

POLITICAL NEUTRALITY OF PRESIDENTS IN PARLIAMENTARY SYSTEMS: BETWEEN CONTEXT AND CONSTITUTIONAL DESIGN

by Jeton Hasani

In partial fulfillment of the requirements for the degree of Master of Laws

LL.M. in Comparative Constitutional Law

Capstone Thesis

Supervisor: Prof. Daniel Smilov

Department of Legal Studies

© Central European University

June 7, 2020

Abstract

Political neutrality is a crucial trait that a president should have in virtually all parliamentary systems. Yet, while some presidents are reasonably neutral, others disregard neutrality requirements altogether. Besides sharp differences in presidential neutrality between countries, we find variations within a country as well, where some presidents are visibly more neutral than others. This thesis aims to explore what explains these differences in the political neutrality of presidents across and within countries. More specifically, this thesis addresses the question of whether presidential political neutrality is a feature that can be influenced by constitutional design, or whether it depends too much on context. I argue that presidential neutrality depends on both constitution and context (where the latter can also be adjusted by the former). First, the political neutrality of presidents depends on the political opportunities that the president faces (where these political opportunities are, in turn, determined by the constellation and relative strength of the government), and, secondly, on the modalities of (indirectly) electing the president. Both factors are equally relevant, but they determine presidential neutrality in different aspects. While lack of political opportunities fosters a politically inactive president, adequate modalities of electing the president (that is, broad support from the government and the opposition) significantly increase the probability of having an impartial (impersonal and objective) president. An impartial president may nevertheless be an independent political agent and vice versa, which is why both the political opportunity framework and modalities of electing the president are relevant to ensure a politically neutral president.

Table of Contents

Contents

Abstract	1
1. Introduction	3
2. Political Neutrality: The Theoretical Framework	7
3. Neutrality in Practice	16
3.1. The Constitutional Setting.....	16
3.2. Practical Neutrality Requirements	17
3.3. Neutrality in Context: Germany, Kosovo, and Turkey	23
3.3.1. General remarks.....	23
3.3.2. Germany	24
3.3.3. Kosovo.....	28
3.3.4. Turkey.....	32
4. Understanding Neutrality: Context and Constitution	38
4.1. Introduction	38
4.2. Political Opportunity Framework.....	42
4.3. Modalities of Electing the President	46
4.4. Curbing Non-neutrality	49
5. Conclusion	54
6. Bibliography	57

1. Introduction

On June 3, the Assembly of Kosovo elected a new government, with 61 out of 120 votes. Shortly thereafter, a Member of Parliament, who had declared a few days earlier that he would not vote in favor of the new government, claimed on an interview that he nevertheless changed his mind, because the President of Kosovo, Hashim Thaçi, had come to visit him at his home at 01:00 AM to convince him to vote in favor of the new government. Given that they are longtime friends, he agreed to listen to the President and vote accordingly.¹ This vote was decisive for the election of the new government. Later that day in a television interview, President Thaçi admitted that he did indeed influence the MP, and thanked the MP for showing respect towards him by voting as directed.²

For a president who is supposed to stay above daily politics and act as an impartial moderator, Thaçi's political engagement in this case certainly breaches political neutrality requirements. Thaçi's behavior is unimaginable to happen today in, say, Germany, where no president has been as severely non-neutral as him (whose non-neutrality, as will be seen later, is by no means confined to the instance above). Why do these differences exist between countries in terms of presidential neutrality? Is it the constitutional design that is to blame, or rather the political context? Apart from differences between countries, we find differences in the degree of presidential neutrality within a country as well. Not all presidents of Kosovo were non-neutral as Thaçi. President Jahjaga, just before him, was adequately neutral. What explains this variation, too? Could it be, as some suggest, a matter of personality? This thesis sets out to explore the

¹ "Shala thotë se u bind nga presidenti e ish-kryeministri, reagon KDI-ja," *Koha Ditore* (June 3, 2020).

² T7, "PRESSING, Hashim Thaçi - 03.06.2020," *Youtube* (June 3, 2020), at: <https://youtu.be/Qquv0vyv-uY?t=865> (accessed in June 7, 2020).

reasons for these differences in the political neutrality of presidents across and within countries with a parliamentary system. After determining the factors that explain presidential neutrality or lack thereof, the concern is to see whether anything can be done through constitutional design to ensure that the president will be neutral while in office.

The reason why we focus on presidents within typical parliamentary systems is that it is in these systems where the notion of a neutral head of state gains its most faithful expression, where the president is modeled after the constitutional monarch as a “neutral power,” under the influence of French theorists of the 18th century. Whereas, as will be explained later in more detail, in other, non-parliamentary systems, presidential neutrality may not have the same expression. In a nutshell, what we mean by a neutral president is: 1) a president that does not interfere in day-to-day politics and governing, and 2) a president that is impartial, i.e., impersonal (including non-partisan) and objective (committed to facts and truth). In non-parliamentary systems that prescribe a neutral president, usually, it is not required that the president is neutral in the first aspect, but only in the second (and often not to the same extent as in parliamentary systems). Whereas, in parliamentary systems, historically (mainly in the context of a constitutional monarchy) and in its contemporary conception, the head of state is meant to be neutral in both aspects.

A neutral president is very important for the functioning of parliamentary systems. Only a neutral president can serve as an effective arbitrator in times of deadlock and political disputes between other (active) powers. Non-neutral (politically engaged or biased) presidents will lack the moral authority to serve as a third party when most needed. Additionally, a neutral president can serve as an effective check on the other branches and maintain their equilibrium. On the other hand, a non-neutral president can work to the detriment of the main active political forces, namely the parliament and government. For instance, they might delay and cause deadlock in

policymaking, obstruct the formation of the government, be detrimental in some policy areas (by acting as independent political actors as in, e.g., foreign affairs and military policy, where institutions are supposed to act with one voice). A non-neutral president can also be divisive and work to the detriment of any party, rather than serving as a unifying figure; etc. Thus, it is evident that in parliamentary systems political neutrality is one of the most crucial traits that a president should have.

In the first section, I present a theoretical framework of political neutrality. First, I elaborate on the general role and status of presidents in parliamentary systems, and then on the meaning and properties of presidential political neutrality. Afterwards, I differentiate political neutrality with closely related terms, such as impartiality, activism, and neutral power. I present a brief historical survey of *pouvoir neutre*, starting from the pre-Constant authors to Schmitt and Kelsen in the Weimarian period and its modern-day conception.

In the second section, I analyze neutrality in practice. First, I present the constitutional setting for presidential neutrality, addressing the question of how can we spot that in a chosen country the president is supposed to be neutral. Then, I take a closer look at what exactly, in practical terms, does political neutrality require from a president and when will presidents be in breach of political neutrality. In the last part of this section, I look closely into (non-)neutral presidential behavior in three countries: Germany, Kosovo, and Turkey (all parliamentary systems; Turkey until 2014).

After seeing presidential neutrality in context in these three countries, in the last section, with this context in mind, I deal with the central aim of this thesis, namely, to determine whether constitutional design is really relevant in ensuring a neutral president, or is political neutrality too contextual. First, I determine what factors account for the variation in degree of presidential

political neutrality across and within countries. The main concern of this thesis is what is most relevant, constitutional design or context, rather than what specifically works to ensure a neutral president. Nevertheless, after I determine that political neutrality is dependent on some aspects of constitutional design *and* some specific contexts (which, too, can be influenced by constitutional design), I briefly present some practical constitutional suggestions that might help to increase the probability that the president will behave neutrally in office.

2. Political Neutrality: The Theoretical Framework

Regarding the role and status of the president in a political system, two main modes of constitutional arrangement exist: the president is either a neutral figure, or an active political agent.³ In parliamentary republics, which are the focus of this thesis, the president is neutral. In such systems, as a rule, the president does not participate in day-to-day governing of the state; rather, that is the function of the government. Accordingly, the president is not considered to be part of the traditional three powers, but instead presents a category of its own: the president is a neutral power, standing above (but not being superior) to the three traditional ones.⁴ Following this model of a politically neutral head of state, the president in a parliamentary system has a limited mandate: they represent the country, are involved in the appointment of certain officials, guarantee the smooth functioning of institutions—but they do not determine the political direction of the country.⁵ Historically, we encounter such presidents first in the earliest parliamentary republic, the French Third Republic. The president of the French Third Republic was to perform all the ceremonial, civic and constitutional functions that were previously performed by the monarch—but would not lead policymaking and exercise executive power.⁶

In parliamentary systems, the neutral president is expected to make a conscious effort to stay disengaged from the political competition of the other powers of the state. She may not try to

³ European Commission for Democracy through Law (Venice Commission), “REPORT on the revision of the Constitution of Armenia,” CDL (2000) 102: §13.

⁴ Although presidents may be nominally part of the executive branch in some parliamentary systems (e.g., in India), in practice, they do not embody executive power, just as their counterparts in constitutional monarchies.

⁵ European Commission for Democracy through Law (Venice Commission), “Republic of Moldova: OPINION on the proposal by the President of the Republic to expand the President’s powers to dissolve parliament,” CDL (2017) 017: §20; Dragoljub Popović, *Comparative Government* (Edward Elgar Publishing, 2019): p. 47.

⁶ Elliot Bulmer, *Non-Executive Presidents in Parliamentary Democracies* (International IDEA, 2017): p. 5.

intervene in the realm of practical politics. What she may do, however, as a neutral power, is to maintain the constitutional order by guaranteeing the equilibrium and smooth functioning of these other (active) powers, as suggested most prominently by Benjamin Constant in the 18th century. To realize this maintenance, as a so-called arbiter, the neutral president might come into action especially in cases of institutional deadlock and political disputes between other powers. But she may not engage in everyday governing and everyday politics. The neutral president stays out of these political affairs so when the pressing need comes for their direct involvement, namely in solving disputes and deadlock, they are still seen as a credible third party capable of their effective resolution.

In addition to requiring that the president is not immersed in daily politics and governance, neutrality also requires that the president, upon exercising his constitutional powers and responsibilities, does not take sides or represent any narrow interest, such as, for instance, only those of the government or a particular political group.⁷ A neutral president also does not take into account their own interest and private motives. Neutrality requires that the president aims for objectivity by being committed to facts and truth, and, as Weber emphasizes, “personally motivated favour and valuation” are not compatible with “the rule, and the rational pursuit of ‘objective’ purposes.”⁸ (For more concrete political neutrality requirements, see Chapter II Neutrality in Practice.)

Political neutrality has many shades and degrees. Rather than being black and white, we have a spectrum of neutrality and some presidents are more neutral than others. Moreover, in some

⁷ A president that, represents the interests of a political party, takes their side, or is affiliated with it, is considered a partisan president. When I use the term (non-)partisan president throughout the text, I mean it in this sense, and not as some authors use it to denote a president who was (not) associated with a political party before taking office.

⁸ Ioannis Tassopoulos, “Neutrality,” *Max Planck Encyclopedia of Comparative Constitutional Law* (2017): ¶31.

systems presidential neutrality requirements are quite softer than is typical for parliamentary systems. For instance, although some semi-presidential republics such as Romania prescribe a neutral president, this does not include prohibiting the president from being an active political agent. Being elected directly by popular vote, the president runs in the elections being affiliated with a political party and with a particular political agenda, which he then tries to execute once in office, rendering him automatically as politically committed.⁹ Not only the Romanian President can be a political agent, but, as the Romanian Constitutional Court held, although the President is constitutionally required to give up party membership upon taking office, they are allowed to have a partisan leaning: the President may “sympathize” with any political party.¹⁰ On the other hand, in some presidential systems such as the United States the political neutrality of the president in this sense is inconceivable.¹¹

⁹ Elena Simina Tănăsescu, “The President of Romania, Or: The Slippery Slope of a Political System,” *European Constitutional Law Review* 4, no. 1 (2008): pp. 66, 73-4; Sergiu Gherghina, Alexandra Iancu, and Sorina Soare. “Presidents and their parties: Insights from Romania” In *ECPR General Conference, Prague, Czech Republic* (2016): pp. 7-11; 18-22. For France, see Łukasz Jakubiak, “The Parliamentary Genesis of the French Semi-Presidentialism against the Background of the Process of Presidentialisation of the Fifth Republic,” *Politeja-Pismo Wydziału Studiów Międzynarodowych i Politycznych Uniwersytetu Jagiellońskiego* 15, no. 53 (2018): pp. 210-1, 216-7; Jack Hayward, “From Republican Sovereign to Partisan Statesman,” in Jack Hayward and Martin Harrison, *Degaulle to Mitterrand: President Power in France* (NYU Press, 1993): pp. 20-35; David Marrani, “Semi-Presidentialism a la Francaise: The Recent Constitutional Evolution of the Two-Headed Executive,” *Constitutional Forum* 18, no. 2 (2009): pp. 70-1. Meanwhile, some semi-presidential systems such as Montenegro do not prescribe the political neutrality of the president at all: Zlatko Vujović and Nikoleta Tomović, “The Presidentialisation of Political Parties in Montenegro: A Limited Semi-presidentialism,” in Gianluca Passarelli, *The Presidentialisation of Political Parties in the Western Balkans* (Palgrave Macmillan, 2019): p. 121.

¹⁰ Advisory Opinion No. 1/2007, OJ No. 258, 18 April 2007. According to the Romanian Constitutional Court, “the Constitution does not forbid the President to maintain his relationships with the political party that provided him support throughout the elections or with any other political parties. Such a ban would not be in the spirit of the Constitution if the President is elected based on a direct, individual vote, owing to his political agenda and if he is accountable to his voters for the fulfilment of this programme. It is obvious that in order to put his programme into practice, the President may carry out a dialogue with the political party of which he used to be a member or with a completely different political party that could provide support in terms of the implementation of this programme.” Tănăsescu, “The President of Romania,” p. 70.

¹¹ Douwe J. Elzinga, “Monarchy, Political Leadership, and Democracy: On the Importance of Neutral Institutions” in John Kane, Paul ‘t Hart, and Haig Patapan (eds.), *Dispersed democratic leadership: Origins, dynamics, and implications* (Oxford University Press, 2009): p. 116; Fred I. Greenstein, “Presidents, their styles and their leadership,” in Joel Aberbach & Mark Peterson (eds.), *Institutions of American democracy: The Executive branch* (Oxford University Press, 2005): p. 236. Notwithstanding, there are several presidential systems that have some sort of tradition of presidential neutrality in a narrow sense (e.g. Chile, Peru, Mexico), which is usually confined to requiring inclusive relations of the president with other parties, especially during elections: Harold E. Davis, “The Presidency in Chile,”

We should differentiate between political neutrality and other related terms, such as impartiality, presidential activism, and neutral power. Neutrality shares many characteristics with impartiality, but they cannot be used interchangeably as terms (as is the case sometimes, for example, in the literature on Turkey and Italy), since they differ in a crucial point. Both neutrality and impartiality require a president being impersonal (including non-partisan) and both are associated with objectivity (commitment to facts and truth). Where they differ is that, while neutrality requires in addition complete disengagement of the president with ordinary political affairs, impartiality does not: impartiality would only require that, in case of engagement, the president is objective and does not take sides.¹² Because of this difference, we will not use as an antonym of neutrality the term biased, partisan and the like. Instead, we will use the term non-neutral.

Political neutrality is also different from presidential activism. First, a president that is active, in the sense of (as understood most commonly in parliamentary systems) using intensely their discretionary powers,¹³ may or may not be neutral when doing so. For instance, intense legislative veto use will not mean that the president is non-neutral, if they did not use this veto with the intention of, say, favoring the interests of a particular political group or narrow business interests. On the other hand, political neutrality cannot be confined to non-neutral presidential activism either, since a president can be non-neutral also passively, e.g., by not using their veto power when they should have done so, for partisan calculations. In fact, as we will see, sometimes precisely as an expression of their neutrality and non-partisanship, presidents can be very active.

Presidential Studies Quarterly 15, no. 4 (1985): p. 712; “2020 elections: Election board says Peru President did not breach neutrality principle,” *Andina* (Jan 2020); “Court upholds Calderon election victory in Mexico,” *The Irish Times* (Sep 2006).

¹² Tassopoulos, “Neutrality,” ¶8-9, 32.

¹³ Philipp Köker, *Presidential activism and veto power in Central and Eastern Europe* (Springer, 2017): pp. 4-5.

Political neutrality is also different from neutral power as such, the latter being a broader concept, a *power*, with certain functions and objectives (e.g., moderation), while political neutrality is simply a trait that the neutral power shall have.

Neutral power is a concept originating from 18th century France, with its main proponent being Benjamin Constant. Although the idea of a third, moderating *pouvoir neutre* can be found earlier that century among other French authors,¹⁴ it was Constant who developed the concept most profoundly. For Constant, every constitutional system should have a power that has no active role in the state, but instead serves as a *pouvoir modérateur*, preventing the other (active) powers from collapsing into gridlock, or preventing their coalition and arbitrary rule.¹⁵ The neutral power would accomplish this function in two principal ways: through its powers of dismissal (of the executive), and of dissolution (of the legislature). This way, the neutral power becomes “the judiciary power of other powers.”¹⁶ Because the constitutional monarch had neither legislative nor (active) executive authority, and because he was a politically unaccountable power, non-renewable periodically, he was best suited to serve as the neutral power. (Constant was not claiming to be devising something new; he deemed that neutral power was already a reality in the English constitutional monarchy, and that France should follow suit.)¹⁷ For Constant, the neutral head of state remains outside of the political competition of the other powers of the state. Only by staying politically neutral is the head of state then able to serve as an arbitrator who can restore peace and

¹⁴ These earlier ideas of a neutral, moderating power were not necessarily linked with a head of state (even Constant only later linked neutral power with a constitutional monarch). For Poverel, this authority would be embodied in a *conseil de révision*, and for Hérault de Séchelles this would be a “national jury.” For several of these authors, neutral power would have a limited function (e.g., for Polverel, the *conseil* would only have the right to veto laws; for Lavicomterie, the “tempering power” should only seek to keep the executive within its bounds). The general idea of a neutral power also appeared briefly in Necker’s works, and Pétion warned on the importance of a third, regulating power, without which republican institutions would likely collapse: Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830* (Princeton University Press, 2016): pp. 228-9.

¹⁵ William Selinger, *Parliamentarism: From Burke to Weber* (Cambridge University Press, 2019): pp. 124-5.

¹⁶ Craiutu, *A Virtue for Courageous Minds*, p. 227.

¹⁷ Selinger, *Parliamentarism*, pp. 125-6.

facilitate cooperation between other powers.¹⁸ He keeps distance from this ordinary political competition by leaving executive power to the government¹⁹ and by staying above all political parties.²⁰ The neutral power's interest "is not that any of these powers should overthrow the others, but that all of them should support and understand one another and act in concert."²¹ The neutral head of state "never acts in his own name. Placed at the summit of all powers, he creates some, moderates others, directs political life in this way, tempering without taking part in it. It is from this that his inviolability derives."²² Only by not participating in political decision-making and by not embroiling himself in political controversies, can the neutral power attract allegiances beyond partisan divisions and "symbolize the values of justice, impartiality, and national unity."²³

Later on, another important author, Max Weber, favored a neutral constitutional monarch, who would not get involved in political decision-making and would not side with any political party.²⁴ Only by being neutral would the monarch be able to "facilitate a conflict-free solution when the political mood or distribution of power is ambiguous."²⁵ As such, constitutional monarchy stands as barrier to excessive political ambition. After the end of World War I and the abdication of the Kaiser, Weber had to look for replicating these monarchical benefits via republican institutions. Such a substitute of the constitutional monarch would be the republican head of state, who, according to Weber, in order to have the necessary level of legitimacy, should be elected directly by the people and have powers beyond those of the constitutional monarch in

¹⁸ Craiutu, *A Virtue for Courageous Minds*, p. 225.

¹⁹ Markus J. Prutsch, *Making sense of constitutional monarchism in post-Napoleonic France and Germany* (Palgrave Macmillan, 2013): p. 183; Valentino Lumowa, "Benjamin Constant on Modern Freedoms: Political Liberty and the Role of a Representative System," *Ethical Perspectives* 17, no. 3 (2010): p. 401-402.

²⁰ Craiutu, *A Virtue for Courageous Minds*, p. 230.

²¹ Prutsch, *Making sense of constitutional monarchism*, p. 183.

²² Craiutu, *A Virtue for Courageous Minds*, 232.

²³ Selinger, *Parliamentarism*, p. 131.

²⁴ *Ibid.*, p. 202.

²⁵ Max Weber, "Parliament and Government in Germany under a New Political Order," in Peter Lassman (ed.), and Ronald Speirs (trans.), *Weber: Political writings* (Cambridge University Press, 1994): p. 227.

England.²⁶ Writing on the supposed role and function of the president of the Weimar Republic, Carl Schmitt certainly endorsed Weber's latter point. The president should not be merely a figurehead. As a neutral power, the directly-elected president should be particularly powerful, with broad executive powers²⁷—but, who, nevertheless, would not be the sovereign ruler of the nation (he would not be a higher third, but a neutral third, the former being the “people”).²⁸ But, unlike Weber, Schmitt saw the president as an alternative to the Parliament, not merely as a counterweight to it.²⁹ According to Schmitt, the Weimarian parliament is no longer a body that represents the political unity of the nation, since its members cannot stand above particularistic interests. Many parties of Reichstag are not even recognizing the constitution, while others are having trouble to cooperate with one another. This is producing unbearable political instability and weak governance.³⁰ Hence, a neutral force is needed for proper representation: the president, being elected directly by the people, represents the German nation as a whole and, by virtue of his political authority, acts as *the* guardian of the constitution.³¹ The president is an active power (a commander and a rule-maker) only during the state of emergency, while in ordinary times it is a *pouvoir préservateur*.³² Schmitt argued that the role of the president as a *pouvoir neutre et régulateur* is definitely implied in the constitution of Weimar.³³ On the other hand, Hans Kelsen

²⁶ Selinger, *Parliamentarism*, p. 203.

²⁷ Detlef von Daniels, “Politics in Really Hard Times: The Jurisprudence of Crisis” (APSA 2010 Annual Meeting Paper, 2010): p. 8.

²⁸ Jeffrey Seitzer (ed.), *Carl Schmitt: Constitutional Theory* (Duke University Press, 2008): p. 369.

²⁹ Antonino Scalone, “Führerprinzip and democracy in Weber and Kelsen,” in *The Reconstruction of the Juridico-Political* (Routledge, 2015): pp. 27-43.

³⁰ Joseph Bendersky, “Carl Schmitt in the Summer of 1932: A Reexamination,” *Revue européenne des sciences sociales* 16, no. 44 (1978): p. 42; Joseph Bendersky, *Carl Schmitt: theorist for the Reich* (Princeton University Press, 2014): pp. 109-12.

³¹ Bendersky, *Carl Schmitt*, pp. 111-3; Pasquale Pasquino, “Majority rules in constitutional democracies” in Stéphanie Novak, and Jon Elster (eds), *Majority decisions: Principles and practices* (Cambridge University Press, 2014): pp. 226-7.

³² “The guardian of the constitution: Schmitt on pluralism and the president as the guardian of the constitution” in Lars Vinx (ed.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge University Press, 2015): p. 156.

³³ “The guardian of the constitution,” pp. 152, 157; Bendersky, *Carl Schmitt*, p. 112.

has issues with Schmitt's insistence that the president can be neutral. Being elected by the people, instead of representing a (fictitious) general will of the unified people, the president for the most part represents the fraction of society that elects him.³⁴ In addition, to regard the method of election as a guarantee that the head of state will think of their function as that of a conflict mediator "is possible only if one closes one's eyes to reality."³⁵ Furthermore, observes Kelsen, it is particularly suspicious that attempts for an unmodified transfer of Constant's ideology to a republican head of state are being followed by tendencies to enlarge his powers. This necessarily turns the president into the *de facto* sovereign ruler of the state, although Schmitt is refusing to name it so. Such a president cannot serve as the guardian of the constitution.³⁶ Indeed, as later developments showed, rather than serving as an effective authority of constitutional guardianship, presidential supremacy "became the entering wedge for Hitler's dictatorship."³⁷ (Lastly, it must be stated that in its modern-day conception of a *pouvoir neutre*, the head of state is not perceived as the sole neutral power. Constitutional courts and independent agencies, broadly speaking, are also considered to pertain to the neutral power.)³⁸

In the next section, we are going to look at neutrality in practice. After some general remarks, we will focus on the constitutional systems of Germany, Kosovo, and Turkey, analyzing

³⁴ "Who ought to be the guardian of the constitution? Kelsen's reply to Schmitt" in Lars Vinx (ed.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge University Press, 2015): p. 208; Daniels, "Politics in Really Hard Times," p. 8.

³⁵ "Who ought to be the guardian of the constitution?," p. 209.

³⁶ *Ibid.*, p. 180.

³⁷ Karl Loewenstein, "The presidency outside the United States: a study in comparative political institutions," *The Journal of Politics* 11, no. 3 (1949): p. 490.

³⁸ András Sajó, "Concepts of Neutrality and the State," in Ronald Dworkin (ed.), *From Liberal Values to Democratic Transition: Essays in Honor of János Kis* (Central European University Press, 2004): p. 127; Ludger Helms, "The Federal Constitutional Court: Institutionalising Judicial Review in a Semisovereign Democracy" in Ludger Helms (ed.) *Institutions and Institutional Change in the Federal Republic of Germany* (Palgrave Macmillan, 2000): p. 97; András Sajó, "Independent Regulatory Authorities as Constitutional Actors: A Comparative Perspective," *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica* 48 (2007): pp. 32-3; Carl Schmitt, "The Age of Neutralizations and Depoliticizations," in Carl Schmitt, *The Concept of the Political (Expanded Edition)* (The University of Chicago Press, 2007): p. 90.

the practice of their presidents and to what extent were they neutral in the political contexts they operated. In the section after that, with this context in mind, we are going to try to understand neutrality and explain why some presidents are more neutral than others.

3. Neutrality in Practice

3.1. The Constitutional Setting

Neutrality of presidents as a term is seldom mentioned expressly in the constitutional text. So, how do we know that in a chosen country a president is supposed to be neutral? A starting point is to check whether the constitution forbids the President from being affiliated with a political party upon taking office.³⁹ The Turkish Constitution used to read that if the elected President “is a member of a party, his/her relationship with that party shall be severed” (art. 101). (This provision was abolished with the 2017 amendments, which introduced a presidential republic in Turkey.) Similarly, the Kosovo Constitution reads that “[a]fter election, the President cannot exercise any political party functions.”⁴⁰

Another (subtler) provision which denotes a neutral president, is when the constitution reads, as for instance in Kosovo, that the President “guarantees the constitutional functioning of the institutions,”⁴¹ or, as in France, that the President “shall ensure, by his arbitration, the proper functioning of the public authorities.”⁴² These and similar provisions designate a moderating president that is supposed to stay above politics—although to the expense of blurring the president’s place in the institutional system, and thus potentially helping to legitimize any improper intervention from their side.⁴³

³⁹ Levent Gönenç, “Presidential Elements in Government: Turkey,” *European Constitutional Law Review* 4(3) (2008): p. 497.

⁴⁰ Art. 88 of the Kosovo Constitution.

⁴¹ Art. 84(2) of the Kosovo Constitution.

⁴² Art. 5 of the French Constitution.

⁴³ Robert Elgie, “France,” in Robert Elgie (ed.) *Semi-Presidentialism in Europe* (Oxford University Press, 1999): p. 76.

There might be other provisions which denote presidential political neutrality as well, such as the provision in constitutions of Kosovo and Albania that the president “represents the unity of the people.”⁴⁴ Meaning, among others, that the president should not take sides or represent narrow political interests in a biased way.

All the above-mentioned provisions indicate a neutral president in the party-political sense only, i.e., a president that stands above partisan divisions and everyday politics. Such provisions alone do not require additionally that the president is not a substantial actor in policymaking. On the other hand, in parliamentary systems from the 19th century onwards, directly under the influence of Constant’s doctrine,⁴⁵ even if nothing like these above-mentioned provisions exist in the constitution (as in Germany), it is inherent that the president is neutral. The catalog of competences and prerogatives of the president that is typical for parliamentary systems (e.g., the president’s role in government formation, in dissolving parliament, promulgating or vetoing laws, the president’s political unaccountability, etc.), make sense only if seen from the lens of a president as a *pouvoir neutre*.⁴⁶ Add here that the government is typically assigned the task of determining and conducting the policy of the country—designating the head of state as nothing but a neutral power, in both the party-political sense, and as a passive figure, as Constant and Weber suggested for the constitutional monarch. Whether that will unfold in practice that way is another matter.

3.2. Practical Neutrality Requirements

In specific terms, in parliamentary systems political neutrality requires first that the president is a political outsider, without any political ambitions. As Constant suggested, the monarchical head

⁴⁴ Art. 83 of the Kosovo Constitution; art. 86 of the Albanian Constitution.

⁴⁵ “The guardian of the constitution,” p. 152-3.

⁴⁶ Ibid.

of state tempers but does not take part in the political life; this is one of the traits that makes him best suited to serve as the neutral power.⁴⁷ In more practical terms, being a political outsider means that the neutral president does not try to act as an executive and does not intervene in policymaking. The political force of the state is the government.⁴⁸ A neutral president does not play a material role in ordinary political processes, and does not even initiate any political action which might raise concerns or provoke criticism. They must not try to set any political agenda, lobby publicly or behind the scenes about any particular political course of action, or try to impose some policies and block others. A president behaving consistently with such neutral projection is commonly regarded as a figurehead.

Another practical requirement of political neutrality is that the president must not exercise any political party functions. Upon claiming office, they should give up any party membership or formal affiliation with a party. (The Kosovo Constitutional Court held that this requirement applies only for the President, but not for the Acting President, which *ex officio* is the President of the Assembly.)⁴⁹

Further, political neutrality requires that the president does not blatantly oppose the government or any political party. Presidents should not make statements unnecessarily critical of

⁴⁷ Aurelian Craiutu, "A Tale of Two Moderates," *History of European Ideas* 39:1 (2013): p. 149; Selinger, *Parliamentarism*, pp. 125-6.

⁴⁸ That the president stays out of policymaking stands even for spheres of policy widely held by presidents in parliamentary systems to be their prerogative, such as foreign affairs. For instance, although the German Basic Law does not even mention the Government when it comes to foreign affairs (it only mentions the President, assigning him the role of the country's representative for purposes of international law), it is clear-cut that the German government conducts the foreign policy of the country as well. As the country's representative, the president does not determine and conduct the internal political will: he simply may declare it formally abroad. Stefan Kadelbach, "International Treaties and The German Constitution" In Curtis A. Bradley (ed), *The Oxford Handbook of Comparative Foreign Relations Law* (Oxford University Press, 2019): p. 175; Jochen A. Frowein, and Michael J. Hahn, "The participation of parliament in the treaty process in the Federal Republic of Germany," *Chi.-Kent L. Rev.* 67 (1991): p. 362; Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*: 2nd ed. (Duke University Press, 1997): p. 149.

⁴⁹ Constitutional Court of Kosovo, case no. KO 97/10 (22 December 2010).

governmental policies or party activities. I say unnecessarily because sometimes this political engagement of the president might be permissible (at least from a formal perspective). For instance, as the German Constitutional Court found, the President encouraging protests against a “nutcase” political party does not infringe the Basic Law. In 2013, commenting on the behavior of a far-right, ultranationalist party (NPD), who organized several protests against an asylum accommodation center in Berlin-Hellersdorf, President Joachim Gauck, in front of a student audience, stated: “We need citizens who take to the streets and show the nutcases their limits. All of you are called upon to do so.” The Court ruled that these statements as such are not objectionable under constitutional law. The statements would be objectionable only if the President used them “to take sides in a way that evidently neglects the integrative task of his office, and thus takes sides arbitrarily.”⁵⁰ But, in this particular case, the statements were warranted since they merely called for peaceful citizen involvement against political views which present a threat to the free democratic basic order (while “nutcase” was not meant in a defamatory way, when seen in context). Therefore, the Federal President did not cross the constitutional boundaries regarding negative remarks against political parties, which might otherwise violate the parties’ right to equal opportunity. In other words, such statements made by the president will not be constitutionally objectionable only “insofar as they are evidently aimed at the common good, and not given in order to ostracize or favour a particular party for their own sake.”⁵¹ Specifically, those statements that will be insulting, or present a form of “abusive criticism”—that do not contribute to a factual discourse—will be objectionable. As for this particular instance, in making these statements,

⁵⁰ BVerfG, Judgment of the Second Senate of 10 June 2014 - 2 BvE 4/13 -, §22, 34. See also Thomas Kliegel, “Freedom of Speech for Public Officials vs. the Political Parties’ Right to Equal Opportunity: The German Constitutional Court’s Recent Rulings Involving the NPD and the AfD,” *German Law Journal* 18, no. 1 (2017): pp. 189-212.

⁵¹ BVerfG, 2 BvE 4/13, §29.

President Gauck “positioned himself against ideologies which are ignorant of history, racist and xenophobic, and rallied listeners to use democratic means to prevent such ideologies from becoming accepted. In doing so, the respondent did not exceed the limits of his representative and integrative functions, nor did he arbitrarily position himself against the applicant.”⁵² Nevertheless, although in these constitutionally unobjectionable cases the presidents might not cross constitutional boundaries formally, they might, in effect (perhaps in different circumstances) diminish their perception as a neutral figure. Also, it is to be decided on a case-by-case basis whether political statements of the president crossed the line and were arbitrary. Presidents might not know beforehand whether their statements will conform to such neutrality standards, hence every critical statement of party-governmental behavior or policies is a gamble that the president makes with their office. Thus, presidents should tread lightly in this uncertain territory.

Equally important is the requirement that the president does not support any political faction. This is relevant especially in the context of elections: a neutral president does not endorse any political party or individual candidate. In addition, a neutral president does not meddle in party affairs and what happens within individual political parties. Their usual activities, internal discontents, or questions who the leader of a political party is, are not a matter of concern for the president.⁵³ Crucially, a neutral president should also refrain from discussing controversial political topics in public.⁵⁴

Upon exercising their constitutional powers, as a way of intervening in the functioning of the state mechanism, a neutral president should be aware of some further essentials. A neutral

⁵² Ibid.

⁵³ See, *mutatis mutandis*, Supreme Court of India, *Nabam Rebia and Bamang Felix v. Deputy Speaker*: §191 (as cited in Tassopoulos, “Neutrality,” ¶30).

⁵⁴ Jan Kysela, and Zdeněk Kühn, “Presidential Elements in Government: The Czech Republic,” *European Constitutional Law Review* 3, no. 1 (2007): p. 101.

president does not shape her constitutional powers with political or personal calculations in mind: rather, when exercising her functions, she is objective and does not act on behalf of herself or any political group, or surrender to any form of political pressure. One of the key nonceremonial constitutional functions of the president is her role in government formation. Usually, this role is formal only, but when no clear legislative majority emerges from the elections, or when a new majority cannot form after a vote of no confidence, in some systems, the president's role increases, for instance, by assisting in negotiations for coalition formation, or, in cases of real deadlock, even exercising discretion on whom to invite for appointment as Prime Minister.⁵⁵ In such cases, as we saw in Introduction, some presidents might seek to directly influence the formation of the government according to their preferences, or at least try to complicate the process (e.g., by being passive).⁵⁶ This is opposite to what political neutrality requires from a president. In some systems, the president should set aside partisan-political motives in another important nonceremonial function as well, namely in having the discretionary authority to, under certain circumstances, dissolve parliament and call early elections (e.g., when candidates cannot gain the confidence of the legislative majority), or to delay the dissolution (e.g., after a vote of no confidence) in hopes of finding a new majority to form a government.⁵⁷ The same neutrality requirements can be breached in other cases of exercising constitutional powers as well, such as, e.g., in the use (or lack of use) of legislative veto, appointing powers (either through appointments despite objectionable reasons, or refusing appointment for non-neutral reasons), or in their right to refer cases to the Constitutional Court for partisan purposes.

⁵⁵ Raymond A. Smith, *The American Anomaly: U.S. Politics and Government in Comparative Perspective* (2nd ed.) (Routledge, 2011): p. 67. For Italy, see Nicola Palladino "'Presidentialisations' in Italy: the battle for leadership between the Prime Minister and the President of the Republic," *Contemporary Italian Politics*, 7:2 (2015): pp. 117-8.

⁵⁶ For the Central and European context, see generally Vít Hloušek (ed.), *Presidents Above Parties?: Presidents in Central and Eastern Europe, Their Formal Competencies and Informal Power* (Munipress, 2014).

⁵⁷ Smith, *The American Anomaly*, p. 67.

Keeping these neutrality requirements in mind, from this sort of idealistic perception of a neutral president, in the next section we are going to look closely at the political neutrality of presidents in three jurisdictions with a parliamentary system: Germany, Kosovo, and Turkey. (It should be noted here that Turkey changed its system from a parliamentary one⁵⁸ to semi-presidential in 2007 (which took effect in 2014),⁵⁹ and then to a presidential one in 2017.) We are going to look at how the presidents in these countries behaved in office and to what extent they fulfilled neutrality requirements, within the political context they operated. First we are going to cover Germany, then Kosovo, and lastly Turkey. The order is not random, but we start with the country where—on average—presidents were more neutral, to the one where they were less neutral (although Kosovo and Turkey are not that far from each other). We will only analyze presidential neutrality within the current constitutions of these countries, since the aim of this thesis is to analyze the extent constitutional design accounts for the political neutrality of presidents. As we determined, presidential non-neutral behavior is one where: 1) the president tries to be an executive, or participates in daily politics; or, 2) the president lacks impartiality, behaving in favor or against, political parties. Some presidents are non-neutral in both directions, but the distinction is crucial for this thesis since different factors account for a president that tries to be politically active, from a president that lacks impartiality, as we will explain later. After we inspect the behavior of these presidents in practice and the extent they were neutral, with this context in mind,

⁵⁸ For the Turkish debate whether the constitutional system of Turkey under the Constitution of 1982 was indeed a parliamentary system or not, given the relatively strong position of the president compared to classical parliamentary systems, *see* generally Ergun Özbudun, *Contemporary Turkish Politics, Challenges to Democratic Consolidation* (Lynne Rienner Publishers, 2000): pp. 59-60; Gönenç, “Presidential elements in government,” p. 499.

⁵⁹ By semi-presidential system I mean a system where the president is directly elected and where we have a government which is responsible to the legislature. For the debates on what constitutes a semi-presidential system, *see* generally Andriy Tyushka, “Semi-Presidential Systems,” *Max Planck Encyclopedia of Comparative Constitutional Law* (2018).

in the last chapter we are going to try to understand what might make some presidents behave more neutrally than others.

3.3. Neutrality in Context: Germany, Kosovo, and Turkey

3.3.1. General remarks

Germany, Kosovo, and Turkey are typical parliamentary systems (Turkey prior to 2014), that is, systems where the government is elected by the parliament and is dependent on its confidence, where the president is indirectly elected and not part of the executive branch. Within Siaroff's scale of presidential powers measurement,⁶⁰ the German President scores a 0, while the Turkish President (before 2014) scored a 3. Kosovo is not featured in this list, but the Kosovan President would score a 2. Turkey and Kosovo had the same method of electing the president, that is, both required a two-thirds of votes in the first two rounds, and an absolute majority in the third round. Whereas, Germany has an electoral college, a Federal Convention, which elects the President. Half of the members of the Federal Convention are Bundestag (lower house) members, while the other half are elected from parliaments of the Länder, from among their members. There are three rounds for electing the president in Germany as well, where in the first two rounds an absolute majority is needed, while on the third a simple majority suffices. In Kosovo and Germany, the president is elected for a term of 5 years (with the possibility of reelection once), while in Turkey the president was elected for 7 years (no reelection). In Kosovo and Turkey the president has to give up party affiliation once taking office, while in Germany this is not a Basic Law requirement, but is rather a matter of convention.

⁶⁰ Alan Siaroff, "Comparative presidencies: The inadequacy of the presidential, semi-presidential and parliamentary distinction," *European Journal of Political Research* 42 (2003): p. 287–312.

3.3.2. Germany

German presidents, compared to presidents of Kosovo and Turkey, have been, on average, more neutral, in the sense of not being part of day-to-day politics and governing, and serving objectively (without bias). Of course, not all German presidents had the same level of neutrality, with some presidents being evidently less neutral than others. However, we do not see in Germany any case where the president has grossly violated neutrality requirements repeatedly, as is the case with some presidents in Kosovo and Turkey who have been true political actors and divisive figures. Instead, the non-neutrality of German presidents has been more subtle.

For the most part, German presidents are neutral in relation to the government and do not work against it. German presidents usually stay within their constitutional limits and do not interfere directly in policymaking. Also, they do not unnecessarily criticize the government, or favor other political groups to the detriment of the government. This is so mostly because in Germany “cohabitation” instances are rare (situations where the president does not come from the same party as the government), and, more importantly, because German presidents usually face strong and stable governments, inhibiting any potential ambitions of the president to become a substantial political actor. Of course, there are some presidents who were fairly active politically, such as Gustav Heinemann (1969-1974) and Richard von Weizsäcker (1984-1994), who, apart from being in ideological and political opposition to the government (as fairly independent from any party, although formally they were party members), faced relatively weak governments as well (the former because the government had a fragile majority in parliament, and the latter because the government was very overburdened with the German unification process).⁶¹ Heinemann tried to

⁶¹ Margit Tavits, *Presidents with prime ministers: Do direct elections matter?* (Oxford University Press, 2008): p. 91.

influence political life mostly through his speeches, which were most often critical of governmental policies.⁶² Weizsäcker, on the other hand, whose mandate corresponded with the time of the German unification, rarely coordinated his actions with the executive. He would often comment on controversial political topics, openly criticize political parties and suggest party reforms, and would independently pursue political agendas on his quest “to unite the German nation.”⁶³ These two presidents were not active this way for partisan purposes, working in favor of some party; presumably, they simply had personal political ambitions and incentives. Both were heavily criticized as being either “too opinionated” or overstepping their constitutional authority.⁶⁴ Then we also have President Horst Köhler (2004-2010), who was more active politically than most German presidents. Köhler (throughout most of his term) was not facing a weak government, but rather a Grand Coalition with substantial majority in Bundestag (72.7%). Köhler was a political figure mostly through his comments on day-to-day politics, often sharing his views on policies and personally desired outcomes.⁶⁵ In part, he was outspoken because of being in political opposition to one of the grand parties in the Grand Coalition, SPD, who, as a main coalition partner, substantially determined the political agenda of the government (nevertheless, he did not fail to be outspoken against members of CDU either). Although Köhler exercised often (by German standards) his veto power (two times), he vetoed laws which were “undoubtedly and evidently” unconstitutional.⁶⁶ Overall, even though Köhler was relatively political compared to his

⁶² Ibid., p. 88.

⁶³ Ibid., p. 90.

⁶⁴ Ibid., pp. 83; 90.

⁶⁵ Gerd Strohmeier, and Ruth Wittlinger, “Parliamentary Heads of State: Players or Figureheads? The Case of Horst Köhler,” *West European Politics* 33, no. 2 (2010): pp. 247-8; 254.

⁶⁶ Ibid., p. 253.

predecessors, he was not a severely non-neutral figure as some have suggested and generally stayed within constitutional limits.⁶⁷

Although German presidents, as a rule, do not work to the detriment of the government, a common pattern of non-neutrality found among German presidents is that they often are partisan in favor of the government. Here German presidents become, as Schmitt termed it, an “annex of the government.”⁶⁸ We see this pattern on many occasions, with presidents such as Heuss (1949-1959) who, following the interests of the ruling parties, did not veto laws although they were obviously unconstitutional, or president Carstens (1979-1984) who called early elections because they were convenient for his party (his party saw new elections as an opportunity for political growth, and purposely lost a vote of no confidence in parliament). Carstens was sued in the Constitutional Court, as the first German president to be sued, and the Court did not rule such move as unconstitutional. Still, it does not invalidate the fact that Carstens was clearly partisan and a co-conspirator with Chancellor Kohl.⁶⁹ (Similarly as Carstens in 1982, President Köhler in 2005 called early elections with the request of Chancellor Schröder, after purposely losing a vote of no confidence. However, unlike Carstens, Köhler did not co-conspire with the Chancellor and there was overall a broad consensus on holding snap elections.)⁷⁰ Then we also have presidents Scheel (1974-1979) and Rau (1999-2004) who, being partisan, overall stayed deferential to the government, and, specifically, did not veto laws despite their broadly contested constitutionality (and later declared as unconstitutional by the Constitutional Court).⁷¹ In addition, German presidents rarely refuse appointments and dismissals, despite how controversial are the cases.

⁶⁷ Ibid., p. 254.

⁶⁸ Seitzer, *Carl Schmitt*, p. 370.

⁶⁹ Tavits, *Presidents with prime ministers*, p. 89.

⁷⁰ Strohmeier, “Parliamentary Heads of State,” p. 254.

⁷¹ Tavits, *Presidents with prime ministers*, p. 84.

There are instances where they refused appointments for purely non-neutral reasons, such as President Heuss refusing to appoint once one minister from his own party. Heuss refused the appointment because of personal hostility towards the minister, deeming him responsible for CDU abandoning his party (FDP) in the previous coalition, and with the intent of preserving the current ruling coalition.⁷²

Regarding government formation, German presidents are fairly neutral, with generally no apparent intentions to influence government formation according to their wishes (however, they do not have much room for maneuver here, since elections mostly produce clear-cut results).⁷³ An important exception is President Lübke (1959-1969), who, in 1965, openly pushed for a coalition between SPD and his party CDU, then later saying that it would be good for the country if SPD was involved in governing. This presents one of the most non-neutral acts a German president has done (which, in the end, was not successful).⁷⁴

In conclusion, German presidents rarely work to the detriment of the government in a non-neutral way. Presidents stay within their limits and do not try to exercise executive authority and interfere in daily politics. However, where German presidents are not neutral is that often they serve as party-political agents, mostly in a subtle way, in favor of the interests of the ruling parties. Generally, the presidents that were not deferential to the government were those that were in ideological opposition to the government and faced relatively weak governments, using these opportunities to be politically active. Whereas, as is usually the case, German presidents come from the same party as the government and face strong governments with stable majorities—leaving no opportunity for presidents to be strong political actors. It is in these usual instances

⁷² Ibid., p. 86.

⁷³ Ibid.

⁷⁴ Ibid., pp. 86-8.

where German presidents are generally not neutral, being biased in favor of the government. Of course, this is not the case with all German presidents: recent presidents such as Joachim Gauck (2012-2017) and Frank-Walter Steinmeier (2017-), that were elected as consensual candidates, were reasonably neutral moderators instead of mere partisan followers.

3.3.3. Kosovo

Next week I'll take the final constitutional steps to enable the formation of a new Government w/ full legitimacy from Parliament, capable to fight #COVID19 and serve the people. Tariffs & reciprocity need to be dropped in order to strengthen USA & EU support for Kosova.

— Hashim Thaçi, current President of Kosovo.⁷⁵

President Thaçi (2016-) made this Twitter post a few weeks after a vote of no confidence passed in parliament against the government of Prime Minister Kurti. Besides public statements, Thaçi did everything he could to oust Kurti from power and that Kosovo has a new government he agrees with. Ultimately, he succeeded, with the new government of LDK-AAK forming in June 3, 2020. Apart from directly influencing the formation of the government (by even “convincing” hesitant MPs to vote for the new government), Thaçi has been non-neutral in many regards throughout his term (since 2016), which saw in this period three governments come and go (and the fourth one just formed). Thaçi’s non-neutrality varied depending on what parties formed the government. All these governments were quite weak, since they were too preoccupied with other pressing matters, and had a fragile majority in parliament.

Thaçi, who before becoming President was Kosovo’s PM for two terms, has been non-neutral no matter who he faced as government. In the first part of his term (for roughly one year

⁷⁵ Hashim Thaçi, Twitter post, Apr 19, 2020, 3:52 PM: <https://twitter.com/HashimThaciRKS/status/1251871256254783489?s=20> (last accessed: 7 June, 2020).

and a half) he faced a LDK-PDK government—PDK being his former party (of which Thaçi was its leader for 17 years, until he had to resign upon taking presidential office). Thaçi’s most notable non-neutral act during the first part of his term was that he, disregarding the PM who did not endorse such move,⁷⁶ took a legislative initiative to transform Kosovo’s Security Force into an army. The move was controversial because the general understanding was that to make this transformation valid constitutional amendments were needed. In the end, after some months, Thaçi withdrew, but, the point from a neutrality perspective is that, in taking this initiative, Thaçi acted as a completely independent political agent, seeking to gain political credits.

Next, Thaçi faced a government composed of AAK-PDK (elected with the bare minimum number of votes in parliament, 61 out of 120). Apart from threatening PM Haradinaj implicitly with “dismissal”⁷⁷ (by the means of still having control over his former party, PDK), Thaçi’s most non-neutral activity during this period of roughly two years has to do with foreign affairs. Thaçi would independently push for a “final and comprehensive agreement” with Serbian President, Vučić. Allegedly, at some point the negotiations between the two presidents included talks of a land-swap between the two countries, which made all domestic political actors, including the PM, to strongly oppose Thaçi’s further role in relations with Serbia. In the end, negotiations stopped since Serbia refused to continue them (supposedly because of some tariffs imposed by the Kosovo government), but Thaçi’s intent to lead these negotiations never ceased.⁷⁸ Despite Thaçi’s clear political ambitions, a “comprehensive” international agreement with a huge scope of implications is certainly not within the authority of a non-executive president.

⁷⁶ “Nga Podujeva Mustafa i çon porosi Thaçit: Ushtria me përkrahje të SHBA-së dhe NATO-s,” *Koha Ditore* (March 18, 2017).

⁷⁷ “Haradinaj - Thaçit: Nëse mendon dikush që mund të më disiplinoj me një karrige, gabim e ka,” *Koha Ditore* (23 October 2018).

⁷⁸ “Thaçi flet për territoret: Pazare nuk do të ketë, shkëmbim nuk do të ketë” *Gazeta Express* (June 5, 2020).

Apart from working to the detriment of the government by acting as if he was an executive, Thaçi also lacked impartiality. During this time, Thaçi would often work in favor of his ex-party. Most notably, he delayed appointing members of the Central Election Commission, leaving it non-functional for a year. It took a single reaction from the U.S. Embassy in Kosovo for Thaçi to immediately appoint the CEC members,⁷⁹ proving that the delay was not done for any objective reasons. Thaçi was also a biased figure by working against particular parties. He would often hold public speeches or use social media to attack political parties and individual politicians. For instance, he accused, without presenting any proof, the major opposition party (LVV) and its leader, Kurti, as being financed from Iran and keeping informal ties with Russian President, Putin.⁸⁰ Thaçi's non-neutrality would intensify the most once Kurti came to power in February 3, 2020. Roughly a month after Kurti became PM, Thaçi, in a Facebook post, attacked him directly, *ad hominem*, using terms such as a wicked, cowardly, shameless liar—among others.⁸¹ Kurti's government was the first in independent Kosovo (2008) where Thaçi's ex-party was not part of it. Now Thaçi, being strongly opposed politically and ideologically to Kurti's government, had strong incentives to be non-neutral. At the beginning of the COVID-19 pandemic in Kosovo (mid-March), Thaçi called a meeting of the Security Council, where, driven by political ambitions, proposed that the country declares a state of emergency (which would have made Thaçi a central authority in managing the crisis).⁸² It was during this period when Thaçi did one of the most non-neutral acts of his term. After the Government refused Thaçi's request to declare a state of emergency but nevertheless took some measures against the coronavirus, severely restricting

⁷⁹ “Thaçi i bindet presionit të SHBA-së, i jep mandat KQZ-së,” *Gazeta Blic* (March 26, 2019).

⁸⁰ “Thaçi: Pyeteni Kurtin kush janë individët nga Irani që ia financojnë partinë,” *Koha Ditore* (March 31, 2018).

⁸¹ Hashim Thaçi, *Facebook post*, March 11, 2020: <https://www.facebook.com/HashimThaciOfficial/posts/3547006318703035> (last accessed: 7 June, 2020).

⁸² “Thaçi mbledh Këshillin e Sigurisë, propozon gjendje të jashtëzakonshme,” *Evropa e Lirë* (March 17, 2020).

movement, President Thaçi called a press conference and stated: “Limiting fundamental rights and freedoms is possible only under a declared state of emergency[...] Citizens are not obliged to respect unconstitutional decisions and nobody will be able to punish them because of that. Neither the Police nor other security institutions shall enforce this unconstitutional decision of the Government, because otherwise they themselves commit a criminal offence.”⁸³ For this flagrant interference and abusive criticism, Thaçi has been sued to the Constitutional Court (the Court is yet to decide). Thaçi also recently called LVV a “criminal enterprise,” accused it of illegal surveillance, of having drug labs, and so on.⁸⁴

Within the same constitution of Kosovo, Thaçi’s predecessor, Atifete Jahjaga (2011-2016) (the only female president in any of the jurisdictions covered in detail here), was nothing like her successor. Prior to becoming President, Jahjaga was not involved in politics; rather, she served as Deputy Director of the Police. Although her election was controversial (since allegedly she was elected due to the influence of international diplomats in Kosovo), she was elected with two-thirds of votes of all members of Parliament as a consensual candidate. Jahjaga was a unifying figure, did not interfere in daily politics and did not try to go beyond her constitutional powers to the detriment of the executive. She exercised her veto power to suspend controversial laws, and referred matters to the Constitutional Court, in a non-partisan way. During her term, Jahjaga faced two governments. While the first one (PDK-AKR) was relatively more stable, the second one (PDK-LDK), although it had a greater majority in parliament, was quite overburdened and faced

⁸³ Bekim Bislimi, Mimoza Sadiku, “Presidenti Thaçi kundërshton masat e qeverisë për kufizim të lirisë së lëvizjes” *Evropa e Lirë* (March 23, 2020).

⁸⁴ “Thaçi: Vetëvendosje organizatë kriminale, unë nuk e solla Pacollin,” *Koha Ditore* (April 29, 2020); “Thaçi: Kurti, Abazi dhe Sveçla fikën kamerat dhe vizituan dhomën e përgjimeve në PTK për tri ditë,” *Gazeta Express* May 27, 2020); “Presidenti Thaçi publikon pamje të një laboratorit të drogës, akuzon ‘Grupin Kurti’,” *Koha Ditore* (May 28, 2020).

an obstructive opposition, rendering parliament often dysfunctional.⁸⁵ Yet, this variation in government's strength and stability did not seem to influence Jahjaga's behavior in office. She simply had no apparent political ambitions and no incentive to be non-neutral, although often parties tried to draw her into political games.⁸⁶ Jahjaga was an ally of the international community present in Kosovo who was interested in having a neutral president—she presents a special and distinct case from a neutrality perspective, which is difficult (although not impossible) to replicate in Kosovo via usual political means (within the current framework).⁸⁷

Fatmir Sejdiu's presidency (2008-2010) (the first one in post-independence Kosovo), was relatively calm and uneventful. He was elected by coalition support only. Generally, he did not try to overstep his constitutional boundaries and did not act as an executive. But, he was a partisan president: he still stayed as the leader of one of the parties in government (LDK), although the Constitution required that, upon claiming office, the president must not exercise any political party functions. He resigned after the Constitutional Court found that this presented a serious constitutional violation.⁸⁸

3.3.4. Turkey

A president cannot be impartial. No president in this country has been neutral. And I won't be an impartial president, either.

⁸⁵ "Kosovo: opposition MPs fire tear gas in ninth parliament attack in six months," *Euronews* (March 10, 2016).

⁸⁶ Erjonë Popova, Bekim Muhaxheri, "The president who did not strike back," *Prishtina Insight* (April 7, 2016).

⁸⁷ And the reason political parties agreed in the first place to have Jahjaga as president was that they stipulated in a political agreement that Jahjaga would be dismissed as soon as some political reforms were over, which foresaw, among others, electing the president directly by popular vote. Political parties enacted constitutional amendments to this effect, providing that Jahjaga's term would end prematurely. The Constitutional Court found that this specific amendment was unconstitutional: KO 29/12 and KO 48/12 (20 July 2012).

⁸⁸ Constitutional Court of Kosovo, case no. KI 47/10 (28 September 2010).

Despite what Erdoğan is claiming, some Turkish presidents have indeed been fairly neutral. President Süleyman Demirel (1993-2000), who prior to becoming President was Prime Minister, was one of them. Demirel faced many governments throughout his term of 7 years, where most governments were moderately strong (and he was not politically opposed to any of them, except for the government in his last year in office). Demirel was elected president through coalition support only. He believed it was unacceptable for an “impartial” president to interfere in matters which are internal to a political party, or in matters which are the responsibility of the government.⁹⁰ He generally lived to such beliefs, and, in addition, was not subservient to the government either. Although often political actors tried to draw him into political games, Demirel refrained from any dubious behavior.⁹¹

Another fairly neutral president was Ahmet Sezer (2000-2007). Before becoming President, Sezer was the President of the Constitutional Court of Turkey. Sezer was elected with 60% of votes, as a compromise candidate endorsed by all five leaders of parties represented in parliament (he did not gain more votes since not all MPs supported him individually). Throughout his 7-year term, Sezer faced three governments: the first one was a moderately strong government, while the governments from 2002 and on were a very strong, single-party (AKP) governments, with nearly two-third of seats in parliament. In terms of using constitutional powers, Sezer was the most active president in Turkish history (he vetoed laws and constitutional amendments 72 times,

⁸⁹ Constanze Letsch, “Recep Tayyip Erdogan the favourite to win Turkey's first presidential election,” *The Guardian* Aug 8, 2014).

⁹⁰ Zeyneb Ç. İçener, “Presidents, the state and ‘democracy’ in Turkey: the ideas and praxis of Süleyman Demirel,” (phD diss., Bilkent University, 2010): pp. 139, 163; Gönenç, “Presidential Elements in Government,” p. 510.

⁹¹ Gönenç, “Presidential Elements in Government,” pp. 510-1.

and referred matters to the Constitutional Court 26 times).⁹² Generally, Sezer did not intervene in daily politics and governance, and, clearly, was not deferential to the government.

But, fairly neutral Turkish presidents such as Sezer, Demirel and, to some extent, Kenan Evren (1982-1989) (the first president under the 1982 Constitution), became active in political life mainly in one set of instances—and perhaps this is what Erdoğan is alluding to in the quote above—namely when they felt that secularism principles are being threatened by political forces. These presidents took practical steps to curb the rise of political Islam in Turkey.⁹³ For example, Demirel would send admonishing letters to PM Erbakan (RP party) regarding his anti-secular activities. Erbakan resigned afterwards (mainly due to military pressure), then Demirel played a key role preventing him and the RP party from staying in power (by even going against his own former party DYP, of which he led prior to becoming President), by appointing a PM outside of the RP-DYP coalition; President Demirel chose as PM Mesut Yılmaz of ANAP.⁹⁴ On the other hand, President Sezer, apart from his frequent veto use on religious matters, would refuse appointing “fundamentalist” ministers, and he would openly take the side of the military against the government on issues which concerned secularistic values⁹⁵ (as Erdoğan would state later, he “suffered a lot from Sezer during his presidency”).⁹⁶ Whether this political activism of Turkish presidents constituted a breach of neutrality is debatable. Secularism is a central tenet of the Turkish constitutional order, while Presidents had a duty to safeguard the same. In my view, as long as it was evidently clear that political parties such as RP and AKP were trying to undermine

⁹² Ibid., p. 513.

⁹³ For Evren’s presidency in general, *see* Metin Heper, “The Executive in the Third Turkish Republic, 1982–1989,” *Governance* 3, no. 3 (1990): pp. 305-15.

⁹⁴ Gönenç, “Presidential Elements in Government,” pp. 511-2.

⁹⁵ Ibid., pp. 515-8.

⁹⁶ Ceren Şengül, “Varieties of ‘Kurdishness’ in Turkey: state rhetoric, language, and regional comparison,” (phD diss., University of Edinburgh, 2016): fn. 93.

secularist principles, proportionate presidential activity to counteract these undertakings did not mean they were impairing their constitutional status. Indeed, one could argue that if they would not have acted in light of clear anti-secular endeavors, it would have constituted a breach of their neutrality, by being biased in favor of the government.

On the other hand, some Turkish presidents were anything but neutral. One such severely non-neutral president, who claimed that Çankaya holds half of the political power,⁹⁷ was Turgut Özal (1989-1993). Özal, an ex-PM of Turkey, was elected with coalition support only (one-sidedly, since the opposition boycotted the process). (18 years after Özal's election, in 2007, the Constitutional Court of Turkey clarified that a two-thirds superquorum is necessary to proceed with electing the president in the first round, making some opposition support indispensable from the beginning.)⁹⁸ Özal was a biased president, who meddled with party affairs, and who often publicly criticized the Government when it did not consult him before decision-making. He wanted to be regularly briefed on political matters and gave directions to executive officials on how to act.⁹⁹ For the first 2 years of his term, Özal faced a government led by his former party (ANAP). The Prime Minister, Akbulut, was previously a Minister in PM Özal's cabinet. As expected, Akbulut was completely subservient to Özal and during this period Özal was truly an executive.¹⁰⁰ Later, things changed when Mesut Yılmaz became a leader of Özal's former party and subsequently the Prime Minister of Turkey. Yılmaz hinted from the beginning that he would not be subservient like Akbulut, and advised President Özal to not step into the responsibilities of the Government. Although there were tensions between the President and the Government, Özal was

⁹⁷ İçener, "Presidents, the state and 'democracy' in Turkey," p. 139.

⁹⁸ Constitutional Court of Turkey, Grounds No.: 2007/45, Decision No.: 2007/54. Aslı Bâli, "Courts and constitutional transition: Lessons from the Turkish case," *International Journal of Constitutional Law* 11, no. 3 (2013): pp. 675-7.

⁹⁹ Gönenç, "Presidential Elements in Government," pp. 507-8; İçener, "Presidents, the state and 'democracy' in Turkey," p. 139.

¹⁰⁰ Gönenç, "Presidential Elements in Government," p. 507.

not the same “executive” anymore during this period (which lasted only for a brief 10 months, since new elections approached).¹⁰¹ In these new elections, breaching severely neutrality requirements, Özal would campaign for his former party, ANAP. Seeing Özal’s biased behavior, the upcoming PM, Süleyman Demirel, the leader of DYP, promised during the elections that they would dismiss Özal once in power. They could not dismiss him—and this phase marks an uneasy “cohabitation” period between the President and the Government.¹⁰² President Özal would, among others, veto laws or delay promulgating them, refuse appointments and dismissals; of course, for no objective reason. Although he was a truly divisive and partisan figure when Demirel was in power, he was not able to have *de facto* executive authority as previously.¹⁰³

Another non-neutral president is Abdullah Gül (2007-2014), a co-founder of PM Erdoğan’s party, AKP, who was elected with AKP’s votes only. Unlike Özal, Gül was not non-neutral by interfering into the realm of executive authority, but rather, he was non-neutral by being simply a reliable party follower and deferential to the government of PM Erdoğan.¹⁰⁴ Gül refused to veto even laws which were widely deemed to be unconstitutional or which fueled massive protests in Turkey.¹⁰⁵

After Gül, the next Turkish president is the incumbent, Erdoğan (2014-). Erdoğan is a different case from the other Turkish presidents, being a president of Turkey in systems of government other than parliamentary (semi-presidential and presidential). Hence, Erdoğan’s example does not say much for parliamentary systems, which are the focus of this thesis, but it is

¹⁰¹ Ibid., p. 508.

¹⁰² Ibid.

¹⁰³ Ibid., p. 509.

¹⁰⁴ Elisabeth Özdalga, Review of “Abdullah Gül and the Making of the New Turkey by Gerald MacLean,” *Journal of the Ottoman and Turkish Studies Association*, Vol. 2, No. 2 (2015): pp. 443-4.

¹⁰⁵ E.g., Yigal Schleifer, “Turkey: President Approves Controversial New Alcohol Regulations,” *Eurasianet* (June 10, 2013).

interesting to see how presidential neutrality evolved in Turkey after he came to power. Erdoğan, as the first directly elected Turkish president, was completely non-neutral from 2014 to 2017, while the Turkish constitutional system still required that the president is neutral. Erdoğan was not only the *de facto* head of the executive during this time, via his control over the AKP—which, as stated before, is permissible, at least as a matter of fact, in semi-presidential systems—but he was also a severely biased and partisan president as well. Most notably, President Erdoğan would campaign in general elections for his “former” party, AKP.¹⁰⁶ Also, he would campaign strongly against HDP, an ethnic Kurdish nationalist party.¹⁰⁷ With the 2017 constitutional amendments, which introduced an *alla Turca* presidential system,¹⁰⁸ the requirement that the elected president severs all ties with his former party was, naturally, abolished.

We have seen presidents of three different countries and the extent they respected neutrality requirements within the political context they were in. In the next section, we are going to try to give an explanation to what might have accounted for their behavior, in more concrete terms. The ultimate concern is to determine what is responsible for presidential non-neutrality: is it the fault of constitutional design, or is it all contextual?

¹⁰⁶ Berk Esen, and Sebnem Gumuscu, “Rising competitive authoritarianism in Turkey,” *Third World Quarterly* 37, no. 9 (2016): p. 1587.

¹⁰⁷ Ersin Kalaycioğlu, “The conundrum of coalition politics in Turkey,” *Turkish Studies* 17, no. 1 (2016): p. 33.

¹⁰⁸ Menderes Çınar, and Nalan S. Şentürk, “The presidency in Turkish politics: From independence to the AKP,” in Alpaslan Özerdem and Matthew Whiting (eds.), *The Routledge Handbook of Turkish Politics* (Routledge, 2019): p. 111.

4. Understanding Neutrality: Context and Constitution

4.1. Introduction

We have seen the behavior of presidents in three different countries with parliamentary systems. As we saw, some presidents are evidently more neutral than others. With this context in mind, the question to be raised is, what factors or settings determine the political neutrality of presidents in parliamentary systems? Why was President Özal of Turkey a completely non-neutral president, while President Jahjaga of Kosovo was an adequately neutral figure? Is constitutional design relevant in ensuring a neutral president, or is political neutrality too contextual and outside the influence of the constitutional lawyer; is it really plausible that no matter what a constitutional designer foresees *a priori*, they can never really ensure that a president will be neutral while in office? In this section, we deal with these issues more closely. The short answer is that, indeed, you can never really ensure in absolute terms that a president will behave neutrally while in office. Practically, it is impossible to shape a presidency only according to constitutional rules: contextual factors are key as well. But, crucially, even these contextual factors are not outside the scope of constitutional design either: there are a few things which can be done via constitutional text alone to raise considerably the likelihood that the president will be neutral. Although constitutional design cannot ensure absolutely that a president in office will be *completely* neutral, I argue that through constitutional design we can make it virtually impossible that the president will be *severely* non-neutral, as some presidents in Turkey and Kosovo were.

Generally, there are two most plausible lines of reasoning which try to shed light into what makes a president be neutral or non-neutral. The first of them is less contextual and argues that the

method of election is key (without necessarily excluding political context from the equation). Divergences exist within this line of reasoning as well, with some proponents such as Neto and Strøm arguing that only direct elections can produce a non-partisan president, since in such case the presidential candidate is forced to appeal above or across party lines.¹⁰⁹ While others such as Linz argue that only indirect elections, through consensus and compromise between different parties, can guarantee a neutral president.¹¹⁰ The second line of reasoning, more contextual, is the one that argues that the general behavior of the president in office (including their neutrality), rather than depending on electoral modalities as such, depends on the political environment, i.e. the constellation and strength of political forces that the president faces. When the president faces an unfavorable political environment (i.e., a strong and stable government), they will stay passive politically; but, when political opportunities open, presidents will become influential political actors. One of the main proponents of this explanation is Tavits, and she calls this the political opportunity framework.¹¹¹ (Tavits' work focuses on presidential activism, and not neutrality as such, but her findings on presidential activism are applicable for presidential non-neutral activism as well.)

I argue that both the political opportunity framework and modalities of presidential election are most relevant when it comes to the neutrality of presidents. But, they are not relevant in the same manner and for the same reasons. As we defined neutrality before, we noted that starting from Constant, Weber and on, and also within the inherent logic of a parliamentary system, a neutral head of state is, in one hand, meant to not interfere in policymaking and act as an "active"

¹⁰⁹ Octavio Amorim Neto, and Kaare Strøm, "Breaking the Parliamentary Chain of Delegation: Presidents and Non-partisan Cabinet Members in European Democracies," *British Journal of Political Science* 36, no. 4 (2006): p. 624.

¹¹⁰ Juan J. Linz, "Democracy, Presidential or Parliamentary: Does It Make a Difference?" in Juan J. Linz and Arturo Valenzuela (eds.), *The Failure of Presidential Democracy: Comparative Perspectives (vol. 1)* (John Hopkins University Press, 1994): pp. 10-1.

¹¹¹ Tavits, *Presidents with prime ministers*.

power, and, on the other hand, that the neutral president is “impartial,” i.e., staying above all political actors, not being biased or partisan. Accordingly, a president will be non-neutral mainly in one of these two ways: 1) they will either try to act as an executive or interfere in policymaking, instead of staying passive, as a “reserve” power, or 2) they will be intentionally biased or partisan, instead of being impartial to political life. Although these lines overlap and we have some non-neutral presidents in both regards, that is not necessarily so. The political opportunity framework accounts for the first line of non-neutrality. A president that is non-neutral by acting as an executive—by being an active, rather than a neutral, power—does so mainly because he faces a government which he is in political or ideological opposition to, *and* because the government is weak or unstable.¹¹² On the other hand, a president that is non-neutral by lacking impartiality (a president that is not objective and impersonal, but is rather biased and partisan)—for instance, by working in favor of the government as a reliable follower, or by generally being a divisive figure against any party or person, instead of a unifying one—is so because they were not elected adequately. And by an adequate election I mean an election where the president is supported by both the ruling parties and a substantial portion of the opposition. True, a president that lacks impartiality because they were not elected adequately, might have stronger incentives to interfere in policymaking and be a substantial political actor (depending on who they face as government)—but, when the government is strong and stable, usually these presidents will refrain from being active, keeping their bias and partisanship to themselves, or their attempts to intervene will be in vain, counteracted by the (strong) government. Also, (lack of) political opportunities does not seem to have an influence on *causing* such bias, hence political opportunity framework does not say

¹¹² Ibid.

much for the second line of non-neutrality. Hence, an adequate election method, that decreases the likelihood of presidential bias or partisanship, is also key in ensuring a neutral president.

Apart from presidency-centered explanations which we endorse here, there exist some president-centered approaches which try to explain the overall behavior of the president by focusing on the president as an individual. Most notably, one of these approaches asserts that the personality of the president is key in explaining presidential behavior, rather than the political context they are in or the constitutional modalities in place. Apart from lacking empirical support, the personality-centered approach also lacks a strong theoretical foundation since there is no unified approach to what constitutes a “personality” in the first place.¹¹³ To say that a president behaves politically actively or stays passive because they have an active or passive personality, as Tavits states, borders tautology, unless “the concept ‘personality’ is restricted to certain traits.”¹¹⁴ And since these personality-centered explanations tend to be quite fuzzy, lacking a particular set of traits by which presidents could be classified based on personality, testing any influence of personality on presidential behavior can be hard to perform.¹¹⁵ Furthermore, empirical evidence does not seem to support personality-based theories, since, as we saw, we have presidents who change their behavior when circumstances change, i.e. when political opportunities open (as is the case with Presidents Lübke and Herzog in Germany, Thaçi in Kosovo, Özal in Turkey, etc.).¹¹⁶ In addition, presidents in a country usually do not differ substantially from one another in terms of their political activity. If the personality-based approach was correct, then we would, as a matter of probability, see more politically active presidents in Germany, same as we find in Kosovo or

¹¹³ Köker, *Presidential activism*, p. 24.

¹¹⁴ Tavits, *Presidents with prime ministers*, p. 135.

¹¹⁵ Ibid.; Philipp Köker, *Review of “Presidents above parties? Presidents in Central and Eastern Europe, their formal competencies and informal power,” CEU Political Science Review, 10 (1-2) (2015): p. 150.*

¹¹⁶ Tavits, *Presidents with prime ministers*, p. 135.

Turkey. But, overall, German presidents remain passive politically.¹¹⁷ Thus, presidency-centered explanations seem to be more plausible.

In this section, first I present in more detail the political opportunity framework, and then the adequate modalities of presidential election. I conclude the chapter by briefly presenting some practical constitutional design settings which might raise the likelihood of having a neutral president.

4.2. Political Opportunity Framework

As stated, the political opportunity framework accounts for presidential non-neutral behavior where the president attempts to interfere in policymaking and act as an executive (but it does not account for presidential bias and partisanship). In this line of non-neutral political activity, presidents act as completely independent political agents, circumvent executive authority or the parliament, try to shape policy according to their wishes and weaken the position of the government. This way, presidents diminish their moral authority to act as effective arbitrators in cases of political deadlock and disputes, hence this politically active role of presidents is incompatible with the notion of a neutral president.

As many other officeholders, presidents are usually politically ambitious enough to want to accrue more personal power and interfere in policymaking according to their political preferences.¹¹⁸ A president that faces a weak and unstable government is likely to be politically active and an independent political actor, since the government will be unable to keep the president within constraints.¹¹⁹ The president will attempt to act as an independent political actor *especially*

¹¹⁷ Ibid.

¹¹⁸ Ibid., p. 15.

¹¹⁹ Ibid.

if she is in political or ideological opposition to the ruling parties (usually in instances where the president and the government are not from the same party).¹²⁰ However, being in political or ideological opposition to the government does not mean that the president will always act non-neutrally. This opposition simply serves as an incentive. Whereas, the matching partisan constellation in presidency and government will reduce incentives of the presidents to be politically active, since somebody else is executing their policy preferences for them.¹²¹ But, even presidents that are generally in line with the ruling parties, politically or ideologically, might at times attempt to become substantial political actors if the government is weak or unstable (such as the example of Özal in Turkey shows). Thus, in instances where the president comes from the same party as the government *and* the government is relatively strong, the presidents stay within their constitutional limits and do not attempt to become what they are not: an executive. Rather, they remain figureheads. And even if presidents are in opposition to the government, but the government is strong, the president will still remain an insignificant political actor. If the government and parliament are strong and steady enough, i.e., if they are not fragmented, dysfunctional or unstable, they will be able to restrict and keep within their limits even the most politically ambitious presidents.¹²² Whether presidents will lack impartiality when facing a strong government is another matter—but they will not be able to effectively influence policymaking or work substantially to the detriment of the other (active) powers.

We can see the political opportunity framework in action throughout presidencies in countries we looked at in this thesis. We saw that in parliamentary systems such as Germany, where presidents face relatively strong and stable governments, presidents usually do not stretch

¹²⁰ Ibid., p. 16.

¹²¹ Köker, *Presidential activism*, p. 45.

¹²² Tavits, *Presidents with prime ministers*, p. 16.

their otherwise limited powers. However, even within Germany, when political opportunities opened, i.e., when governments were weak, the presidents would be more politically active than usual.¹²³ For instance, politically active presidents such as Heinemann and Weizsäcker faced relatively weak governments (Heinemann because the government had a fragile majority in parliament, while Weizsäcker because the government was overburdened with the challenging German unification process). Weak and preoccupied German governments were unable to curb their moderate political activity. Also, both Heinemann and Weizsäcker were not in line with the ruling parties, since they were relatively independent from all of them. This lack of partisanship served as an incentive for their political involvement.¹²⁴ Even within individual German presidencies, we can see that when some initially passive presidents became politically or ideologically opposed to the government, they became more politically active. For instance, President Lübke was fairly politically passive in the first part of his term, but, later on, when he gained a new support base (SPD) and he did not have enough support from his party (CDU) to get reelected, Lübke would lobby that SPD is involved in governing and he was generally more politically active. We find a similar pattern with President Herzog, who become more vocal when the government changed to one he was politically opposed to.¹²⁵ Thus, strong German governments with rare “cohabitation” instances make German presidents usually behave as typical figureheads. (We also have President Köhler who did not face a weak government, but rather a grand coalition, yet he was to some extent politically active. Notwithstanding, overall, Köhler stayed within constitutional limits: he would have been more non-neutral, as a party-political tool, if he would not have vetoed the laws that he did, or if he would have refused to call new elections

¹²³ Ibid., p. 91.

¹²⁴ Ibid.

¹²⁵ Ibid.

in 2005.)¹²⁶ On the other hand, although German presidents remain politically passive, a common pattern found among them is that they still are non-neutral, by being biased in favor of the government. Facing a strong government they agree with, most German presidents stay deferential and do not act against the government, even in cases when their involvement is warranted.¹²⁷ Usually, these deferential presidents were not elected by broad support, and that is likely why they lacked impartiality (more on this on the next section).

On the other hand, in Kosovo and Turkey, we find that, on average, presidents were more active politically than in Germany, and this is mostly explained due to the fact that the majority of Kosovan and Turkish (before AKP) governments were relatively weak and unstable (in Kosovo, no governmental term has lasted for a full four years). Presidents Thaçi of Kosovo and Özal of Turkey would not have managed to be the same independent political actors if they were presidents in Germany, since governments there would have been strong enough to counteract their political ambitions. Within Kosovo and Turkey as well, we find variation between presidents: when the president did not come from the ruling parties or when the government was weak, the president was more non-neutrally active. For instance, President Özal used every opportunity to be a political actor by facing weaker governments, while President Evren just before him was less politically active, since Evren faced a stronger government, although many expected he would achieve “presidential domination” (since Evren was the leader of the 1980 coup).¹²⁸ But, even Özal’s political ambitions would get hampered once he was facing stronger governments. Although Özal was a *de facto* executive in the first part of his term when the PM was subservient to him, he would get more passive later when other, relatively stronger, PMs would come to power (such as Yılmaz

¹²⁶ Strohmeier, *Parliamentary Heads of State*,” pp. 252-3, 254.

¹²⁷ Tavits, *Presidents with prime ministers*, pp. 90-1.

¹²⁸ Gönenç, “Presidential Elements in Government,” p. 505.

and Demirel). Özal was still a severely non-neutral president for the rest of his term though—but by lacking impartiality, not by being an “executive” as before. We see evidence also in Kosovo where, once President Thaçi faced a weak government he was strongly opposed to (with a fragile majority in parliament and overburdened with a pandemic), he took an unprecedented politically active role in the new government formation, with the aim of ousting the ruling party from power. This “cohabitation” period between Thaçi and LVV did not last long (4 months), otherwise presumably it would have led to way more instances like Thaçi’s request to declare a state of emergency, in his attempts to accrue more power.

Therefore, the political opportunity framework seems to be a plausible theory in explaining the level of presidential neutrality in the sense of a politically active president, and the evidence supports it across countries, within a country, and within individual presidencies. What the political opportunity framework does not account for, however, as mentioned, is the other line of non-neutrality, namely the bias or partisanship of the president. A president that does not work to the detriment of the government in the sense elaborated above, i.e., a president that is not an active political actor, may nevertheless be non-neutral by being biased in favor of the government or a particular political group, or a president that works against a political party as such (a divisive figure). The political environment, i.e., the constellation and relative strength of political forces, does not cause presidential bias or partisanship. Modalities of electing the president seem to be most relevant in accounting for a biased or partisan president.

4.3. Modalities of Electing the President

Since this thesis is concerned with parliamentary systems and does not make a cross-system comparison, we do not have enough data to make any conclusion regarding which method of electing the president, indirect or direct, is more likely to produce a neutral president. Many authors

suggest that, not only neutrality but overall the role of the president is more dependent on the political context, rather than on the method of election.¹²⁹ What we can say for sure is that electing a president in one way or another does not guarantee that the president will be neutral. We have neutral and non-neutral presidents throughout “parliamentary” systems, regardless of the method of election. Presidents in Iceland, which are directly elected, are, on average, more neutral than presidents in Kosovo, which are indirectly elected. But, then, presidents of Germany (indirectly elected) are more neutral than presidents of Romania (directly elected). Hence, the method of election does not seem to guarantee anything, but whether it increases or decreases the likelihood of having a neutral president, is another matter. But, what is important from a neutrality perspective is that, as a rule, in systems with directly elected presidents, neutrality constitutional *requirements* are not the same as in typical parliamentary systems with indirectly elected presidents. Nothing prevents a president in Iceland, for example, which is directly elected but maintains a neutral role by way of tradition, from being more non-neutral and have a more significant political role, including being partisan (since this is not constitutionally objectionable).¹³⁰ But, the same active or partisan role is incompatible with the office of the president in parliamentary systems. When in parliamentary systems a president behaves non-neutrally, especially in the sense of interfering in policymaking, that is usually seen with suspicion, whereas this will not happen necessarily in systems where the president is directly elected, because of the supposed “legitimacy” derived from popular vote. Thus, my hypothesis would be that, when it comes to neutrality of presidents, an indirectly elected president is more likely to stay neutral because of constitutional constraints, whereas, in a non-parliamentary system, sooner or later, the role of the president might evolve

¹²⁹ Robert Elgie, *Review* of “Presidents in Parliamentary Systems: Do Direct Elections Matter?,” by Margit Tavits, *Perspectives on Politics* 10, no. 1 (2012): pp. 207-209.

¹³⁰ Gunnar H. Kristinsson, “Iceland,” in Robert Elgie (ed.) *Semi-Presidentialism in Europe* (Oxford University Press, 1999): p. 101-2.

easily to a non-partisan or even partisan political player (depending on constitutional configurations in place, namely whether they allow the association of the president with a political party).¹³¹

When it comes to presidential neutrality within parliamentary systems, in this section I argue that presidential election modalities are also key in ensuring a neutral president. What is most important is the amount of support the president gets in being elected: the broader the support the better—and the support should come from both the government and the opposition. If in electing the president the government does not have a say, then the president will be in political or ideological opposition to the incumbent government, and thus have an incentive to be politically active.¹³² On the other hand, a president that is elected by government support only, will most certainly lack impartiality (e.g., as is the case with many German presidents,¹³³ Turkish Presidents Gül and Özal, President Sejdiu of Kosovo). Hence support from both government and opposition in electing the president is indispensable.

Presidents that have been fairly unifying figures and impartial, have usually been elected by broad (government and opposition) support. Examples include President Jahjaga of Kosovo, German Presidents Weizsäcker, Gauck and Steinmeier, and Turkish President Sezer. However, we also have presidents who were elected with government support only, yet were impartial in office, such as President Demirel of Turkey. Broad support in electing the president seems to raise the likelihood that the president is an impartial figure, impartiality being an indispensable notion for

¹³¹ More on this on pp. 8-9 of this thesis and the accompanying footnote.

¹³² Electing a president without government support is possible in systems with an electoral college as in Germany, or, at least theoretically, even in Kosovo where the parliament chooses the president, when, for instance, the government and the opposition cannot agree for a consensual president and hence the government supports the opposition in electing the president as *ultima ratio*, in order to skip new general elections.

¹³³ In Germany, presidential elections are “heavily partisan and compromise candidates are rare.” Tavits, *Presidents with prime ministers*, p. 169.

neutrality. However, facing a weak government, even widely supported presidents can be politically active (although they might be impartial), as the example of German President Weizsäcker shows, or they might even be both politically active and biased presidents, such as President Thaçi of Kosovo (however, although it does not diminish completely the fact that Thaçi was broadly elected, his election has some abnormalities, which are specific for Kosovo; more on this in the last section, Curbing Non-neutrality). All in all, broad support in electing the president seems to raise considerably the likelihood that the president will be a unifying, impartial figure, instead of a divisive, biased one.

4.4. Curbing Non-neutrality

The political opportunity framework suggests that a president is more likely to be non-neutral when they are in political or ideological opposition to the government, and if the government is weak or unstable. Therefore, a starting point to curb presidential non-neutrality would be to make the government stronger and more stable.¹³⁴ Closely linked to a stronger and more stable government is a stronger and more stable parliament. Thus, a constitutional lawyer, when designing the office of the presidency, should also take into account factors and modalities regarding, among others, the electoral system, government formation, and party system fragmentation.¹³⁵ What exactly might work and what might not in terms of ensuring a stable and strong parliament and government goes outside the scope of this thesis and we are not going to go into details. Broadly speaking, what Tavits suggests is that “if the electoral system favors bigger

¹³⁴ On whether it is advisable to try to make the government stronger, Sartori argues that strong governments are “a risk that we must take—if for no better reason, by default, because the alternatives are worse.” Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York University Press, 1994). p. 112

¹³⁵ Tavits, *Presidents with prime ministers*, p. 236.

parties and the party system is fairly consolidated one would expect to have a relatively strong parliament with low levels of fragmentation. The same factors also influence the strength of government—the more consolidated the party system the less fragmented the governing coalitions. Further, if the rules of government formation require an investiture vote, the likelihood of minority governments decreases and stronger governments are formed as a result.”¹³⁶ What should not be done, though, to make governments stronger, is to introduce a high electoral threshold for general elections (in Kosovo and Germany this is 5%, whereas in Turkey it is 10%). Because although high electoral thresholds generally lead to stronger governments, the higher amount of seats they get in parliament means that they can often unilaterally appoint the president. Hence, substantial opposition support becomes unnecessary. As a consequence, a high electoral threshold is more likely to make presidents be less politically active, but to the detriment of making them biased and partisan.

As we saw, even when governments are strong and stable, the president can still be non-neutral by serving as a party-political tool in favour of the government. Also, they can still be non-neutral by being divisive, rather than unifying figures. Here is where an adequate electing method becomes relevant. As we explained, an adequate electing method is one where both government and substantial opposition support are needed. Kosovo has (and Turkey had) an adequate electing method in paper, but in practice it has not been used adequately. In Kosovo, the President is elected in three rounds. In the first two rounds, a two-thirds majority is needed to elect the president. If the president is not elected in the first two rounds, then a last third round is held, where an absolute majority suffices. But, what is most crucial—and what makes this electing method adequate—is that starting from the first round a superquorum of two-thirds of MPs is needed to even proceed

¹³⁶ Ibid.

with electing the president. Hence, making some (often substantial) opposition support indispensable for electing the president. Turkey had the same provision. But, in both countries this provision was brought to the Constitutional Court, and before the Courts decided it was not really clear whether the superquorum is required or not. Only in 2007 did the Turkish Constitutional Court clarify that a superquorum is required—the Constitution was enacted in 1982! (Özal was elected by government support only, although the opposition boycotted the process, since the superquorum rule was not obvious.) Hence, these rules should be as clear as possible in the constitution, stating clearly that a superquorum is needed as well. As stated, the issue was brought before the Constitutional Court of Kosovo too (in 2011), where a presidential candidate was elected breaching, among others, the superquorum requirements. The Court declared the election unconstitutional (and declared that a superquorum is required as well), but, unfortunately, the Court potentially contributed that the parliament elects a biased and partisan president in the future. The Court, weirdly enough, stated that, although a supermajority is required to proceed with electing the president from the first round, electing the president “is of such importance, that all deputies, as the representatives of the people of Kosovo, should consider it their constitutional duty, unless excused by the President of the Assembly, to participate in the procedure for the election of the President.” The Court notes that the Constitution requires that “all 120 deputies should vote, minus those properly excused by the President of the Assembly [...] The requirement of Article 86, that all deputies had to vote, was, therefore, not met.”¹³⁷ The Court, rather than recognizing the indispensable opposition support in electing the president, and how this superquorum is meant to ensure a consensual president—empowering the opposition with the knowledge that they have the right to object a presidential candidate this way, unless the ruling

¹³⁷ Constitutional Court of Kosovo, case no. KO 29/11 (30 March 2011).

parties agree on a consensual candidate—the Court instead (potentially) made deputies believe that they have a duty to be present and fill the quorum for the ruling parties, which then easily elect the president in the third round with just an absolute majority. (It seems that this decision did not have a substantial influence on the election of president Thaçi as president, since the opposition boycotted the process, and even threw teargas in parliament!) Nevertheless, what explains Thaçi's election with a two-thirds present to make the quorum, is because of some specifics of Kosovo. In Kosovo, from 120 seats in parliament, 20 are reserved for other communities living in Kosovo apart from Albanians. These MPs from other communities, so far, usually support the Albanian coalition that forms the government, regardless of who they are. Hence, if some Albanian coalition has 61 seats in parliament, then they can count on the other 20 seats as well (with some few exceptions, when sometimes individual deputies act otherwise), because the other communities, as a rule, do not take sides between Albanian parties but their parties join any government regardless.¹³⁸ Therefore, when the ruling parties together had roughly 61 votes of deputies to elect president Thaçi, the 20 deputies from other communities (now part of the government as well), were present so there is quorum. So, the MPs vote from other communities for the president is more automatic and they are always part of the government. Hence, although in paper the rules for electing the President of Kosovo are adequate, some other provisions make it inadequate as it is. Thus, to raise the likelihood that Kosovo has more impartial (impersonal and objective) presidents, the threshold for quorum should be higher (maybe from 80/120 deputies to, say, 86/120). Whether that is desirable for other reasons is another matter, but, with the situation in Kosovo as it is—with

¹³⁸ Nevertheless, why still this potential “two-thirds majority” of the government does not make the governments in Kosovo strong and stable, is that the governments and parliaments are fragmented and unstable. In addition, in many crucial policies governments are not supported by the MPs of other communities, especially the Serbian community. The MPs of other communities usually do not take sides between Albanian parties, but that does not mean that they automatically support any cause of the government. Hence, you cannot really say that the governments in Kosovo have a “two-thirds” majority.

the (in practice) inadequate electing method, plus with inherently weak and unstable governments—it is almost guaranteed that future Kosovan presidents will be either substantially politically active, or biased, or both.

What else can be done in terms of constitutional design, is that, generally, presidential powers should be kept to a minimum, since a strong president is incompatible and illogical with the notion of a neutral president.¹³⁹ Also, their authority in some areas, as in foreign affairs and military policy, should be as clear as possible (the provision in Kosovo that the President “leads the foreign policy of the country” is as fuzzy as it gets, since in practice presidents in parliamentary systems do not determine and conduct the foreign policy of the country).¹⁴⁰ Also, the presidents should preferably not have the right of legislative initiatives, or to initiate referendums, since this potentially can be used by presidents to be more independent political actors, contrary to neutrality requirements.¹⁴¹

¹³⁹ Elliot Bulmer, *Presidential Legislative Powers* (International IDEA, 2017): p. 28-9.

¹⁴⁰ Art. 84(10). For more details, see page _ of this thesis.

¹⁴¹ Gábor Dobos, Attila Gyulai, and Attila Horváth “Weak but not powerless: the position of the president in the Hungarian political system,” in Vít Hloušek (ed.), *Presidents Above Parties?: Presidents in Central and Eastern Europe, Their Formal Competencies and Informal Power* (Munipress, 2014). For referendums, see also: European Commission for Democracy Through Law (Venice Commission), “Moldova: Consolidated Opinion on the Revision of the Constitution,” CDL(2000)095-e: §20.

5. Conclusion

This thesis set out to explore what accounts for the variation of presidential behavior across and within countries regarding their political neutrality. The ultimate concern was to determine whether political neutrality is dependent on constitutional design, or whether it is too contextual and well outside the scope of influence of the constitutional designer. By analyzing presidencies within three countries with parliamentary systems (Germany, Kosovo, and Turkey), this thesis shows that there are two main factors which determine presidential neutrality in parliamentary systems: 1) the constellation and strength of political forces the president faces; and 2) modalities of electing the president. (On the other hand, president-based explanations of presidential neutrality, i.e., those that focus on the president as an individual and a personality rather than on external factors, besides lacking a solid theoretical foundation, also do not seem to have empirical support.)

These two plausible lines of explanations do not account for presidential neutrality in the same way. It was stated that two elements constitute political neutrality, namely that the president is: 1) disengaged from daily politics and governing, and 2) they are impartial (impersonal and objective). The political environment the president faces accounts for the first line of neutrality. More specifically, the president, as most officeholders, will likely try to accrue more power during office and attempt to have her policy preferences executed. When the president faces a weak or unstable government, the president will usually be a substantial political actor: they will act as an executive and engage in day-to-day governing, rather than remaining a passive, neutral power. Especially prone to engage with the political process in this way are those presidents that face governments which they are in political or ideological opposition to. While, on the other hand, a

president that is in line with the government, or who faces a strong government, will likely be a politically inactive president. In the former case, because somebody else will be executing the president's policy preferences for them, and, in the latter case, because a strong government will be able to curb the political ambitions of even the most motivated presidents.

Nevertheless, even in cases when the president stays politically inactive, because they are in line with the government or because the government is strong, the president can still be non-neutral by not being impartial. They still can be, for instance, deferential in favor of the government, or, a divisive figure instead of unifying. And here is where an adequate election method becomes relevant. When the president is elected by broad support (from the ruling parties and the opposition), the likelihood that the president will be an impartial (impersonal and objective) figure increases. Nevertheless, even such impartial presidents might be politically active, if the political opportunities favor such activity (i.e., if the president is in opposition to the government and the government is weak). That is why both the political opportunity framework and the adequate modalities in electing the president are key in maintaining a neutral president.

Based on these conclusions, when designing the presidency with the aim of having a neutral president, one should especially focus on the modalities of electing the president, and also consider factors that are related to the strength and stability of the government. A strong government, in conjunction with an adequate electing method, will considerably raise the likelihood that the president will be neutral. Therefore, presidential political neutrality is not entirely a matter of context, but a constitutional designer can have substantial influence on the extent a president will be neutral.

While constitutional design—making the government strong and making some form of opposition support indispensable for electing the president—will not be able to ensure absolutely

that the president will be neutral, it will ensure almost absolutely that the president will not manage to be a severely non-neutral figure, as was the case with some presidents in Kosovo and Turkey. In addition, the constitutional designer should curb some presidential powers which are not really compatible with the notion of a neutral president, which the president might use to be an independent political actor, such as the right of legislative initiatives and the right to call referendums.

6. Bibliography

“2020 elections: Election board says Peru President did not breach neutrality principle,” *Andina* (Jan 2020).

Bâli, Ashi. “Courts and constitutional transition: Lessons from the Turkish case,” *International Journal of Constitutional Law* 11, no. 3 (2013).

Bendersky, Joseph. “Carl Schmitt in the Summer of 1932: A Reexamination,” *Revue européenne des sciences sociales* 16, no. 44 (1978).

——— *Carl Schmitt: theorist for the Reich* (Princeton University Press, 2014).

Bislimi, Bekim and Mimoza Sadiku. “Presidenti Thaçi kundërshton masat e qeverisë për kufizim të lirisë së lëvizjes” *Evropa e Lirë* (March 23, 2020).

Bulmer, Elliot. *Presidential Legislative Powers* (International IDEA, 2017).

——— *Non-Executive Presidents in Parliamentary Democracies* (International IDEA, 2017).

Çınar, Menderes and Nalan S. Şentürk. “The presidency in Turkish politics: From independence to the AKP,” in Alpaslan Özerdem and Matthew Whiting (eds.), *The Routledge Handbook of Turkish Politics* (Routledge, 2019).

“Court upholds Calderon election victory in Mexico,” *The Irish Times* (Sep 2006).

Craiutu, Aurelian. “A Tale of Two Moderates,” *History of European Ideas* 39:1 (2013).

——— *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830* (Princeton University Press, 2016).

Daniels, Detlef von. “Politics in Really Hard Times: The Jurisprudence of Crisis” (APSA 2010 Annual Meeting Paper, 2010).

Davis, Harold E. “The Presidency in Chile,” *Presidential Studies Quarterly* 15, no. 4 (1985).

Dobos, Gábor, Attila Gyulai, and Attila Horváth. “Weak but not powerless: the position of the president in the Hungarian political system,” in Vít Hloušek (ed.), *Presidents Above Parties?: Presidents in Central and Eastern Europe, Their Formal Competencies and Informal Power* (Munipress, 2014).

Elgie, Robert. “France,” in Robert Elgie (ed.) *Semi-Presidentialism in Europe* (Oxford University Press, 1999).

—— Review of “Presidents in Parliamentary Systems: Do Direct Elections Matter?,” by Margit Tavits, *Perspectives on Politics* 10, no. 1 (2012).

Elzinga, Douwe J. “Monarchy, Political Leadership, and Democracy: On the Importance of Neutral Institutions” in John Kane, Paul ‘t Hart, and Haig Patapan (eds.), *Dispersed democratic leadership: Origins, dynamics, and implications* (Oxford University Press, 2009).

Esen, Berk and Sebnem Gumuscu. “Rising competitive authoritarianism in Turkey,” *Third World Quarterly* 37, no. 9 (2016).

European Commission for Democracy through Law (Venice Commission). “REPORT on the revision of the Constitution of Armenia,” CDL (2000) 102.

—— “Republic of Moldova: OPINION on the proposal by the President of the Republic to expand the President’s powers to dissolve parliament,” CDL (2017) 017.

—— “Moldova: Consolidated Opinion on the Revision of the Constitution,” CDL(2000)095-e.

Frowein, Jochen A. and Michael J. Hahn. “The participation of parliament in the treaty process in the Federal Republic of Germany,” *Chi.-Kent L. Rev.* 67 (1991).

Gherghina, Sergiu, Alexandra Iancu, and Sorina Soare. “Presidents and their parties: Insights from Romania” In *ECPR General Conference, Prague, Czech Republic* (2016).

Gönenç, Levent. “Presidential Elements in Government: Turkey,” *European Constitutional Law Review* 4(3) (2008).

Greenstein, Fred I. “Presidents, their styles and their leadership,” in Joel Aberbach & Mark Peterson (eds.), *Institutions of American democracy: The Executive branch* (Oxford University Press, 2005).

“Haradinaj - Thaçit: Nëse mendon dikush që mund të më disiplinoj me një karrige, gabim e ka,” *Koha Ditore* (23 October 2018).

Hayward, Jack. “From Republican Sovereign to Partisan Statesman,” in Jack Hayward and Martin Harrison, *Degaulle to Mitterrand: President Power in France* (NYU Press, 1993).

Helms, Ludger. “The Federal Constitutional Court: Institutionalising Judicial Review in a Semisovereign Democracy” in Ludger Helms (ed.) *Institutions and Institutional Change in the Federal Republic of Germany* (Palgrave Macmillan, 2000).

Heper, Metin. “The Executive in the Third Turkish Republic, 1982–1989,” *Governance* 3, no. 3 (1990).

Hloušek, Vít (ed.). *Presidents Above Parties?: Presidents in Central and Eastern Europe, Their Formal Competencies and Informal Power* (Munipress, 2014).

İçener, Zeyneb Ç. “Presidents, the state and ‘democracy’ in Turkey: the ideas and praxis of Süleyman Demirel,” (pHD diss., Bilkent University, 2010).

Jakubiak, Łukasz. “The Parliamentary Genesis of the French Semi-Presidentialism against the Background of the Process of Presidentialisation of the Fifth Republic,” *Politeja-Pismo Wydziału Studiów Międzynarodowych i Politycznych Uniwersytetu Jagiellońskiego* 15, no. 53 (2018).

Kadelbach, Stefan. “International Treaties and The German Constitution” In Curtis A. Bradley (ed), *The Oxford Handbook of Comparative Foreign Relations Law* (Oxford University Press, 2019).

Kalaycioğlu, Ersin. “The conundrum of coalition politics in Turkey,” *Turkish Studies* 17, no. 1 (2016).

Kliegel, Thomas. “Freedom of Speech for Public Officials vs. the Political Parties' Right to Equal Opportunity: The German Constitutional Court's Recent Rulings Involving the NPD and the AfD,” *German Law Journal* 18, no. 1 (2017).

Köker, Philipp. *Presidential activism and veto power in Central and Eastern Europe* (Springer, 2017).

——— *Review of “Presidents above parties? Presidents in Central and Eastern Europe, their formal competencies and informal power,” CEU Political Science Review*, 10 (1-2) (2015).

Kommers, Donald P. *The Constitutional Jurisprudence of the Federal Republic of Germany*: 2nd ed. (Duke University Press, 1997).

“Kosovo: opposition MPs fire tear gas in ninth parliament attack in six months,” *Euronews* (March 10, 2016).

Kristinsson, Gunnar H. “Iceland,” in Robert Elgie (ed.) *Semi-Presidentialism in Europe* (Oxford University Press, 1999).

Kysela, Jan and Zdeněk Kühn. “Presidential Elements in Government: The Czech Republic,” *European Constitutional Law Review* 3, no. 1 (2007).

Letsch, Constanze. “Recep Tayyip Erdogan the favourite to win Turkey's first presidential election,” *The Guardian* Aug 8, 2014).

Linz, Juan J. “Democracy, Presidential or Parliamentary: Does It Make a Difference?” in Juan J. Linz and Arturo Valenzuela (eds.), *The Failure of Presidential Democracy: Comparative Perspectives* (vol. 1) (John Hopkins University Press, 1994).

Loewenstein, Karl. “The presidency outside the United States: a study in comparative political institutions,” *The Journal of Politics* 11, no. 3 (1949).

Lumowa, Valentino. "Benjamin Constant on Modern Freedoms: Political Liberty and the Role of a Representative System," *Ethical Perspectives* 17, no. 3 (2010).

Marrani, David. "Semi-Presidentialism a la Francaise: The Recent Constitutional Evolution of the Two-Headed Executive," *Constitutional Forum* 18, no. 2 (2009).

Neto, Octavio Amorim and Kaare Strøm. "Breaking the Parliamentary Chain of Delegation: Presidents and Non-partisan Cabinet Members in European Democracies," *British Journal of Political Science* 36, no. 4 (2006).

"Nga Podujeva Mustafa i çon porosi Thaçi: Ushtria me përkrahje të SHBA-së dhe NATO-s," *Koha Ditore* (March 18, 2017).

Özbudun, Ergun. *Contemporary Turkish Politics, Challenges to Democratic Consolidation* (Lynne Rienner Publishers, 2000).

Özdalga, Elisabeth. Review of "Abdullah Gül and the Making of the New Turkey by Gerald MacLean," *Journal of the Ottoman and Turkish Studies Association*, Vol. 2, No. 2 (2015).

Palladino, Nicola. "'Presidentialisations' in Italy: the battle for leadership between the Prime Minister and the President of the Republic," *Contemporary Italian Politics*, 7:2 (2015).

Pasquino, Pasquale. "Majority rules in constitutional democracies" in Stéphanie Novak, and Jon Elster (eds), *Majority decisions: Principles and practices* (Cambridge University Press, 2014).

Popova, Erjonë and Bekim Muhaxheri. "The president who did not strike back," *Prishtina Insight* (April 7, 2016).

Popović, Dragoljub. *Comparative Government* (Edward Elgar Publishing, 2019).

"Presidenti Thaçi publikon pamje të një laboratorit të drogës, akuzon 'Grupin Kurti'," *Koha Ditore* (May 28, 2020).

Prutsch, Markus J. *Making sense of constitutional monarchism in post-Napoleonic France and Germany* (Palgrave Macmillan, 2013).

Sajó, András. "Concepts of Neutrality and the State," in Ronald Dworkin (ed.), *From Liberal Values to Democratic Transition: Essays in Honor of János Kis* (Central European University Press, 2004).

——— "Independent Regulatory Authorities as Constitutional Actors: A Comparative Perspective," *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica* 48 (2007).

Sartori, Giovanni. *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York University Press, 1994).

Scalone, Antonino. "Führerprinzip and democracy in Weber and Kelsen," in *The Reconstruction of the Juridico-Political* (Routledge, 2015).

Schleifer, Yigal. "Turkey: President Approves Controversial New Alcohol Regulations," *Eurasianet* (June 10, 2013).

Schmitt, Carl. "The Age of Neutralizations and Depoliticizations," in Carl Schmitt, *The Concept of the Political (Expanded Edition)* (The University of Chicago Press, 2007).

Seitzer, Jeffrey (ed.). *Carl Schmitt: Constitutional Theory* (Duke University Press, 2008).

Selinger, William. *Parliamentarism: From Burke to Weber* (Cambridge University Press, 2019).

Şengül, Ceren. "Varieties of 'Kurdishness' in Turkey: state rhetoric, language, and regional comparison," (pHD diss., University of Edinburgh, 2016).

"Shala thotë se u bind nga presidenti e ish-kryeministri, reagon KDI-ja," *Koha Ditore* (June 3, 2020).

Siaroff, Alan. "Comparative presidencies: The inadequacy of the presidential, semi-presidential and parliamentary distinction," *European Journal of Political Research* 42 (2003).

Smith, Raymond A. *The American Anomaly: U.S. Politics and Government in Comparative Perspective* (2nd ed.) (Routledge, 2011).

Strohmeier, Gerd and Ruth Wittlinger. "Parliamentary Heads of State: Players or Figureheads? The Case of Horst Köhler," *West European Politics* 33, no. 2 (2010): pp. 247-8; 254.

Tănăsescu, Elena Simina. "The President of Romania, Or: The Slippery Slope of a Political System," *European Constitutional Law Review* 4, no. 1 (2008).

Tassopoulos Ioannis. "Neutrality," *Max Planck Encyclopedia of Comparative Constitutional Law* (2017).

Tavits, Margit. *Presidents with prime ministers: Do direct elections matter?* (Oxford University Press, 2008).

"Thaçi flet për territoret: Pazare nuk do të ketë, shkëmbim nuk do të ketë" *Gazeta Express* (June 5, 2020).

"Thaçi i bindet presionit të SHBA-së, i jep mandat KQZ-së," *Gazeta Blic* (March 26, 2019).

“Thaçi mbledh Këshillin e Sigurisë, propozon gjendje të jashtëzakonshme,” *Evropa e Lirë* (March 17, 2020).

“Thaçi: Kurti, Abazi dhe Sveçla fikën kamerat dhe vizituan dhomën e përgjimeve në PTK për tri ditë,” *Gazeta Express* May 27, 2020).

“Thaçi: Pyeteni Kurtin kush janë individët nga Irani që ia financojnë partinë,” *Koha Ditore* (March 31, 2018).

“Thaçi: Vetëvendosje organizatë kriminale, unë nuk e solla Pacollin,” *Koha Ditore* (April 29, 2020).

“The guardian of the constitution: Schmitt on pluralism and the president as the guardian of the constitution” in Lars Vinx (ed.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge University Press, 2015).

Tyushka, Andriy. “Semi-Presidential Systems,” *Max Planck Encyclopedia of Comparative Constitutional Law* (2018).

Vujović, Zlatko and Nikoleta Tomović. “The Presidentialisation of Political Parties in Montenegro: A Limited Semi-presidentialism,” in Gianluca Passarelli, *The Presidentialisation of Political Parties in the Western Balkans* (Palgrave Macmillan, 2019).

Weber, Max. “Parliament and Government in Germany under a New Political Order,” in Peter Lassman (ed.), and Ronald Speirs (trans.), *Weber: Political writings* (Cambridge University Press, 1994).

Who ought to be the guardian of the constitution? Kelsen’s reply to Schmitt” in Lars Vinx (ed.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge University Press, 2015).