

FROM BIG BANG TO INCREMENTALISM: CHOICES AND CHALLENGES IN CONSTITUTION BUILDING

The second Melbourne Forum on Constitution Building in Asia and the Pacific

Manila, the Philippines

3-4 October 2017

Jointly organised by International IDEA and the Constitution Transformation Network

Hosted by Department of Political Science, University of the Philippines Diliman

Session III Moving between a Presidential and Parliamentary System

The Allure of Semi-Presidentialism in Korea

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Some disclaimers may be in order. The current Korean constitution provides for a president and a prime minister, but it is in no way a semi-presidential system of government. The prime minister is not chosen from among the members of the legislature (National Assembly) and is not accountable to it either. Rather, the president appoints the prime minister and it is to the president only that he owes his position. To be sure, the National Assembly must consent to his appointment and may “recommend” the removal of the prime minister from office but such recommendation is not binding on the president. Similarly, while the prime minister has the authority to recommend the appointment and removal of cabinet ministers, it is the president that has the final say. Regarding the powers of the prime minister, the constitution states that he “shall assist the President” and direct the various ministries “under order of the president.” He becomes acting-president in case the president is for some reason unable to discharge his duties. In sum, the Korean system is not one of “dual executive” as the prime minister is neither representative of nor responsible to the legislative branch.

This, however, is not to say that semi-presidentialism has no relevance for Korean constitutionalism. On the contrary, it has recently become the leading form of government espoused by politicians and commentators as an alternative to the current system, which critics like to characterize as a form of “imperial presidency.” Although some argue that the government can be operated in a semi-presidential style even under the current Constitution, the view is gaining momentum that a constitutional revision is needed to bring about effective changes in that direction. Whether the constitution will be revised remains to be seen, especially given the geo-political volatility in the region, but there is no doubt that semi-presidential system will be at the centre of discussion if and when the process does begin.

The idea of revising the constitution to change the form of government has been a staple of political and legal discourse in Korea ever since the founding of the modern republic in 1948. Although Korea’s constitution has gone through a total of nine revisions, proposals for yet another revision continue to

be heard from various political actors with diverse viewpoints. What seems to unite the different proposals is a negative assessment of the presidential system which has remained the country's basic framework of government. It is blamed for practically all the political instability and corruption Korea has experienced over the years. The argument is that the current constitution (adopted in 1987 as part of democratic transition) allows the president to exercise such concentrated powers that the system of checks and balances is often frustrated and invariably leads to the abuse of power by the president. This in turn, it is argued, results in political gridlocks between the government and the opposition and ultimately in extreme political unrest in the form of demonstrations by the general public.

This criticism of the presidential system in fact goes back to the drafting of Korea's founding constitution. According to the author of the basic draft of the 1948 constitution, Yu Chin-o, the government was originally designed to be a parliamentary system. This was only transformed, Yu claims, into a presidential form through strong-arm tactics by Syngman Rhee who was intent on becoming the first president of the new independent Korean state. The implication is that presidential system was adopted with less than full procedural legitimacy and for the purpose of enabling one person to control the government. Indeed, as Rhee's presidency became autocratic, arguments for parliamentary system gained more support as a possible means for preventing the rise of dictatorship. That is why after Rhee was ousted from office in 1960, the constitution was changed to a parliamentary form of government. This, however, did not last because the constitution was changed back to presidential system in 1962 following the coup d'état by general Park Chung-hee. It is thus not surprising that throughout Park's presidency, which became even more autocratic than Rhee's, the idea that true democracy requires a parliamentary form of government acquired greater attraction and support from opposition politicians and intellectuals.

Given this history, one might be forgiven for asking how and why semi-presidentialism started receiving so much attention in Korea. To answer this, we must understand the way in which Korea's democratic transition took place in 1987. Chun Doo-hwan, who seized power after Park's assassination in 1979, changed the constitution in 1980 but essentially maintained the system of indirect election of the president that had been in place since the infamous Yushin constitution of 1972 which Park had adopted to ensure his continuous re-election as president. Although the 1980 constitution provided for a seven-year single-term presidency and despite Chun's repeated pledge that he would leave office at the end of his term, his decision in early 1987 to ban any discussion of constitutional revision only intensified the opposition and the public's demand for democratic reforms. Foremost among the reforms called for at the time was the election of the president through a direct popular vote. Removing the system of indirect election that prevented and distorted the expression of the people's will was the most important step toward democratization. Thus, when Chun's government relented in the face of nationwide protest and agreed to a constitutional revision through negotiation with all three opposition parties, there was universal agreement that the president should be elected through direct popular vote. In sum, choosing the president with the people's own hands was (and still is) seen as the greatest achievement of the democracy movement in Korea.

Against this background, it is not surprising that the idea of a parliamentary system, which would either eliminate the presidency or reduce it to a ceremonial figurehead, became less attractive over time. At the same time, however, there has been a growing discontent that too much power is still concentrated in the office of the president, despite attempts in 1987 to significantly reduce its stature

and influence. To be sure, compared to the 1980 or 1972 constitutions, the current constitution is more balanced. The powers of the National Assembly were strengthened in various ways, individual rights were given greater protection, and a constitutional court was established to adjudicate various forms of constitutional disputes. Yet, of the six presidents who were elected under the current constitution, three have been the subject of criminal investigations for corruption and abuse of power.¹ The other three saw close family members prosecuted and convicted for various forms of influence peddling.² The lesson drawn by many from this unfortunate political experience is that under the current system the president is able to exercise, essentially uninhibited, too much power on too many matters without being accountable to anyone. Hence, the growing demands for a constitutional change which would drastically reduce the power and authority attached to the office of the president.

It is in this context that for the past decade or so the idea of semi-presidential system has been gaining traction among politicians and commentators. More often referred to in Korea as “decentralized presidential system” (*punkwŏnhyŏng taet’ongnyŏngje* 分權型 大統領制) the claim is that, as a popularly elected organ of the state, the National Assembly should be a co-equal partner of the president in governing the state. Since both have democratic legitimacy, the two institutions should divide up among themselves various decision-making powers and the means to enforce them. Under the current system, the criticism goes, the legislature neither participates in formulating any policy nor exercises any final meaningful oversight over the executive branch. The solution, it is argued, must therefore lie in strengthening the legislature and entrusting it with substantive powers while retaining the office of a popularly elected president, albeit with reduced powers.

Since at least 2009, there have been draft constitutions based on semi-presidential system drawn up by at least two different “consultative committees for constitutional revision” set up within the National Assembly. In addition, several civic groups have also proposed changing the constitution in the direction of weakening the presidency and bolstering the power and responsibility of the legislature. While there are meaningful differences among the proposals, it is worth noting that “decentralized presidential system” has become the generally preferred route for changing the government form in the event of a constitutional revision.

As for the expected benefits of the switch to a semi-presidential system, it is often argued that it will conduce to the increased responsiveness and accountability of the government as a whole. A popularly elected president will no doubt try to heed the people’s demands, but given his or her constitutionally guaranteed fixed term, there is less incentive to closely track the desires of the general public. By contrast, a cabinet formed within the legislature through a general election will likely be more responsive to the wishes of the electorate. And having two offices that have democratic legitimacy (though acquired through different routes) will promote a healthy competition in terms of trying to claim the mandate of the people.

Another benefit claimed for the semi-presidential system is that it is better suited for addressing the increasingly complex problems facing governments in this globalized and interconnected world. In a presidential system, it is claimed, every decision is ultimately made by one person who could not

¹ Roh Tae-woo was convicted and served time; Roh Moo-hyun committed suicide while under investigation; and Park Geun-hye was impeached and is still being investigated.

² Sons for Kim Young-sam and Kim Dae-jung and older brother for Lee Myung-bak.

possibly be an expert on every issue. By contrast, the semi-presidential model is more likely to provide a governance framework that encourages collaboration and deliberation among multiple actors with expertise in different fields.

Of course, opinions differ as to how to divide up government powers between the president and the prime minister/cabinet. A popular view has it that the president should be in charge of “external” issues such as foreign affairs and national defense while the prime minister and the cabinet should oversee all “internal” or domestic issues. Another view is that instead of the internal/external distinction which is bound to be unworkable, the president should manage the state’s longer-term strategy for the future or broader issues of social integration, leaving the prime minister to take care of the day-to-day administration. Yet, there is near universal agreement that such abstract labels will not provide sufficient guidelines when the president and the prime minister fail to cooperate with each other.

In this connection, the system of France and its experience with ‘cohabitation’ governments is often discussed in Korea as a reference point. Many point out that the French were able to avoid deadlocks during periods of cohabitation due to their political culture which places a premium on tolerance and compromise. By contrast, critics argue, such culture of cooperation and mutual respect has yet to take root in Korea. Opponents thus claim that a constitutional change in the direction of a semi-presidential government will not necessarily avert impasses and stagnation in the government in case the president and the prime minister are from different parties.

Another reference sometimes invoked by commentators is the case of Austria. This model, it is alleged, has the benefit of avoiding the problem of cohabitation because, although it has a dual executive, in practice real power is concentrated on the prime minister. Under normal circumstances, that is, the way in which government is operated is very close the parliamentary system. This, however, gives rise to the worry in Korea as to whether the general public would accept a system which essentially turns the popularly elected president into a figurehead or at best a political leader “in reserve.”

The issue of political culture, many commentators point out, shows that changes in the constitutional structure alone will not be enough to solve the problems facing Korean politics. It goes without saying that constitutional revision must be accompanied by changes in the statutes and regulations dealing with a host of issues including the electoral system and legislative procedure. For sceptics, of course, no amount of institutional change will be sufficient without a political culture that can support a semi-presidential form of government. Others counter by arguing that political culture is to a great extent forged by institutions and therefore can be nudged and transformed in the desired direction by altering the constitutional and legal framework.

Many advocates of the semi-presidential system argue that the current 1987 constitution has outlived its usefulness. As a product of democratic transition, the “87 System” may have facilitated the consolidation of democracy but it no longer meets the needs of the Korean society. The claim is that Korean politics is no longer dominated by larger-than-life figures whose stature and reputation might justify allowing the president to exercise extensive influence over state affairs. Times have changed such that less charismatic and uninspiring leaders must make decisions through tedious process of persuasion and cooperation. For that, they claim that the semi-presidential model is more suitable.

It should be noted, however, that even among those who agree on the need to overcome the “87 System,” not everyone believes that the semi-presidential system is the way to go. During the last presidential election in May 2017, following the impeachment and dismissal of Park Geun-hye, all five major candidates pledged to change the constitution in the direction of “decentralization,” i.e., reduction of the powers of the president. But only one specifically argued for changing to the semi-presidential system and he came in third place in the election. The main competition is from the proposal to reduce the president’s term to four years (from the current five) and to allow for re-election (which is specifically prohibited by the 1987 constitution). Disallowing the president from seeking re-election may have been necessary at the time of democratization to prevent a permanent one-person rule.³ The claim is that this however created an unforeseen by-product which was that the president did not feel the need to be responsive to the people’s wishes. The way to fix this, it is argued, is to permit re-election while shortening the term of office by one year. Plus, this has the merit of not going against the people’s apparent deep-seated desire to choose with their own hands a leader who will not be a mere figurehead.

In sum, the semi-presidential system has many supporters in current Korean political discourse. Yet, its appeal may lie in the fact that it has never been tried. It remains to be seen whether it will be adopted if and when the process of constitutional revision actually begins.

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³ The current constitution even states that any constitutional change in the president’s term of office shall not apply to the president in office at the time the proposal for revision is made: Article 128(2).