither because of the right to dismiss it, nor even the right to convene its meetings. Why? Because in both cases, the president will begin to dominate over the executive or the governing will fall to disorder. This is dangerous, because then the executive power goes beyond the control of parliament. For the safety of the young democracy, the president may be only the arbiter having the right

to bring cases before the Constitutional Tribunal and, or the moderator to help with the creation of the governments.

Detailed analysis also showed that the in optimal version of semipresidential system, head of state should not be proactive neither in legislative, nor in appointment-dismissal power. Thus, only the parliament should be responsible for the council of ministers. This minimum requirement must be met if the young democracy does not want to end up in anarchy or in the arms of some kind of autocracy. So in this theater stage directions belong to the presidential system, as the actors should play within the logic of parliamentarism.

Therefore, the head of state should be only reactive in the legislative process by having a relatively strong veto power. Because, as in a parliamentary system, the government as the executive branch breaks here the principle of *separation of powers* when it becomes a agenda setter. And, as it occurred in young democracies, this phenomenon is conducive to the democratic erosion. Summing up, it is better to weaken the executive power (government) in its proactive approach, while adding in the constitution the head of the state as a veto-actor.

Now I am closing the general comments relating to the nearly 40 years having experiences with transition and consolidation of democracies. High time for a discussion more detailed although limited size of this study.

## 2.

**DEMOCRATIC TRANSITIONS EXPERIENCES**

Some historical experiences may suggest that the most effective transitions took place where there was a definite advantage prodemocratic elites, and especially if they were consensually polarized and divided. Because it is impossible to dictate a well-balanced democracy by one dominant political camp, even if it is expressly pro-democratic camp like Polish “Solidarność” movement was, for example. In Poland, the first good semipresidential constitution was established in 1992, just under the conditions of appearance of the opposition inside the former "Solidarność" and sharp competition between supporters of President Lech Walesa and of former Prime Minister Tadeusz Mazowiecki. Additionally, accompanied during the process of constitutional designing by the rivalry among the different state institutions such as: the office of the president and the two chambers of parliament. Previously, as a result of a complete political marginalization of former communists, Poland became threatened to be under the domination of the "Solidarność", where, of course, a few only understood the essence of democracy based on competitiveness, and thus the capability of a peaceful transfer of power in the hands of the opposition. Although at that time we felt disappointed with political divisions and the prospect of losing government, from today's point of view it is clear that the constitution based on the *ancien régime* – only few amended before 1992 - would make of Walesa and "Solidarność" political hegemony for many years. Yet the level of consolidation of democracy is often estimated at least after the first, and more often after the second successful rotation of power. As I mentioned earlier, I personally saw here an opportunity for Egypt, where the debate on a new constitution was joined by people elected in universal suffrage, and also representing separated institutions like: People's Assembly, the Shura Council and the newly elected president.

Unfortunately, it is well known world problem - "rotten door" transitions (as opposed to "hard door" ones)<sup>16</sup>, where the ruling elites of *ancient régime* have achieved during the dictatorship, such a severe level of "rot" that upon the change power cannot create valuable opposition, but rather to spread in the other political parties or complete exit from politics. The key concept is that new post-revolutionary camps, if united, almost always try to write a constitution and other fundamental rights "for themselves" to gain easy re-election or to maintain the government for longer. To these ends, they also issue laws that either explicitly authorize their discretion or are difficult to understand because of their vagueness. They forget that, in democracy, they actually handover the government to the opposition. During the 1990s years the last century, resulted in the so-called "no cooperative" transitions in Argentina, the Republic of South Africa and other sub-Saharan Africa and also in Europe: in Romania, Serbia and Croatia. Of course, building democracy is also prevented by too large, and too dominant influence on the process of transition of elites ruling under the dictatorship. It was just Brazil which was experienced directly coming out of the military junta, and particularly Chile, where General Pinochet has secured in the constitution - through the configuration of the second chamber of parliament - 'enclaves' which gave him an autocratic influence the decisions of the state (including the budget of the army) and his own impunity for years.

In the process of designing a new constitution two things seem to be most important. First, the importance of the so-called "constitutional moment", so if there is public support for the transition process and for the Constituent Assembly, which it prepares. Second, obtaining approval for a draft constitution among a meaningful political elites. Because these are the elites who in practice will determine its effectiveness or sabotage. And we must remember that the democratic consolidation requires the consensus between basic social actors and elites that they both play the same game - democracy. That no one will try to pursue their interests in any other way. Polish experiences in this regard may be instructive. In 1990 we lost the "constitutional moment" (the same happened later in Belarus, Ukraine and Russia), with the

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<sup>16</sup> Concepts are taken from: L. A. Way, S. Levitsky, Why „Democratic Breakthroughs” often fail to create democracies: Modes of Transition and the Prospect for Democratic Change, [w:] S. Levitsky, L. A. Way, *Competitive Authoritarianism: International Linkage, Organizational Power and the Fate of Hybrid Rule*, Manuscript.



result that between the years 1989 to 1997, we had three constitutions, and the impression that each team may try to adapt it to their own political ambitions. Exactly the global experiences confirm transactional process of constitution-making, in which are attempts to use the starting position of politicians (for example the former Communist Party first secretaries and chairmen of the socialist parliaments) to fight for the biggest influence in the future. Unfortunately, too many people from "Solidarność" thought then that just their presence in politics is enough to ensure a democratic Poland. Nothing could be further from the truth. Polish "constitutional moment" however, lasted until about one year and a half. On the other hand it must be said that, the whole time we were learning from our mistakes and reacted to the changing political situation in the country.

## 3.

**TOWARDS THE DEMOCRATIC CONSOLIDATION**

The principal thesis from the introduction is that the societies burdened by autocratic legacy should try to protect themselves and others against exclusion, and democracy itself against erosion. They should rather design system and its institutions using de-concentrating of powers models, in no case by concentrating the power of the executive branch. Those are basic, but of course not the only conditions for the maintenance of democracy for longer.

"The consolidation of democracy" is a term, over which swept all possible discussion and there is no point in bringing them up here. It is primarily a defense of democracy against the violent coup that caused riots and collapse. However, much more difficult is to protect it against less visible to citizens and slow, and thus more insidious, the erosion<sup>17</sup>. We estimate that the various factors badly affect the consolidation: economic (for example recession 10 percent from the previous year reduced by 43 percent chances of consolidating democracy and the growth of GDP per capita of 1200 USD, increasing by 30-80 percent) autocratic heritage (mainly military), lack of prior experience with democracy<sup>18</sup>. Suspected should (by the experience of Latin America) be a presidential system, but mainly in correlation with the duration of democracy and the rate of GDP. Thus, for example, to consolidate democracy on the basis of a presidential system, in 10 years, we need GDP per capita amounted to \$ 8,000. And in the case of the non presidential it's only \$ 3000. The following table illustrates the differences:

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<sup>17</sup> See: A. Schedler ., *What is Democratic Consolidation?*, „Journal of Democracy” 1998, vol. 9, no. 2.

<sup>18</sup> M. Svolik ., *Authoritarian Reversals and Democratic Consolidation*, [www.netfiles.uiuc.edu/msvolik/www/research.html](http://www.netfiles.uiuc.edu/msvolik/www/research.html). Also: Gleditsch K.S., Choung J.Lee, *Authoritarian Transition and Democratization*, Paper presented at 45<sup>th</sup> Annual Convention of the International Studies Association, Montreal, 17–20. 03. 2004.

GDP [USD]	p.c.	Presidential system (years)						Non presidential system (years)					
		0	10	20	30	40	50	0	10	20	30	40	50
1000		0	0	0	0	0	0	8	9	12	16	21	27
2000		0	0	0	0	0	0	42	45	52	61	69	75
3000		0	0	0	0	0	0	86	87	90	93	95	96
4000		0	0	0	0	0	0	98	98	99	99	99	100
5000		1	1	1	1	1	1	100	100	100	100	100	100
6000		10	10	12	16	21	27	100	100	100	100	100	100
7000		42	45	52	61	69	75	100	100	100	100	100	100
8000		86	87	90	93	95	96	100	100	100	100	100	100
9000		98	98	99	99	99	100	100	100	100	100	100	100

Source: M. Svolik, *Authoritarian Reversals...*, tab. 4.

Unfortunately, the literature shows rather that the consolidation of democracy is more difficult than return to autocracy. The latter probability is doubled. The only hope, as it turns out, is the high competitiveness in fledgling democracy, and thus the existence of strong opposition, which often come from the elite competition.

In post-communist states, where has been confirmed that the competitiveness not only prevents writing, by the incumbents, a discretionary law for their own benefits but in fact makes quicker creation of the system of *checks and balances*, consisted mainly of: second chamber of parliament, the president with a strong veto, constitutional courts, different ombudsmen, independent financial auditors, central banks and local authorities. Because both

sides fear as well the consequences of losing elections as losing the power.<sup>19</sup> Simply speaking, the point is a such institutional designing (through the electoral law, the principles of subsidizing political parties, with a possible preference for the opposition, including this outside parliament) which would create a situation in which the incumbents never be sure of electoral success.

Unfortunately, either because of lack of strong opposition, or simply in order to weaken it the governments often play the unfair game and willingly reach for the public resources giving them an advantages. The situation of "unequal opportunities" (it will be more widely explained in parts of the erosion of democracy and the rule of law) arises which is more subtle than electoral fraud and repression of opposition. This phenomenon can grow to the level of preventing democratic consolidation.<sup>20</sup>

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<sup>19</sup> A. Grzymala-Busse, *Rebuilding Leviathan. Party Competition and State Exploitation in Post-Communist Democracies*, Ann Arbor 2007.

<sup>20</sup> S. Levitsky, L.A. Way, *Why Democracy Needs a Level Playing Field?* „Journal of Democracy” 2010, vol. 21, no. 1, pp. 57-80. And their last book: *Competitive Authoritarianism. Hybrid Regimes After the Cold War*, Cambridge 2010, pp. 5-13.

## 4.

**TWO MODELS OF DEMOCRACY BUILDING**

Now the question is about the delegation of power and its responsibility in a democracy. Without this relationship representative democracy would not exist. The delegation of power from the public to the politicians has a serious weakness, particularly in new democracies. Politicians tend to escape from the chain of this delegation because of as well their personal interests as lack of common responsibility. These are just a sympathetic interpretation of the political class. Worse, when they do it to accumulate the power which stinks of tyranny.

We are accustomed to the fact that the delegation of power by society and representative democracy are self-evident. Simply because the facts show that complete withdrawal from representation in favor to various forms of the participating democracy is a cynical in political practice and end up with a rule similar to those regimes, which was prepared for its citizen by Gaddafi in Libya, or Chavez in Venezuela.

It's easy to realize, that the delegation of power<sup>21</sup> is a *singular chain* in the case of classical parliamentary system (for example *Westminsterian*), in a much more branched of the case of presidential regimes. In each case, the chain of delegation is constructed of multi-agent relationship: principal - agent. From the voters thorough the deputies, and ending on the bureaucracy. It is also appropriate to highlight political parties, without which it is impossible gain the truly democratic politics. A good image of this determination is well-known as "Bronislaw Geremek's error," Polish chairman of the Constitutional Commission, who even in 1990 at a conference in Costa Rica was to say that "Solidarność" movement closed the legacy of political parties, without which one could create a democracy. He immediately was responded by Juan Linz of Yale University: "see you soon – without a parties is impossible."

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<sup>21</sup> On this subject see comprehensive: *Delegation and Accountability in Parliamentary Democracies*, ed. K.Strom, W.C. Muller, T. Bergman, Oxford 2006.

Little bit later, in October 1990, parliamentary caucus of "Solidarność" (Civic Parliamentary Club) began to disintegrate into many political parties.

The relation of power delegation is indeed a one-way, however in a democracy it is determined by another one relation going to the opposite direction and even more important to be developed: this is accountability. Accountability of the agent in front of his or her principal. According to principal-agent relation problems arise due to the reason that agent usually has a better information than principal. Additionally there can appear so-called "moral hazard" on the side of agent. So, the lack of information or misinformation (typical for nascent democratic societies) may prove to be detrimental to principal. Therefore, studying the chain reactions analysts has disclosed the reverse waveforms. It's the bureaucracy of the Ministry which prepares the ministerial propositions. Later, the government becomes the agenda setter in parliament. In turn, these are political parties who offer programs to their societies. Nowadays is even worse. People vote without any knowledge of parties programs, and what politicians offer is just a simple: "Now let us govern now, judge afterward."

Differences in the delegation of power in the parliamentary and presidential systems are obvious. The parliamentary system (for example in the UK - Westminster) has only one institutional direct agent in relation to voters. This is a parliament, of course personally the deputies inside their political parties. Meanwhile, various presidential systems have usually two agents: the parliament and the president. However the separate or concurrent elections can have serious consequences because of the existence or not of *cohabitation*. Sometimes, as in the U.S., people choose their sheriffs, Attorneys General or the state authorities (including judges). Why is it like that? Why both "classic" models of democracy are so different from each other? Of course, further delegation of power is similar. The president and parliament separately appoint their bureaucratic agents, etc. The response should be searched for the system of accountability of politicians in both regimes. In one only these two models are not differ. In none of them, neither the U.S. nor the UK, no agent has two principals. Such errors have burst the young democracies. For example, the Weimar Republic, where the government could be dismissed by both the president and parliament (Reichstag). However, it is not the distinction between presidential and parliamentary regimes which is here important. The question of democratic delegation of power, and the more accountable politicians, is based on a different mechanism.

### **The two entities: principal and agent**

Representative democracy is based on principal-agent relationships. Both are separate entities with possible vary resource of the information or conflict of interest. Information's asymmetry lies in the fact that the principal does not know everything about its agent. He or she can be mistaken on his or her professionalism and skills (adverse selection). The principal ,for example voters, therefore risk. Our political candidate - according to Plato's dilemma - may just prove to be more greedy of power and glory than the responsible and right. It is impossible to disagree with the authors, who consider the selection of candidates for the politicians most important for democracy. Nigerian Chinua Achebe found it, in his country, as a cause of democratic deconsolidation.<sup>22</sup> Simply, agent must want and possess the capability to be a good agent for his principal.

In young democracies, we find examples of some other "agency loss", ominously called "moral hazard". Agent mind his own business, forgetting of made vow, not behave like he promised to his principals, and carefully mask his or her behavior. Unfortunately nowadays we face the political marketing which features personal, populist politics and belittle the political parties (and the voters) .This is just an example of degeneration of evident rule of representativeness. In fact it is for a young democracy that is threatening the discretion available politicians or officials. The larger the political "rent" is to take, the worse for a young democracy, especially the post-communist, where privatization involves a huge state property. With moral hazard we also have to deal with the ruling laziness after the deposit of the campaign promises given in the program. At this affliction the last in the chain of delegation - bureaucrats, are often to suffer the most. In young democracies, it is often to be found that the politicians first want at any price to win the elections and posts. And after the election, it turns out that the "drawer" of government are empty and there are no law drafts. Unfortunately, the thing is that the "chain of delegation" may be the result of exposure of all the evil viruses. Either lazy, or clientelisticly and nepotisticly oriented parliamentary majority (or the government, the president) can infect other agents by the "chain of delegation".

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<sup>22</sup> J. Brehm, S. Gates, *Working, Shirking and Sabotage: Bureaucratic Response to a Democratic Public*, Ann Arbor 1997; Ch. Achebe, *The Trouble With Nigeria*, London 1983.

Basically, the frequent disappointment is just, in young democracies (but not only), such a picture of the disease.

### **Vertical and horizontal accountability of power**

Vertical accountability along the chain of delegation from officials (civil servants), thorough ministers, government, prime minister (as *primus inter pares*, or *extra pares*), a parliamentary majority, the parties to the main principal, which are voters have already learned. Can the sovereign rest easily when the chain is long and so few opportunities to exercise accountability? Looking at the the British one can conclude that yes. But what in case of the fledgling democracy which teeters before consolidation between the threat of autocracy and anarchy. Indeed, research on "agenda controller" shows almost monopolistic position of the government with the parliamentary majority, where a parliament usually is a "rubber stamp" office. The opposition, being in the minority, has little to say, and in addition, this model may not appeal to the Constitutional Court, because it does not exist in a "singular chain" paradigm. As correctly formulated by Barbara Geddes, this single chain of delegation is as strong as its weakest link<sup>23</sup>. A chain of delegation has many links and only in one is needed to compete for the support of voters and their verification. Laziness or clientelism of the parliamentary majority will replicate like a virus to other links along this singular chain. A balance of powers mechanism is exceptionally low. Thus, control and accountability are poor. This is why proponents of the concept of "singular chain", always ignored the *checks and balances* mechanism believing that to stabilize the legislative process is enough, firstly, to delay the voting on the legislation to the next meeting of the Assembly, secondly, in order to make more accountable government, the increasing the rotation of offices and frequency of general elections. But just to increase the political accountability of government one can also multiply agents of the same principal, in this way keeping their social legitimacy. The main political positions elected in a universal elections: the presidents, the second chamber of parliaments, prosecutors, judges (like in US), and also an independent central bank, constitutional courts, ombudsmen, different auditors of finance and media independence, a proportional electoral law resulted in coalitional governments are the ways to reduce and

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<sup>23</sup> B. Geddes, *Politicians Dilemma: Building State Capacity in Latin America*, Berkeley - Los Angeles - London 1994.



disperse of the delegation chains of the accountability. So it looks like the presidential system, semipresidential or even in a consensual model of democracy by Arend Lijphart<sup>24</sup>. Most importantly, the creation of the next agents of the same principal (voters) gives the effect of *separation of powers*, which of course does not represent the hierarchical (vertical) delegation "principal-agent", but symmetrical and horizontal relationship which is decidedly transactional. Thus, reducing the risk resulting from a single chain (singular) and from renting more agents (for example related to the asymmetry of information), while increasing the transactional costs associated with the necessity of negotiations between the parties as legitimated socially entities and searching for compromise solutions. It is impossible to avoid the impression that the first model reflects the philosophy of politics as the domination of the will of the majority, while the second as a consensus dealing. It should be added that at the same time the "agency costs" in the first paradigm are considered pejoratively, in the second one transactional costs unquestionably are added value. Not only do they show the development of a compromise decision-making, but also serve as additional "fire detectors" in a democracy. For each such dispute shall be immediately noticed by the public opinion.

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<sup>24</sup> A. Lijphart, *Democracies. Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, New Haven London 1984.

## 5.

## BETWEEN SCYLLAS AND HARIBDAS. REAL DILEMMAS OF THE INSTITUTIONAL DESIGNING

The rejection of the dictatorship and to hold first successful democratic elections are only the beginnings of full, not necessarily pleasant surprises, inland to democracy. The post-revolutionary elites face many challenges to overcome. If we take to account the risks arising from the desires of capturing the state by the elites and their parties<sup>25</sup>, duration in power or at least predilection to “survive” politically, the necessary to resolve dilemmas are arranged in a clear dichotomy. The two first and principal also consist of:

- 1) Avoiding a return of any dictatorship, and the risk of falling into anarchy,
- 2) Choosing between the decisiveness of the system (legislative) but also instability, and its representativeness and stability in long distance politics.

The two alternatives seem to determine the remaining constitutional and institutional settlement. Since the choice here made it will determine whether we adhere to either the principle that "winner-take-all" and "zero sum game" of power, or the contrary: expressing the power sharing after any new electoral opening. Whether we decide to *majoritarianism* and its effects, or opposite, to accept the regulations appropriate to consensual model, for example as described in the Arend Lijphart's concept<sup>26</sup>. Finally, which of the models of presidential or parliamentary system and the electoral law (*majoritarian* or proportional) will be by us adopted for a longer time.

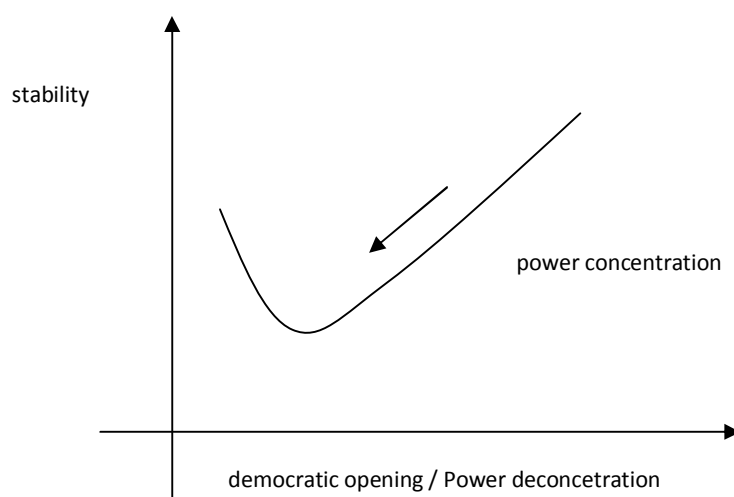
### Between dictatorship and anarchy

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<sup>25</sup> See: A. Grzymala-Busse, op. cit.

<sup>26</sup> A. Lijphart, *Democracies. Patterns of ...*, and latter in: A. Lijphart, *Constitutional Choices for New Democracies*, „Journal of Democracy” 1991, vol. 2, no. 1.

Among the countries in transition from dictatorship to democracy only a few in Africa, fell into a long period of anarchy. But attempts to usurp excessive, badly balanced power has damaged about 73 percent countries. The so-called "J curve" by Ian Bremmer<sup>27</sup> illustrates why this is so easy:



This curve reflects the relationship between the stability of the state and processes of democratic reforms. It says that the most stable are: hard autocracy and consolidated democracy. Between the ends of the curve is, however, a period of instability (both arms of the curve are falling down), because someone always bear the costs of transformation (see Part 6 about economic reforms and justice). Along this curve we can hike in both directions. Then instability can cause erosion of democracy in which anyone can easily use it and to lead us to the "left" side, into the abyss of another dictatorship.

At the turn of 2009 and 2010 almost all Central Asian countries (even the major cases of "color revolutions", such as Kyrgyzstan and Georgia) and sub-Saharan Africa lost the fight for liberal democracy. A superpresidential of one-party or a party hegemonic regimes, (with mighty power of presidents), the electoral democracies and in majority electoral autocracies prevailed. Similarly, one could evaluate the "success" of Eastern Europe (Russia, Belarus). "Delegative" or "illiberal" democracies (see Part 8 of the "erosion of democracy") spread over Central Europe and Latin America. Simple statistics shows what more threatens the young

<sup>27</sup> I. Bremmer, *The J-Curve. A New Way to Understand Why Nations Rise and Fall*, New York 2006.

democracies. Of course, the excessive concentration of executive power and too long duration. It does not matter whether it is a tyranny of the majority in the parliament (e.g. the hegemonic or dominant party systems), or of the executive. This happens for example when the legislative power is concentrated only in one body. Then, who controls this body, rubs against the power of dangerously high. Therefore it is not enough, in the institutional arrangement, to follow Montesquieu's ordinary *separation of powers*: legislative, executive and judiciary. This is important, all these branches must have something to say in the decision-making process, in which democratic bills are issued. But when the president in the superpresidential system possesses right to issue unilaterally the decrees by which he or she may bypass the parliament, the threat exists. Once have a unicameral parliament without *vis a vis* the veto of the second chamber, without the head of state or the judicial power, the situation is the same. For example, the *Westminsterian* system is only short step next to such a pattern. The Lords in the House can only delay the adoption laws. The two-party parliamentary system, a lack of disciplined parties and the constitutional court, with only a ceremonial head of state, prime minister and his or her government are the really powerful rulers at least for one term, which indeed they may shorten. This regime depicts perfectly our well known "singular chain" of delegation of authority and accountability of politicians, which was mentioned in the previous chapter. This should make us very careful in the shaping the process of delegation of powers from the voters, to avoid the abdication of the principal to his agent. For the benefit of no branch: legislative, executive and judiciary.

To reduce the permanent risk of the authoritarianism, it is important not only to separate the institutions in the legislative process, but also, as I said before, to let them have "the voice". From the formal side it is called a veto power (absolute, with a delay, suspending) or the repeal of the act for non-compliance with the constitution. However, the veto must have a content, and therefore be based on the difference of opinion, pluralism of views. Both criteria make up a complex system of veto-players and veto-actors. Because in democracy the difference of options are based on party pluralism the veto-holders system is co-created by *separation of powers* and the kind of the electoral law according to which certain number of parties will be entered to parliament.

At this point raises the interesting conclusion: about the level of threat of tyranny or anarchy does not depend on the presidential or parliamentary systems, as such, but the number and power of individual veto-holders. In the tyranny only one veto-holder is spotted -

the dictator (unitary, the junta or the only party), both necessary and sufficient for decision making. Anarchy, however, can take the form of a Polish *Liberum Veto*, the basic rule of unanimity. There each is the a veto-player who can paralyze decision-making process.

### **Between decisiveness and representativeness, stability and compromise**

Young democracy has really much to do and reform to resign of efficiency. The authorities need to make a specific decisions, which in turn must be implemented and pursued by the government, its agencies, the bureaucracy, and everything should be under the control of *ex ante* or *ex post* by the of the principal-sovereign, mainly the voters. Young democracy must also create institutional mechanism to resolve various conflicts.

In systems in which "winner-take-all" (presidential, with the single-member constituencies for the parliament or artificially manufactured majorities: like in a Greece) decisions are made quickly and easily. It is not strictly related to the pure *separation of powers* system, except when the president has a clear majority in Congress (the two chambers) or, conversely, Congress is too fragmented to oppose the president, and additionally president has the right of issuing decrees independently. For sure this is a parliamentary system in the *Westminsterian* version, especially in a unicameral parliament. This is the system of concentration of power in government in which the parliament is only "rubber stamp" office. Because this system forces the political parties' responsibility for the maintenance of their governments (hence the greater party discipline here). Favored additionally by a majoritarian electoral system in single-mandate districts, with a higher threshold proportional electoral law, or artificially manufactured majorities. I point here that the solutions with a high concentration of power in executive are not only a features of superpresidential systems in Latin America, but also a *Westminsterian*-type parliamentarism, and not only. Slovakia did not have, between the years 1994-1998, two-party system but the government of Prime Minister Mečiar (based on the dominant party in the coalition) belonged to extremely autocratic, saturated with discretion, nepotism, corruption, clientelism and watched political opponents. As commented by director of the local Institute of Public

Affairs, Georgi Meseznikov, these were the years lost by Slovakia, because they had to focus on the fight against government dictatorship<sup>28</sup>.

Characteristic feature of the "concentration of power" model is the high decisiveness, but little the accountability of government to the citizens, because it is only mediated by delegation chain characterized by a large number of intermediate principal-agent relations. A chain, I repeat, is as strong as its weakest link, from the parliamentary members to the bureaucracy. From the perspective of a young democracy where there is a need for many difficult reforms, such decisiveness seems to be attractive because - as was shown by Weaver and Rockman as well as Cox and McCubbins - institutional arrangement effectively blocks the claim of the short-term losers of the reform process<sup>29</sup>. Thus, isolates incumbents from the troublesome social pressures. Only question is whether such systems of concentration of power may serve to consolidate democracy in the long run?

The concentration of executive power also touched superpresidential system of Eastern Europe and Central Asia. Not only is Pauline Jones Luong who says that this is the effect of "transient transactional game" of post-communist elites, between Moscow and the regions (oblast) in order to the "old survived in new forms." This was the weakness of those "round tables" (pacted transitions), because they eliminated entirely the opposition. They determined the structure of parliaments, nominations of incumbents, control over the elections results, and finally the decrees for the presidents. That's why everywhere except Tajikistan, Armenia and Azerbaijan all of the transformation passed relatively peacefully. Lars Johannsen studied 900 executives, 15 former communist countries (including Poland) and also came to the conclusion about the strong concentration of decision-making process here. While weakness of parliaments, political parties and disregard for civil society organizations and professionals. He showed a concentration of decision-making in the executive power in the post-communist parliamentary systems at the level of 71.5 percent in turn, according to respondents, the largest concentration in the presidential palaces was to take place (in order) in Kazakhstan, Uzbekistan, Kyrgyzstan, Georgia, Azerbaijan, Armenia and Moldova, and

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<sup>28</sup> *Democracy in New Europe. The Politics of Post-Communism*, ed. J. Smith, E. Teague, London 1999, pp. 166–171.

<sup>29</sup> G.W. Cox, M.D. McCubbins, *The Institutional Determinants of Economic Policy Outcomes*, [in:] *Presidents, Parliaments, and Policy*, ed. S. Haggard, M.D. Cubbins, San Diego 1999, pp. 9, 29–30;

governments - Polish (86.8 percent in 2004), Slovenian, Lithuanian, Hungarian, Latvian and Bulgarian. At the end were the parliamentary systems of Czech Republic, and Estonia.<sup>30</sup> Conclusions on power concentration can be drawn from work written by Witold Henisz from University of Pennsylvania. With its data can be calculated more global results. Well, in the period 1989-2000 reached a concentration of power in the francophone countries of sub-Saharan Africa at 88 percent, Anglophone - 86 percent., postcommunist - 77 percent., and presidential republics in Latin America - 64 percent. At this point I would, just for comparison, noting that the U.S. presidential system since decades has been estimated at only 50-53 percent<sup>31</sup>.

In the concentration of power system is not only easy to nationalize country economy (see superpresident Hugo Chavez in Venezuela) but also not to allow any sectors to be privatized. Lucan Way argues that in Russia, Azerbaijan, Turkmenistan, Kazakhstan and Uzbekistan could not come to the "color revolutions" against authoritarians, because those local elites put their state paw on the oil and gas. So in such countries have no chance of democratization. The governing there is too much profitable.<sup>32</sup>

The problem is that the concentration of power systems, although they are much decisive, are equally exposed, first, on the instability of politics (including any change of ruling group), and secondly, on the less representativeness. The new government, is as much as decisive but not representative ( usually voted by the minority of all legitimate voters), can completely reverse the process of reform. This is why the opposite outlook to the concentration of power systems can be connected with stability of politics and its more representativeness. In order to achieve institutional system more stable and more representative, one should integrate the veto-actors and veto-players in decision-making

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<sup>30</sup> L. Johannsen, *Power and Coordination: Decision – Making and Influence in Post – Communist Governments*, Paper for Workshop Sessions: The Process of Decision-Making in Cabinets in Central-Easter and Southern Europe, 13–18. 04. 2004, Uppsala 2004.

<sup>31</sup> W.J. Henisz, *The institutional environment for infrastructure investment*, „Industrial and Corporate Change” 2002, vol. 1 , no. 2, pp. 355–389; Him also:, *The Institutional Environment for Economic Groth*, „Economic and Politics” 2000, vol. 12, no. 1, pp. 1–35; See also: K. Metelska-Szaniawska, *Konstytucyjne czynniki reform gospodarczych w krajach postsocjalistycznych*, Warszawa 2008, p. 189.

<sup>32</sup> L. Way, *The Real Causes of the Color Revolutions*, „Journal of Democracy” 2008, vol. 19, no. 3, pp. 64–66. Arab revolutions of course partly deny of L. Way’ thesis.

procedure (legislative). Here I am talking about already mentioned the institutions of *checks and balances* system, which agreement is needed to, change a *status quo*. These veto-actors (state institutions) and veto-players (parties) lift up, simply, transaction costs of decision-making process, because they are forced to negotiate or simply block each other. At the constitutional level, the mechanism is therefore based on the degree of separation (division) of powers and *separation of purposes*. In the latter case, the diversity of the parties reflects the differences in social options. At the end I underline several rules related to the building veto-actors and veto-players systems<sup>33</sup>:

- The more of these veto-points in the legislative process, the system is less decisive, but it is more representative simultaneously, because each of these points can represent various social options;
- The stronger is their veto power (eg, when to overrule their veto some qualified majority is needed), the system is less decisive, but long distance policy is more stable,
- The more the veto-points and the stronger their veto, the policy is less polarized and more compromise,
- The more veto-points and the stronger their veto, the easier is to block the agenda setter (government, parliament) seeking the reversal of reforms,
- The more veto-points and the stronger their veto, the greater the risk, however, the decision-making inertia and anarchy.

The not simple choice between political system solutions, more or less decisive, representative and stable in the long perspective of politics can be facilitated by the observation of the effects of economic reform and social justice in the particular young democracy.

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<sup>33</sup> Most of these principles are perfectly disclosed by George Tsebelis in: G. Tsebelis, *Veto Players. How Political Institutions Work*, Princeton, New Jersey 2002, pp.207-222



## 6.

### **ECONOMIC REFORMS AND JUSTICE IN YOUNG DEMOCRACY**

Young democracy must somehow be able to balance the social benefits and burdens resulting from the necessary economic reforms to their just distribution. Until the reforms in post-communist countries were proceeded one conviction dominated. The belief that their benefits are dispersed more widely and only costs are accumulated in specific social groups. Hence, in order to make effective the reform government should be insulated from the intrusive pressures, as hoped for, only short-term losers. Thus, also a significant concentration of power in executive (representing only the best reformist option) and long periods in office of the incumbents were recognized as legitimated. Meanwhile, reforms in post-Soviet countries (Eastern Europe), also highlighted a clear trend towards concentration of power, but from an entirely different reason. It was appeared that just gains coming from the initial reforms were accumulated in the hands of a few elites, but the costs were more widely spread in society. And in order to maintain the long run these advantages, the main elites sponsored the politicians of: Russia, Ukraine and Belarus seeking the concentration of power, mostly in the presidential offices or dominant parties. Why? In order to further "freezing" of reforms during the stage most favourable for them. In this way, "short-time winners" isolated the "short-time losers" for longer time.

Post-communist countries of unequal consequence introduced democratic and economic reforms. It is shown by European Bank for Reconstruction and Development (EBRD). The bank described the determinants of progress: privatization, reconstruction of enterprises, liberalization of foreign trade, competitiveness, banking reform, legal reform, and their four-point scale. The results showed more or less sustainable process of development of individual countries. Definitely advanced to the Poland, Czech, Slovakia, Slovenia and Hungary. Worse - Estonia, Bulgaria, Russia, Moldova, Romania, Albania, Kazakhstan. And the worst in Ukraine, Belarus, Uzbekistan, Turkmenistan. It discerned the processes strongly,

moderately or poorly advanced.<sup>34</sup> As was turned out, not among the advanced reformers, but where there was no consequences in their implementation, the higher decline in GDP per capita (in the years 1989-1994) by 17 percent and 39 percent respectively was noted. In the same years, inconsistent reformers have paid significantly higher price in the social stratification of the measured increase in the Gini index by 48 percent, compared with 18 percent growth in countries of advanced reforms. This shows clearly, in of these first countries, the greater concentration of income (about 8 percent, compared with 3 percent in countries more advanced) in the hands of 10 to 20 percent population than in countries with greater advancement. The last factor looks completely surprisingly. Countries with the most stable governments (especially presidential, but also parliamentary), with the exception of the Czech Republic, are countries that implemented during the nineties only slow, partial reforms. Turkmenistan, Uzbekistan, Kazakhstan did not experience any change in power. Romania, Kyrgyzstan, Moldova, Russia only once, and Poland, Estonia, Lithuania, Slovakia until 5 or 6 changes of government teams. Durability of governments differ from 64 months to 24 for both groups, respectively. Thus the **fluctuation of governments did not prevent the consistent reform introduction** but their stability did not correlate neither with consistency, nor the courage of incumbents. This leads to one fundamental conclusion: **dissatisfaction of "short-time losers", as well the phenomenon of removal by universal suffrage particular governments, were not against to the process of democratic and economic reforms.** This only pointed to the lack of a sense of justice among the "losers".

Unfortunately, similar conclusions were never fully be confirmed in the area of Latin America. I long wondered why? Finally, I accepted the thesis that this is because of low, in general, level of reforms in Latin America compared with the post-communist countries, especially Central and Eastern Europe. The degree of implementation of reforms in Latin America at the turn of the century did not exceed 38 percent. Meanwhile, the Central European new democratic advancement of reforms reached in the mid-nineties to an average above 70 percent, and in the remaining communist countries about 35 percent, and hence the apparent differences that give clear conclusions.

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<sup>34</sup> See: *Transition Report*, EBRD, 1994 i 1995.

On the basis of post-Soviet countries one can therefore recapitulate the situation in the following manner. **The more the political system is open to the participation of "short-time losers", the smaller will be the blocking probability of reform by the short-term beneficiaries.** Then, the more inclusive democracy is better. Joel Hellman as proof of the validity of such a reasoning used a formula of coalitional governing. He proved that reform progress correlated highly with the rotation of the incumbents. Thus, the more parties involved in coalitions, the harder it is to monopolize the reform process by "short-time winners." One-party governments can be dangerous. The more players in the game, the less chance that it will run only on partial reforms. Finally Hellman showed high correlation between the calculated determinants, indicating progress of reforms proposed by the EBRD (European Bank of Reconstruction and Development) with coalitional form of governments. Correlation reached a high level of less than 72 percent convergence (Pearson: 0.72).

Now a few words about the economic reforms. There have been many works talking about potential causes of success and failure of economic reforms in new democracies. In our case, these studies need to be narrowed to influence of democratic institutions and political systems and rather not only to typical parliamentary, presidential or semipresidential ones but occurring configurations of veto-actors and veto-players. More specifically to answer the question, what configuration gives the chance to optimize economic decisions, and what defends against the democratic erosion. And since the democratic erosion can come from both the bad arrangement of veto points, and the failure of economic reforms, is there the universal, desired in both respects, the institutional design?

Cumulative EBRD indicators included to the countries of consistent reforms, among others: the Poland, Czechoslovakia and Hungary, and to the countries of the "partial reforms": Kyrgyzstan, Romania, Latvia, Russia, Bulgaria and Moldova. At the same time among the partial reformers were mostly political systems of the dominant executive power, what, to some extent, denied the once popular idea that the best reforms are carried out under autocracy (South Korea, Chile under Pinochet). Indeed, among the countries of consistent reforms EBRD has reported the lower declines in GDP per capita, lower unemployment rates and much lower Gini coefficient growth (1989-1994).

It also found that the above-mentioned progress reform EBRD indicators correlate well with the degree of pluralism of options participating in governments, expressed by indicator of *coalition government score*. Correlation result clearly indicates the success of the reform of states which coalitional form of government respected (Poland, Czechoslovakia, Slovenia, Hungary).

Luckily, there are, however not too large, the literature trying to describe the relationship between veto players arrangement and the effects of economic reforms. In terms of general reforms in the institutional context is the best to refer to the works of Witold Henisz.<sup>35</sup> He examined both the influence of the number and mutual distance of individual veto-points on the particular branches of power. This, in turn, served to Scott Gehlbach and Edmund Malesky to an interesting conclusion that the effective economic reforms in the post- communist countries well correlated with a wide distribution of power and their durability with more veto-opponents.<sup>36</sup> An unexpected implication would be that the same arrangement of veto-points can serve both economic reforms and their confirmation. However, there are conditions of this double efficiency. These are: the strength and position in the system of institutions of the legislative agenda setter and the general consensus among veto-players about the basic directions of change. And this is where the *status quo* means the current state of the dictatorship, which we all want to farewell, and when strong position of agenda setter is not threaten by another proactive legislative authority. And also the agenda setter, and most of the other veto-actors and veto-players located near the political centre (which means in turn no danger of polarization), and the whole relationship consisted on the *repeated game*. This last means that the partners know they are doomed to cooperate each other also in the future in different, unknown today, configurations. In other words, a greater number of veto players does not necessarily imply a lack of decisiveness, on the contrary, it may mean greater progress not only in the economy ( Frye, Henisz, Mansfield), but also in terms of building a strong foundation for the *rule of law* in emerging new democracies

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<sup>35</sup> Both works cited above.

<sup>36</sup> S. Gehlbach, E.J. Malesky, *The Role of Veto Players in Economic Reform*, Paper prepared for annual meeting of the International Society for New Institutional Economics, June, 2007, p.11, [www.isnie.org/assets/files/papers2007/Gehlbach.pdf](http://www.isnie.org/assets/files/papers2007/Gehlbach.pdf).

(Andrews, Holmes, Montiola)<sup>37</sup>. Henisz, who was not involved in the research on agenda setter concluded it in the following manner: nothing worse than the uncertainty in the investment coming from significant and sudden changes in the preferences among the incumbents or change the incumbents of the remote preferences. A rapidity of these changes takes place mainly after the limitation of pluralism of options and a sequence of veto-actors and veto-players. Still, however, provided there is really unwanted by the elites the *status quo* (autocratic state), the consent of veto-players about the general directions of change and a powerful, reform-oriented agenda setter. It remains a central issue of where in the political system the agenda setter should be placed. Gehlbach and Malesky in the summary of their researches suggests only that it was not be the president. Though it is understandable in popular outlooks that young democracies can be deluded by the mirage of decisiveness of this office. At the end of deliberations, however, they give us a warning that a veto-actors consensus can be relating only to the first, so-called: *easy reforms* consisted on: price and trade liberalization, small privatization (eg, trade and services) rather than to reforms of the "second generation", which could include the reform of public finance, banking and large enterprises.

I want at this point to mention the Polish research results of the author, Katarzyna Metelska-Szaniawska<sup>38</sup>. In her book about constitutional factors of economic reforms she proves and she makes, based on empirical econometric models, the hypothesis that a lower degree of concentration of power, along with a wide catalogue of rights and civil liberties and an independent constitutional judiciary (where this catalogue is executed), affects strongly positive effect on implementation of economic reform. On the contrary, a strong concentration of power negatively interacted mainly with the reform of the "first generation" in the initial period of transition. It is also important that Metelska-Szaniawska emphasizes not only indispensability for the economic reform of the independent constitutional courts

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<sup>37</sup> See; Bibliography and: T. Frye, J. Hellman, J. Tucker, *Data Base an Political Institutions in the Post-Communist World*, New York 2000; T. Frye, E.O. Mansfield, *Fragmenting Protection: The Political Economy of Trade Policy in the Post-Communist World*, „British Journal of Political Science” 2003, vol. 33, pp. 635–657; J.T. Andrews, G.R. Montiola, *Veto Players and the Rule of Law in Engineering Democracies*, „Comparative Political Studies” 2004, vol. 37, pp. 55–87.

<sup>38</sup> K. Metelska-Szaniawska, *Konstytucyjne czynniki reform gospodarczych w krajach postsocjalistycznych*, Warszawa 2008, pp. 173–174, 208–274

(probably the most important veto-actors), but in general - following Henisz – the pluralism of the other veto- actors and their preferences (eg political parties). In this way, and also the Constitutional Political Economy (at least part of it) is strongly against the thesis of the necessity of concentration of power in order to implement such reforms.

## 7.

## LETHAL (SUPER)PRESIDENTIALISM AND *WESTMINSTERIAN* PARLIAMENTARISM

It is quite interesting that a presidential system (other than the United States'), a British parliamentary model (other than Great Britain) and a chancellor rule (other than Germany), became the major causes of crises in the young democracies of the world, as first seen in the countries of South America, Eastern Europe and Central Asia, and later seen in Central Europe (eg Hungary) and the Anglophone part of sub-Saharan Africa. Today we know that the reason for these crises was excessive "executive dominance" (presidents or dominant party syndromes) affecting the *checks and balances* systems. This was often caused by a poor constitutional design or a distortion of classical models which mixed presidential and parliamentary regimes. There are three contexts of dominance related to the different tools of power concentration:

- 1) Too long duration in power of one political option: in presidential systems as a result of rigid term and/or unrestricted re-elections, and in the parliamentary systems as a result of the syndrome of dominant party rule,
- 2) The proactive appointment - dismissal power to enable a decisive influence on the appointment and / or dismissal of the bodies belonging to the system of *checks and balances*,
- 3) The proactive legislative power conferred by law to issue decrees or unilateral announcement of referenda (presidents) or the syndrome of dominant parties (governments). In the case of the presidential system, this clearly breaks the "separation of branches" mechanism and serves to bypass "disobedient" parliaments, thus depreciating them in their legislative competence. In parliamentary systems, which in principle violate "separation of powers", they have to also break, in light of the dominant party, the "separation of purposes", in other words, the pluralism of political options (parties). And

this gave rise to further deviations (for example in Anglophone sub-Saharan Africa). If elected by universal suffrage, presidents became the prime ministers, but without the parliamentary control, thus breaking the parliamentary system entirely. At the same time, as was typical for the parliamentary system, they usually used the lack of *incompatibilitas*, then employed in governments (much better paid); thus, many MP's were needed to achieve dominance in parliament.

Thus, superpresidential or superchancellor regimes were formed, where the concentration of power in the hands of the executive went far beyond a resident of the White House or the chancellor of united Germany. Finally, an important question arises: why excessive dominance of the executive and all the associated problems described here do not affect the U.S., Great Britain and Germany. In all cases, the answer surely is a long democratic tradition, the tradition of the *rule of law*, etc. And again, the U.S. does not breach the "separation of powers." The presidency is a "persuasive" voice and not almighty. Congress sets the legislative agenda and the president does not even have the right to initiate legislature. Furthermore, after the midterm elections in parliament, it is very rare that the president's party even holds a majority in both houses of parliament, thus reducing the president's power even more. This means, of course, *cohabitation* and the appearance of *horizontal* veto-actors and *vertical* veto-players. England has no written constitution, so the standards of democracy cannot be changed by the majority in its favor. In Germany, in turn, there is the upper chamber of parliament, the Bundesrat, which is another strong veto-actor because it is recruited independently by local "lands" politicians.



## 8.

## THE EROSION OF DEMOCRACY AND THE *RULE OF LAW* UNDER THE ATTACK

Unfortunately, one of the greatest threats to consolidating democracy, as it turned out in practice, are democratically elected by us into power, the politicians. And always where constitutions open up any possibility of circumventing or manipulating, still weak, institutions. This touched so many democratically elected presidents or prime ministers starting from Carlos Menem and Nestor Kirchner in Argentina, till Vladimir Mečiar in Slovakia. However, even if the constitutions properly built systems of *checks and balances*, were, as in Hungary, amended in favour of the parliamentary majority and governing party. It means that only the *rule of law* culture gives solid guaranty. There are some canons of *rule of law* breakings.

### Breaking the horizontal balance of powers

In 1984, O'Donnell announced to the world that he had discovered a "new species" and in the following manner described his "Delegative Democracy."<sup>39</sup> Its premise is the supposition that whoever wins the elections (parliamentary or presidential), which in this case are democratic, that is fair, and fully competitive, feels the title to rule according only to his free will. The winner in the exercise of his office is limited only by hard facts of existing relationships, influences, and the tenure of office marked by the law formally. The rulers willingly refer to the idea that they embody the will of the nation or society, and any constraints of their freedom by the press or the judiciary, at best, recognize as a needless annoyance. Therefore deny, though generally non-public, but in action, Montesquieu's balance of powers, and thus also the *horizontal* checking of the executive. The model is therefore highly individualistic or *majoritarian*. Since voters are expected to be passive after

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<sup>39</sup> See: G. O'Donnell: *Delegative Democracy*, "Journal of Democracy" 1994, vol. 5, no. 1, pp. 55-69

the elections. In this way, released genie from Aladdin's lamp turns into a Hobbesian monster - Leviathan. O'Donnell point of view can be also completed by the facts that the breaking of *horizontal* mechanisms of balance of powers can take place, as shown by the examples of Slovakia, Hungary and Argentina, not only in an informal way but also by the amendments of uncomfortable, from the rulers point of view, law, including even the constitution. What confirms that the mere existence of a democratic written Constitution does not guarantee the democratic rule of law in the state.

### **Breaking the vertical balance of powers: party dominance and the phenomenon of uneven political playing field**

Domination or hegemony consist, respectively, on an informal or been institutionalized driven out of the competition elements from the democratic system. Hungarian situation indicates that the party Fidesz, in 2011, very quickly, in 8 months after the election, passed the stage of dominance (68 percent seats for the coalition in the unicameral parliament) to the stage of hegemony, for most of the changes made by amendments of the law, including the Constitution (10 amendments). The problem generally is a very important also because, as with one hand, historical, on the other hand, probabilistic researches show: 19 percent of autocracies in the world base on dominant or hegemonic party, and the risk for democracy to slide in this direction is as high as 24 percent. Following further is only worse - 55 percent chance of degradation to the one-party system and 45 percent the government would be transformed to the military junta.<sup>40</sup>

Literature is rather consistent in the description of stages transform into democratic dominant party system or as a further consequence, hegemonic. The mobilization of constituencies, resulting in a high capacity and superior transactional position to other parties, and finally dominate the organizational agenda and legislation. In an even more specifically, there are three stages of growth: 1) the coordination of constituencies, 2) the stage of transformation of the votes in the mandates of the deputies, 3) coordination in the

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<sup>40</sup> B. Magaloni: *Comparative Autocracy*, Stanford University, prepared for Conference: „Research Frontiers in Comparative Politics, April 27-28, 2007, pp. 38-41.

parliament.<sup>41</sup> Justified in light of the facts, it is also adding a fourth stage: the transformation of governmental position to the biggest number electoral votes in subsequent elections. What has become once upon a time in India, Mexico, South Africa, Japan is not absolutely impossible and elsewhere. Rising of this phenomenon is generally conducive the party subsidy system which prefers mainly the strongest parties, as well as neopatrimonialism, widespread clientelism, and in some post-communist countries permanent capture the state by political parties, including its agencies and the bureaucracy.

The phenomenon and causes of the exploitation the state by incumbents in post-communist democracies examined, as already mentioned, Anna Grzymala-Busse of the University of Michigan.<sup>42</sup> And she put one major thesis. This happened where competitive democracy, for various reasons, was weakened. That is, if the rulers felt no threat in the upcoming elections, because of the weakness of the opposition. At that time they even consciously, as in: Bulgaria, Czech Republic, Slovakia or Romania, refrained from the founding of independent bodies determining the strength of the mechanism of *checks and balances*. With full rationality also, as argued by A. Grzymala-Busse, was created the discretionary law to facilitate the exploitation of state resources by the ruling parties.

However, the problem is in the fact that the concept of "democratic rule of law" is accompanied by scientists letting in more and more new items. Undoubtedly, with the greater the potential benefit to the quality of democracy. In early 2010, Steven Levitsky of Harvard University and Lucan Way of University of Toronto proposed the extension of this idea of the terms "level playing field" (even playing field) in a democratic competition. After analyzing the 35 so-called "hybrid" states<sup>43</sup> (where, among others, institutions are democratic, but practice is not), these authors found that the inequality of opportunity is, roughly speaking, not on the elections' manipulations or repression of opposition, but a more subtle phenomenon of unequal access to various state resources, including: state institutions or the media. Everything what allow to increase the chances of incumbents in the confrontation with the opposition. This happens generally when: 1) the state institutions are used for partisan purposes, 2) the rulers gain a permanent advantage at the expense of the opposition and 3) incumbents degrade or even only reduce the competitive potential of the opposition. There is

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<sup>41</sup> B. Nyblade, *The Dynamics of Dominance*, March 2004, [in:] : [nyblade@ucsd.edu](mailto:nyblade@ucsd.edu)

<sup>42</sup> A. Grzymala- Busse, *Rebuilding Leviathan*....

<sup>43</sup> See: S. Levitsky, L.A. Way, *Why Democracy Needs a Level Playing Field?* „Journal of Democracy” 2010, vol. 21, no. 1, pp. 57-80.

no space here to exemplify such special treatment. In many countries we can see with the naked eye. There are funds flowing for political tasks of incumbents from the governmental or local governmental jobs, from government officials and local government agencies, state owned companies, the use of public buildings, means of communication, public employees, low-cost loans from the banks with state ownership, etc. In a further aspect with privileged access to public media, or to influence the independence of private media (for example, by placing paid advertisements in them). Unfortunately, also succeeded to demonstrate that the over regulation of party electoral competition depreciates, more or less, the chances of the opposition.

Nobody, of course, has a doubt that even in the most stable democracies, rulers always have some advantages. The point is that the judiciary (such as constitutional courts), should keep, by its verdicts, such a advantages to be as little as possible, recognizing that success and strength of the opposition in the competition belongs to the canons of “democratic *rule of law*”. We must therefore with a certain optimism recall that the nascent democracy in Tunisia took care of equal opportunities of starting in the 2011 October election political parties.

### **Constitutional factors: presidential or parliamentary system?**

Maxwell Cameron and others<sup>44</sup>, have observed interesting correlations associated with respect for the *rule of law*. First, that the parliamentary democracies (outside the OECD) more respect the *rule of law* than in the presidential republics (63% to 48%). What can deny everyday intuition that presidentialism is manifested by strict horizontal distribution and separation of the powers. But it is in the U.S, in South America unnecessary. Second, the high culture of the *rule of law* provides significant chance of survival of both types of democracy over 10 years (80% for the presidential and 84% for parliamentary regimes). Thirdly, in the case of low respect for the *rule of law* "survival rate" falls off sharply in the presidential republics and is 25% against 56% of the "survival rate" for the parliamentary model.

Also was examined how these both models of democracy are prone to instability in correlation with the quality culture of *rule of law*. The results revealed similar. With a high

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<sup>44</sup> Zob. M. Cameron, A. Blararu, L. Burns: *Constitutional Frameworks....*;

standard of the rule of law, both models exhibit a high stability (86% of parliamentary and presidential 73%). But, with a little respect of the *rule of law*, the probability of falling into instability by the parliamentary regime is 14% and 34% of the presidential one.

Why are presidential systems fare so badly in the context of lack of respect for the rule of law? We have provided answers here already. Because most presidential regimes in the world have *de facto* nature of superpresidential system.

Unfortunately, the question of whether parliamentary system correlates better with the culture of *rule of law*, cannot be answered definitely. For the parliamentary system does not speak not only recent history of Slovakia and Hungary but also the history of "Westminsterian" post-colonialism, in Anglophone part of sub-Saharan Africa. How the *rule of law* is broken shows in her works Oda von Cranenburgh.<sup>45</sup> As well in the form of overwhelming by the executive the mechanism of *horizontal* as *vertical* (by the dominant party) balancing of powers. The domination of one party in parliament, between 2002-2007 took place in: Madagascar - 64%, Burkina Faso - 66%, Komoros - 67%, Guinea - 75%, Togo - 89% .

All this means that it is not the type of political system (presidential or parliamentary) which influenced a respect of the *rule of law* but, probably, the degree of dominance of the executive power.

### **Political parties and constitutional courts**

As mentioned before, the *horizontal* balance system is based on state institutions which consent is required for changes in the system of decision-making (legislative), while the *vertical* system, in the same context, based on political parties, or the various organizations of civil society. The relationships between all these entities are to have the transactional game character in the symmetrical arrangement. Therefore, both mechanisms

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<sup>45</sup> See: O. van Cranenburgh, 'Big Men' Rule: Presidential Power, Regime Type and Democracy in 30 African Countries, "Democratization" 2008, vol. 15, no. 5. Her also: *Power and Competition: the Institutional Context of African Multi-party Politics*; [in:] *African Political Parties: Evolution, Institutionalization and Governance*, London, pp.188-207.

together constitute a system of "connected vessels" so called "veto-actors" and "veto-players". A durable domination of any political option is a violation of democratic *rule of law*, because it destroys this time, not *separation of powers* but the *separation of purposes* (pluralism of political options). This means that, for example, during the creation of the electoral law ruling majority cannot violate following principles: independence and impartiality of the electoral commissions, real competitive elections, voting equality, equal opportunities for competing entities, free expression of voters, effectiveness of parliament finally etc. The tenet of "competitiveness" suggests, for example: to avoid a plurality voting in single-mandate districts, where it maintains two – party system (especially if both parties together get fewer votes than the half of the citizens entitled to vote), making impossible to participate in the governments of lesser options, or when it can threaten to eliminate opposition. Under the "magnifying glass" of the *rule of law* should also be taken all methods of artificial manufacturing the parliamentary majorities, because of the ways of counting the votes which may violate the principle of equality.<sup>46</sup> All parties must have equal opportunities (Levitsky's and Way's "even field"), both in terms of the subsidy (even with a possible preference for the opposition, including extra parliamentary one) and access to media and other state resources. There is, of course, possible the "catalyst" function of electoral law, but never protectionist one. It is believed that even in times of social crisis, the law must protect an equal chances of parties against the will of voters who would be willing to establish the hegemony of one of them. These principles should be reflected both in the size of electoral districts and the percentage thresholds. Meanwhile, a violation of "free expression" of voters should be recognized in the cases of every excessive "wasting" of votes, thus "forcing" the voters to vote for the winning parties, however, contrary to their first preference. In conclusion of this part, we can say that most of the possible "discriminatory clauses" of the electoral law should be regarded as violating the *vertical* mechanism of *checks and balances*, ergo the democratic *rule of law*. However, when such laws are issued there is no doubt that this is real test for the independent, and impartial judiciary, mainly constitutional.

Unfortunately, many young democracies for a long time after the moment of democratic breakthrough, did not managed well in funding politically strong and independent judiciary (including the monitoring of the integrity and purity of the electoral process). In

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<sup>46</sup> See interesting work: K. Chrysogonos, C. Stratilatis: *Constitutional Restraints on the Electoral System*, [www.uridicas.unam.mx/ponencias/1/381pdf](http://www.uridicas.unam.mx/ponencias/1/381pdf).

Croatia, until 2000 (end of the rule of Tudjman), the guarantees of political independence of the judiciary remained only on the paper and was expressed very vaguely. And until 1995, in general, there was no regulation. Russia, Belarus and Ukraine only just in 1993 and 1996 adopted their constitutions respectively. In Serbia, until 2006, introduces no guarantees for the independence of the judicial council corporate candidates (founded in 2001), and the council consistently was boycotted by the parliament. Examples could be multiplied. Gretchen Helmke<sup>47</sup> studying the ruling supreme courts in Latin America, with special focus on Argentina, revealed the double face of the judges of supreme courts (constitutional courts), the professional and political ones. And that this last too often influenced the judicial attitude. Analysing the both, military junta and the democratic opening periods she came to conclusions about the local judiciary. First, that there was a significant separation between formal and informal institutions. Judges fear of losing office (insecure tenure) issued "defence strategy" involving the support of the executive power in their verdicts. Second, much more frequently under the rule of dictators than democracy. Third, that "defence strategy" (strategic defection) was to support not governments that appointed them to function but governments in the future, which may deprive them of their offices or, have in their hands the decisions relating to their further careers. The latter issue became particularly dangerous in the dominant or hegemonic party systems.

Considering the above remarks a young democracy can and should motivate the activity of the judiciary. Because, the constitutional courts ceased to be regarded as an actor which are "outside" the politics. There are measures that can help to make the constitutional courts a significant and active veto - actors in the national decision-making process. First, their activity may be indirect, relating to the area of transactional relationship (veto bargaining) with legislative power. This is a very important issue because the potential judgments will stimulate the content of draft legislation or amendments made by the chambers of parliaments. Everything of course in the context of the veto-actors that are entitled to submit the issues to court's authority, such as heads of state or parliamentary

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<sup>47</sup> Helmke G., *The Logic of Strategic Defection: Insecure and Judicial Decision – Making in Argentina Under Dictatorship and Democracy*, Paper prepared for Constitutional Courts Conference, Washington, 1–3.11. 2001; Helmke G., *Judicial Decision – Making and Strategic Defection: Court – Executive Relations in Argentina, 1976–1995*, Paper prepared at the Conference on the Scientific Study of Judicial Politics, Texas University, October 21–23, 1999.

opposition etc. Direct activity consists simply on verdicts which cannot be repealed by other institutions. This is related also to so-called "constructive interpretation", which has the right to go against the intention of the law giver and particular parliamentary majority. It is this direct involvement which makes the judiciary a significant actor in the decision-making procedure. If one can believe Donald Komers, the German Federal Constitutional Court, in the years 1951-1985, interpreted the 845 federal laws and revoked until 391.<sup>48</sup> Now we can see clearly the advantage of the verdicts by the constitutional courts in comparison to decentralized judiciary, which cannot overrule the general normative acts and interprets only in the case. Therefore there is no doubt that to make the real strength of the judiciary, young democracies should start from the appointment of a separate constitutional courts.

Nicos Alivizatos<sup>49</sup>, who analyzed the situation of the judiciary in the countries of the Western democracies, came to the next conclusions. Second, the importance of tradition and history. Well, but what if both are loaded by autocratic legacy? Third, clear and firm decentralization (local authorities) of the state power, of course, activates the judiciary, because of the need for settling disputes between levels of government. Fourth, it is affected by competitiveness and ideological ( in political programs) distance between the institutional actors of politics. Fifth and finally, to influence positively, the number of actors of the *horizontal* or *vertical* mechanisms of the accountability, especially when they have the power to bring cases before the constitutional courts. Interestingly, it also appeared that the independence of the judiciary is the greater, when rulers are less confident and sure in the electoral success.

As one can see, in this way, at the end, we came up with the "vicious circle" of democracy: the stronger and more powerful are mechanisms of *horizontal* and *vertical*, the stronger and more independent judiciary. But also, when someone tries to make them weaker, thus weakens the same time national Themis. This section therefore confirms that they constitute a system of "*connected vessels*". And also the risk that democratic country cannot help herself without international level organizations.

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<sup>48</sup> D.P. Kommers: *The Constitutional Jurisprudence of Federal Republic of Germany*, Durham 1989, pp. 59-61.

<sup>49</sup> N.C. Alivizatos: *Judges as Veto Players*, [in:] *Parliaments and Majority in Western Europe*, ed. H. Doering, New York 1995, pp. 566-591.



## 9.

**THE REMEDY OF SEMIPRESIDENTIALISM**

The existence of pro-democratic elites are not enough to consolidate young democracy. Painfully revealed to build democracy in Iraq, Afghanistan and Bosnia.<sup>50</sup> Modernization changes are needed (in the economy, education, civil society), and at the beginning mainly the institutional ones. First of all, as I wrote earlier, to combat erosion of democracy, with which the young democracy must struggle from the start. The most dangerous agents of erosion of democracy turned out to be:

1) disregard or complete breaking of the principle of *separation of powers* (by the legislative proactivity of the executive power, which included the right to self-decrees or to unilateral holding of the referendum by the presidents of such regions and countries as Latin America, Central Asia, Belarus, Russia and Ukraine);

2) excessive dominance of the executive power (presidents in the presidential systems and governments in the parliamentary systems), often resulting in attempts to paralyze basic functions of the democracy as well as the *horizontal* and *vertical* mechanisms of *checks and balances*; this, in turn, resulting in the depreciation of the positions of parliament and the judiciary within the constitution;

3) admission to the "dominant party" syndrome, destroying the "separation of purposes" rule.

This is interesting that to achieve Central European democracies needed, on average, 11 years in order to achieve the current level of consolidation. Southern European democracies (Greece, Spain, Portugal) required 14 years and Latin American democracies as much as 26 years. Why in this context just Central European countries look so well?

The common answer to above mentioned threats to the young democracies in Central and Eastern Europe that managed to build successful democracies, has become,

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<sup>50</sup> See for example: C. Manning, *Political Elites and Democratic State-building. Efforts in Bosnia and Iraq*, "Democratization" 2006, vol. 13, no. 5, pp. 724-738.

essentially, a semipresidential system founded in the logic of parliamentarism. This system took hold in eight of eleven countries (the others being purely parliamentary regimes). Professional indexes of consolidation and quality of democracy (Bertelsmann Transformation Index, Nation in Transit, Freedom House) give the highest ratings to these semipresidential models: Slovenian, Polish and Slovak Republic (after 1998) and to these parliamentary republics: the Czech Republic and Estonia. In the world rankings of the top ten new democracies, the top half of the regimes are semipresidential (except Uruguay and Spain): Slovenia, Portugal, Poland and, a little bit later, Mongolia<sup>51</sup>

Why is that? In my opinion, it is first because the semipresidential system has the most reasonable mechanism of balance of powers (*checks and balances*), which protects against the return of dictatorships, despite the appearance, here and there, of attempts at autocratic practices. Secondly, it is because of the proportional electoral system, which protects fair and honest elections as well as the distribution of political power among different social options. This is extremely important for young democracies, especially those with a high risk of dominant party syndrome, for example, Tunisia, Egypt or Libya who all have post-Islamic parties. Thirdly, with the exception of the Czech Republic, it was decided as soon as possible to have decentralization of power through general elections of local authorities (municipalities), securing them with independent budgets which create independence from their capitals. It is also meaningful to remember that the erosion of democracy can proceed at the local level in similar or even identical manner as that of state.

The semipresidential model seems to depict the most well-developed mechanism of balance of power and accountability. It introduces to the transactional democratic "game" a super strong veto-actor, the president, coming straight from a general election. To be meaningful, however, a veto-actor must be equipped with a significant (ie. hard to overrule) veto power. Secondly, the election of the president should take place in the mid-parliamentary term so as not to influence the parliamentary majority. Thirdly, as was mentioned at the beginning, such semipresidentialism (with a president armed by strong veto) brings back to the parliament the position of the legislative agenda setter and "separation of powers" simultaneously.

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<sup>51</sup> See for example: W. Merkel, *Against All Theories: The Rapid Democratic Consolidation in Central and Eastern Europe*, [http://www.fphil.uniba.sk/file/admin/user\\_upload/edit](http://www.fphil.uniba.sk/file/admin/user_upload/edit).

For the record, first of all let me recall the classic definition of semipresidential system by Duverger. But not in the definitions is the essence of things, but in general, the introduction to the political game a head of state as one of the veto-actors. To be more precise in mutual connection of hierarchical system of parliamentarism (hence more decisive based on “singular chain” of delegation and accountability of power) with the advantages of vertical and symmetrical transactional games associated with the presidential regime.

In line with Duverger<sup>52</sup> semipresidential model can be definite as follows:

- 1) First, the president of the republic is elected by universal suffrage (and is not a chief of the executive).
- 2) Second, the President possesses quite considerable power.
- 3) Third, there are also Prime Minister and the government, who can stay in office if and only if they have confidence in parliament.

As we can see, the definition is quite roomy, though it was ascertainment of one political system, which is the French Fifth Republic. Significant flexibility is in the content of items shown 2 and 3. It draws a lot of options, however, on one condition - the parliament must have a means of control over the government under which would be able to withdraw its confidence (usually we have in mind the institution of the vote of censure). This means that many countries have worked or work right now in these broad terms. Eight in South America: Argentina in 1994, Colombia 1991, Ecuador in 1979, Guatemala 1985, Paraguay 1992, Peru in 1993, Uruguay in 1966, Venezuela 1961, in Europe, eight Central and Eastern Europe: Bulgaria, Lithuania, Macedonia, Poland, Romania, Slovenia, Ukraine and Russia. The problem is explained with the other post-Soviet countries, mainly from the region of Central Asia. There, only the Constitution of Tajikistan (1994) speaks enigmatically of shared accountability with the president of parliament for the establishment and maintenance of government. While constitutions of Russia or Georgia record the presidents powers to veto a parliamentary vote of no - confidence!

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<sup>52</sup> M. Duverger, *A New Political System Model: Semi-presidential Government*, „European Journal of Political Research” 1980, vol. 8, no. 2, pp. 165–187.

Such examples illustrate rather superpresidentialism than semipresidential system. The presidents of these have a clear potential for reducing or even eliminating the powers of scrutiny of parliaments, are capable of veto their censure, or threaten them to be dissolved.

The semipresidential system formula is roomy, but not so that *de facto* standing midway between the presidential (in its classical version) and the parliamentary systems. In the latter the executive is not elected by universal suffrage (besides Israel), but it is an emanation of the parliament. And if so, the prime minister and the government remain under constant supervision of legislature, which may at any time dismiss them. The essence of things lies not in name, but the fact that the institutional system is not located between the classic presidentialism (USA), and the classical *Westminsterian* parliamentarism (United Kingdom), and may even drift from the superpresidential formula (Georgia, Russia, Uruguay, etc. ) to a balanced parliamentarism. And under the latter name we would understand every system with such a power of the head of state which makes him or her a veto-actor in relation to the second part of the executive - the government and its majority in parliament. That is what would differ this system from "pure" parliamentary one, where not only the appointment and dismissal of the government, but also the dissolution of parliament belongs to the ruling majority. We could probably also talk about the balancing of presidentialism by removing all the president's legislative powers (eg the right of veto in the U.S.) or by strengthening the parliament by the right of approval for individual appointments in the executive or judicial apparatus. So, countries characterized by superpresidentialism certainly could begin to limit conflicting and emerging impasses too excessive powers of their presidents as a veto-actors in the appointment and dismissal game and/or their legislative proactivity. Meanwhile, the first tool to balance the strong parliamentary majority (*Westminsterian* one) could be the establishment of a head of state equipped with the "suspensive veto", or even just have to carry out the general election for that office. The point 1 of Duverger's definition is clear but different weights is adhered by students of presidential power.

### **President coming from the universal suffrage**

In the twenty-first century in a world dictated by the culture of “picture media”, especially electronic, power became extremely personified. All we keep the close look, how he or she looks and behaves as a president or prime minister at the expense of listening what they speak to us. One can therefore intuitively think that the voters expect that the president, who earlier in the campaign attacked us through the television, internet or DVDs will have some powers, otherwise why would vote for him. In fact, might have, but not required. This is not purely institutional aspect. But nowhere more than in Central and Eastern Europe and Central Asia personal and historical aspects —influenced the democratic regime designing. Walesa and Havel not only were not the leaders of political parties, but even deprived of them, in spite of that as the heroes of social movements partly determined constitutions and political practices of their countries. Árpád Göncz, Hungarian dissident widely respected, over the years influenced the policy of his country, despite the fact that, after all, as Havel in Czechoslovakia, he was not an elected president by universal suffrage. On the other hand, the presidents of Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, and Russia, Belarus and Ukraine, as the leading dignitaries and local leaders of former communist parties won the general election easily becoming autocrats just after. In one case, they managed to get the constitutional powers more or less tailored to the size of their ambition (Walesa), in others not (Havel).

The fact of the general election of the president more impinges on his authority informal than formal. This is directly connected with his entanglement in semipresidential system, the options and the structure of the party or his or her neutrality. Here are the main possible configurations:

1) The president is the leader of the party, which has an absolute majority in parliament (and shapes the government). This may mean his great power not only in ministers selecting, but also as an agenda setter in the legislative process.

2) The president is the leader of the dominant party in coalition with another party. Now, not much has changed his position, but it is balanced by a significant internal veto-player – coalitional partner. The president can then obtain an advantage thorough appointment policy of coalitional ministers. A similar situation in Europe took place in France in 1967-

1968 (Gaullists have 200 seats and Republicans 47 coalition, so more than 240-seat opposition.)

3) The president is the leader of the party, which operates in a balanced coalition. This situation is purely transactional. Negotiation may cover any matter of substance or personal (Giscard d'Estaing in the years 1974-1978).

4) The president is the only member of the majority party or parties in the coalition. Therefore likely that he or she will become hostage to his party and its leader. His authority will limit itself to a rather strict constitutional powers (rule of the Kaczynski brothers in Poland in 2005-2007)

5) The president is in opposition, that belongs to or admits to a particular opposition party. In this way, can grow to the rank of leader of the opposition forces. But its power is purely constitutional. These powers may (but need not) be used to fight the ruling majority. It provokes a dramatic, but mainly a media battle during the *cohabitation*. The president rises to the rank of reviewer-controller. In young democracies, the situation could become quite worrisome, and the president's position stronger than the president, "a member of the majority party" (Poland since 2007, when the ruling coalition of PO-PSL had to meet President Kaczynski, a total representing in the gestures oppositional PiS). Out of this situation is to switch the positions of President neutral.

6) The president the *arbiter*, a neutral president. It's not just non partisan president, but also in practice abstaining from supporting any parliamentary options. This is the presidency not involved in political clashes. What's more, he gains more confidence through the political scene. His rank rises, when less overwhelming the parliamentary majority, the more problems with the appointment of the government or its maintenance, and also with carrying out the bills by the government. President the *arbiter* may be a perfect remedy for the weakness of minority governments. They may compensate for the lack of parliamentary support (as does, for example, the president of Germany).

### **The appointment-dismissal power**

The definition of the semipresidentialism, with regard to the appointment-dismissal game between the head of state and prime minister (government) puts one condition. Existing separately from the president, the government must be accountable to parliament. The president elected by popular vote, except in cases of impeachment, is subjected only to the evaluation of the voters. Meanwhile, the government in this constitutional mutation, although should be dismissed by parliament – can be appointed and dismissed by the head of state also (the so-called: *president-parliamentary*). Semipresidential system is therefore extremely flexible. The same remark applies to the competence to dissolve the parliament. The head of state can possess such a power or not. It may be discretionary (in *president-parliamentary*), or strictly rationed to certain clearly described circumstances (in the *premier-presidential*).

But because of the experience described in the previous sections, regarding to the possible deviation of the semipresidential model observed in Eastern Europe and French-speaking sub-Saharan Africa, it should be in this place definitely repeat the warning against the granting of head of state, both proactive legislative (decrees, referenda), and the excessive appointment – dismissal powers: relating to the possibility of discretionary (any) dismissal of the government and the parliament. Leaving the dissolving of the parliament mainly to the parliament by its own and only conditionally to the president.

### **When the president and prime minister go to war**

The only real drawback of the semipresidential system refers, in fact, to the ambitions of "a tug - of - war" between the prime minister and president. But these are mainly the media facts and especially harm the image of the PR political class.

Thomas Baylis<sup>53</sup> did two important things. First, described – what usually excess of the standards of Western democracies - "tug - of - war" between presidents and prime ministers of Central and Eastern Europe, and next recognized widespread weakness of the latter, which was expressed by a relatively short life of the cabinets. The lowest stability of

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<sup>53</sup> See: T.A. Baylis, *Presidents versus Prime Ministers. Shaping Executive Authority in Eastern Europe*, „World Politics” 1996, vol. 48, pp. 297–323; tenże, *Embattled Executives: Prime Ministerial Weakness in East Central Europe*, „Communist and Post-Communist Studies” 2007, vol. 40, pp. 81–106.

governments since 1990 have shown: Lithuania and Poland - averagely 1.3 years, followed by Latvia, Estonia and Bulgaria - respectively 1.4, 1.5 and 1.8 years. It's also something what in Poland, Lech Walesa has called (in his experience) "Bermuda Triangle", and especially its one side, the party system in parliament. When the party system is too fragmented, parties without cohesion and discipline, and prime ministers do not belong to their leaders, presidents immeasurably easier dominate the political scene. When the prime ministers loose their legislative support they are bound only on the support of presidents, even if presidents do not have a right to dismiss the government. This seems to confirm the accuracy of informal relations between the president, prime minister and National Assembly of the Fifth French Republic.

However, Orbán in Hungary, Klaus in Czech Republic – Klaus, Mečiar and Dziurinda in Slovakia - contrary to the general thesis Baylis - were strong premieres. Mečiar became even an autocrat. Orbán, during the first prime minister time, played the nationalist card and limited impact of the opposition on the media, apparently believing that “the winner take all”. As demonstrated by the years 2010-2011, during the second premiership he has not changed his stance one iota. Klaus definitely won the battle on the power with President Havel. In the 1991 December referendum Havel tried unsuccessfully to expand the prerogatives of head of state of the “suspensive” veto, decrees during the dissolution of parliament and presidential rule in a crisis situation. All those prime ministers also had significant support from the party of the parliamentary majority.

Recapitulating the phenomenon of "a tug of war" within the executive branch in the semipresidential system we would say that:

1. This phenomenon is more dangerous for the democratic consolidation in the early period during the transition, gradually has less negative effects as far as the procedure of consolidation.

2. Proactive powers of presidents, both legislative and appointment - dismissal, embody poor democratic consolidation. Proactive legislative authority correlates with 46 percent serious conflicts, while the reactive (presidential veto) only with 13 percent. Although the *president-parliamentary* model in the first transition period (1990-1994) reported less severe conflicts than *premier-presidential*, because in 17 percent compared to 50 percent, but



later in the period 1995-1999 these relationships changed in favour of *premier-presidential* (33 percent to 50 percent).

3. *President-parliamentary* model where, recall, the president possesses discretionary, and therefore also against the parliamentary majority, the right to dismiss the government, and often, and the same time the parliament - led, according to Freedom House scale (1991-1904), Uzbekistan, Kyrgyzstan, Russia, Moldova, Croatia (Tudjman), Ukraine (until the "Orange Revolution", but afterwards, during the presidency of Yanukovich), in the chains of autocracy. This system reduces the number of conflicts within the executive, but only because the president can arbitrarily fire the prime minister and has a significant influence on his nomination. When additionally president can block a parliamentary motion of censure (to keep the government or legislature to threaten solution), a conflict the president-prime minister turns into a greater disaster of the political system, which is the "war" between the president and the parliament (parliamentary majority). It is just in the *president-parliamentary* where presidents are given the tools to warfare with parliaments and the governments as an agents of both of them become a hostage of two principals: the president and parliament. These characteristics is, however, out the *premier-presidential* model.

4. *Premier - presidential* model, not only is devoid of the above mentioned threatening of democratic consolidation characterizing the *president-parliamentary* concept, but also promotes the development and stabilization of the party system. Because it makes only the parliament and its parties responsible for government maintaining. And although in the short term *president-parliamentary* copes better with parliamentary fragmentation, because the president can maintain or nominate the government, in spite of parliamentary majority or divisions, this fact does not acts in favour of the institutionalization of the political party system. On the contrary this can lead to the suprapresidentialism. Extremely majoritarian or proportional electoral laws to the parliament also contribute to the degradation of democracy.

5. *Cohabitation* appeared to be virtually irrelevant to the escalation of the conflict within the executive. Data cited by Sedelius<sup>54</sup> show that in such a period happened to 42

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<sup>54</sup> See: T. Sedelius, J. Ekman, *Dilemmas of Semipresidentialism in Central and Eastern Europe. Intra-Executive Conflict and Cabinet Instability*, Paper for XV NOPSA Conference, Tromsø, Norway,

percent serious conflicts in relation to 38 percent registered during the time of the uniformity of the incumbents coming from the same party or coalition. When they occur in the *premier-presidential* model, opens up the possibility - as Giovanni Sartori wrote<sup>55</sup> - shifting centre of gravity of power (head - shifting) toward the prime minister's office. So yes, as it happens in France. Which means simply that *cohabitation* rather extinguish the conflicts, than it instigates. A conflict turns into a fight mainly in the pages of the media. There, however, the presidents of the *premier-presidential* model in the eyes of the voters lose their faces. Robert Elgie<sup>56</sup>, observing the periods of *cohabitations* in France, recorded a decline during these periods the head of state with the Prime Minister formal conflicts and only weekly informal meetings on matters where the interests of the public. Since the Elysee Palace and Matignon (seat of government) know that they need to agree to avoid the embarrassment of both sides.

6. The concurrent presidential and parliamentary elections reduce the number of conflicts, since the nature of opportunity for the presidency of the majority.

7. The partisanship of presidents clearly is conducive to conflicts, only except where he or she is a leader of the party, which built the government majority in parliament. When he or she is just an ordinary member of the party, a conflict occurs almost always, even with their surroundings.

8. Minority governments always cause conflicts between presidents and parliaments, although it can be extinguished inside the executive power.

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August 5–9, 2008. T. Sedelius., *The Tug – of – War Between Presidents and Prime Ministers: Semipresidentialism in Central and Eastern Europe*, Örebro 2006.

<sup>55</sup> G. Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, London 1997, p. 124.

<sup>56</sup> R. Elgie, *Cohabitation: Divided Government French-Style*, [in:] *Divided Government in Comparative Perspective*, ed. R. Elgie, Oxford 2001, p. 124. See also: R. Elgie, *The Politics of Semi- Presidentialism*, [in:] *Semi-Presidentialism in Europe*, ed. R. Elgie, Oxford 1999; R. Elgie, *Duverger, Semi-Presidentialism and Supposed French Archetype*, “West European Politics” 2009, vol. 32, no. 2, pp. 248-267; R. Elgie, *Variation on the Theme*, “Journal of Democracy” 2005, vol. 16, no. 3.

9. Antidote to the conflict is always the position and activity of constitutional courts. In all the countries of Central and Eastern Europe, they are nominated to set a long time, without the right to re-election but with the right to resolve the conflicts of law between authorities. But only in Belarus and Russia those courts are appointed by presidents only by themselves. This does not require comment. Second antidote can be the institution of parliament dissolution (after all, only inconsistent with the model of pure presidentialism). But it must be noted that in the *president-parliamentary* system, this institution would mean war with the parliament. Again, a more appropriate remedy seems to be a *premier-presidential* model, based on the logics of parliamentarism where presidential intervention is limited to real inability of parliament in creating or sustaining the government (Bulgaria, Lithuania, Poland).

Semipresidential system is suspected also a lower overall efficiency in comparison to parliamentary one. This, of course, because of the increasing share of the veto-actors (the president, the second chamber of parliament, the constitutional judiciary, etc.). So for the same reasons described by Hellman and Frye, and for a more transparent decision-making process here. In the *premier-presidential* system everything runs smoothly, if there is no *cohabitation*, and when it is always possible to transfer power to the government. It just depends on the will of the actors. The point here is even during *cohabitation* president cannot act against the parliament and fire the cabinet supported by its majority. Yet this is the *premier-presidential* where resignations of governments are rare, thus the conflict between the president and prime minister may take longer. Arend Lijphart<sup>57</sup> has called such conflicts only an aesthetic one. Semipresidential system may, however, increase transactional costs of legislative process (weakening its decisiveness), in accordance with the rules of the veto-games to affect the stability over cadence policy. Now few words about the president, as a veto-actor in this system.

### **The president as the veto-actor**

If, as we agreed, proactive skills, both in the legislative and appointment - dismissal fields may threaten to appear the superpresidential system, to abuse the principle of

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<sup>57</sup> A. Lijphart, *Constitutional Choice for New Democracies*, "Journal of Democracy" 1991, vol. 2, no 1, p. 81.

"separation of powers" and the domination of the executive power depreciating parliaments, the president should be strong, but only in reactive power. President should be a pure veto-actor, not the mixing to the current governance. This latter should only be left to the government, the prime minister at its head.

### **Reactive appointment - dismissal power**

As a reactive appointment - dismissal power model in semipresidential system must be considered a *premier-presidential* version, this one in which only parliament may dismiss the government. The point is to limit the presidential power having regard to the elimination of weapons to his disastrous war with the parliament. And certainly the ability to manipulate the law in order to concentrate the executive power may create the temptation to dismiss the cabinet against the parliamentary majority. Unlike the vast majority of Eastern European and Central Asian countries presidents of Bulgaria, Lithuania, Polish, Portugal (since 1982), Romania does not have such a competences.

What is after the failed parliamentary investiture? Should a parliament be threaten to be dissolved by head of state? And in general, in the new democracies, a reactive president should have such a instrument, whether discretionally used or only in certain circumstances? It should not be done discretionally, but only if the parliament is not able to establish its "own" government. And if it fails to appoint a prime minister and government "the ball" should return to a president. This means that the semipresidential system should in the matter of a veto-playing with the president as an important veto-actor, firmly stuck in the logic of parliamentarism. Also, in the name of disarming the head of state to prevent his or her wars with the parliaments.

Meanwhile, the appointment of a government by the head of state without parliamentary investiture or, as in Russia, the possibility of its appointment, by the president, despite granted no-confidence (three times, Article: 111 of the Constitution), the threat of dissolution of parliament after a single (Kazakhstan) or triple (Russia, Kyrgyzstan ) negation, can begin this dangerous "mad dancing" the executive with parliament. Poland coped with such a situation in the so-called Small Constitution of 1992 in quite novel manner. The constitutional designers applied the essence of a "constructive vote of no - confidence"

solution also to the conditions of appointment of the government. Namely, after the refusal of investiture for the government appointed by the president they also gave the parliament a chance to establish a government on its own initiative. First, by the absolute, later even a by simple majority of votes (Art. 57-60). Finally, the designers of Small Constitution reached the final solution. If and Diet (eg due to the weakness of the party system) has not coped with this situation, foresaw the possibility of presidential government, but only up to 6 months, which would allow time for parliament to establish a government supported by it (Article 62). In this way, interestingly highlighted the possible role of head of state in semipresidential young democracy. Looking at the whole of the then regulations of Polish constitution could help noticing that it was a *premier-presidential* by Shugart and Carey constitution, even at that time both authors "Presidents and Assemblies..." just signed the book to print. So, we can say that the constitutional instruments (powers) of contemporary Polish head of state surely belonged to reactive.

An example of Polish "consolidational constitutionalism" of the nineties shows how the semipresidentialism can be flexible when the president and the parliament as an agents of their principal (voters) can be complementary. Once the ball can be on the side of the head of state, once the parliament. This is optimistic in the case of the reigning "zero sum game" principle, that is, when the president put the only one alternative in front of the parliament "Take what I give you, or reject." However we always can leave the parliament, before the president, the first opportunity to establish the government. So the first move can belong to the parliament, not the president.

### **Reactive legislative power**

A reactive tool of the president (but also the upper house of parliament) is the veto. An absolute, selective, suspensive or even "amendatory" one. This last, moreover, has nine presidents of post-communist countries. They all reinforce the stability of the decision-making system, stabilize in the long term policy, especially when associated with a high threshold to be overruled by the deputies. However, if it is at the level of absolute governing majority (ruling), or consists only of delay of the bills, veto-actor disappears because the ruling majority rather always will win. Thus, the part of mechanism for balancing the powers is then liquidated.

The point is to look at the legislative veto as a transactional process, existing under conditions of uncertainty between the legislature and the executive (veto bargaining), where the latter does not act like a typical executive, but as "the upper house of a parliament." Transactional game is to force a compromise (by negotiation), or force the other concessions.

## Conclusions

The mere even introduction of the next agent of voters, the presidential veto-actor, somehow limits, in a young democracy, the threat of concentration of power. Simply because, among other things, it pluralizes the political leadership. Additionally, avoiding a proactive president's formula also minimizes the risk of erosion, as seen in the superpresidential system where the head of state provokes wars with parliament. Rather, in the semipresidential system, the policy of the state, according to the theory of veto players, becomes, in the long run, more stable and more representative. The introduction of the presidential veto-actor to the political system, be it in the semipresidential system or parliamentary system (for rigid terms), produces another important effect: a more consistent *separation of powers* in the decision-making (legislative) process. Without it, the executive based on the governing majority as the agenda setter and controller and is, *de facto*, in the position of the legislature. This means that this proactive legislative power belongs, this time, to the governmental part of executive which further depreciates parliament. In that way, the dominant executive usually emerges. So, this is the phenomenon that, by definition, cannot be left out of the design. But, it can be weakened by the adoption of the *incompatibilitas* principle, for example. However, to install a strong president with enough legislative veto power such that it calls for a super majority to exceed the governmental power, seems **to restore, in the parliamentary system, the principle of "separation of powers."** Up until now, we have allowed, of course, such a violation of this principle in these systems. But given the experience of new democracies, must we now reconcile with that?

The key to a stable decisiveness of young democracy seems to be moderate, reactive legislative power of presidents and other veto-actors in the chain of veto games. So a moderate distance between veto-actors while weakening the power the agenda setters. Legislative veto should force the transactional games (eg in the form of something for

something) between veto-actors, and not be merely a means of "zero sum" playing. In the version, either on top of me, or I will veto. Of all the functions of this veto are the most important. Unfortunately, in young democracies too often prevails in practice, the principle that the "winner take all". It was evident even in the conflicts of presidents and prime ministers also typical of parliamentary republics of Czechoslovakia, Slovakia and Hungary. But we must remember that the veto should be strong enough (3/5 or 2/3 majority needed for its overrule), in purpose to compel the agenda setters to make the transactional veto - games.

In the moderate formula, reactive power also consists on a presidential right to bring the issues to the constitutional courts, because between the legislature and the courts also takes place a transactional game. This forces the parliament to debate on the constitutionality of legislation, adoption, or anticipate judicial decisions, and ultimately to the initiative revising constitutions. The formula is moderate while the president has a right of legislative initiative (in the case of very passive government and the ruling majority in parliament) and the declaration of the German model of "higher legislative emergence" (this is the case of minority governments).

However, in situations requiring high decisiveness necessitating, for example, market reforms in new democracies, the institutional designing should be accompanied by the agreement among strong legislative agenda setter (preferably the ruling majority in parliament) and the other veto-actors and partisan veto-players (coalition) as to the general directions of change.

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And finally, one more note: **the president in the semipresidential model should be deprived of the tools to fight the parliament.** The government should be accountable only to parliament. The preferred system by the constitutional designers should be, therefore, a *premier-presidential* model by Shugart and Carey. The appointment of government by the president cannot have too far-reaching freedom. It is not has to be so restrictively, as in Bulgaria, that the president is forced to designate the next prime minister of the winning party

and later successively. It cannot also be the case, as happened in 1998 in Mongolia, that the president was rejecting parliamentary candidates one by one. The solution in the Polish constitution, which seems to be the optimal formula, says that after rejecting a presidential proposal, parliament may nominate the government by itself. It is, of course, also possible to give the first move to parliament and then later on to the president.



## 10.

### **PARLIAMENTS SHOULD BE STRONG IN YOUNG DEMOCRACIES**

Depreciating of parliaments is a crime on the body of young democracies. One can understand the annoyance of parliamentary fragmentation of III and IV of the French Republic and the pre-war Weimar Republic. In this latter the treatment, unfortunately, turned out to be worse than the disease. President Hindenburg, on the basis of the constitution, still was at war with a parliamentary majority on which ultimately benefited only Adolf Hitler. And this is essential that semipresidential system does not lead to war on the line: the president - parliament, far more dangerous than such a "tug of war" between the president and prime minister mentioned little before. There are three possible "axes of war" in the hands of the head of state and each of them individually is democratic. However, if you accumulate them together the erosion of democracy will come for sure. "Axes" are following: first, the right to appoint the government, and on the other hand, second, the right of dismissal it discretionally, third, right to discretionary dissolution of parliament. Each of the instruments individually risk-free, if they are cumulated become real antiparliamentary cannon. The reason is that, first, the president may appoint a governments against the parliamentary majority. Second, he or she may dismiss a governments alike. Third, the president can threaten of dissolution of parliament when this last responds to a blow, and would want to launch a motion of censure against a government which does not have the support the parliamentary majority.

These are the instruments for dangerous, for a young democracy, the wars between the executive powers and the parliaments primarily because they permanently depreciate the importance and position of the deputies. Parliaments usually respond to blows (see Russian President Yeltsin's war with the parliament in 1992/93 year). The humiliation is even deeper when additionally presidents, as in Russia, Georgia, Kazakhstan, can block the direct parliamentary vote of no - confidence and to use discretionally the decrees or other unilateral

decisions. Simply to bypass the parliaments. However, the strong parliament is the first veto-actor which guarantees a run of good democracy. But mainly this bicameral one. Because it gives a chance to make the second chamber (as in Germany) the relevant verifier of the first chamber, which - as we know - except in the case of minority governments, is dominated by the governing majority.

Parliaments are the homes of political parties. If there live MPs 'independent', it just - as illustrated by the countries of Eastern Europe, Central Asia and *clientelisticly* minded congressmen in Latin America – mainly to weaken parliaments in favor of executive power. Meanwhile, their weakness in front of the executive, which treats them instrumentally, not only reduces the ability of governance, but also destroys the political parties. Well-institutionalized parliament builds strength and reputation of political parties. The rule, moreover, also works the opposite way.

But whether such institutionalized parliaments are allies in the consolidation of democracy? Data show that they are. After all, they are an important part of the "horizontal" mechanism of balancing of the powers. The number of tools available to control the executive, clearly correlates with the level of democracy in the country. However, the practice of countries such as Mexico and Putin's Russia (plus most of Central Asia), illustrates how effective this tool can also be in the hands of autocratic executive. And not only the proactive superpresidentialism is at stake, but the parties' reality, which are close to the situation of the regimes of dominant and hegemonic parties. As we have seen, in other situations too proactive presidents opposite to well institutionalized parliaments rather will be the source of the "wars" with the legislatures.

Following Robert Elgie<sup>58</sup>, among transitional countries in 2007 was up 55 semipresidential regimes (Portugal, Central and East Asia), 35 republics purely presidential (South America, Sub-Saharan Africa) and only about 8 parliamentary regimes (with or without the GDR, Central Europe, and Sub-Saharan Africa). This means that in 65 percent of these countries the governments a more or less are accountable to parliaments, which create,

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<sup>58</sup> R. Elgie, *Varieties of Semi-Presidentialism ...*, p. 61

check and dismiss them. Parliaments usually also acting under pressure from its own dissolution.

In the semipresidential system, as has already established, safer for the young democracy is a variant of which introduces the parliamentary logic, and thus abandon the excessive legislative, mainly, and organizational proactivity of the head of state. Leaving aside, therefore, governments formed under the dictation of the president and his right to their dismissal, the true nature of such semipresidentialism is the reduction of principal-agent relationship to the accountability of government before the parliament, so long as the parliament is able to exercise this accountability. And this leads us directly - apart from exceptional cases of one-party majority rule in the new democracies - to a key issue of the coalitional appointment - dismissal game. So the games among partisan veto-players.

It is prevailing point of view that in Latin America - except in the case of Chile, Costa Rica, Nicaragua and Uruguay - that parliaments have been dominated by the executives. Not only in the appointment – dismissal procedure relating to state apparatus (which after all is consistent with the model of presidentialism), but also in term of the legislative decision-making parliaments abdicated in the favor of executive. In Brazil, more than 755 legislation - since 1985 - came from the head of state. By the same *caudillo* tradition, Argentina was led to the “winner – take – all” political philosophy. Although Congresses began to threaten even military, for purely clientelistic reasons, taking away their budgets for parliamentary own needs. And recently started to initiate *impeachments* or another pressure on their presidents to resign from the exercise of their offices. In the nineties, only Collor in Brazil, and Perez in Venezuela were removed by an extraordinary indictment. Most of the 13 resignations (1985-2004) was followed by mass demonstrations, and in five cases, the pressure of the army. At last United States Agency for International Development has launched programs aimed at institutional strengthening of parliaments.

Poorly evaluated is also the institutionalization of parliaments in Central and Eastern Europe, not to mention the countries of Central Asia. Among the opinions about Polish Parliament in the nineties the important position of the parliamentary committees was emphasized, but also they questioned the lack of public hearings and special no matter formulated by desiderata. According to World Bank publications, both Poland and Hungary

relatively gained the best institutionalized parliaments, mainly through the prism of the committee's work. The grade, however, was decreased because of the leadership and member parity were always resolved in favor of the ruling majority. In Poland, twice, three times in Hungary, Bulgaria and Estonia, even nine, and in Czech Republic until eleven more times governing majority chaired the parliamentary commissions than opposition. This is an interesting observation that shows little or no opposition forces against parliament majority. To this David Olson<sup>59</sup> showed that only high volatility of electoral votes, mainly directed against the governing, makes parliamentary committees an effective veto-actors, as a result of decomposition of the majority, but only just before the end of the term. This is further evidence that the institutionalization, however makes parliaments more professional, is not enough to serve as guarantor for the balance of powers. A parliamentary majority in the parliamentary model or the majority and the president in semipresidential system makes this majority (except the *cohabitation*) the controller of both the legislative agenda and appointment - dismissal game. But this goes beyond the aspect of institutionalization, just in the sphere of party constellations.

The very institutionalization (and also professionalization) of parliaments correlates with the consolidation of democracy, in particular designed in the logic of the parliamentary model. And this last conclusion confirms my suggestion to replicate in young democracies this exact semipresidential version embedded in that logic. Also, in 1994, Olson in his "*Democratic Legislative Institutions*" was writing about the "two bikes" of institutionalized parliaments: party clubs and committees. When a stable majority party exists, the committees as a checks of the executive are not worth much, but when party discipline does not overpowers, the committees take on a clearer meaning. In the terminology proposed here then clubs, and commissions become an effective veto-actors, which often reflect the divisions crystallized in the governmental branch.

Data from 82 countries prepared for the World Bank Institute have shown that among the new democracies the most number of control instruments (7) had parliaments in: Croatia, Estonia, Greece, Spain, Hungary, Costa Rica, Lithuania, Poland, Romania, and the least (2-4):

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<sup>59</sup> D.M. Olson, *Administrative Review and Oversight: The Experience of Post-Communist Legislatures*, [in:] *Legislature and Oversight and Budgeting. A World Perspective*, ed. R. Pelizzo, R. Staphenurst, Washington 2008, pp. 161-173.

Azerbaijan, Russia, Tajikistan, Armenia and Kazakhstan. The controversy was only in regard to Russia, because differently looked a parliamentary practice. Practice which, however, is not institutionalized. Generally, public hearings, and committees of inquiry were the most popular means of (more than 95 percent), and ombudsmen the least popular (73 percent).

By and large, the countries of the parliamentary model have greater number of instruments for monitoring than other systems (parliamentary - 6.35; semipresidential - 5.71; presidential - 5.69). Thanks the *premier-presidential* variant the semi-presidentialism landed on the honorable second place.<sup>60</sup>

Steven Fish went on further and created a ranking list of 32 competencies of parliaments deciding on their strength (so-called: the Fish - Kroenig Survey)<sup>61</sup>. It was the index of the strength of parliaments (*Parliamentary Powers Index*), which refers to the ability to check presidents, the bureaucracy and independence from the executive. But not only. Consisting also on the rights of: *impeachment*, the appointment and dismissal of the government, the possibility of re-election of deputies. **The analyses showed a strong correlation between the strength of parliaments and the top place in the ranking of the level of democratization by Freedom House.** Post-communist countries, the more consolidated, democratically, in 2003-2005 were significantly better (lower spot) position in this ranking. High in the correlation revealed a parliamentary Czech Republic, but next after semi-presidential Mongolia and Slovakia. Poles with a very good assessment of democracy (2.0) in the power of their parliament came in only at 14th place (lower than Estonia, Lithuania, Bulgaria, Moldova, Hungary, and even Albania). Fish, however, had no doubt: the power of parliaments correlated strictly with the consolidation of democracies, because since the very beginning of democratic transition only the parliaments could effectively stop the curse of the autocratic legacy, mainly so-called “personal power”. When the independent judiciary is still weak, the parliament, especially of the two-chamber, and gathered there political parties both defend the *horizontal* balance of power.

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<sup>60</sup> R. Pelizzo, R. Staphenurst, *Tools of Legislative Oversight: An Empirical Investigation*, World Bank Policy Research Working Paper 3388, September 2004, no. 11, pp. 11-12, [www.ink.library.smu.edu.sg](http://www.ink.library.smu.edu.sg).

<sup>61</sup> M.S. Fish, *Stronger Legislatures, Stronger Democracies*, „Journal of Democracy” 2006, vol. 17, no. 1, p. 7.

Fish, however, proves to another. Institutionally weak parliament is a double curse, also because political parties are not developing but stagnating. This damage, therefore, not only *horizontal* but also *vertical* mechanism of balance of the powers.

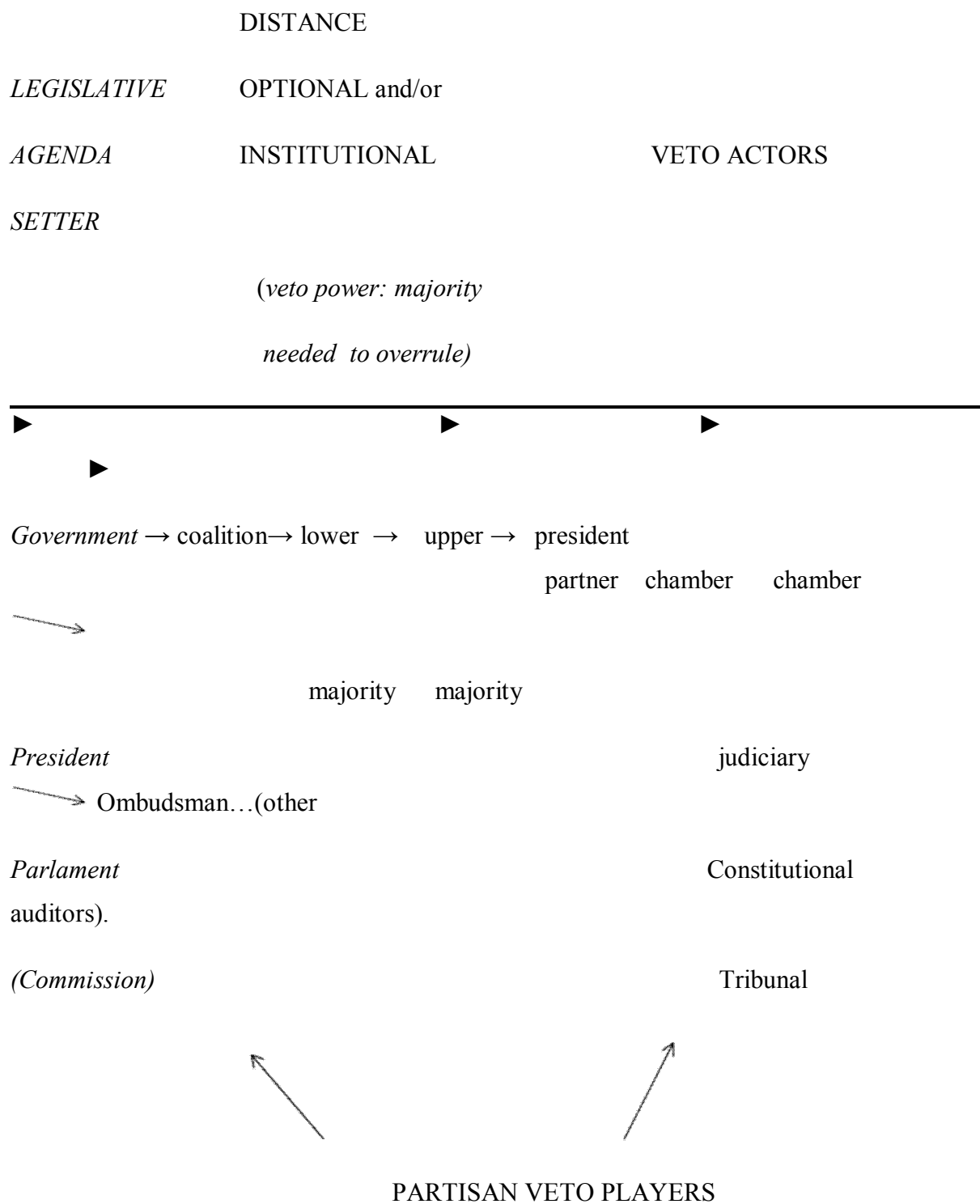
## 11.

## SUMMARY

Most of the generalizations and conclusions of the processes of democratic transition have been presented to the reader in the first part of this article. Here, we should remember that as much as 73 percent of the countries have not managed successfully to consolidate their democracies. This is due, in large part, to the errors of the institutional (constitutional) design, which opened up even the smallest opportunities to manipulate the institutions and move towards the erosion of democracy and the relapse into autocracies. Our new (and sometimes even old) democracies will always risk attracting politicians who are greedy for wealth and power until they realize that the respect for "democratic rule of law" can be also advantageous and favorable for them. Because, when they lose power, as a result of an election, no one will want to capture them or send them to international courts.

Due to the fact that the attacks on democracy are always a matter of attacks on the *horizontal* and *vertical* systems of balance of powers, both should be protected and properly developed, especially in young democracies. Guillermo O'Donnell has rightly pointed out that **the understanding of "democratic rule of law"<sup>i</sup> means also, and perhaps primarily, the protection of democracy as such.** It seems that is the best suited for this, optimally balanced semipresidentialism based on the parliamentary logic (ie, Shugart and Carey: *premier-presidential*).

# APPENDIX: The veto-actors and veto-players game





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