

SEVENTH CHAPTER

THE GOVERNANCE OF PRESIDENTIAL SYSTEMS

One of the main differences between the parliamentary and presidential systems is that the former was the result of an evolutionary process and the latter of a circumstantial decision. However, there are some elements of the parliamentary system that are present in the presidential one, from its origins. Others, on the other hand, were not considered when the first Presidential Constitution was adopted in Philadelphia, due to the understandable fact that they were not yet sufficiently developed in the parliamentary system itself. For example, political parties, which in their contemporary version were formalized only in 1832, in England, with the Reform Act, have a different function in presidential and parliamentary systems. In the latter they have become indispensable because the formation and functioning of the government depends on them, which does not happen in the presidential systems of the classic and plebiscitary model; in the cabinet, on the other hand, the parties tend to play a new role, closer to that of parliamentary systems.

In a certain way, the assembly experience has its roots in the phases that correspond to the archaic and ancient state. The formidable investigation coordinated by Mogens Herman Hansen and Thomas Heine Nielsen,¹⁰⁴ located 1,035 political communities that could be considered poleis. Of these, 95 had a territory of about 25 square kilometers but another 61 extended beyond 500 kilometers. The political meeting areas (ekklestiasteron, bouleuterion, etc.), which are included under the common denominator of “political architecture”, have been identified through archaeological remains or documentary testimonies. The first add up to 47 and the second 53; public policy discussions were taking place in many of these sites. In addition, it is known that in other spaces (temples, theaters, markets, stadiums, etc.) access to speakers was also facilitated; there are 337 archaeological remains of this type of architecture, and 57 more documentary sources. This shows that the intensity of political life was of a magnitude greater than that which

¹⁰⁴ An Inventory of Archaic and Classical Poleis, New York, Oxford University Press, 2004, pp. 53 et seq., 70 et seq. and 1336 et seq.

has been recognized for centuries, especially when thought only in terms of Athens.

As for the origin of the modern Parliament, there is a record of the presence of parliaments in Normandy since the Middle Ages, and it could be considered that the English tradition begins with the Norman William the Conqueror, from 1066. At various points in Europe, collegiate deliberation bodies became common, especially in the late Middle Ages. However, only English evolved to become a Parliament in its modern and contemporary senses.

During the reign of Henry III, towards the middle of the thirteenth century, the operation of the colloquia or parliament was already known, to refer to the collegiate and deliberative activity presided over by the monarch.¹⁰⁵ Later on, a distinction began to be made between the *magnun concilium* (council of magnates) and the *consilium privatum* (collaborators of the monarch).¹⁰⁶ At the end of the century, Edward I sponsored a growing presence of commons, with the aim of eroding feudal power and consolidating the monarchy. It was the first time in the Middle Ages that the legitimizing function of having the support of representatives of the common people was noticed. Although there are reports that the commons met alone around 1283, it was from 1341 that their deliberations were separated from those held by the magnates, and from 1352 they met in the chapter house of Westminster Abbey.¹⁰⁷ In France the States General were developed; the Cortes, in Spain, and the Diet, in the German Roman Empire.¹⁰⁸

The emergence and expansion of germinal parliaments facilitated the also incipient process of secularization of political power. The tax powers claimed by those deliberative bodies and recognized by the monarchs, implied a limit for the acts of exaction exercised by religious corporations. The

¹⁰⁵ Jolliffe, J. E. A., *The Constitutional History of Medieval England*, London, Adam and Charles Black, 1954, p. 287.

¹⁰⁶ *Ibidem*, p. 368.

¹⁰⁷ See Stubbs, William, *Select Charters and other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward the First*, Oxford, Clarendon Press, 1913, pp. 454 et seq. Winston Churchill mentions that in 1343 the prelates and magnates, and the knights and representatives of the bourgeois, met in two different chapels in Westminster, known as the White Chamber (for the former) and the Painted Chamber (for the latter). The most important thing, however, was that in that year the figure of the spokesman or president (Speaker) of Parliament appeared. Cf. *A History of the English-speaking peoples*, New York, Dorset, 1956, t. I, pp. 358 et seq.

¹⁰⁸ This is an aspect that Henry Hallam, one of the most important historians of English constitutional law, delved into. See *L'Europe au Moyen Age*, Brussels, Gregory, Wouters et Cie., 1840, pp. 189 et seq.

tensions between the political authority and the religious authority were evident above all in France, where King Philip IV and Pope Boniface VIII staged a hard confrontation. In February 1296 the pope issued the bull *Clericis laicos*, denouncing the “horrid abuse of secular power”, which demonstrated “how the laity are hostile to the clergy” and, therefore, deserved excommunication. In response, the French monarch summoned in 1302 the first States General, made up of the three estates: noble, ecclesiastical, and plain, so that in addition to recognizing him as sovereign, they would authorize him to exclusively collect taxes in the kingdom territory.

The English and French experiences show that parliament arose at a singular historical moment, which gave it a double and paradoxical function: on the one hand, it served the interests of the subjects, before the monarchs, to mitigate the effects of the decisions on tax purposes. On the other, it served the interests of the monarchs, to escape the tributary power of the popes.

The impulse that transformed the English Parliament into an institution of the modern state, occurred with the Petition of Right, of 1628, through which King Charles I was asked to respect the powers of Parliament and the cessation of arbitrary acts by part of the monarch’s collaborators. The text concluded by saying: “all your collaborators and ministers must serve you according to the laws and statutes of the kingdom”. There begins a cycle of institutional adjustments that culminated with the Bill of Rights, of 1689, which enshrined the supremacy of Parliament.

On the other hand, when they ascended to the throne that same year, Mary and William of Orange were simultaneously anointed queen and king, but considering that William was a foreigner, Parliament adopted a law of succession in 1700, in which article 4 established that all decisions “relating to the good government of the kingdom” (things relating to well governing of this kingdom) should be approved by the King’s Privy Council, and in article 6 he added that no foreigner could be a member of that Council. However, as the composition of the Privy Council was very large, gradually, the ministers (also members of the Privy Council) began to deliberate separately and in a smaller place, the cabinet council.¹⁰⁹ In examining this intense period, Pocock corroborates the “constitutional persistence” that characterizes English history.¹¹⁰

¹⁰⁹ See Creasy, Edward, *The Rise and Progress of the English Constitution*, London, Richard Bentley and Son, 1892, pp. 330 et seq.

¹¹⁰ Pocock, J. G. A., *The Discovery of Islands. Essays in British History*, New York, Cambridge University Press, 2005.

For their part, when building the presidential system in Philadelphia, the constituents included aspects of a parliamentary nature that did not transcend the Latin American presidential systems that emerged a few decades later. Article 2, section 2, of the Constitution of 1787 provides that the president “may request the opinion, in writing, of the main official of each one of the Executive departments, regarding the matters of their respective branches.” and that, with the advice and consent of the Senate, he will appoint government officials, except in specific cases where the law exempts him from this obligation.

The *advice and consent* formula is characteristic of English parliamentary institutions, and it was before the collegiate decision-making bodies in the Middle Ages. It appears in various capitulations dictated by Charlemagne in 802; in the ordinances of Guillermo I, of 1087; in the famous *The Dialogue Concerning the Exchequer*, of 1180; in the *Magna Carta*, of 1215, for example. Then it appeared in the *Bill of Rights*, of 1689. In American law it was used in the Charter of Maryland, dictated by Charles I of England, in 1632. It is unequivocally a striking expression of the parliamentary function that, although it was incorporated in the Constitution of 1787, did not transcend the Latin American presidential systems that were formed because of its independence from Spain.

Although I refer here to the evolution of institutions, it must be borne in mind that between their conceptual development and their practical exercise, there tend to be differences, sometimes very pronounced, due to cultural factors, resistance to change, and deviations caused by corruption and the usual effects when large interests are involved in the struggle for power. It took a long time to purify the functioning of the parliamentary and presidential institutions. If we only saw the constitutional statements, we would be left with a superficial impression of the institutional reality.

To get an idea of the concentration of power in the adjustment phases of the British system, we could take as indicative the data at the beginning of the 19th century: of a population close to 25 million, only half a million had the right to vote, and the vote did not it was secret; the so-called pocket districts subsisted, where a landowner or a small group decided who would be the representative of the commons; elsewhere, elections were auctioned.¹¹¹

In the United States, cases of corruption were highly identifiable until well into the 20th century. There the figure of the so-called bosses, manag-

¹¹¹ The highest price was reached in York in 1811, where it cost £ 200,000 to be elected. See Watts, Duncan, Whigs, *Radicals and Liberals 1815-1914*, London, Hodder & Stoughton, 2002, pp. 22 et seq.

ers and controllers of votes was developed, and doubts about the legitimacy of several presidential elections, numerous governor elections and a considerable number have not been strange to its political history. The influence of special interests in elections and in governmental and legislative management is still the subject of acrimonious discussion in the 21st century.

The study of these outcomes corresponds to other disciplines, such as political science, for which reason only a reference is made here so that the mere examination of constitutional institutions does not produce the false impression that in all cases their functioning real matches its abstract statement. The convergence between norm and normality is, of course, the dominant aspiration in constitutional states. The important thing about institutional designs is to facilitate this process; conversely, poorly constructed institutions, or misconceptions repeated only routinely, or appropriate for a given time or circumstance, but dysfunctional at other times or places, can cause frustrations that are not always understandable, even though they are explainable. Sometimes, this type of setback produces disenchantment in relation to the constitutional State when everything that has been produced does not go beyond constructive errors in the arrangement of the pieces of an institution.

Political control is one of the traditional functions of constitutional systems, but the design of its instruments and procedures has varied. In its initial phase, the constitutions conferred a role of special relevance to the separation of powers, which made its influence felt in the Congress of Philadelphia and in the Declaration of the Rights of Man and of the Citizen, whose article 16 became the axis of normative formulations and doctrinal reflections throughout the nineteenth century and much of the twentieth.

The theoretical construction of the separation of powers was explained when the important thing was to have a construct that would allow dismantling the prevailing monarchical absolutism. It is understandable that Montesquieu's arguments were directed in the direction of counteracting the concentration of power that characterized the modern state, organized around the figure of the monkey, with the exceptions of the United States and, gradually, the British.

The constitutional monarchy was a phenomenon typical of the nineteenth century, and its fundamental elements resided in the subjection of the monarch to foreseeable forms of political control. In the presidential systems, which developed mainly in Latin America over that century, the instruments of control also took shape. However, the principle of separation of powers adopted content and nuances that were both functional to vindicate public liberties and to strengthen dictators. The argument of the

separation of powers was useful for those who tried to inhibit the control actions of the organs of political representation.

The separation of powers took on an amphibological aspect. On the one hand, it was useful against absolutist systems, but in the same way it was building the arguments for the new holders of power to protect themselves against the supposed interference of congresses and parliaments. Insofar as it is considered as a functional separation, Montesquieu's scheme corresponds, legally and politically, to the doctrine of specialization that Adam Smith would advocate shortly after in the economic sphere, and which Immanuel Kant immediately adopted as his own.¹¹²

The concept of functional separation was accompanied by constitutional constructions of progressive rigidity, according to which any hypothetical interference of one state organ in the activity of another was forbidden. This isolation caused the power concentrated in the person who occupied the government to prevail over the power of the congresses; power that is generally dispersed, declarative and with a strong tendency to inner conflict.

Congresses suffered from fragmentation problems, and at this point they are still vulnerable; yet it is neither possible nor desirable to dispense with the internal blocks. The power of the government is usually vertical, and its holder exercises effective control over subordinates, has decision-making capacity and offers a coherent, homogeneous and disciplined position abroad, while congresses often debate without deciding, and their determinations Regulations are subject to the application of them by governments. When, on the contrary, the congresses are homogeneous, it is usually at the expense of their freedom and independence, either because of their political subordination in relation to the government; either by the hegemonic exercise of power by a party or a charismatic leader.

The functions of political control, the axis of any democratic system, encounter resistance from governments, especially in those organized as presidential systems. In addition to the factors associated with government cohesion and congressional fragmentation, propaganda actions have a distorting effect on the relations between the two organs of power. The most

¹¹² Smith published *The Wealth of Nations* in 1776; Kant, in his *Foundations of the metaphysics of customs*, published in 1785, expressed: "Every industry, trade and art has gained from the division of labor. An artisan does not do all the trades, but each one is limited to carrying out a job that, due to its characteristics, can clearly differentiate itself from any other, with the result of achieving greater performance and greater perfection. Where the jobs are not divided and where each one is a multifaceted craftsman, the trades are still in the greatest barbarity". See the Spanish edition, Madrid, Santander, 1996, p. 14.

common is that, due to the availability of technical and economic resources, and due to the characteristics of vertical discipline, governments are more effective in terms of propaganda than congresses, where the action of plural committees and operational limitations make the media results appear leaner.

The government machinery is heading in different directions. It is common for it to have a spokesperson who transmits the position of the whole of that body of power, while in Congress there is a spokesperson for each fraction, which also does not always have the full support of its members. In any case, in the face of unity of action and government position, Congress, in the best of cases, exhibits natural contradictions in an organ made up of forces opposed to each other. The ability to articulate media support is more affordable for the government, through agreements that are not always in accordance with the public interest. The same happens with the main economic groups, which have direct interests in the media, as partners, or indirect, as large advertisers.

To circumvent the controls, many times you choose to discredit the controller. This action affects parties and congresses, inseparable elements of representative systems. Complaints of corruption against parties and ineffectiveness against congresses produce a cumulative effect that contributes to weakening the real possibilities of control over the government. Once this negative current is unleashed, governments warn that the greater the loss of prestige of their controllers, the less popular support will be for the controlled exercise of power. This translates into risks of arbitrariness and impunity in the actions of the rulers.

The conjecture about who controls the controller is resolved in constitutionalism through an operational form according to which the controller controls his controller. When this relationship of reciprocal controls is the object of a reasonable construction, it generates a constructive balance that encourages each of the bodies involved to satisfactorily fulfill its own functions. For this reason, in constitutional systems, two varieties of political controls are identifiable: improper, formal, or apparent controls and their own, material, or real controls. The former generates institutional dysfunction, because to the extent that they only fulfill an appearance, they lack positivity and evade the principle that in a democratic system there cannot be an organ of political power that is not subject to political control. The latter are those applied effectively, and in this case, what must be examined is the gradient in terms of compliance, which can range from maximum tolerance to extreme demand. Improper controls have no effect, and proprietary controls can have counterproductive effects if their use is distorted

by excess or by default. Hence, the nature of the controls is associated with their normative statement and the form of their effective application.

One of the greatest democratic aspirations is expressed through the “one man, one vote” principle, coined in England at the beginning of the 19th century by John Cartwright.¹¹³ But it is known that electoral formality does not reflect the actual situation of the exercise of power. Universal, free, direct, secret and periodic voting is exposed to influences derived from the dominance of interests over the media; the circumstantial impact of advertising messages; to the cultural filters that result from the religious, environmental, labor, educational and even emotional factors of the voters; to the personality of the candidates; to the dominant perceptions about institutional life; to the susceptibility of voters to be influenced by the use of public policies; to the evaluation of the performance of the institutions, and to a series of unforeseen events that generate fluctuations in the mood of a community. Electoral sociology studies highlight the vulnerability of the voter and the impossibility of having aseptic or neutral environments when making decisions that, on the other hand, are usually preceded by strong emotional charges and even animosity.

Constitutional institutions can offset the growing stresses generated by electoral systems. There are two levels of electoral competition: one, the one centered on the contrast between personalities, which is more accentuated in the internal selection processes of the parties (pre-campaigns), while there the differences in programmatic matters tend to be nuanced; another, the one that arises on antithetical programs. A highly competitive system can process an electoral contest between programs, but confrontations related to issues of personality are much more complex in terms of their consequences. Discrepancies based on programs are an invitation to reason, while those referring to questions of personality are a summons to passion. The struggle of personalities cannot be dispensed with, but good institutional design can mitigate its negative effects.

Just as the level of concentration of wealth in a country or region can be identified, accurate indices have not been developed to measure the concentration of political power. Not even studies related to ruling elites offer anything more than a transitory approximation regarding the way in which the exercise of power is distributed. In these circumstances, the best option

¹¹³ Cf. Paul, Alexander, *The History of Reform. A Record of the Struggle for the Representation of the People in Parliament (1884)*, London, Routledge & Sons, p. 19. Cartwright was a staunch opponent of corrupt political practices and saw universal suffrage as a solution. See Pocock, J. G. A., *The Machiavellian Moment*, Princeton, Princeton University Press, 1975, p. 547.

to get an idea about this problem is to determine the characteristics of the representative system and how efficient it works. This also does not exclude the distortions that may affect the integration and operation of the representative bodies, but at least it offers a reference from which it is possible to infer, along with other indicators related to the quality of democracy, how they are being processed, the demands and meeting the needs of a political community. The next step would require establishing the relationship between the distribution of political representation and the ownership of the governing bodies.

In presidential systems, the cabinet government modalities, according to which a nexus is drawn between the congresses and the government, translated into majority support for the program and for the ministers, at least in design, attenuates the effects of the concentration of political power and they sponsor the governance of these presidential systems.

The governance of a political system is related to its results, rather than its conceptual design and normative structure. The dilemma of choosing between a model that produced governance for a period, and a new model, whose effects are subject to testing, is resolved from the fact that an established system presents decreasing disadvantages.

You can distinguish between the opportunity and the need for a change. The first occurs when political agents identify a propitious moment to anticipate responses to foreseeable systemic problems; the need for change, on the other hand, occurs when these problems were not noticed or corrected in time. The attitude of the political agents and the governed varies if, after introducing the changes, the institutional conditions suffer a deterioration that is attributed to the change itself and not to the process of decline of the previous phase.

Not all institutional changes translate into immediate improvements, because it takes time to fit a new institutional assembly to the cultural environment. This phenomenon entails the paradox that changes to cement governance can produce a governance deficit during the adaptation phase of institutions and behaviors. The effects of the transition from one cycle to another were described in a very graphic way by Plato: when the universe reverses the direction in which it rotates, before it begins to move in the opposite direction, there is a moment when all movement ceases.¹¹⁴ With this myth he illustrated the implications of a change: when what existed ceases to function and what is being built barely appears, there is an arrest; a stage of apparent paralysis that preludes to the new beginning. In the renovation

¹¹⁴ *El político*, 270.

of the institutions that have become dysfunctional, there is an adjustment that must be foreseen so as not to frustrate the expectations that a change arouses, and so as not to affect governance.

By governability I understand *a process of legal, reasonable, controllable, and effective decisions, adopted by legitimate authorities, in an area of freedom, equity and institutional stability, to guarantee the population the exercise of their dignity and their civil rights political, cultural, and economic-social and to meet the requirements of society through regular, sufficient and timely benefits and services.*

The constitutional elements to achieve governability reside in three factors: public liberties, political responsibility, and institutional cooperation. When any of these elements are missing, a governance deficit, or even un-governability, can be registered. The base is represented by the set of freedoms for society to exercise its rights, with the limitations resulting from the environment, the effects of which must be reduced to the minimum possible. Furthermore, to complement the space of freedoms and enhance its effects, it is essential to build a system of political responsibilities. Only in this way is the capacity of the representative system strengthened and the exercise of public freedoms strengthened. Contrary to what is often claimed, the mechanisms of direct or semi-direct democracy generally expose society to manipulation of emotions. The handling of images and media of collective influence, direct or subliminal, reduces freedom of choice and turns voters into recipients of political marketing. On the other hand, the representative system, despite its imperfections and the agonistic nature of politics, allows at least to have suitable mechanisms to rationalize the relations between the organs of power. There is no constitutional state where the governed are not free and the governors are not responsible. The political irresponsibility of the rulers is a limitation on the freedom of the ruled.

This problem was identified from the dawn of constitutional democracy by Constant. In his *Principles of Politics*, he¹¹⁵ pointed out the factors that should give rise to the responsibility of ministers: the arbitrary use of power; the commission of illegal acts that affect the public interest; and attacks on freedom, security, and property of the governed. From his point of view, it was essential to empower the assemblies to declare ministers “unworthy of public trust.” With this, Constant differentiated legal responsibility from political responsibility. Acts contrary to the law gave rise to ordinary prosecution, while the political performance of a position could be assessed by parliament. In this case, his expression would translate into trust or censure.

¹¹⁵ Constant, Benjamin, *Principes de politique (1st ed., 1815)*, in *Écrits politiques*, Paris, Galimard, 1997, chs. IX and X.

Interpreted in the opposite sense, it can be said that where there is no public responsibility of public servants, a patrimonial sense of power prevails that symbolizes a kind of private appropriation of the public function.

The third factor that contributes to governance in a constitutional state is institutional cooperation. This is a difficult element to achieve because the electoral struggle implies the legitimate exclusion of the adversary, and because the political controls suppose the reciprocal limitation of the contenders. But governance is not based on tensions, but on forms of cooperation that allow building solutions for coexistence, that alienate the cohesion of the community (original sense of politics), and that are translated into effective satisfiers for the communities. community needs. Without instruments that contribute to institutional cooperation, governance is unfeasible.

Those mechanisms include the cabinet government and the reelection of legislators. Coalitions and agreements between parties become viable when leaders realize the need for long-term decisions. On the contrary, the pressures of permanent containment reduce the options for mutual understanding. The greater the propensity for electoral confrontation, which includes referendum arbitrations, the lower the institutional capacity to promote cooperative behavior among political agents.

In this study we have seen that the main parliamentary instruments to promote political responsibility are questions, interpellation, and the various forms of censorship. In turn, an ideal instrument to sponsor institutional cooperation is trust, translated into support for a government program or a set of shared policies, and for the people who must answer for its success. These mechanisms produce different effects, because while some have a restrictive purpose, others have a constructive one. A well-articulated constitutional system must effectively combine these ingredients.

A formula analogous to the Pareto optimum may be adequate to design constitutional institutions that guarantee democratic governance. In this sense, there will be a reasonable constitutional situation when to define the structure and functioning of the institutions the criterion is adopted that one situation is preferable to another, if no democratic institution is affected and at least one improves, this effort will be compensated by the greater collective well-being, by the best guarantee of the rights of the governed, and by the best opportunities for the governors to cooperate with each other, without prejudice to the political responsibility that incumbent upon them.

The viability of parliamentary instruments depends on the characteristics of the presidential systems. I identify three models: the Philadelphia

model, the Bonapartist or plebiscite model, and the cabinet model. The first, which corresponds to the American Constitution of 1787, is based on an electoral system that differentiates between the electoral legitimacy of the president and that of Congress, and that confers on the latter powers of control like those that were already common in England in the middle 18th century. The Philadelphia model was built with all the necessary reserves to avoid the risks of the monarchical exercise of power.

The Bonapartist or plebiscitary model arises in the French Constitution of 1848, according to which the people “delegated” the executive power to a president elected directly and by the majority, for which a second round was even foreseen if in the first nobody got that plurality of votes.

All the Latin American constitutions, the first in the world to embrace the presidential system, gradually abandoned the Philadelphia model and introduced the Bonapartist, more functional for the personal exercise of power. Bolivia adopted it in the Constitution of 1851; Peru, in 1856; Venezuela, in 1858; Ecuador, in 1861; El Salvador, in 1864; Honduras, in 1865; Brazil, since its first republican constitution, in 1891; Panama, since its first Constitution, in 1903; Colombia, through the 1905 reform to the 1886 Constitution; Uruguay, in its second Constitution of 1918. In general terms, there was no great urgency, because ways had been found to violate the electoral power of citizens, manipulating the results according to the will of the political leaders. local or national.

In the case of Mexico, the organic electoral law of 1857 was hardly subject to discrete adjustments over the following decades, and it did not represent an obstacle to the reelections of President Benito Juárez or President Porfirio Díaz, for example. However, in 1917 within the strategy announced by Venustiano Carranza and seconded by the deputies, the presidential figure was strengthened, giving a plebiscitary base to its origin. In his speech on the 1st of December 1916, Carranza clearly showed the effects of the plebiscite system that he proposed:

If the president is appointed directly by the people, and in constant contact with him by respecting their freedoms, by the broad and effective participation of the latter in public affairs, by the prudent consideration of the various social classes and by the development of legitimate interests, the president will have his support in the same town; both against the attempt of invading chambers and against the invasions of the Praetorians. The government, then, will be just and strong.¹¹⁶

¹¹⁶ Constituent Congress, *Diario de debates*, Querétaro, 1st. December 1916, t. I, no. 12.

Republics with presidential-parliamentary systems appeared in the last third of the 19th century. After the French Republic was proclaimed in 1871, a set of three laws passed between February 24 and July 16, 1875, made up the Constitution of the Third Republic. The election of the president was entrusted to the National Assembly (Law of February 25, article 2), the government was deposited in the cabinet, headed by the president (article 3 of the aforementioned Law), and the ministers held political responsibility (Article 6 of the aforementioned Law). The characteristics of brevity and generality of these norms, which were adopted with a transitory sense, and the intensity of the electoral politics of the time, gradually led to the consolidation of a full parliamentary system.

Although for different reasons, in Spain a process like the French one developed, almost at the same time. In February 1873 the Republic was proclaimed, extinguished in December of the following year. In that period, five presidents governed, who had responsible cabinets before the congress. The draft Constitution of 1873 was never approved, it provided for a presidential-parliamentary system according to which the executive power would be exercised by the Council of Ministers, whose president would be freely appointed and removed by the president of the Republic (articles 71 and 82). The President of the Republic would be the holder of the so-called “relational power”, according to which he could call the Cortes to sessions, appoint and remove government officials, and “personified the supreme power and supreme dignity of the Nation” (article 82). The ministers, for their part, could not form part of the Cortes or attend their sessions, except when summoned (article 65), and would have been responsible before the Senate (article 66).

The cabinet model, which was already foreshadowed in those cases of France and Spain, would appear better defined a few years later, in the constitutions of Germany, Finland and Portugal, and has expanded rapidly in the constitutionalism of the 20th century and the beginning of the 21st century. This is proven by the reception of parliamentary institutions in presidential systems.

The debate on the adoption of the parliamentary system has been present throughout Latin American political history, in a very special way during the 20th century. In Mexico it was an issue that was widely discussed during the revolutionary period, in the run-up to the 1916-1917 Constituent Congress. It is a question that was also aired, on different occasions, in Brazil, Chile, Cuba, Ecuador, Peru and Venezuela, for example.

The origin of the controversy over the presidential system is not in the objective deficiencies of this system, but in the arbitrary form of its exercise

and in the numerous and painful episodes of abuse that this performance has caused. For this reason, rather than suggesting the change of the system based on the inconsistencies and defects that characterize it, the possibility of renewing and rationalizing it has opened. This is, to a large extent, the purpose pursued with the incorporation of control institutions from parliamentary systems.

The rational design of these instruments must be carried out with a rigorous calculation of the desirable effects. Both the overflows that turn parliamentary politics into a frivolous spectacle, as well as the rigidity that makes the mechanisms of political control inapplicable, must be avoided. Both are extreme inconveniences that result from the dogmatic use of controls and that in practice affect their positivity. When they are introduced into the constitutional norm only with a spirit of political brilliance, but without a clear objective of their advantages, the result is negative. The use of controls must be surrounded by precautions that ensure their effectiveness and seriousness, at the same time.

The lack of legal consequences of the control mechanisms can make them a kind of opinion institutions, if their effects are contracted to expressing a point of view that, in the best of cases, supports or strengthens political currents. It is true that in a representative democracy even the fact that a point of view is generalized is important, but the functioning of political institutions demands a minimum of efficiency. In these cases, the use of parliamentary controls should be viewed with interest, because at least it proves that the distances between the presidential and parliamentary systems are narrowing and that in successive stages of development it will be possible to adopt more effective political control mechanisms.

Several Latin American constitutions consider the public, general, collective or state interest as the basis for the inclusion of political controls of parliamentary origin. However, most of those same constitutional texts do not specify the characteristics of this general, collective, or state interest. It is a type of norm with a very open texture, in relation to which legislators could rely on the jurisprudential criteria, national or international, related to these concepts. This is a valuable option, because to the extent that the political control exercised by the congresses incorporates considerations of jurisprudential origin, it will be taking a significant step in the development of a new modality of balances between the organs of power. In this way, the presence of the courts would influence one of the essential functions to preserve freedoms and legal security, which consists of controlling the exercise of power.

The effects of political controls are related to the majority that prevails in the body of political representation. In parliamentary systems, it is essential that the government have the support of that body, even if it is a minority government, while this political support is not essential in presidential systems, except where approval of the program of government is required and the confidence of the Congress for the investiture of the cabinet or whoever heads it. The foregoing means that in the parliamentary system, interpellations and motions of no confidence tend to be less frequent than in the presidential ones, since in the latter their formulation does not jeopardize, in all cases, government stability, while in parliamentarians they translate to the loss of the majority or the breakdown of the agreements that support a minority government.

The use of political controls of parliamentary origin is more flexible in presidential systems than in parliamentary systems, among other things because they do not usually put the permanence of the head of state and government at risk. Under these conditions, controls are not a factor of political instability, as they have been, when used stubbornly, in parliamentary systems. The models of parliamentary control adopted up to now by the Latin American presidential systems come from a generation of European norms that tried to remedy the excess assembly members, especially from the experiences of the 3rd and 4th French republics. The highest level of precaution corresponds to the German model of constructive censorship, which has made wide school in today's parliamentary constitutionalism.¹¹⁷

For the same reason, parliamentary controls could be less limited in presidential systems; systems that, by their very nature, are quite rigid. The simpler application of the forms of parliamentary control, especially questions and interpellations, would facilitate the relationship between Congress and the government because, without jeopardizing its stability, it would offer the opposing political forces the opportunity to make assert your reasons about running the country. For this reason, adopting in presidential systems the same prevention structures in the face of political controls that have become generalized in parliamentary systems would add degrees of difficulty to the exercise of those controls and would create the illusion that presidential systems they have been modernized when the opposite would be happening.

It is important to carefully examine institutional interactions, to see to what extent the simple transfer of a range of parliamentary institutions

¹¹⁷ The censorship mechanism adopted by the German Constitution (article 67) has found an echo in the Constitutions of Belgium (article 46), Spain (article 113), Hungary (article 33 A) and Poland (article 158), for example.

rationalizes presidential systems. In many cases the opposite happens: the feeling of frustration at the lack of the expected results affects the social perception of the Constitution and lowers the levels of trust in institutions and politics.

When acts of control produce practical consequences, their authors tend to apply them with greater responsibility, while the exercise of controls that only have a declarative scope fosters an exhibitionism that is contrary to the sobriety of a mature democracy.

The advantages of incorporating instruments of political control from the parliamentary system can be minimized by not carrying out an analysis that allows us to warn of possible negative institutional interactions. This is evident in the case of the dissolution of Congress, which, far from rationalizing the presidential systems, contributes to deepening its hegemonic powers.

The models of parliamentary control incorporated into Latin American constitutionalism have considered the militaristic experiences suffered by most countries in the hemisphere. This explains, in part, the lower urgency for its adoption noticed in Mexico.

Regarding the presidential systems of some African, Asian, and European countries, the motivations for adopting instruments coming from the parliaments have been different. In many of these cases there has been a transition from authoritarian forms of exercise of power to progressive democratization schemes. By adopting the presidential organization combined with parliamentary controls, a governable transition has been sought, without exposing ourselves to recurrent personalism. For this reason, a large part of the states that were governed by Soviet law adopted presidential systems with important elements of parliamentary control. The same occurs in several countries of Islamic law.

An examination of contemporary presidential experiences reveals errors and successes in institutional designs. Although it seems a contradiction, parliamentary controls may be less limited in presidential systems, because there they facilitate the relationship between Congress and the government without putting governmental stability at risk. These controls contribute to the balance between the organs of power, without diminishing the capacity of each one. Its function is not to diminish the power of the constitutional organs, but to rationalize their performance and facilitate institutional cooperation.

In a good part of the presidential systems where parliamentary instruments of political control have been incorporated, the results have been less

innocuous than it seems, since at least they have contributed to shaping a culture of greater demand in terms of the responsibility of the rulers. It can be said that there are parallels with the normative statements in electoral matters, which in general terms also preceded democratic electoral practices. Available empirical evidence shows that there are viable options that lead to the rationalization of presidential systems, without exposing societies to failure.

Additionally, it should be emphasized that political controls of parliamentary origin imply the presence of a responsible party system and therefore also controlled, with internal discipline that encourages cooperative behavior and strengthens the representative system. To achieve these objectives, it is necessary to contemplate the mechanisms that favor transparency in terms of the structure and functioning of the parties, inhibit circumstantial and contradictory alliances that disconcert citizens, and regulate such striking phenomena as transfuguism.

A distinction is usually made between parliamentary, presidential, semi-parliamentary and semi-presidential systems. Most of the systems built after the war, and even more emphatically those that have been developed after 1989, tend to incorporate elements that mitigate the deficiencies and enhance the advantages of those systems, without pretending preserve the hypothetical orthodoxy in the design of each system. With few exceptions, there are no systems that can be considered “pure”, if the traditional models in which the parliamentarian and the presidential were inspired are considered. In our time there are only governable and ungovernable systems, and generally the former has to adopt as many operational instruments as experience recommends.

The phenomenon of globalization has brought about an unusual exchange of experiences that include institutional ones. Familiarity with the forms of government that occur throughout the world is something that characterizes the world citizen of our time. That citizen does not distinguish so much the peculiarities of each system, as the capacity of the systems to produce satisfactory results. The new governance indices measure social demands and government responses, without differentiating between systems. For this reason, what counts is that the systems have the means to ensure democratic governance, without looking at the nomenclator that identifies them. The problems of our time go beyond institutional nominalism; they concern the political and legal realism that allows societies to achieve, consolidate and develop their democracies.