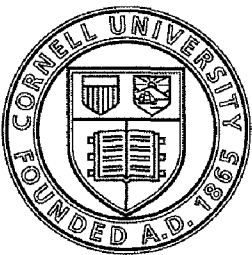


The Politics of Timor-Leste



Cornell University

Michael Leach and Damien Kingsbury, editors

The Politics of Timor-Leste

Democratic Consolidation after Intervention

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SEMI-PRESIDENTIALISM AND THE CONSOLIDATION OF DEMOCRACY

Rui Graça Feijó

National Unity does not consist of politicians rubbing shoulders with each other to show our teeth to the people.

— Xanana Gusmão (June 22, 2006)

Democratization is a dynamic process that always remains incomplete and perpetually runs the risk of reversal.

— Charles Tilly

The political experience of Timor-Leste after the country became the first new independent nation of the twenty-first century has been rich and varied. The choice of a system of government is certainly a significant milestone in its journey toward a consolidated democracy. This chapter will examine the controversy over the characterization of the East Timorese system of government and offer historical and theoretical insights as to why the semi-presidential system may be considered a positive factor, contributing to political stability and democratic consolidation.

IS TIMOR-LESTE A (CONSOLIDATED) DEMOCRACY?

Discussing the democratic consolidation in Timor-Leste presupposes that a basic characterization of the current state of affairs in the country be made explicit and agreed upon. One approach to this problem consists in referring the matter to a credible international organization. Freedom House regularly publishes a list of what it calls “electoral democracies,” that is, polities that abide by the following criteria: a competitive, multiparty political system; universal adult suffrage for all citizens (with exceptions for restrictions that states may legitimately place on citizens as sanctions for criminal offenses); regularly contested elections conducted in conditions of ballot secrecy and reasonable ballot security, and in the absence of massive voter fraud that yields results that are unrepresentative of the public will;

and significant public access of major political parties to the electorate through the media and through generally open political campaigning.¹

In the judgment of Freedom House, independent Timor-Leste has consistently been regarded as an “electoral democracy.” This organization then rates polities according to two other criteria—political rights and civil liberties—that converge to define a narrower “liberal democracy” as polities that combine free elections with “a substantial array of civil liberties.” “Free Countries” are simultaneously “liberal” and “electoral democracies”; “Partly Free Countries” are “electoral democracies” that lack some features of “liberal” democracies. Timor-Leste has always been considered by this organization as a Partly Free Country, implying that its “democracy” exists but requires a positive and substantial evolution.

Looking elsewhere for an operative definition of democracy, José António Cheibub’s “minimalist stance” may serve our purposes. He defines democracy as “a system in which government offices are filled by contested elections,” and reverts to three main operational rules: First, the chief executive must be elected; second, the legislature must be elected; and third, there must be more than one party. The third rule about political parties is subject to a “consolidation rule,” that is, the need to establish that the introduction of a democratic system does not lead to any of the following situations: a non-party rule; a one-party rule; or a permanent electoral domination by the winner party.² Timor-Leste does respond positively to all these tests, and can thus be considered a democracy as defined by objective and basic rules. This, however, must not blind us to a myriad of problems that have surfaced in this country’s recent history that may qualify this assessment.

It is an undisputed fact that the ten years since independence have been marked by political instability (riots of December 2002, incidents in Lospalos in 2003, Catholic-inspired demonstrations in 2005) and even violence (culminating in the severe crisis of the second quarter of 2006 and, later on, in February 2008, in the attacks on the president and the prime minister). Several analysts have noticed the manifestation of “authoritarian temptations,”³ or seen the country on a “path to authoritarianism”⁴—perhaps too strong a characterization of the way FRETILIN exercised executive power.⁵ The editors of the present volume also expressed their concern that in 2006 Timor-Leste’s political system “remain[ed] immature and potentially susceptible to single-party dominance.”⁶ In Portugal, Pedro Bacelar de Vasconcelos and Ricardo Sousa da Cunha expressed their critical appraisal in this manner: “In spite of undeniable merits and bold initiatives [the FRETILIN

¹ See www.freedomhouse.org/report/freedom-world-2012/methodology, accessed on May 21, 2012.

² José António Cheibub, Michael Alvarez, Fernando Limongi, and Adam Przeworski, “Classifying Political Regimes,” *Studies in Comparative International Development* 31,2 (1996): 3–36.

³ Sven Gunnar Simonsen, “The Authoritarian Temptation in East Timor: Nation Building and the Need for Inclusive Governance,” *Asian Survey* 46,4 (2006): 575–96.

⁴ Jacqueline Siapno, “Timor-Leste—On the Path to Authoritarianism?” *Southeast Asian Affairs* 1 (2004): 325–42.

⁵ Rui Graça Feijó, “Timor-Leste: o sobressalto democrático” (Timor-Leste: The democratic upheaval), paper presented at the Fourth Congress of the Portuguese Political Science Association, Lisbon, March 6–7, 2008.

⁶ Damien Kingsbury and Michael Leach, eds., *East Timor beyond Independence* (Victoria: Monash Asia Institute, 2007), p. 4.

government] did not have enough stamina to mobilize society in the construction of a plural and common project, to privilege conciliation over sectarian temptations and naked political confrontations.”⁷ We cannot forget that the Timorese authorities were compelled to call—in a united effort combining the representatives of all branches of power: the president, prime minister, and speaker of the House—for international military assistance to maintain a modicum of public order in the wake of the demise of the national police and the breakdown of the armed forces—surely a major setback in the consolidation of the new republic and its institutions.

My claim, however, is not that Timor-Leste has managed to consolidate its democracy—given the nature of this process aptly expressed by Charles Tilly in the epigraph to this essay⁸—but that it has so far been able to steer the boat over rough seas without resorting to unconstitutional, or otherwise deviant, solutions to the enormous problems it has faced, no matter how a number of responsible political actors may have attempted to operate outside the boundaries of the constitution or to advance unconstitutional legislation.

The constitution has remained in force throughout these eight years, never being suspended or abolished and effectively circumscribing the limits within which political life and the legitimate forms of competition for power should take place. Along with other actors, the court of appeals—acting in its interim constitutional capacity—has been a critical element in stopping the deployment of “authoritarian temptations” by ruling several bills proposed by the majority government to be unconstitutional. The 2007 round of elections was declared “free and fair.”⁹ Presidential elections were fought in two rounds (in April and May 2007), resulting in a clear winner (former nonpartisan minister for foreign affairs and prime minister, José Ramos Horta). Parliamentary elections brought in a replacement of the incumbent government by a coalition of opposition parties led by the former president, Xanana Gusmão, thus enacting a practical example of a competitive democracy accepting a turnover of majority and government. The transition from the old to the new government, even if coupled with tough political fighting, was mostly peaceful.

A few months into the “second cycle” of Timorese politics, all these institutions reacted in a constitutional manner to a serious challenge. President Ramos Horta was shot and seriously wounded, and forced to leave office (and the country) temporarily, and Prime Minister Xanana Gusmão was ambushed. An interim president was appointed in accordance with the constitution; he eventually returned his power to the rightful president when Ramos Horta was ready to reoccupy his post.

⁷ Pedro Bacelar de Vasconcelos and Ricardo Sousa da Cunha, “Semipresidencialismo em Timor-Leste: um equilíbrio institucional num contexto crítico” (Semi-presidentialism in Timor-Leste: An institutional equilibrium in a critical context) in *O Semipresidencialismo nos Países de Língua Portuguesa*, ed. Marina Costa Lobo and Octávio Amorim Neto (Lisbon: Imprensa de Ciências Sociais, 2009), p. 254.

⁸ Charles Tilly, *Democracy* (Cambridge: Cambridge University Press, 2006), p. x.

⁹ Christine Cabasset-Semedo and Frédéric Durand, *East Timor: How to Build a New Nation in Southeast Asia in the 21st Century* (Bangkok: IRASEC, 2009) <AU: pages?>; Rui Graça Feijó, “Counting Votes that Count: A Systemic Analysis of the Timorese Elections of 2007 and the Performance of the Electoral Institutions,” in *State, Society and International Relations in Asia*, ed. Mehdi Pervizi Amineh (Amsterdam: Amsterdam University Press, 2010), pp. 103–17.

In brief, the constitutional rule of law has survived in times of hardship; elections have been held according to the prescriptions of the constitution and internationally accepted rules; no political office is held, formally or informally, in defiance of the expressed will of the people; and changes in the holders of executive powers have been achieved peacefully. These transfers of power have actually been limited: Timor-Leste has had three prime ministers (Alkatiri, 2002–06; Ramos Horta, 2006–07; Estanislau da Silva, May–August 2007, and Xanana Gusmão, since 2007), and two presidents of the republic (Xanana Gusmão, 2002–07, and Ramos Horta, elected in 2007) in the two electoral cycles. As such, Timor-Leste can legitimately claim the status of a democratic polity, even if the regime is far from achieving “consolidation,” the term set out by Juan Linz and Alfred Stepan¹⁰ and by Larry Diamond.¹¹

IS TIMOR-LESTE A “SEMI-PRESIDENTIAL” REGIME?

Background: On the Notions of “Semi-Presidentialism”

The emergence of “semi-presidentialism” as a *tercium genus* of democratic, constitutional systems of government, clearly individuated and distinguished both from “parliamentarism” and “presidentialism,” is a major development of twentieth-century political theory,¹² in spite of a continuing academic debate ranging from issues regarding nomenclature to the fine-tuning of its definitions. This system of government extends its roots back to the Weimar Republic (1919–33), under the influence of Max Weber,¹³ but for many decades remained a nameless child with few siblings,¹⁴ all of whom lived in Europe.

In 1970, Maurice Duverger coined the term in his attempt to single out the novelty of the French Fifth Republic, namely the regime that emerged from the 1962 amendment to the 1958 constitution, which introduced direct popular elections for the Presidency of the Republic. Duverger would expand on his proposal in his *Échec au Roi*¹⁵—during a time when Portugal had adopted a similar system of government—and summarized his views for the Anglo-Saxon academic world in a much acclaimed paper in 1980. These are the intellectual roots of this concept of a

¹⁰ Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe* (Baltimore, MD: Johns Hopkins University Press, 1996), pp. 7–15.

¹¹ Larry Diamond, *Developing Democracy: Towards Consolidation* (Baltimore, MD: Johns Hopkins University Press, 1999) pp. 732–77.

¹² Lobo and Neto, *O Semipresidencialismo*, p. 261.

¹³ Horst Bahro, “A influência de Max Weber na Constituição de Weimar e o semipresidencialismo português como sistema de transição” (The influence of Max Weber on the Constitution of the Weimar Republic and Portuguese semi-presidentialism as a transition system), *Análise Social* 31,4 (138), pp. 777–802.

¹⁴ As stated by Sartori, “In 1919 there was no notion of semi-presidentialism.” See Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (Basingstoke: Palgrave, 1994), p. 127.

¹⁵ Maurice Duverger, *Échec au Roi* (Checkmate) (Paris: Albin Michel, 1978). For a Portuguese translation with an exclusive preface, see *Xeque-Mate—Análise Comparativa dos Sistemas Políticos Semi-Presidenciais* (Lisboa: Edição Rolim, 1980). See also Duverger’s “A New Political System Model: Semi-Presidential Government,” *European Journal of Political Research* 8,2 (1980): 165–87.

particular system of government, which have been further developed in recent decades.

The onset of the “third wave of democratisation” that Samuel Huntington dates to the Portugal’s Carnation Revolution of April 25, 1974,¹⁶ constitutes a second factor explaining the explosion of interest in this system of government, both in academia and in the political arena. Whereas Spain (1975–76) and Greece (1974) made their transitions from authoritarianism to democracy through the more conventional “parliamentary” route, Portugal chose the new model—and, as democracy has expanded throughout the world since, the number of countries moving along this path has steadily increased. From an almost residual category, “semi-presidentialism” saw its popularity grow to the point that in 2002 it represented 22 percent of 114 democracies.¹⁷ The most recent and comprehensive survey of “semi-presidentialism” carried out by Robert Elgie reveals that, in 2010, there were fifty-two countries with this type of constitutional arrangement—including countries that cannot be considered democracies.¹⁸ More important is the fact that the popularity of this system derived from its appeal to young democracies, in central and eastern Europe, Africa, and Asia.¹⁹ For various scholars, this is not a mere coincidence, as they acknowledge a positive impact of “semi-presidentialism” on “the consolidation and the maintenance of democracy,”²⁰ even if no consensual explanation of the reasons for this trend has yet emerged. To analyze this question, it is appropriate to start with Duverger’s classic definition of “semi-presidentialism”:

A political regime is considered as semi-presidential if the constitution which established it combines three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive power and governmental power and can stay in office only if the parliament does not show its opposition to them.²¹

This definition is composed of two objective elements (the first and the last) and a quite subjective one. So then, what are to be considered “considerable powers” of a president? There seems to be no litmus test to gauge an answer to this question. Attempting to solve the problem while remaining as close as possible to the original

¹⁶ Samuel P. Huntington, *The Third Wave of Democratization* (Norman, OK: Oklahoma University Press, 1991).

¹⁷ José Antonio Cheibub, “Making Presidential and Semi-Presidential Constitutions Work,” *Texas Law Review* 87,7 (2009): 1375–1407.

¹⁸ Robert Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance* (Oxford: Oxford University Press, 2011), p. 24.

¹⁹ Robert Elgie and Sophie Moestrup, *Semi-Presidentialism outside Europe* (Abingdon: Routledge, 2007), p. 9. I would like to stress that I shall be considering “semi-presidentialism” only as far as it is one particular form of democratic government. Systems of government that may present formal similarities but that are not framed by a constitutional regime respecting the rule of law (as was, for instance, the case in Angola prior to the recent constitutional revision), require particular analysis and should be treated separately from the context of the current discussion.

²⁰ Steven D. Roper, “Are All Semipresidential Regimes the Same? A Comparison of Premier-Presidential Regimes,” *Comparative Politics* 34,3 (2002): 253–72.

²¹ Duverger, “New Political System Model,” p. 165.

definition has led subsequent writers in two alternative directions. On the one hand, Giovanni Sartori²² has expanded on the number of conditions and proposed the following set of necessary characteristics: First, in a “semi-presidential” democracy, the head of state (president) is selected by popular vote—either directly or indirectly for a fixed term in office; second, the head of state shares the executive power with a prime minister, thus entering a dual authority structure the three defining criteria of which are: (a) the president is independent from parliament but cannot govern alone or directly and, therefore, his or her will must be conveyed and processed via his or her government; (b) conversely, the prime minister and his or her cabinet are “president-independent” in that they are “parliament-dependent,” that is, they are subject to either parliamentary confidence or no-confidence (or both) and in either case need the support of a parliamentary majority.; and (c) the dual authority structure of semi-presidentialism allows for shifting balances of power within the executive, under the strict condition that the “autonomy potential” of both the president and prime minister executive remains.

On the other hand, Elgie thought it possible to operationalize the concept of “semi-presidentialism” as a “system where a popularly elected president exists alongside a prime minister and a cabinet who are responsible to the legislature”—thus eliding the question of presidential powers altogether.²³ In an attempt to provide a pragmatic solution for a great deal of cases, Jorge Novais has suggested that “the most decisive power a president may have in semi-presidential regimes is the power to dissolve parliament.”²⁴ The existence of this power can solve the issue of “considerable powers” in a positive way (that is, where it exists, presidential powers can be deemed “considerable”). However, the absence of this power might not rule out the classification of a particular regime as “semi-presidential,” as the authority to dissolve parliament could instead be replaced by another power of similar effect, as was the case in Portugal between 1976 and 1982 when the president had the power to dismiss the prime minister, but not to dissolve parliament.

Wide or narrow, each of these proposed definitions shares the idea that there is at the core of “semi-presidentialism” some form of duality of power. As Sartori puts it:

The one characteristic that any semi-presidential regime *must* have [...] is a dual structure of authority, a two-headed configuration. Thus, any semi-presidential Constitution must establish, in some manner, a diarchy between a president who is head of the state, and a prime minister who heads the government.²⁵

Alan Siarof argues that the critical feature distinguishing “semi-presidentialism” from other systems of government is the combination of parliamentary accountability (the definitional feature of “parliamentarism”) with presidential

²² Sartori, *Comparative Constitutional Engineering*, pp. 131–32.

²³ See Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance*, especially pp. 19–23, for a discussion of this definition.

²⁴ Jorge Reis Novais, *Semipresidencialismo, Volume 1: Teoria do Sistema de Governo Semipresidencial* (Semi-presidentialism, volume 1: Theory of the semi-presidential government system) (Coimbra: Almedina, 2009), p. 155.

²⁵ Sartori, *Comparative Constitutional Engineering*, p. 122.

powers, here taken in a generic sense,²⁶ a combination that incorporates the duality criterion. For Siaroff and Elgie, then, the analysis of the extent of presidential powers is not an initial, definitional issue in terms of the basic identity of the system, but becomes essential on a finer analysis of varieties of “semi-presidentialism.” What are these varieties?

Progressing with the history of the debate, Matthew Shugart and John Carey,²⁷ although critics of the terminology in use,²⁸ proposed two models of regimes with directly elected presidents that, in fact, represent subtypes of a common, semi-presidential regime. These authors, struck by the fact that in the two decades before their book was published, “nearly all new democracies [...] had elected presidents with varying degrees of political authority,”²⁹ divided regimes having a directly elected president into three categories. First, they defined “presidentialism” as a “regime type based on the ideal of a maximum separation of powers (between the executive and the legislative branches), and full and exclusive responsibility of the cabinet to the president”—thus sustaining its classic definition. They then defined two new and distinct forms of government combining an elected president with a prime minister who owes his/her power to the confidence (or at least the acquiescence) of parliament: “premier-presidentialism” as “a type in which the president has certain significant powers, but the cabinet is responsible only to the assembly,” and “president-parliamentary” whose defining trait is “shared—or confused—responsibilities over cabinets between president and assembly.”³⁰

These two cases may be regarded as species of “semi-presidentialism,” since they share the basic elements pertinent to the definition of this system. Both radically differ from “presidentialism,” even if the fact that the president has a fixed term and cannot be removed is a point in common. In semi-presidential models, however, the assembly that supports the cabinet can, as a general rule, be dissolved by the president; or, alternatively, the prime minister supported by the assembly can be likewise dismissed. As such, the principle of absolute separation between legislative and executive that characterizes “presidentialism” does not hold in these two cases.

²⁶ Alan Siaroff, “Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction,” *European Journal of Political Research* 42,3 (2003): 290.

²⁷ Matthew Soberg Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992).

²⁸ Arguably, their criticism may be based on an erroneous assumption regarding a presumed continuum between two poles that Sartori (*Comparative Constitutional Engineering*, p. 124), Lijphart (Arend Lijphart, “Trichotomy or Dichotomy?” *European Journal of Political Research* 31,1 [1997]: 126), and Pasquino (Gianfranco Pasquino, “Semipresidentialism: A Political Model at Work,” *European Journal of Political Research* 31,1 [1997]: 130) have convincingly argued to be non-existent in Duverger’s notion.

²⁹ Shugart and Carey, *Presidents and Assemblies*, p. 2.

³⁰ *Ibid.*, p. 15. Shoesmith’s argument (as referred to by Kingsbury in this volume) that the centrality of the president’s power resides in his or her capacity to influence the composition of government, if understood as a “public” rather than “private” power, is certainly not compatible with the “premier-presidential” type, which seldom gives the president such power, at least openly, but would certainly conform to the second. As such, it does not seem to be a pertinent benchmark to exclude particular regimes from “semi-presidential” classification. See Dennis Shoesmith, “Timor-Leste: Semi-Presidentialism and the Democratic Transition in a New, Small State,” in *Semi-Presidentialism outside Europe*, pp. 219–35.

For most practical purposes, the item in the list of presidential powers that can better be singled out to represent the distinction between these two varieties of “semi-presidentialism” is the power to dismiss the prime minister. When the president has such a power, the chances that his powers overlap and in some way are confused with those of the prime minister is greater than in those cases in which the president cannot remove a prime minister but can dissolve the assembly and call fresh elections. This, of course, is the central feature distinguishing forms of “parliamentarism” (which does not, as a rule, accept dissolution of parliament by an external power). In Portugal, since 1982 (when the president lost his power to dismiss a prime minister but gained greater capacity to dissolve parliament), the presidential prerogative to dissolve parliament regardless of the majority opinion was only used twice,³¹ both times by presidents confronted with parliaments in which political majorities existed. The scarcity of its use (twice in twenty-eight years) does not diminish its centrality in the balance of power.

Shugart and Carey are also to be credited with two other important developments in the understanding of the way semi-presidential regimes operate and can be analyzed. Instead of using long checklists of presidential powers like Timothy Frye’s twenty-seven items,³² they have sought to aggregate presidential powers into major areas, and then to divide these into “legislative” and “non-legislative” powers. Although in theory these different powers are independent of the variety of “semi-presidentialism,” there is a clear tendency for “premier-presidential” regimes to offer their presidents substantial “non-legislative” powers (regarding the formation and the dismissal of cabinets, censure, dissolution of the assembly), whereas the “president-parliamentary” species shifts the balance in favor of extensive “legislative” powers (package veto/override, partial veto/override, decree, exclusive introduction of legislation, budgetary power, proposal of referendums, judicial review) for the president, who actually shares these powers with the prime minister.³³

Shugart and Carey also introduced a zero-to-four scale to measure each one of the presidential powers. This method has been scrutinized by Lee Metcalf,³⁴ who proposed some revisions. Recent comparative works on “semi-presidentialism,”

³¹ Some might count three cases, but the first one (General Eanes in 1982) was immediately after the Constitutional revision and used by a president elected before that major change, which affects comparability. In another case (Mário Soares in 1987), the majority in parliament was not “hostile” to the president, and proposed to form an alternative government to the minority cabinet of the single largest party, which had fielded a candidate against Soares and had been defeated in the House by a vote of censure. In the third case (Jorge Sampaio in 2004), there was a majority “hostile” to the president and in support of a government whose prime minister was not dismissed while fresh elections were called. In the cases of other parliament dissolutions (Sampaio in 2002 and Cavaco in 2011), all political parties agreed with early elections, thus, limiting the options of the presidents who were both confronted with the resignation of the prime minister (first, Guterres and, in 2011, Socrates). In the case of Portugal, where presidents require individual, personalized endorsement and officially reduce the weight of their party affiliation, the category of “hostile majority” should be read with caution. This point holds for Timor-Leste.

³² Timothy Frye, “A Politics of Institutional Choice: Post-Communism Presidencies,” *Comparative Political Studies* 30,5 (1996): 523–52.

³³ Shugart and Carey, *Presidents and Assemblies*, pp. 149–54.

³⁴ Lee Kendall Metcalf, “Measuring Presidential Power,” *Comparative Political Studies* 33 (1999): 660–85.

namely the one carried by Marina Costa Lobo and Octávio Amorim Neto in the Lusophone world, including Timor-Leste, use the revised version of the initial scale.³⁵

At this point, a new question must be addressed: What is the most appropriate source of information to define a political system in any given country? In 1980, Maurice Duverger stated plainly that “the concept of a semi-presidential form of government is defined by the content of the constitution.” But when he passed from the general level to a discussion of individual country cases, he acknowledged that the paradox of “similarity of rules, diversity of games” called for four parameters to be taken into account: (1) the actual content of the constitution; (2) the combination of tradition and circumstances; (3) the composition of the parliamentary majority; and (4) the position of the president in relation to this majority.

For political scientists, therefore, a simple examination of formal constitutionalism will not suffice to ground the classification of political regimes as semi-presidential.³⁶ The “material constitution” encompasses established practices that offer a basis for actions not considered in the formal constitution,³⁷ but more often it operates in the opposite direction, erasing in practice some formal powers granted to the president. Examples here include a range of countries with presidents who in practice, play largely ceremonial roles, in spite of the letter of the constitution granting them wider powers, as is the case in Austria.³⁸

³⁵ Lobo and Neto, *O Semipresidencialismo*, pp. 264–65.

³⁶ Empirically oriented studies soon confront what Sartori calls a “material constitution” as distinct from the “formal constitution.” There is also an ongoing debate on the extent of implicit powers versus those explicitly set in the printed word of a constitution. See, for instance, José Joaquim Gomes Canotilho and Vital Moreira, *Os Poderes do Presidente da República* (The powers of the president of the republic) (Coimbra: Coimbra Editora, 1991) and André Freire and António Costa Pinto, *O Poder dos Presidentes. A República Portuguesa em Debate* (The power of the presidents: The Portuguese Republic in debate) (Lisbon: Campo da Comunicação, 2005), thus reinforcing the argument in favor of historically defined studies of the ways power is actually exercised. “Implicit” powers are those not specifically stated in the listing of presidential competences but that can be derived—if only in special, abnormal occasions—from generic functions as “commander-in-chief of the Armed Forces” (to what extent does this imply that the president be constantly informed of all government policies in detail? Is a presidential agreement necessary prior to any major decision? Can he or she actively intervene?) or as “guarantor of the normal functioning of institutions.” (Can the president dismiss a prime minister in breach of a constitutional obligation even if supported by a parliamentary majority?)

³⁷ Sometimes this can be pushed to the limits and actually oppose the letter of the Constitution. One such example was President De Gaulle’s decision to initiate referendums in defiance of the Constitution of the Fifth Republic, which was not challenged either politically or legally by his opponents.

³⁸ Arguably, presidents of Timor Leste have regarded the letter of the Constitution as defining too narrow a scope of competences and powers in view of the “traditional” values of the land that they espoused. It is curious to remark that neither Xanana Gusmão nor Ramos-Horta were members of the Constituent Assembly and were, thus, mostly absent from the debate on the system of government. Their subsequent career at the very top of the Timorese political world, partly rooted in their past achievements, sheds light on the assumptions and political choices made by the international community and the UN administration under Sergio Vieira de Mello favoring formal procedures (party formation and elections) over the recognition of Timor-Leste’s own political structures (such as the umbrella-like CNRT that encompassed all sectors of political opinion) and allowing a constituent process to go ahead without the direct participation of major players. This sort of option was made in a country where personalities

In brief, we might state that formal “constitutional engineering,” or “constitutional design,” matters greatly in the way it shapes the politicians’ pursuit of their interests³⁹ and, therefore, is critical to the process of classifying particular political systems.⁴⁰ But this view cannot be separated from a historical analysis that identifies the “material constitution,” or the entrenched political praxis, which combines both the formal and informal elements to provide a full picture of the environment in which politicians and citizens actually live, and the rules by which they abide

The Case of Timor-Leste

Most readings of the constitution of the Democratic Republic of Timor-Leste will recognize in its articles the basic tenets of a semi-presidential form of government. In Timor-Leste, the president of the republic is elected by universal, direct popular suffrage for a term of five years. Parliament is also elected by popular vote for a maximum term of five years, and the majority of members of parliament—be they members of one party or a number of parties in a pre- or post-electoral coalition⁴¹—have the right to appoint the prime minister, and only they can directly bring down the government. These two fundamental principles institute a dual structure of authority as a central element in the system of government, which allows for its classification as “semi-presidential.”

Furthermore, among other powers, the president can dissolve the assembly—a power, however, that requires certain precedent conditions both in terms of timing and circumstances. But the president does not possess the right to dismiss the prime minister, whose mandate is dependent solely on the confidence of parliament.⁴² The combination of these constitutional features permits us to conclude that Timor-Leste has adopted the premier-presidential variety of semi-presidentialism. This conclusion is consistent with the analysis of presidential powers according to Shugart and Carey’s model, as revised by Metcalf, carried by the Portuguese constitutionalists Bacelar de Vasconcelos and Sousa da Cunha⁴³: They rate the “legislative powers” of the Timorese president at 4.5 and the “non-legislative” at 4, making the Timorese president the one with the most limited powers in the

do carry enormous weight—they are certainly at least as important as formal ideology or any single other base for distinctive political parties.

³⁹ Shugart and Carey, *Presidents and Assemblies*, p. 13.

⁴⁰ Metcalf, “Measuring Presidential Power,” p. 663.

⁴¹ This issue, however, generated serious controversy in 2007 following the parliamentary elections due to the fact that FRETILIN won the plurality of votes but could not command enough support in the National Parliament to form a stable government, whereas several political parties that had run separately formed a post-election coalition that controlled the majority of seats. The Constitution does not specifically address this issue, thus leaving the door open both for presidential discretion and for any solution found in parliament—much like the Westminster parliament after the May 2010 elections.

⁴² It is arguable that the very general Constitutional duty of the president to ensure the regular functioning of democratic institutions may empower him or her, in exceptional circumstances, to dismiss the prime minister (Article 112-2).

⁴³ Bacelar de Vasconcelos and Sousa da Cunha, “Semipresidencialismo em Timor-Leste,” pp. 250–52.

Lusophone world.⁴⁴ However, as noted above, this constitutional analysis does not capture the whole picture. A major factor requiring attention—mainly when dealing with the term in office of President Xanana Gusmão, 2002–7—is the difference between the letter of Timor-Leste’s constitution and the actual implementation of its provisions.

Consider two examples: the president is supposed to make certain decisions in consultation with two bodies—the *Conselho de Estado* (Council of State, CoS) and the *Conselho Superior de Defesa e Segurança* (Superior Council for Defense and Security, SCDS)—whose views are not binding but whose consultation is mandatory for the exercise of some of the president’s powers, such as the dissolution of the assembly (CoS), the declaration of a state of emergency or state of siege (both councils), or the institutionalizing of the president’s role as supreme commander of the armed forces (SCDS). The existence of those councils depended on the passing of ordinary legislation in parliament, which was supposed to expand the constitutional principles into operational organizations and establish their respective rules. The process took three full years, and the inauguration of both councils was only complete on May 20, 2005. In the meantime, the constitutional powers of the president were somewhat limited by the nonexistence of these constitutionally mandated institutions.⁴⁵

More important is electoral legislation. While the president has the power to determine the date of elections—both presidential and legislative, including an early election following a dissolution of parliament—he or she can only do so provided there is an electoral law.⁴⁶ Thus, when the “crisis” erupted in April 2006, the president was actually empowered to dissolve parliament but not to call fresh elections—a dual solution that most established democracies would have attempted—because there was no electoral legislation to authorize the ballots. A highly problematic situation could arise out of a dissolved parliament in the absence of effective electoral legislation, as the constitution grants full powers to design and pass such legislation to parliament. In the actual case, electoral bills were passed by parliament when Ramos Horta was prime minister at the end of 2006, just in time for the president to call elections that would guarantee that the terms in office would not extend beyond their five-year constitutional limit.

These two examples reveal the extent to which there was a wide gap between the constitution’s abstract provisions and the actual pace of implementation of the instruments necessary for principles to be operationalized and transformed into actual institutions and deeds. The presidency was slow in acquiring these instruments—from legal provisions to human resources or financial means—to put the president in a position to make effective use of the powers bestowed by the

⁴⁴ A reminder: The maximum number of points is 28 for “legislative” and 24 for “non-legislative” powers according to this scale. The existence of limited executive powers is supposedly typical of the “premier-presidential” variety of this system. Lobo and Neto, *O Semipresidencialismo*, p. 267.

⁴⁵ As a mere example: President Xanana made his first official visit to the military headquarters only after the inauguration of SCDS, and only then was an officer appointed to serve in his military supporting team (*Casa Militar*).

⁴⁶ The first president was elected on a provisional UN regulation, and the first parliament resulted from the transformation of the Constituent Assembly also elected under provisional UN regulations that were no longer valid after the new Constitution became the Law of the Land on May 22, 2002.

constitution. In this sense, the “material constitution” deviated from the formal one by limiting the actual exercise of formal presidential powers. In one respect, it continues to do so, as the legal framework for the use of referendums, for example, is yet to be produced.

Furthermore, on the other side of the equation, both Xanana Gusmão and Ramos Horta have been able to engage in areas of activity that lacked sufficient support in the constitutional letter, but were carried out in broad daylight. Take, for example, the first president’s creation of a team to work on the issue of “veterans”—a sensitive issue in a country that owes much of its independence to a network of active resistance fighters, whom the guerrilla leader Xanana Gusmão led and knew personally in great numbers. Though this issue was taken up by Prime Minister Alkatiri, in his government reshuffle of June 2005, by creating a special department to lead the process, the moral capital of Xanana loomed larger and gave the president ample room to determine the final shape of this particular policy. Another example of practical initiatives of the president was Xanana’s involvement in the creation of the Museum and Archive of the Resistance—an initiative of high symbolic importance, arguably an expression of his duties in the realm of consolidating national unity and identity, but easily bordering on a demonstration of rivalry with government competences in cultural policies.

Ramos Horta has considered it his duty to offer a sort of “emergency aid” to cases of particular hardship that are brought to his attention. He created a team that provides responses to such appeals within one month, and sets plans that cannot last longer than six months—with more serious and lengthy cases channeled to the government for normal procedures. This represents a revised version of a similar initiative that was deemed to be in breach of the constitution by the Court of Appeal, which is now legitimized by mandated support from the government’s own budget (but effectively managed by the staff of the presidency). Both cases reveal a systemic tolerance for some executive duties to be carried out by the president, regardless of the restrictions that the letter of the constitution imposes on the president’s powers in this domain—an extension of powers justified in various ways. Ramos Horta stated in an interview that

no Constitution, no Law can restrain or forbid a President to have opinions and to set up projects in favour of the poor ... In African or Asian countries, where poverty is still enormous, and where the President or the King are regarded as the “Father of the Nation” in a very patriarchal society, and where the Government has no capacity to be everywhere in this struggle against poverty and in the process of healing the wounds of society, and respond quickly to the most blatant needs of the people, the President of the Republic must intervene and give some help, complementing the action of the government and diffusing the political and social tension that may grow against the government.⁴⁷

⁴⁷ In November 2009, I was fortunate to conduct two long interviews (about two hours each) with former President Xanana and current President Ramos-Horta, focusing on the nature and the workings of the Timorese political system. Those interviews were completed in 2011 and 2012, at a time when a third interview was conducted with former prime minister Alkatiri.

In this sense, the other face of the “material constitution” is one that includes those powers of the president that enhance the president’s image as a paternal figure and, thus, tend to grant the president legitimacy to intervene beyond the scope of the constitutional text. Both the factors that enhance and those that limit the powers of the president in practice do not subvert the essential matrix of Timor-Leste’s government system: the existence of a duality of powers between president and prime minister.

These points regarding the power and prerogatives of the president of the Republic would apply, *mutatis mutandis*, to the case of prime ministers. Although it is often assumed that executive powers not specifically allocated to the president fall in the realm of the prerogatives of the government, the powers of prime ministers in “semi-presidential” regimes are not unlimited. The political dividing line often results more from a balance of power between the two than from any exegesis of the constitution, be it “formal” or “material.” Thus, it is also true that there are examples of the prime minister overstepping the constitutional line and behaving in a questionable manner.⁴⁸

Finally, it is important to bear in mind that presidential powers—such as the power to dissolve parliament—need not be actually exerted to be considered in these assessments. With this in mind, the constitutional foundations of the governmental system should remain our main, though not exclusive, source justifying the classification of the Democratic Republic of Timor-Leste as a “semi-presidential” polity. Both Kay Rala Xanana Gusmão and José Ramos Horta—having both been president and prime minister at different times—have expressed their opinion on this issue, confirming their understanding that this is the best definition of the Timorese regime.⁴⁹

SEMI-PRESIDENTIALISM: HELP OR HINDRANCE TO THE CONSOLIDATION OF TIMORESE DEMOCRACY?

The increasing number of semi-presidential experiments in democratic transition and consolidation requires particular corresponding attention from scholars. Of course, relationships between specific systems of government and the wider process of democratic consolidation are multiple and complex,⁵⁰ and certainly not determined by these constitutional choices alone. Karl Popper’s notion of “propensity,”⁵¹ or weighted probability, can be summoned to frame our discussion. This notion seems to be echoed in Lobo and Neto’s concept of “suggestive associations,”⁵² a possible way to frame relationships between the choice of a

⁴⁸ As an example, I would argue that the decision taken under Alkatiri’s government to sack almost one-third of those who served in the armed forces at a time when the President of the Republic and Commander in Chief was out of the country, and without granting his acquiescence for such a dramatic action, reveals a very narrow conception of presidential powers without constitutional basis

⁴⁹ Interviews with the author, November 2009. This is not simply a question of supporting the current system, which might be expected (though neither was a member of the Constituent Assembly), but a question of how best to characterize it.

⁵⁰ Novais, *Semipresidencialismo*, p. 194.

⁵¹ Karl Popper, *A World of Propensities*, (Bristol: Thoemmes, 1990).

⁵² Lobo and Neto, *O Semipresidencialismo*, p. 271.

government system and the survival of young democracies, potential cause-and-effect relationships still open to debate.

Sophie Moestrup conducted a survey of countries involved in democratization processes in recent decades, assessing the impact of the adoption of this form of government on the breakdown of young democracies, that is, assessing whether this form of government exerted an eventual negative impact on democratic consolidation. She concluded that “semi-presidential regimes are *not* more or less likely than either presidential or parliamentary regimes to suffer democratic breakdown through coups or otherwise.”⁵³ The results of Moestrup’s empirical test are important, not so much for these associations or correlations, but because they stress how urgent it is for scholars to move beyond theoretical hypotheses and focus on the actual, historically situated political processes of particular regimes.

Of direct relevance to the case of Timor-Leste is Steven Roper’s argument that in premier-presidential regimes (deemed to be more stable than president-parliamentary regimes⁵⁴), “[t]here appears to be a relationship between presidential power and cabinet instability.”⁵⁵ To the extent that Timor offers a historical example of an attempt to consolidate a democratic regime with a “premier-presidential” variety of semi-presidentialism,—and under this umbrella, one that is less generous with presidential prerogatives—Timor-Leste will remain an important case study.

Theoretical Assumptions

Examining the likely impact of semi-presidentialism upon democratic performance from a western European perspective, Gianfranco Pasquino has identified several “advantages and disadvantages of semi-presidentialism.”⁵⁶ Among disadvantages, he includes two possibilities. First, there is the risk of a turn to “hyper-presidentialism,” wherein the accumulation of executive and legislative power occurs via the coincidence of majorities in presidential and parliamentary elections. This risk seems to be greater in “president-parliamentary” varieties of government, in which the overlap between the president’s and the prime minister’s authority is more likely to occur (and the risk for confrontation is residual). Second, there is the likelihood that political and institutional clashes may erupt between the president and the prime minister when the parliamentary majority is not committed to the president, leading to a paralysis of the decision-making process or even to a constitutional crisis. Again, “premier-presidential” varieties seem less prone to fall into this trap, as the respective roles of president and prime minister are more clearly distinguished in regard to “executive” powers—those which more often potentiate the conflict. The latter disadvantage seems to carry a convincing argument inasmuch as it is widely echoed as the original sin of “semi-presidentialism.”

⁵³ Sophie Moestrup, “Semi-Presidentialism in Young Democracies: Help or Hindrance?” in *Semi-presidentialism outside Europe*, p. 40.

⁵⁴ See Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance*, for a defense of this thesis, including updated references.

⁵⁵ Roper, “Are All Semipresidential Regimes the Same?” p. 254.

⁵⁶ Gianfranco Pasquino, “The Advantages and Disadvantages of Semi-Presidentialism: A West European Perspective,” in *Semi-Presidentialism outside Europe*, pp. 14–29.

On the positive side of the coin, Pasquino calls our attention to the fact that “semi-presidentialism” has been credited with helping democracies to contain and dismiss undemocratic challenges by significant political actors against “the rules of the game,” given the likelihood that some form of Arendt Lijphardt’s “consensus democracy”⁵⁷—a combination of decision-making effectiveness and a fair amount of agreement among the political elites—will prevail in a system that does not live by the “winner takes all” rule, thus retrieving Sartori’s argument in favor of a flexible system. Pasquino’s defense of the “relative advantage” of “semi-presidentialism” is corroborated by Novais, for whom “flexibility” translates into a better equilibrium and division of powers, a greater capacity to integrate different political and institutional actors, and an enhanced tendency to overcome blockages.⁵⁸

Different Views of the Timorese Experience

The debate over Timor-Leste’s choice of a system of government predates the 2002 constitution. In fact, it has its roots in the time of the resistance movement, and, in particular, after the creation of the CNRT in 1998, when a new political unity platform emerged and produced developments both before and after the referendum of 1999. Secondly, this choice bears on the evolution of thinking on this issue among the leadership of FRETILIN, as the most structured political force, during the period between 1999 and the moment when the Constituent Assembly—amply dominated by this party—was called to cast its vote. Unfortunately, no systematic work has been done so far to shed light on what remain obscure pages of political history.

Though we are not yet able to address the issue of the key political decisions on the nature of the government system from inside the Timorese political elite, an alternative way can be pursued by looking at what has been written by political commentators and analysts. Back in 2001, James Mackie suggested that the adoption of a semi-presidential system of government “may well be more suited to East Timor’s needs than a purely presidential or parliamentary system,” arguing that “if it can be combined with the sort of consensual type of legislature advocated by Lijphardt, it could conceivably deliver better governance than any of the other Southeast Asian political systems.”⁵⁹ This line of argument had been sustained by various other authors right up to the present, a recent example being Bacelar de Vasconcelos and Sousa da Cunha, who argue that “semi-presidentialism” contains inherent virtues “in the equilibrium of the system of government and in the control of executive power [which are] decisive in the full implementation of the principle of the separation of powers.”⁶⁰

⁵⁷ Arendt Lijphart, *Democracies—Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven, CT: Yale University Press, 1984).

⁵⁸ This argument echoes Robert Dahl’s notion of “polyarchy”; see Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971). See also Novais, *Semipresidencialismo*, p. 139.

⁵⁹ J. A. C. Mackie, “Future Political Structures and Institutions,” in *East Timor: Development Challenges for the World’s Newest Nation*, ed. Hal Hill and João M. Saldanha (Basingstoke: Palgrave, 2001), p. 205.

⁶⁰ Bacelar de Vasconcelos and Sousa da Cunha, “Semipresidencialismo em Timor-Leste,” p. 237.

The extended roll of Portuguese scholars writing on this issue and assuming positive valuations is, of course, inseparable from the fact that Portugal was among the first countries in the last quarter of the twentieth century to adopt “semi-presidentialism,” giving the scholars ample opportunity to participate in early debates;⁶¹ and from the widespread belief that Portugal may have played a critical role in the expansion of semi-presidentialism in the Lusophone world. In fact, Portuguese scholars, mainly from the Law School of the University of Lisbon, were active players in the constitutional reforms of the late 1980s and early 1990s in Lusophone Africa.⁶² However, Timor is a different case. The leading constitutional expert who served in the UN administration, Pedro Bacelar de Vasconcelos, raised objections to the overall process and resigned before the elections for the Constituent Assembly. The Portuguese legacy was nevertheless felt in an indirect way.⁶³ The argument I have presented elsewhere, and that I briefly recall here, is that the “Portuguese legacy” was convened insofar as it presented a practical solution that served the interests of, at least, the party that dominated the constituent assembly, and since this party had a clear majority, its power could be extended in parliament for the first electoral cycle, but no longer, for the party lacked the force of an allied, charismatic leader, and, in fact, the most potentially effective leader was a political competitor and had to be reckoned with. Too much power to the president could offset the parliamentary majority; too little might drive the popular leader to operate from outside the system, creating a strong external pressure. The delicate balance was best translated into a “semi-presidential” system that would both express the principles of division of powers and institutional cooperation and offer a practical way to implement checks and balances and foster consensual policies.

But consensus about the merits of “semi-presidentialism” in young democracies was not to be the key note in analyses of Timor-Leste. Soon after independence, critical voices were making themselves heard. Dennis Shoemith is probably the most consistent advocate of this stance, arguing that “the semi-presidential system in the new state has institutionalized a political struggle between the president, Xanana Gusmão, and the prime minister, Mari Alkatir,” which “has polarized political alliances and threatens the viability of the new state.” He added, “The fault line established by a semi-presidential system complicates the already formidable task of establishing an effective and at the same time democratic system of government.”⁶⁴ This negative view of the impact of this form of government upon the consolidation of democracy has continued to surface regularly as Timor-Leste emerges as a country

⁶¹ See Maurice Duverger (sous la direction de), *Les Régimes Semi-Présidentiels* (Paris: Presses Universitaires de France, 1986).

⁶² The influence of the Portuguese Constitution on the fundamental laws of those countries “can be understood thanks to the presence of Portuguese jurisconsultants in their elaboration as well as the cultural proximity of many of those countries’ jurists who had been formed in Portuguese universities.” Jorge Bacelar Gouveia, *As Constituições dos Estados de Língua Portuguesa* (The constitutions of Portuguese-speaking countries), second edition (Coimbra: Almedina, 2006), p. 19.

⁶³ Rui Graça Feijó, “Weaving New Institutions, Translating Political Grammars: A Critical View on Timorese Political Institutions and the ‘Portuguese Legacy,’” in Paulo Castro Seixas, *Translation, Society and Politics in Timor-Leste* (Porto: Universidade Fernando Pessoa, 2010).

⁶⁴ Dennis Shoemith, “Divided Leadership in a Semi-Presidential System,” *Asian Survey* 43,2 (2003): 231, 252.

hampered by recurrent problems attributed, “in part, to the semi-presidential constitutional structures.”⁶⁵

True, Shoesmith recently seemed to move away, in part, from his early, critical stance when arguing the case to “remake the state” in Timor, although he still maintains that “the experience of the six years of independence strongly suggests that the current constitutional model is flawed and that there is a case for constitutional reform.”⁶⁶ In the shorter term, his proposals were intended to clarify and strengthen the role of parliament. It seems that his concerns now impinge more on the relation between parliament and executive government than on the balance between this prime ministerial and presidential powers. In this sense, Shoesmith’s proposal for a greater parliamentary role in the political life of Timor does not seriously question the fundamentals of the semi-presidential system. Also, he seems to have shifted the burden of responsibility for the problems of democracy in Timor from “the political struggle at the centre of power” to the view that “the defining variable for both semi-presidentialism and political democracy is the relative incapacity of the state to adequately perform basic state functions”⁶⁷—which is a supportable view, if one essentially independent of concerns relating to the operative system of government.

Moreover, the conclusion that “semi-presidentialism” has *generated* or *institutionalized* political confrontation at the core of the state sustained in the earlier texts by Shoesmith, can be revised in light of the chronology. By 1998, most of the movements and personalities involved in the resistance against Indonesia’s occupation had come together under the umbrella of CNRT. But the history of Timor after 1974 is one marked by bitter rivalries (culminating in a brief civil war in August 1975) that permeated the core of the resistance. José Mattoso offers a moving history of the harsh years, and a background for the split between Xanana and FRETILIN, in the mid-1980s, on strategic grounds.⁶⁸ Shoesmith himself provides an account of the “historical legacy” and the depth and scope of divisions that existed *prior* to the referendum.⁶⁹ Political divisions (and, equally important, conflicts between personalities who were to survive the struggle for independence and translate these rifts in the formation of political parties and other socially relevant organizations, often with blurred ideological definitions), therefore, *predate* the adoption of the government system—they were not generated by it. While Shoesmith acknowledges that the leadership was divided prior to independence, the view that these tensions were “institutionalized” can also be challenged. An alternative view would acknowledge that these institutions were set up in such a way as to bring preexisting, deep political rivalries and in-fighting *inside the boundaries of constitutionally defined settings*—rather than ignoring their existence or attempting to repress their

⁶⁵ Benjamin Reilly, “Semi-presidential Democracy in East Asia,” in *East Asia Forum*, www.eastasiaforum.org/2008/11/08, accessed on April 24, 2012.

⁶⁶ Dennis Shoesmith, “Remaking the State in Timor-Leste: The Case for Constitutional Reform,” paper presented to the Seventeenth Biennial Conference of the Asia Studies Association, Melbourne, July 1–3, 2008, www.cdu.edu.au/creativeartshumanities/profiles/documents/conference_paper_july_2008.pdf, accessed June 28, 2012.

⁶⁷ Shoesmith, “Timor-Leste: Semi-Presidentialism,” p. 234.

⁶⁸ José Mattoso, *A Dignidade: Konis Santana e a Resistência Timorese* (Dignity: Konis Santana and the Timorese resistance) (Lisboa: Temas e Debates, 2005).

⁶⁹ Shoesmith, “Divided Leadership,” pp. 235–46.

manifestations. These arrangements facilitated contact between alternative power bases and imposed, to a certain degree, restraints upon the political actors, and were, therefore, a positive element in the process.

Representative systems need to deal with political rivalry *within* their walls, not by systematic exclusion. The claim that “semi-presidentialism” contributed to institutionalizing political conflict within the system, rather than allowing it to survive and challenge the regime from the outside, should, in fact, be read as a compliment rather than as a criticism. The years of Xanana’s presidency illustrate this point, although a systematic analysis with objective benchmarks is still to be done. If one were to analyze the *modus operandi* of Xanana’s presidency—including the institutional relations with the prime minister and his government (measured by vetoes, public criticism, or other indices), the mediator role he was called to perform and the ad-hoc committees he sponsored (all of which included representatives of government), or the ways in which he reached out to wider sectors of society, both in his formal institutional capacity (appointments to the Council of State) and informally—one would certainly agree with Sven Simonsen, who has noted that “it is first and foremost President Xanana Gusmão who has gone to great lengths in efforts to pacify political relations.”⁷⁰

Although one cannot deny the existence of rivalry and friction, these tensions were mostly contained within the boundaries of the constitution. Up until 2006, President Xanana had offered active support to the government, including at the time of the riots of 2002; he had vetoed no law other than with the backing of the Constitutional Court (he later “pocket vetoed” the Penal Code,⁷¹ which would only be passed by President Ramos Horta in 2010); he mediated the conflict associated with the demonstrations led by sectors of the Catholic Church in 2005 without expressing any intention to give in to pressures of that kind; he may have publicly criticized certain ministers (such as Rogério Lobato), but he did not raise obstacles to their continuation in government even at a time of reshuffle, and so on.

Of course, the events of 2006 brought in a new conjuncture. But then Xanana’s legal duty to “guarantee the regular functioning of the institutions”—shattered by the collapse of the security and armed forces, both under government direct responsibility—called for new forms of action in a situation in which hundreds of thousands of Timorese were living in a most precarious situation. The resignation of the prime minister—not associated with a dissolution of the FRETILIN-dominated National Parliament—was obtained through political rather than institutional means: Alkatiri preferred to offer his resignation when confronted with the likelihood of Xanana’s resignation, as the president had lost confidence in the prime minister but was not explicitly entitled to use a dismissal power, though his prerogatives allowed him to dissolve parliament.⁷²

⁷⁰ Simonsen, “Authoritarian Temptation,” pp. 580–81.

⁷¹ “Pocket veto” is an expression used in cases when a president stalls a piece of legislation without either approving or formally refusing to sign it for a period longer than the one prescribed in the Constitution. In this case, the purpose was to force government officials to reconsider the terms of the bill, which changes the prime minister tacitly agreed to redraft.

⁷² In my view, Article 112-2 could be evoked to contemplate the dismissal of Alkatiri in June 2006 because, as I understand it, this provision contemplates two situations: the “previous cases,” which are explicit (Article 112-1), and “when it becomes necessary to guarantee the regular functioning of democratic institutions.” This reading is not universally accepted, as some argue that the copulative “and” refers to a necessary second condition to be read in

WHAT IF ... ? A COUNTERFACTUAL EXERCISE

Hidden behind the criticisms of “semi-presidentialism” lie implicit alternative theses: that either “presidentialism” or “parliamentarism” would be better suited to respond to the needs of Timor-Leste.⁷³ A brief counterfactual exercise may illuminate the merits or otherwise of these alternatives.⁷⁴

The choice of a government system was made by the Constituent Assembly in 2002. Momentarily moving back in time to those days, what were the key characteristics of the Timorese political landscape that would inform the decision to be taken? I would sum these up in five points. First, Timor-Leste had never experienced genuine democratic government, as late Portuguese colonial rule (unlike British, French, or Dutch rule) coincided with one of the most durable authoritarian regimes in Europe, and the forced integration in the Indonesian Republic also represented an experience in authoritarianism. Second, the country lacked most of the ingredients identified in the literature as marking the basis for an endogenous drive toward democracy, which was, to a substantial degree, brought in from the “outside,” partly by the returned elite who had lived in the diaspora and partly by the imposition of conditions imposed by the “international community” to insure the continuation of aid. Third, Xanana, as the leader of the guerrillas for two decades, was popular with the people and could easily win an election should he decide to run. He was also highly regarded among leaders within the international community. Xanana, however, never organized his supporters as a political party, and thus lacked the ability to influence some elections (like the legislative ones).

conjunction with, not as an alternative path to, the first element of the sentence. My argument is that the conditions set in Article 112-1 are valid *per se*, independent of their implication on the “regular functioning” of institutions (for instance, a prime minister’s permanent state of incapacity, if declared, implies *ipso facto* dismissal from the job). Pedro Bacelar de Vasconcelos recently expressed a similar view in his detailed commentary of the Timorese Constitution; see Pedro Bacelar de Vasconcelos, *Constituição Anotada da República Democrática de Timor-Leste* (Braga: Direitos Humanos—Centro de Investigação Interdisciplinar, 2011), pp. 362–63, available at www.dh-cii.uminho.pt/crdtl_annotada_final.pdf, accessed June 28, 2012.

⁷³ For the sake of this argument, I am leaving aside a third, radical hypothesis that had already been discarded by the time the Constituent Assembly discussed the system of government, which consisted of an agreement amongst the Timorese elite, with the necessary backing from the “international community,” for an extended “transitional period.” This extended period might take place under the aegis of CNRT, which had anticipated a ten-year-long “transitional period” in its 1998 platform, prior to the launching of a constitutional experience. This option was based on assumptions stressing the need for consensual and inclusive policies that would delay the emergence of competitive politics. See Bacelar de Vasconcelos, “A Transição em Timor-Leste, 1999–2002” (Transition in Timor-Leste, 1999–2002), in *Timor-Leste, da Nação ao Estado*, ed. Rui Centeno and Rui Novais (Porto: Afrontamento, 2006), pp. 57–71.

⁷⁴ The methodological basis for this exercise can be found in Philip E. Tetlock and Aron Belkin, *Counterfactual Thought Experiments in World Politics: Logical, Methodological and Psychological Perspectives* (Princeton, NJ: Princeton University Press, 1996); P. E. Tetlock, Richard N. Lebow, and Geoffrey Parker, *Unmaking the West: “What If” Scenarios that Rewrite History* (Ann Arbor, MI: University of Michigan Press, 2008); and Hermínio Martins, “Tempo e Explicação: Pré-formação, Epigénese e Pseudomorfose na análise socio-política” (Time and explanation: Preformation, epigenesis, and pseudomorphosis in social analysis) in *Portugal: Uma Democracia em Construção*, ed. Manuel Villaverde Cabral, Marina Costa Lobo, and Rui Graça Feijó (Lisbon: Imprensa de Ciências Sociais, 2009).

Fourth, provisions for the election of the Constituent Assembly allowed it to evolve into a national parliament without fresh elections, freezing the power balance for six years and allowing FRETILIN, which had emerged as a majority party claiming far more members than a group of smaller, divided, thinly structured political parties, to maintain control of parliament in the first legislature.⁷⁵ Fifth, relations between Xanana and FRETILIN were far from harmonious, reflecting high tensions among the leading politicians, tensions that were inherited from the resistance period and were fueled by the political maneuvering that eventually led to the dissolution of CNRT and the emergence of open political competition under the aegis and approving eye of the United Nations.

Given the array of political forces in 2002, the following scenarios might have been possible. First, a “presidentialist” system might have been chosen, in which the president would be popularly elected and exercise sole executive responsibility, without being responsible to the legislature—and both the terms of office for the president and the parliament would be fixed and unchangeable (other than by the resignation of the president or an impeachment procedure). The election of Xanana as president would confront him with a parliament dominated by FRETILIN for the entire span of his term. Given that those two legitimacies and several key elements of public policies were not convergent, the risks of stalemate and rising political confrontation would have been higher than the tension that characterized the actual relations between Xanana as president and Alkatiri as prime minister under Timorese “semi-presidentialism.”

The risk also existed that a popular president in a country with weak institutions (backed by an unstructured mass of voters and an undeveloped party system) would be tempted to apply his charismatic appeal to sidestep parliament’s likely obstruction, and to step to the far margins of his constitutional competence. A systematic polarization of both camps would make it more difficult for the image of a “common house” to emerge, let alone to gain roots. It is hard to envisage how, in this context, the alleged “effectiveness” associated with presidentialism could overcome the increased danger of persistent confrontation or stalemate.

Sartori has acutely remarked that most of those who praise presidentialism based on the US experience fail to understand that “the American system works *in spite of* its Constitution, hardly *thanks to* its constitution,” and it requires three conditions to keep delivering good results: absence of ideological principles, weak political parties, and locally oriented public policies.⁷⁶ All three elements are clearly absent in Timor-Leste, where FRETILIN is a strong and ideologically marked political party (all others being both weaker, if not for other reasons in terms their shorter history, and less ideologically marked), and the national level overshadows all local considerations except in the fact that locally based politicians, with more or less visible links to traditional forms of sociocultural organization, aspire to intervene in the national arena through parties with extremely unbalanced results.⁷⁷

⁷⁵ Anthony L. Smith, “East Timor: Elections in the World’s Newest Nation,” *Journal of Democracy* 15,2 (2004), pp. 145–59; Dwight Y. King, “Timor’s Founding Elections and the Emerging Party System,” *Asian Survey* 43,5 (2003), pp. 745–57.

⁷⁶ Giovanni Sartori, *Comparative Constitutional Engineering*, p. 89.

⁷⁷ Rui Graça Feijó, “Elections and Social Dimensions of Democracy: Lessons from Timor-Leste,” in *Timor-Leste: How to Build a New Nation*, ed. Cabasset-Semedo and Durand, pp. 123–38; and Feijó, “Counting Votes that Count.”

Alternatively, the adoption by the Constituent Assembly of a model based on a parliament alone, giving the president no more than a ceremonial role (and perhaps establishing a president who was not chosen through direct, popular election), that is, a solution grounded on the principle of “winner takes all” and the condition that the “winners” would be judged by the people in the next election, would likely have led to the reinforcement of the tendency shown by FRETILIN to “go it alone.” These conditions would have reduced incentives for the parliament to adopt any form of “consensus policies,” and, in the extreme, would have excluded from all but the most formal political games important sectors of the opposition—in and out of parliament. The “path to authoritarianism” in various shades, sensed by Simonsen, Jacqueline Siapno,⁷⁸ or Bacelar de Vasconcelos and Sousa da Cunha, which could easily have led to the permanent domination of parliament by the winning party, would have been open; this sort of parliamentary “authoritarianism” characterized Mexico throughout most of the twentieth century or, perhaps more to the point, Mozambique’s experience of FRELIMO’s permanent domination after the country adopted a multiparty system. Bearing in mind the weakness of the judicial system in Timor-Leste, there could be little confidence in the theoretical model of checks and balances under parliamentary regimes. One can only wonder how the 2006 crisis would have ended without the intervention of a directly elected president.

In this case, a “mostly ceremonial” definition of the role of the president would have increased the likelihood that Xanana would have declined to run for office,⁷⁹ thus keeping his prestige and popularity—and his followers—outside the political institutions, with devastating power to criticize from the outside and to erode the government’s institutional capacity to respond to popular demands. Alternatively, electing a president who could rapidly become a “prisoner in the palace” could tempt a frustrated chief executive to engage in a populist drive, by sidestepping the legal definition of his or her mandate and calling into question, rather than consolidating, the choices of the Constituent Assembly. In sum, the goal of “reducing the intensity of the expression of political conflict and restricting it to peaceful institutionalized channels,” a goal and measure of democratic consolidation, according to Richard Gunther, Nikiforos Diamandouros, and Hans-Jurgen Puhle,⁸⁰ would certainly not have been facilitated by the decision to institute a parliamentary system of government. Conversely, the confusion between a critique of government and a critique of “the system” would be much easier to pass on to the masses of Timorese citizens.

⁷⁸ Jacqueline Siapno, “Timor-Leste—On a Path to Authoritarianism?” *Southeast Asian Affairs* 1 (2006): 325–42.

⁷⁹ Pedro Bacelar de Vasconcelos reports that on the last day of the electoral campaign for the Constituent Assembly, Xanana gave public assurances that he would seek a presidential mandate regardless of the system of government that the representatives of the Timorese people chose (Bacelar de Vasconcelos and Sousa da Cunha, “Semipresidencialismo em Timor,” p. 233). Xanana later declared in an interview with me (Dili, November 2009) that his decision was made much later and under serious international pressure, which might, in fact, presume a more prominent role for the president in the political balance.

⁸⁰ Richard P. Gunther, Nikiforos Diamandouros, and Hans-Jurgen Puhle, eds., *The Politics of Democratic Consolidation: Southern Europe in Comparative Perspective* (Baltimore, MD: Johns Hopkins University Press, 1995), p. 9.

Moreover, Timor-Leste's weak party system is a key factor in our appraisal of the government system. As Sartori notes,⁸¹ to be effective, "parliamentarism" requires that political parties be adapted to parliamentary life, that is, be socialized (through failure, long experience, and adequate incentive) to be cohesive and disciplined organisms. The real question seems to be which political attitude better suited the goals of consolidating democracy in 2002: to marginalize, outlaw, suppress or even repress historically rooted dissent that defied a majority of votes in one single election; or to try and incorporate differences of political opinion in a common "house." And which political system better suited the accomplishment of a preferable attitude?

These two scenarios suggest that the capacity to integrate different sectors of the political elite, with independent views, conflicting interests, and diverse forms of legitimacy,⁸² into commonly accepted institutional arrangements with checks on the power of each player and power sharing—even with its attached danger of *institutionalized* confrontation—should be favored over the alleged "efficiency" of majority rule. "Semi-presidentialism" has, at its core, a dual structure of authority, unbound to fixed terms (as parliament may be dissolved early) and a capacity for flexible combinations and power arrangements between the holders of the two main political seats. These features allow this system of government to be more open and inclusive, and they attract to the institutional circle wider sectors of political society than any of its rivals.

CONCLUSION

Rather than reflect on the merits of a specific type of government system in abstract, this chapter has sought to examine Timor-Leste's choice of a system of government in the specific historical context of its quest for democratic consolidation.⁸³ It has been argued that the overwhelming requirement of a system of government in this particular historical case would rest on its *capacity to be inclusive*. Apart from its capacity to deliver "effective goods" and foster "behavioral" and "attitudinal" democracy, the system should be judged by its contribution to implement "constitutional" democracy, that is, a situation in which "governmental

⁸¹ Sartori, *Comparative Constitutional Engineering*, p. 94.

⁸² See Kelly Cristiane Silva, "Suffering, Dignity and Recognition: Sources of Political Legitimacy in Independent Timor," in *Timor-Leste: How to Build a New Nation*, pp. 139–55.

⁸³ The fact that Timor-Leste had skipped a classic "transition" period, having existed for three years under a "UN Kingdom" (Jarat Chopra, "The UN's Kingdom of East Timor," *Survival* 42,3 [2000]: 27–39) marked by "benevolent despotism" (Joel C. Beauvais, "Benevolent Despotism: A Critique of UN State-Building in East Timor," *International Law and Politics* 33 (2001): 1101–78; Samantha Powell, *Chasing the Flame: Sergio Vieira de Mello and the Fight to Save the World* [London: Allen Lane, 2008]), or "benevolent autocracy" (Simon Chesterman, "Building Democracy through Benevolent Autocracy," in *The UN Role in Promoting Democracy: Between Ideals and Realities*, ed. Edward Newman and Richard Rich [New York, NY: United Nations University Press, 2004]), would suggest this process be protracted and shaken by some features of the leap-frogged stage like political confrontation, bargaining, and translating. The collapse of the CNRT in late 2000, only two and a half years after its creation as a national platform of unity, had revealed the depth and scope of divisions among different currents of opinion that would seem to constitute a stubborn feature of the political landscape. See Rui Graça Feijó, *Timor-Leste: Paisagem Tropical com Gente Dentro* (Timor-Leste: Tropical landscape with people inside) (Lisbon: Campo da Comunicação, 2006).

and nongovernmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of conflict within the specific laws, procedures, and institutions sanctioned by the new democratic process."⁸⁴ The role of democratic institutions is not to *avoid* a vast array of possible problems—as sometimes seems to be assumed by those who replace analysis with long lists of a nascent government's difficulties and shortcomings—but to *confine the responses* to them within commonly defined and accepted boundaries. As Simonsen has pointed out, "exclusionary politics and win/lose outcomes in political disputes would seem to be counterproductive in relation to the goal of (re)building national unity among East Timorese."⁸⁵

Sartori and Pasquino stress that "semi-presidentialism" is a flexible system that brings to the core of political life the expression of the notion of checks and balances—a consideration that both former President Xanana and current President Ramos Horta are keen to emphasize as the main virtue of a system they both believe is well suited to the actual needs of their country, and which, in their view, should not be questioned in its basic tenets for at least another two presidential terms.⁸⁶ It is a system that responds to different configurations of political alignment and parliamentary and presidential bases of power without ever losing its individuality among government systems.

A key element in the debate ought to be the role of political parties. It seems inconceivable that "presidentialism" or "parliamentarism" could operate democratically without relying on the hegemony of political parties over political life. Yet Timor-Leste does not fit this picture—nor, indeed, do several other young democracies, in which figures with great moral authority are politically active and use their prestige and capacity to influence public policies in ways that are not necessarily mediated by political parties.⁸⁷ The powers and prerogatives of presidents vary greatly in these situations, as do public perceptions of their role, even within the "semi-presidential" group of countries alone.

In the case of Timor-Leste, one key attribute of the designed system—which may be regarded as a practical expression of its inherent flexibility—is its *capacity to be inclusive*, that is, to create ways through which a vast array of sectors can find a place in public life. Take for instance the diverse range of presidential appointments to the Council of State.⁸⁸ These are clear illustrations that the construction of trust, and the distribution of roles across party lines—so critical to building democracy as a

⁸⁴ Linz and Stepan, *Democratic Transition and Consolidation*, 6.

⁸⁵ Simonsen, "Authoritarian Temptation," p. 595.

⁸⁶ Interviews with the author in November 2009.

⁸⁷ The most obvious example is the Catholic Church of Timor Leste, whose leaders and a great number of members publicly comment on and influence political debate, but refuse to take part in state organizations, even those of a consultative nature, such as the Council of State, other than in ad hoc committees.

⁸⁸ President Ramos-Horta's five appointees to the Council of State were: an independent member of the three governments supported by the FRETILIN majority between 2002 and 2007; a member of one of the political parties that could not elect a single MP, but as a group polled over 10 percent of the votes; a woman from the Oecussi district to demonstrate gender as well as regional sensitivity; the rector of the university, inherited from Xanana's previous appointments; and the president of the National Electoral Commission. Add to those five the appointment of Ana Pessoa, for many the second-in-command in Mari Alkatiri's government, to the important post of attorney general.

“common house”—has been facilitated by the choice of this specific system of government. Dual authority may lead, at one point or another, to some form of confrontation; but the fact that this system can delineate hierarchical order and specific powers to both president and prime minister, and, more importantly, can oscillate in giving one or the other a more prominent role when required, while remaining sensitive to power shifts expressed in elections, can truly be considered, as Sartori believed, to possess virtues of “institutional witchcraft,” helping to create a common house for political actors of different or diverging persuasions. That is what the consolidation of democracy primarily requires.