

# Crown-Presidentialism

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*This article will theorize a previously unidentified type of constitutional design that I call “crown-presidentialism.” Crown-presidential design combines constitutional powers exercised by elected presidents in both presidential and semi-presidential systems. First, as in presidentialism, crown-presidential constitutions grant the elected president final management power over the makeup of the executive-branch government. Second, as in a semi-presidentialism, crown-presidential constitutions afford the elected president guardian powers to control the legislative branch as well as important judicial, prosecutorial, and integrity institutions. This formal design has provided presidents an important tool for dominating both formal and informal politics while claiming fidelity to democratic constitutional design. Crown-presidentialism is therefore an important tool in the super-presidentialism of many new authoritarian regimes. This finding is a reminder of the importance of formal design rules in shaping political behavior—even in some forms of authoritarian governance.*

## 1. Introduction

Historically, authoritarianism brings to mind communist or military regimes that use extra-legal tools to repress dissent. In recent years, however, scholars have begun to document how authoritarian governance is changing.<sup>1</sup> Given the costs of older methods of authoritarian repression, they describe how contemporary or “new authoritarianism” frequently combines formal democratic institutions such as elections and courts with personalized, centralized rule.<sup>2</sup> Constitutional scholars have recently worked to demonstrate the importance of written constitutional rules in this

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<sup>1</sup> Larry Diamond, *Thinking About Hybrid Regimes*, 13 J. DEMOCRACY 21 (2002); Ivan Krastev, *Paradoxes of the New Authoritarianism*, 22 J. DEMOCRACY 5 (2011).

<sup>2</sup> Krastev, *supra* note 1, at 5 (discussing the mechanisms and resilience of “new authoritarianism”); STEVEN LEVITSKY & LUCAN WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR* 5 (2010) (describing the new methods of authoritarian control that developed in the face of the rising costs of open authoritarianism in the post-Cold War world).

new form of authoritarianism.<sup>3</sup> This research has taken on increasing significance as formal constitutional change has become increasingly important in “democratic decline” around the world.<sup>4</sup> This article will add to this research by demonstrating the importance of a previously unidentified formal constitutional design that I call “crown-presidentialism” in new authoritarian governance.

To date, most have largely dismissed the role of formal constitutional design in authoritarian governance.<sup>5</sup> At the end of the Cold War, commentators assumed that the explosion of rights-based, written constitutions in formerly authoritarian states was part of a third wave of democratization and these constitutions fit into the traditional categories of constitutional design (parliamentarism, semi-presidentialism, and presidentialism).<sup>6</sup> More than twenty-five years later, as some of these countries have failed to adopt democratic constitutionalism, scholars have argued that constitutional design has failed to promote democratic politics. Some argue that the failure of these countries is traceable to the breakdown or failure of semi-presidential or presidential design (Section 2.1). Others suggest that semi-presidential or presidential constitutional design was simply unable to overcome historically rooted traditions of authoritarianism (Section 2.2).

This article will argue that some of those failed post-Cold War constitutional systems with elected presidents did not adopt either semi-presidential or presidential constitutional design. Instead, these systems combined formal presidential authority from presidentialism and semi-presidentialism to create a constitutional design that centralizes vast power in the office of the president.<sup>7</sup> This “crown-presidentialism” has not been previously identified because it *disguises* its commitment to centralized presidential power in the concepts and design features of democratic constitutionalism. Crown-presidential design therefore represents a previously unidentified authoritarian adaption to the post-Cold War order.

In describing crown-presidentialism as an analytically distinct form of constitutional design used in new authoritarianism, this article analyzes the formal legal authority granted to the president in the *text of the constitution*.<sup>8</sup> This crown-presidential constitutional design in turn frequently—but not always—provides *legal* tools for the

<sup>3</sup> CONSTITUTIONS IN AUTHORITARIAN REGIMES (Tom Ginsburg & Alberto Simpser eds., 2013) (generally discussing the role of constitutions in authoritarian regimes); William Partlett, *The Dangers of Popular Constitution-Making*, 38 BROOK. J. INT’L L. 193 (2012) (describing the use of constitutional change to centralize power in the hands of presidents in the former Soviet republics).

<sup>4</sup> David Landau, *Abusive Constitutionalism*, 47 U.C. DAVIS L. REV. 189 (2013) (describing the use of constitutional change to centralize power in Latin America); Kim Lane Scheppele, *Autocratic Legalism*, 85 CHI. L. REV. 545, 546, 554–6 (2018) (discussing the use of law in democratic decline).

<sup>5</sup> Zachary Elkins, Tom Ginsburg, & James Melton, *The Content of Authoritarian Constitutions*, in CONSTITUTIONS IN AUTHORITARIAN REGIMES, *supra* note 3, at 160; LEVITSKY & WAX, *supra* note 2, at 233. David Landau argues that constitutional change can be used to entrench power, but does not focus on constitutional design. Landau, *supra* note 4.

<sup>6</sup> Francis Fukuyama, *The End of History?*, 16 NAT’L INTEREST 3 (1989); BRUCE ACKERMAN, *THE FUTURE OF LIBERAL REVOLUTION* (1992).

<sup>7</sup> Kim Lane Scheppele, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, 26 GOVERNANCE 560, 560 (2013) (describing how the combination of otherwise reasonable constitutional provisions can create something that “looks and acts like a monster”).

<sup>8</sup> Other examples include classifications of judicial review. For a recent explanation of a new model, see Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism*, 49 AM. J. COMP. L. 707 (2012).

construction of what are often called “hyper” or “super” presidential systems.<sup>9</sup> As will be described in more detail later, this formal design gives elected “crown-presidents” a powerful tool to dominate both formal and informal politics (Sections 4 and 5). But this formal tool is not always used effectively, reflecting the fact that formal constitutional design shapes but *does not determine* political ordering.<sup>10</sup>

Looking to constitutional text, therefore, this article will show how “crown-presidentialism” affords the elected president authority to both dominate the executive branch and control the legislature. Crown-presidentialism places this set of powers in the language of constitutionalism by combining president powers from *both* presidential and semi-presidential design.

First, crown-presidentialism draws from presidentialism by giving the president day-to-day *management* powers over the executive branch. Most notably, this includes the final constitutional authority to appoint and dismiss the executive-branch ministers (including the prime minister). This power in turn gives the president broad power over the bureaucracy. This analytically distinguishes it from semi-presidentialism, in which the legislative branch has the authority to remove executive-branch ministers and therefore shares power over the bureaucracy and ministry.

Second, crown-presidential design draws from semi-presidentialism in affording the president *guardian* powers to stand above the constitutional system of checks and balances. These crown-like powers—which draw on older conceptions of monarchical prerogatives—include constitutional authority for the president to enter into, and control, legislative power (most notably, through legislative dismissal and/or appointment).<sup>11</sup> This guardian position also frequently affords the president power to dominate judicial, prosecutorial, and integrity institutions.<sup>12</sup> This formal power

<sup>9</sup> Susan Rose-Ackerman, Diane A. Desierto, & Natalia Volosin, *Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and Philippines*, 29 BERKELEY J. INT’L L. 246 (2011) (discussing how presidents used informal power mechanisms to build hyper-presidential governance); M. STEVEN FISH, *DEMOCRACY DERAILED IN RUSSIA: THE FAILURE OF OPEN POLITICS* 209 (2005) (classifying Russia’s system as semi-presidential but describing it as super-presidential “in practice”); John Ishiyama & Ryan Kennedy, *Superpresidentialism and Political Party Development in Russia, Ukraine, Armenia and Kyrgyzstan*, 53 EUR.-ASIA STUD. 1177 (2001).

<sup>10</sup> See Herbert Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 COLUM. L. REV. 543 (1954) (describing how the operation of the formal federal design in the US Constitution is not fixed but is continually shaped by the dynamic relationship between state and federal politics).

<sup>11</sup> This legislative power closely parallels concepts of the Crown-in-Parliament; in this role, therefore, the president often is formally given so-called prerogative powers such as dissolving parliament, immunity from prosecution, as well as pseudo-legislative powers (in the English tradition known as Orders-in-Council). See, e.g., JANET McLEAN, *SEARCHING FOR THE STATE IN BRITISH LEGAL THOUGHT: COMPETING CONCEPTIONS OF THE PUBLIC SPHERE* (2012). In super-presidential regimes in Africa, we see examples of the President in Parliament. See Section 5.

<sup>12</sup> James Spigelman, *The Integrity Branch of Government*, 78 AUSTL. L.J. 724 (2004) (theorizing the “integrity branch of government” which includes institutions that ensure that each governmental institution exercises the powers conferred on it in the manner in which it is expected). These “integrity” institutions include institutions (such as the Electoral Commission) that are designed to hold the political branches of power accountable and have sometimes been described as part of the fourth branch. Michael Pal, *Electoral Management Bodies as a Fourth Branch of Government*, 21 REV. CONST. STUD. 85 (2016).

analytically distinguishes it from presidentialism in which there is a “mutual independence” between legislative and executive power.<sup>13</sup>

Crown-presidentialism has been introduced by charismatic presidents to re-legitimize centralized and personalized rule. It is usually justified as a democratic form of constitutional design that combines authority granted to presidents in presidential and semi-presidential constitutional design. For instance, in post-Soviet Eurasia and parts of Africa, this design is justified as a democratic constitutional system that responds to the needs of rebuilding state power and creating a strong state (Section 4). Scholars have noted this hybrid nature, referring to the Russian Constitution as “the constitutional equivalent of Europe’s Airbus, assembled from parts manufactured in a number of countries.”<sup>14</sup>

In practice, however, crown-presidentialism’s combination of “parts” is not democratic. Most obviously, it places few checks and balances on presidential power and therefore allows the president to dominate formal state institutions. This formal dominance also provides authoritarian leaders with an important tool for also controlling informal politics. This is important because authoritarianism is not a spontaneous form of political ordering. It requires authoritarian leaders to consolidate and maintain informal control over a wide array of competing factions over time.<sup>15</sup> Henry Hale describes how the constitutional centralization of power in the office of the president allows authoritarian presidents to “signal” to competing groups the particular “patron” to serve.<sup>16</sup> The formal centralization of power also provides authoritarian leaders with the tools for remaining in power by allowing them to co-opt members of the opposition through patronage and therefore weaken informal political competition.<sup>17</sup> Finally, crown-presidentialism allows the president to avoid democratic accountability by shifting blame for policy failures to the executive branch.<sup>18</sup>

Crown-presidential design is not just undemocratic; it can also undermine the project of building a stronger and more effective state. In particular, the executive personalism of hyper-presidentialism frequently undermines the overall stability and strength of public institutions.<sup>19</sup> For instance, centralized and personalized crown-presidential leadership in Russia has increasingly prioritized loyalty—rather than knowledge of local needs—in selecting public officials. This institutional dependency

<sup>13</sup> Denis Beranger & Christina Murray, *Systems of Government*, in THE ROUTLEDGE HANDBOOK OF CONSTITUTIONAL LAW 73, 81 (Mark Tushnet, Thomas Fleiner, & Cheryl Saunders eds., 2013).

<sup>14</sup> Robert Sharlet, *Legal Transplants and Political Mutations: The Reception of Constitutional Law in Russia and the Newly Independent States*, 7 E. EUR. CONST. REV. 59, 64 (1998).

<sup>15</sup> BARBARA GEDDES, JOSEPH WRIGHT, & ERICA FRANTZ, HOW DICTATORSHIPS WORK 63–8 (2018).

<sup>16</sup> Henry E. Hale, *The Informal Politics of Formal Constitutions: Rethinking the Effects of “Presidentialism” and “Parliamentarism” in the Cases of Kyrgyzstan, Moldova, and Ukraine in Constitutions*, in CONSTITUTIONS IN AUTHORITARIAN REGIMES, *supra* note 3, at 218.

<sup>17</sup> GEDDES, WRIGHT, & FRANTZ, *supra* note 15, at 63–8.

<sup>18</sup> Taras Kuzio, *Democratic Breakthroughs and Revolutions in Five Postcommunist Countries: Comparative Perspectives on the Fourth Wave*, 16 DEMOKRATIZATSIIYA: J. POST-SOVIET DEMOCRATIZATION 97 (2008) (describing the practice in the former Soviet space of leaders blaming their subordinates for policy failures).

<sup>19</sup> See, e.g., GEDDES, WRIGHT, & FRANTZ, *supra* note 15 (arguing that centralized and personalized governance is less effective and stable); ERICA FRANTZ, AUTHORITARIANISM: WHAT EVERYONE NEEDS TO KNOW (2018).

means that officials are more likely to strive to please their superiors than their constituents. Consequently, central policy-makers frequently lack the information to make effective policy and therefore decision-making turns into a “guessing game.” This problem has significantly undermined the overall effectiveness of policy-making and state institutions.<sup>20</sup> Crown-presidentialism is therefore more image than substance, creating the appearance of effective, strongman governance but ultimately undermining the ability of the state to function effectively.<sup>21</sup>

In practice, therefore, crown-presidentialism’s centralism is therefore an example of what Kim Lane Scheppele describes as a “Frankenstate,” where the “interaction effects” of “perfectly reasonable pieces” ultimately lead to the creation of a monster.<sup>22</sup> In this case, the “monster” is a presidential office that has the power to dominate both formal and informal political ordering. Crown-presidentialism has therefore become a model for elected presidents to use in asserting formal and informal control over politics while simultaneously disguising this authoritarian project in the language of constitutionalism. The clearest recent example is President Erdogan’s “Turkish type of presidentialism” which is in reality a crown-presidential design.<sup>23</sup>

To describe crown-presidentialism, this article will be divided into four parts. Section 2 will present the two dominant explanations for why many new, post-Cold War presidentialist constitutions have failed to build democratic constitutional governance. Section 3 will outline how crown-presidential design is a new type of constitutional design which has enabled authoritarianism. This design has not been previously identified because it is disguised in the language and concepts of democratic constitutionalism. Section 4 will describe how crown-presidentialism has emerged as an important—but neglected—legal basis for authoritarian resilience in post-Soviet Eurasia and Africa. Section 5 will explain how crown-presidentialism is an important conceptual tool for understanding the role of formal constitutional design rules in both the construction of democracy and authoritarianism globally.

## 2. Constitutional design and post-Cold War authoritarian resilience

Since the end of the Cold War, many countries have adopted constitutions with elected presidents claiming to have democratic constitutional design. A key question in the literature is why this design has failed to promote democratic constitutionalism in some countries but not others. The answers can be divided into two groups. First, some scholars argue that presidentialism and semi-presidentialism are inevitably dangerous design choices for democratic transition because they are subject to

<sup>20</sup> Nikolay Petrov, Maria Lipman, & Henry E. Hale, *Three Dilemmas of Hybrid Regime Governance: Russia from Putin to Putin*, 30 POST-SOVIET AFF. 1, 21–22 (2014).

<sup>21</sup> TIMOTHY FRYE, *WEAK STRONGMEN: THE LIMITS OF POWER IN PUTIN’S RUSSIA* (2021).

<sup>22</sup> Scheppele, *supra* note 7, at 560.

<sup>23</sup> Sule Boyunsuz, *The AKP’s Proposal for a “Turkish Type of Presidentialism” in Comparative Context*, 17 TURKISH STUD. 68 (2015).

authoritarian reversion.<sup>24</sup> A second—and more recent—line of scholarship argues that formal constitutional design has less effect on political behavior than previously thought. Instead, historical or other factors are far more important. Underpinning both answers is that formal constitutional design has been unable to overcome deeply rooted and informal patterns of authoritarian governance.

## 2.1. The dangers of constitutional design with elected presidents

There is a vast literature warning about the dangers of elected presidents for democratic change. Juan Linz famously wrote that classic presidentialism “has unpromising implications for democracy.”<sup>25</sup> Arturo Valenzuela argues that presidentialism undermines institutions and therefore weakens the possibilities of successful democracy.<sup>26</sup> Guillermo O'Donnell claims that presidential regimes are at the heart of the descent of many Latin American regimes into “delegative” democracy in Latin America.<sup>27</sup> In the African context, Nicolas van de Walle demonstrates that presidentialism undermines the development of political parties.<sup>28</sup>

Many scholars similarly argue that semi-presidentialism is also a problematic design choice.<sup>29</sup> Linz states that “[i]n view of some of the experiences with this type of system it seems dubious to argue that in and by itself it can generate democratic stability.”<sup>30</sup> Shugart and Carey warn constitution-makers “to stay away from president-parliamentary designs” where the president can dominate politics.<sup>31</sup> Most recently, Huang-Ying Tang argues that semi-presidentialism is the most likely design to lead to “hegemonic personalistic regimes.”<sup>32</sup> At the center of this concern about semi-presidentialism is the problem of a dual executive and the problem “of deadlock and constitutional conflict between the dual executive.”<sup>33</sup> For his part, Linz is also concerned about the effect of the dual executive on the relationship between the executive

<sup>24</sup> Juan Linz, *The Perils of Presidentialism*, 1 J. DEMOCRACY 51 (1990).

<sup>25</sup> *Id.* at 68.

<sup>26</sup> Arturo Valenzuela, *Latin American Presidencies Interrupted*, 15 J. DEMOCRACY 5 (2004).

<sup>27</sup> Guillermo O'Donnell, *Delegative Democracy*, 5 J. DEMOCRACY 55 (1994).

<sup>28</sup> Nicolas van de Walle, *Presidentialism and Clientelism in Africa's Emerging Party Systems*, 41 J. MOD. AFR. STUD. 297 (2003).

<sup>29</sup> Some scholars, however, defend semi-presidentialism. See, e.g., GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURES, INCENTIVES, AND OUTCOMES* 135 (1997) (“the case against the two extremes, pure presidentialism and pure parliamentarism, is a strong one. . . I believe that the positive case for ‘mixed systems’ is equally strong”); M. Steven Fish, *The Inner Asian Anomaly: Mongolia's Democratization in Comparative Perspective*, 34 COMMUNIST & POST-COMMUNIST STUD. 323, 331 (2001) (arguing that semi-presidentialism provided “sturdy foundations” for democratization in Mongolia because of a “genuine division of power between the president and the legislature”).

<sup>30</sup> Juan Linz, *Presidential or Parliamentary Democracy: Does It Make a Difference?*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY* 3, 55 (J.J. Linz & A. Valenzuela eds., 2004).

<sup>31</sup> MATTHEW SHUGART & JOHN CAREY, *PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* 287 (1992).

<sup>32</sup> See, e.g., Huang-Ting Yang, *Does the Constitution Matter? Semi-Presidentialism and the Origin of Hegemonic Personalist Regimes*, 41 INT'L POL. SCI. REV. 365 (2019).

<sup>33</sup> Alfred Stepan & Ezra Suleiman, *The French Fifth Republic: A Model for Import? Reflections on Poland and Brazil*, in *POLITICS, SOCIETY, AND DEMOCRACIES: A COMPARATIVE STUDY* 399, 412 (Ezra Cheibub & Alfred Stepan eds., 1995).



and the military. In particular, he suggests that the dual executive can create an inherent incentive for the military to intervene in young or fragile democracies.<sup>34</sup> Finally, Cindy Skach's work has also found that semi-presidentialism is prone to authoritarian breakdown in democratic transition.<sup>35</sup>

## 2.2. The irrelevance of formal constitutional design

More recently, scholars have grown skeptical of the relevance of formal constitutional structure to democratic transition and governance. They argue that the formal rules themselves are not able to ultimately overcome more deeply entrenched, informal authoritarian legacies. Two leading scholars of semi-presidentialism have ultimately concluded that informal politics overcomes formal structures and therefore constitutional design really only matters "in relatively democratic countries."<sup>36</sup> As a result, they seek to explore how semi-presidentialism contributes to democratic, quasi-democratic, and also autocratic governance.<sup>37</sup>

This has led some to abandon classification of formal design altogether and instead seek to classify regimes on informal power factors. Recent quantitative work research by Jose Cheibub concludes that "the higher instability of presidential democracies can be entirely attributed to their authoritarian legacy."<sup>38</sup> In the African context, scholars have argued that the concept of "semi-presidentialism" has little meaning when it comes to presidential power.<sup>39</sup> In particular, research has found that in "semi-presidential systems the presence of a premier does not imply that the president possesses less power compared to presidential systems."<sup>40</sup> Furthermore, semi-presidential regimes actually show a higher amount of presidential power than presidential regimes.

Comparative quantitative work on authoritarian constitutions has also argued that formal constitutional design plays little role in authoritarian governance. A recent study by Elkins, Ginsburg, and Melton—relying on coding of constitutions and regression analysis—found that authoritarian constitutions generally do not exhibit "higher levels of executive power" than democratic constitutions.<sup>41</sup> In fact, their regression findings suggest that authoritarian leaders might actually provide themselves "less constitutional power (on average) than democratic leaders."<sup>42</sup> They speculate that this is because executive power is "residual" in these systems.<sup>43</sup> In support they cite the

<sup>34</sup> Linz, *supra* note 30, at 57–9.

<sup>35</sup> Cindy Skach, *The "Newest" Separation of Powers*, 5 INT'L J CONST. L. 93 (2007). See also Section 4.1.

<sup>36</sup> Robert Elgie & Sophia Moestrup, *Semi-Presidentialism in Democracies, Quasi-Democracies, and Autocracies*, in SEMI-PRESIDENTIALISM IN THE CAUCASUS AND CENTRAL ASIA 1, 2 (Robert Elgie ed., 2016).

<sup>37</sup> *Id.*

<sup>38</sup> JOSE ANTONIO CHEIBUB, *PRESIDENTIALISM, PARLIAMENTARISM, AND DEMOCRACY* 140 (2007).

<sup>39</sup> Oda Van Cranenburgh, *Big Men Rule: Presidential Power, Regime Type, and Democracy in 30 African Countries*, 15 DEMOCRATIZATION 952, 961 (2008).

<sup>40</sup> *Id.*

<sup>41</sup> Elkins, Ginsburg, & Melton, *supra* note 5, at 162.

<sup>42</sup> *Id.* at 155.

<sup>43</sup> *Id.* at 162.

importance of non-formal, historical factors such as “the amount of executive power in a country’s past constitution” as a better predictor.<sup>44</sup> This finding helps lead them to the conclusion that there are “few observable differences between authoritarian and democratic constitutions” and that constitutions “have converged in form, if not function.”<sup>45</sup>

### 3. Comparative presidentialism: The neglected subtype of crown-presidentialism

This article provides a different explanation for the persistence of authoritarian governance in some presidential systems. It argues that this authoritarian resilience did not occur because of the *breakdown* of formal constitutional design. Instead, authoritarian resilience was in part a result of formal constitutional design. In fact, many of these countries with continued authoritarian governance adopted crown-presidential systems that—despite abstract commitments to the separation of powers and democracy—formally concentrate vast, formal power in the hands of the elected president. This formal design not only provides a constitutional basis for the president to dominate formal politics, but also provides the president with a potent tool for shaping the informal politics at the center of post-Cold War new authoritarianism.

#### 3.1. Democratic presidential systems: Presidentialism and semi-presidentialism

To understand crown-presidentialism, one must first understand how the well-known categories of presidentialism and semi-presidentialism check the power of the elected president and are therefore democratic.<sup>46</sup> M.J.C. Vile explains how the separation of powers theory in constitutionalism draws its inspiration from the theory of mixed government which was combined with the concept of checks and balances. In both theories, the central idea was that public power should be divided and limited in order to protect the liberty of the individual and create effective government.<sup>47</sup> Writing in the seventeenth century, Charles Dallison explained that “[w]hilst the Supremacy, the Power to Judge the Law, and the Authority to make new Lawes, are kept in severall hands, the known Law is preserved, but united it is vanished, instantly thereupon, and Arbitrary and Tyrannicall power is introduced.”<sup>48</sup>

In presidential constitutional design, the president is formally the head of the executive branch and therefore exercises *management* control over the execution of the

<sup>44</sup> *Id.* at 155.

<sup>45</sup> *Id.* at 162.

<sup>46</sup> Some argue that dispersing power between the executive and legislative branch of power in turn promotes judicial independence. See Julio Ríos-Figueroa, *Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994–2002*, 49 *LATIN AM. POL. & SOC’Y* 31 (2007) (describing how power fragmentation allowed for the development of an independent judiciary in Mexico).

<sup>47</sup> M.J.C. VILE, *CONSTITUTIONALISM AND THE SEPARATION OF POWERS* 1–3 (2d ed. 1998).

<sup>48</sup> CHARLES DALLISON, *THE ROYALISTS DEFENCE* 80 (1648).



law. This power is exercised by nominating and dismissing members of the executive branch (often called the cabinet). In strongly presidential systems, the president has the sole power to appoint and dismiss all members of the executive branch. Weaker presidential systems require the president to gain the consent of the legislature for executive-branch or cabinet appointments. But even in these systems, consent is almost always given as a matter of political practice.<sup>49</sup>

A critical formal check in all forms of presidentialism, however, is an *independent legislature* that cannot be controlled by the president. Presidentialism is therefore characterized by a strict separation of powers or “mutual independence” between the executive (an elected president) and the legislative branch.<sup>50</sup> In the Federalist Papers, James Madison and Alexander Hamilton argue that this strict division between executive and legislature power places important checks and balances on the concentration of power in order to avoid “tyranny” and the problem of “faction” in the protection of individuals.<sup>51</sup>

Semi-presidentialism, by contrast, gives the president a different set of powers.<sup>52</sup> In particular, it affords the president a relatively wide range of monarchical or crown-like *guardian* powers to transcend the system and ensure the unity of the state, including most importantly the power to control legislative power.<sup>53</sup> The monarchical nature of these powers led Maurice Duverger to call this form of government a “republican *monarchy*.”<sup>54</sup> To check these guardian powers, however, semi-presidential design ensures that the president does not have a monopoly over management powers. Crucially, the legislative branch has the authority to remove the prime minister and/or executive-branch ministers. For instance, in the French Constitution, the National Assembly has the power to remove the entire executive-branch government through a vote of no confidence.<sup>55</sup> Semi-presidentialism therefore creates a *dual executive*, where the president shares management power with the parliament. A leading scholar in this field,

<sup>49</sup> Jon Bond & Fleisher, *Malign Neglect: Evidence That Delay Has Become the Primary Method of Defeating Presidential Appointments*, 36 CONG. & PRESIDENCY 226 (2009) (discussing how the requirement of consent has placed very few limitations on presidential appointment power).

<sup>50</sup> Skach, *supra* note 35.

<sup>51</sup> THE FEDERALIST NO. 47 & 51 (James Madison).

<sup>52</sup> Maurice Duverger, *A New Political System Model: Semi-presidential Government*, 8 EUR. J. POL. RES. 165 (1980).

<sup>53</sup> Charles De Gaulle described these presidential powers as important for rebuilding the authority of the state; they clearly drew heavily on the French monarchical tradition. JOHN ROHR, *FOUNDING REPUBLICS IN FRANCE AND AMERICA: A STUDY IN CONSTITUTIONAL GOVERNANCE* 24–6 (1995). These duties include “the proper functioning of the public authorities and the continuity of the State” as well as “the guarantor of national independence, territorial integrity and due respect for Treaties.” 1958 CONST. art. 5. This also includes taking “measures” at a time of emergency. 1958 CONST. art. 16.

<sup>54</sup> MAURICE DUVERGER, *LA MONARCHIE RÉPUBLICAINE* [THE REPUBLICAN MONARCHY] (1974).

<sup>55</sup> 1958 CONST. art. 50 states: “When the National Assembly passes a resolution of no-confidence, or when it fails to endorse the Government programme or general policy statement, the Prime Minister *shall* tender the resignation of the Government to the President of the Republic.” (Emphasis added). This then triggers Article 8 which *requires* the President to remove the PM: “He [the President] *shall* terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government.” 1958 CONST. art. 8. (Emphasis added).

Robert Elgie, has summed up semi-presidentialism as a formal constitutional design where the constitution “identifies both a directly elected president and a prime minister responsible to the legislature.”<sup>56</sup>

Semi-presidentialism can involve a wide range of power relations between the president, the prime minister, and the parliament. Semi-presidential systems where the prime minister (and government) are *only* responsible to the parliament are “premier-presidential.” By contrast, those where the prime minister (and government) are responsible to *both* the parliament and the president are “presidential-parliamentary.”<sup>57</sup> All forms, however, ensure checks and balances through a dual executive that only gives the president management powers when the legislature supports the president. Thus, all semi-presidential systems—even the most strongly presidential-parliamentary—require the president to work with the legislative branch to exercise management powers.<sup>58</sup> In practice, if the president faces a hostile legislative branch, the president loses management authority.<sup>59</sup> This potential for the president to lose control over the executive has therefore led some to describe semi-presidentialism as a process of “alternation” between presidentialism and parliamentarism.<sup>60</sup>

### 3.2. Crown-presidentialism

Crown-presidential constitutions—despite textual commitments to democracy and the separation of powers—combine presidential powers from both presidentialism and semi-presidentialism. This combination formally concentrates power in the president to such an extent that it creates a design that is analytically distinct from presidentialism and semi-presidentialism. This constitutional centralization of power in turns provides presidents with a tool for building and maintaining “super”- or “hyper”-presidential governance.<sup>61</sup>

Scholars have identified the effects of crown-presidentialism in the post-Soviet Eurasian region for decades. For instance, in 1994, Stephen Holmes argued that the 1993 Russian Constitution was not semi-presidential but instead was “super-presidential” because there can be “no cohabitation” in the Russian system.<sup>62</sup> This

<sup>56</sup> Robert Elgie, *Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies*, 3 TAIWAN J. DEMOCRACY 53, 55 (2007).

<sup>57</sup> ROBERT ELGIE, SEMI-PRESIDENTIALISM: SUB-TYPES AND DEMOCRATIC PERFORMANCE 28 (2011).

<sup>58</sup> Robert Elgie, *Cohabitation: Divided Government French Style*, in DIVIDED GOVERNMENT IN COMPARATIVE PERSPECTIVE 106 (Robert Elgie ed., 2001).

<sup>59</sup> See, e.g., Vlad Perju, *The Romanian Double Executive and the 2012 Constitutional Crisis*, 13 INT’L J. CONST. L. 246 (2015) (discussing the deadlock situation in Romania in 2012).

<sup>60</sup> Duverger, *supra* note 52, at 186.

<sup>61</sup> Carlos Nino, *The Debate Over Constitutional Reform in Latin America*, 16 FORDHAM INT’L L.J. 635 (1992); Susan Rose-Ackerman, Diane A. Desierto, & Natalia Volosin, *Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and Philippines*, 29 BERKELEY J. INT’L L. 246 (2011) (discussing how presidents used informal power mechanisms to “subvert constitutional and legal structures designed to check and balance them”); FISH, *supra* note 9, at 209–10 (classifying Russia’s system as semi-presidential but describing it as super-presidential “in practice”).

<sup>62</sup> Stephen Holmes, *Super-presidentialism and Its Problems*, 2 E. EUR. CONST. REV. 123 (1993).

argument, however, remained largely underdeveloped.<sup>63</sup> Other work has begun the work of suggesting a new formal constitutional design. For instance, my own work has argued that the Russian system created a formal design without placing checks and balances on the president.<sup>64</sup> Finally, an article by Petra Stykow is the first to argue that post-Soviet Eurasia has a unique constitutional design contained in constitutional text that she calls “presidential supremacy.”<sup>65</sup> She, however, leaves the category undertheorized and leaves it as an “open question” whether this typology applies outside of post-Soviet Eurasia.<sup>66</sup>

This section will build on this scholarship by more broadly theorizing crown-presidential constitutional design. It will argue that this design combines two kinds of power in the office of the president: (i) presidentialism’s *management* authority over day-to-day executive-branch governance and (ii) semi-presidentialism’s *guardian* authority to control other branches of power (particularly the legislative branch). The combination of these powers creates a new type of constitutional design that is analytically different from the other three types. This design has provided a formal tool for presidents to consolidate authoritarian control while allowing them to claim that they have a democratic form of constitutional design. It has therefore become a central tool in many forms of new authoritarianism.<sup>67</sup> The key minimum conditions are described in Table 1.

### a) *Management authority*

First, as in presidentialism, the key minimum management authority in crown-presidentialism is the president’s final authority to determine the makeup of the executive-branch government (as in a presidential cabinet-style government) through appointment and dismissal. The members of this government are not drawn from the legislative branch and, although the legislature might be able to slow the process of appointing the executive-branch ministers and prime minister (and has some non-binding powers), the elected president can ignore these interventions. This ultimate presidential control of the executive branch means that there is no dual executive (as in semi-presidentialism).

In some crown-presidential constitutions, presidential dominance over the prime minister and executive branch is clearly stated. These constitutions make it clear that the government is appointed and removed solely by the president. In others, one must consider the “interaction effects” of different formal provisions in constitutions.<sup>68</sup> For

<sup>63</sup> See, e.g., Andre Thomashausen, *Super-presidentialism in Angola and the Angolan Judiciary*, in SEPARATION OF POWERS IN AFRICAN CONSTITUTIONALISM 182 (Charles Thombad ed., 2016) (using the super-presidentialism term but failing to define what it means and how it differs from other types of constitutional design).

<sup>64</sup> William Partlett, *Separation of Powers without Checks and Balances: The Failure of Semi-Presidentialism and the Making of the Russian Constitutional System, 1991–1993*, in THE LEGAL DIMENSION IN COLD-WAR INTERACTIONS 105 (William Simons ed., 2011).

<sup>65</sup> Petra Stykow, *The Devil in the Details: Constitutional Regime Types in Post-Soviet Eurasia*, 35 POST-SOVIET AFF. 122, 134 (2019).

<sup>66</sup> *Id.* at 133.

<sup>67</sup> Scheppele, *supra* note 4, at 560–2.

<sup>68</sup> *Id.*

**Table 1.** Minimum conditions for crown-presidentialism

	Key minimum condition
Management authority	Legislature has no binding authority to control the executive-branch government and ministry; president therefore has final authority to choose and form executive-branch government. No dual executive as in semi-presidentialism.
Guardian authority	President has authority to control the legislative branch through legislative dissolution or appointment (or both). Legislature not independent of the president as in presidentialism.

instance, some crown-presidential constitutions state that the presidential appointment of the prime minister requires the “consent” of the legislature. However, later provisions show that this consultation is non-binding. In these constitutions, later provisions state that the president can (i) dissolve the legislature if it blocks a preferred presidential prime ministerial appointment a certain number of times and (ii) then appoint this preferred candidate once the legislature has been dissolved. Taken together, these provisions make it clear that legislative consent is not *necessary* to a determined president intent on appointing a particular prime minister; the legislative branch cannot force a prime minister on a president. A similar mechanism operates in the process of removing the prime minister or other members of the government. In some crown-presidential constitutions, the legislature has the formal power to *issue* no-confidence votes. But other provisions make it clear that the president is free to ignore this vote of no confidence.

Crown-presidential constitutions often contain additional textual signals about the ultimate management powers of the president. Some state, for instance, that the president has formal power to chair meetings of the government and annul executive branch decisions, or is responsible for the formulation of “domestic and international policy.” In this arrangement of powers, therefore, the president has the ultimate authority to determine executive-branch implementation of policy.

**b) Guardian powers**

In addition to these management powers, crown-presidentialism *also* gives the elected president guardian authority to control the legislative branch (drawing from semi-presidentialism). The key minimum guardian power is one allowing the president to formally enter into, and control, legislative power through either legislative dissolution or appointment (or both).<sup>69</sup> Either power on its own—and particularly when combined—subordinates legislative power to presidential authority. In addition, the crown-president often also exercises guardian power to appoint (and, sometimes, remove) judicial, prosecutorial, and integrity institutions. Finally, this guardian power also frequently extends to additional pseudo-monarchical power, such as the

<sup>69</sup> This power also frequently includes pseudo-legislative power to issue law-like decrees; immunity from prosecution; and the power to pardon criminals.

authority to issue law-like decrees, call referendums, and develop mechanisms for resolving inter-branch disputes.

These guardian powers echo the “pre-democratic” power that monarchs once exercised over the entire constitutional system (and particularly legislatures).<sup>70</sup> A Russian lawyer described this particular design as a form of separation “not into separate trees of power, but into separate branches, which come from the same core, the same trunk.”<sup>71</sup> The president is the “trunk” of state power from which the separated branches would emanate. This position allows the president to operate “beyond powers”<sup>72</sup> or as a “meta-branch.”<sup>73</sup> Placed above the constitutional system, the president can also (where convenient) evade political accountability by standing above the fray and placing political blame on the lower branches of government. Thus, crown-presidentialism formally gives the elected president the powers and position traditionally associated with monarchical or crown powers to safeguard state unity.<sup>74</sup>

### c) Justification

The combination of these management and guardian powers in the president is a post-Cold War adaptation of a deeply rooted “centralized state discourse” that stresses the importance of concentrated political power to creating a strong state that can solve particular challenges.<sup>75</sup> This concentrated form of crown-presidential leadership is justified as democratic because it borrows and combines concepts and institutions from democratic constitutionalism.

Crown-presidentialism’s combination of constitutional design, however, does not create a democratic state. Instead, it creates what Kim Lane Scheppele calls a “Frankenstate.”<sup>76</sup> In this phenomenon, Scheppele describes how the “stitching together” of perfectly reasonable pieces creates important “interaction effects” that are frequently ignored.<sup>77</sup> Looking to these interaction effects, she argues, is critical to understanding how a particular system functions as an “integrated whole.”<sup>78</sup>

This insight is important here. Giving an elected president both management and guardian powers allows the president to dominate the key branches of political power: the executive-branch ministers (government), the legislature, as well as courts,

<sup>70</sup> Donald Shell, *The History of Bicameralism*, 7 J. LEG. STUDIES 5, 14 (2001).

<sup>71</sup> 2 КОНСТИТУЦИОННОЕ СОВЕЩАНИЕ: СТЕНОГРАММЫ. МАТЕРИАЛЫ. ДОКУМЕНТЫ. 20 АПРЕЛЯ–10 НОЯБРЯ 1993 Г. [CONSTITUTIONAL CONVENTION: STENOGRAM, MATERIALS, AND DOCUMENTS. APRIL 20–NOVEMBER 10, 1993] 382 (1995).

<sup>72</sup> Stykow, *supra* note 65, at 129.

<sup>73</sup> SCOTT NEWTON, THE CONSTITUTIONAL SYSTEMS OF THE INDEPENDENT CENTRAL ASIAN STATES 149 (2017).

<sup>74</sup> William Scheuerman, *American Kingship: Monarchical Origins of Modern Presidentialism* 37 POLITY 24 (2005) (linking the institution of the president to the monarchical idea that one person is a “direct ‘stand-in’ for the (unified) community as a whole”).

<sup>75</sup> William Partlett, *Post-Soviet Constitution-Making*, in COMPARATIVE CONSTITUTION-MAKING 539 (Hanna Lerner & David Landau eds., 2019) (describing the strong state justification underlying centralized state constitutional design).

<sup>76</sup> Scheppele, *supra* note 7, at 560.

<sup>77</sup> *Id.* at 562.

<sup>78</sup> *Id.*

prosecutors, and other control institutions (such as the election commission or central bank).<sup>79</sup> This formal concentration of power is a potent tool in new authoritarianism's technology of personalized and authoritarian governance. The following sections of this article will describe the effects of this design. This analysis will show that crown-presidentialism helps the president not only to dominate formal institutions but also to assert informal control over competing elites that might check presidential power. Crown-presidentialism can therefore help to build highly personalized forms of authoritarianism, which is not only undemocratic but engenders ineffective and unstable governance over the long term.<sup>80</sup>

## 4. Importance of constitutional design in authoritarian resilience

Crown-presidentialism has played an important role in authoritarian resilience in post-Soviet Eurasia and Africa. Despite hopes that newly drafted post-Cold War constitutions—formally grounded on democratic values and containing long lists of rights—would promote democratic constitutionalism, power has remained centralized in the office of the president in many Eurasian and African countries.<sup>81</sup> This authoritarian centralism is not *just* a matter of informal politics; it is also a product of formal crown-presidential design.<sup>82</sup>

### 4.1. Crown-presidentialism in post-Soviet Eurasia

The collapse of communism in the late 1980s and early 1990s created a crisis of legitimacy and state capacity in many parts of the former communist bloc. New written constitutions were critical in re-establishing legitimate government and transitioning to democratic governance.<sup>83</sup> Many scholars noted that semi-presidentialism was the most popular constitutional design solution for post-communist governance.<sup>84</sup> As time has gone on, however, this has meant that both robust democratic states (such as Lithuania) as well as persistently authoritarian states in the former Soviet space (Uzbekistan, Kazakhstan, Tajikistan, Russia, Belarus, and Azerbaijan) were classified as semi-presidential.<sup>85</sup> In addition, some scholars have struggled to pin down

<sup>79</sup> Mark Tushnet, *Institutions Protecting Constitutional Democracy: Some Conceptual and Methodological Preliminaries*, 69 U. TORONTO L. REV. 95 (2019).

<sup>80</sup> See, e.g., GEDDES, WRIGHT, & FRANTZ, *supra* note 15 (arguing that centralized and personalized governance is less effective and stable); FRANTZ, *supra* note 19; William Partlett, *Russia's 2020 Constitutional Amendments: A Comparative Perspective*, 23 CAMBRIDGE Y.B. EUR. LEGAL STUD. 311 (2021).

<sup>81</sup> See LEVITSKY & WAY, *supra* note 2.

<sup>82</sup> Mark Tushnet, *Authoritarian Constitutionalism*, 100 CORNELL L. REV. 391 (2015) (discussing how constitutions can be used in authoritarian governance).

<sup>83</sup> Venelin Ganey, *Post-communism as an Episode of State-Building: A Reversed Tillyan Perspective*, 38 COMMUNIST & POST-COMMUNIST STUD. 425 (2005).

<sup>84</sup> Perju, *supra* note 59 (discussing Romanian semi-presidentialism).

<sup>85</sup> See *Up-to-Date List of Semi-Presidential Countries with Dates*, THE SEMI-PRESIDENTIAL ONE, [www.semipresidentialism.com/?p=1053](http://www.semipresidentialism.com/?p=1053) (last visited Feb. 23, 2022).



constitutional design in these persistently authoritarian post-communist states. Robert Elgie described how it is difficult to classify Uzbekistan.<sup>86</sup> Judy LaPorte writes that “Azerbaijan’s regime is a curious hybrid, in which semi-presidential institutions operate in the larger context of authoritarianism.”<sup>87</sup> Finally, Elgie and Moestrup argue that Kazakhstan is on the “constitutional cusp” of semi-presidentialism and presidentialism but is ultimately presidential.<sup>88</sup>

Why has semi-presidentialism brought democracy to some post-communist countries and not to others? One common answer is that semi-presidentialism is dangerous and prone to authoritarian breakdown. Cindy Skach has made this claim repeatedly. Placing Russia alongside Weimar Germany, Skach argues that Russia’s adoption of a semi-presidential form of constitutional government in 1993 undermined pursuit of constitutional democracy by creating incentives for “legislative immobilism, presidential-legislative deadlock or impasse, and the resulting use of presidential decrees to counteract immobilism.”<sup>89</sup> She explains that semi-presidentialism “contains a set of inducement mechanisms that preclude options, mobilize confusion, involve citizens in battles against democratic institutions, and increases the chances that future choices will be made under conditions where alternatives are not discussed or debated, facts are rearranged, and self-correction is impossible.”<sup>90</sup> In particular, Skach claims that Russia has been in “divided minority government” since 1993 and that this has undermined its democratic development.<sup>91</sup> Furthermore, Eugene Huskey warns that “semi-presidentialism contains an added danger that is often overlooked in the comparative literature: the politics of the dual executive.”<sup>92</sup> Robert Elgie argues that the presidential-parliamentary form of semi-presidentialism can undermine democratic transition.<sup>93</sup> In particular, he explains that the dynamics of executive-legislative interaction in this presidentially dominated form of semi-presidentialism are particularly problematic and often lead to democratic breakdown.

Other scholars have suggested that semi-presidentialism has been overwhelmed by the historical legacy of authoritarian politics in post-Soviet Eurasia.<sup>94</sup> In particular, some have posited that formal rules in the Russian Constitution have simply failed

<sup>86</sup> Robert Elgie, *Difficult Cases—Uzbekistan*, THE SEMI-PRESIDENTIAL ONE, [www.semipresidentialism.com/?p=332](http://www.semipresidentialism.com/?p=332) (last visited Feb. 23, 2022).

<sup>87</sup> Jody LaPorte, *Semi-Presidentialism in Azerbaijan*, in SEMI-PRESIDENTIALISM IN THE CAUCASUS AND CENTRAL ASIA, *supra* note 36, at 91, 92.

<sup>88</sup> Elgie & Moestrup, *supra* note 36, at 1.

<sup>89</sup> CINDY SKACH, BORROWING CONSTITUTIONAL DESIGNS: CONSTITUTIONAL LAW IN WEIMAR GERMANY AND THE FRENCH FIFTH REPUBLIC 108 (2005).

<sup>90</sup> *Id.* at 126.

<sup>91</sup> Timothy Colton & Cindy Skach, *A Fresh Look at Semi-Presidentialism: The Russian Predicament*, 16 J DEMOCRACY 113, 116–17 (2005).

<sup>92</sup> Eugene Huskey, *Democracy and Institutional Design in Russia*, 4 DEMOKRATIZATSIYA: J. POST-SOVIET DEMOCRATIZATION 466 (1996).

<sup>93</sup> ROBERT ELGIE, SEMI-PRESIDENTIALISM: SUB-TYPES AND DEMOCRATIC PERFORMANCE 69–93 (2011).

<sup>94</sup> Oleg Zaznaev, *The Presidentialization of a Semi-Presidential Regime: The Case of Russia*, in POLITICS AND THE RULING GROUP IN PUTIN’S RUSSIA 27, 33–7 (Stephen White ed., 2008).

to constrain the practice of semi-presidentialism.<sup>95</sup> One commentator argued that Russian President Boris Yeltsin's "exercise of super-presidential power" was out of line with the constitutional norms and therefore "threatened the precarious separation of powers contained in the 1993 Constitution."<sup>96</sup> Molly Lien opines that the main problem with the Russian Constitution was its failure to constrain a president that "chooses to disregard" the limitations placed on presidential power.<sup>97</sup>

Informal factors have clearly played an important role in the persistence of authoritarian government in the former Soviet space. But post-Soviet Eurasian authoritarian resilience cannot be traced to the breakdown of formal constitutional design. On the contrary, it was partly the result of crown-presidential design and the powerful tool this design provides the elected president to dominate both formal and informal politics.<sup>98</sup>

### a) Russian crown-presidentialism

Russia's 1993 Constitution was a critical moment for crown-presidentialism in post-Soviet Eurasia. After a violent confrontation between President Boris Yeltsin and the Russian Parliament, President Yeltsin altered the existing draft constitution to concentrate further power in the office of the presidency.<sup>99</sup> Russia's resulting crown-presidential design then became an important instrument in building and maintaining super or hyper-centralized presidential governance in Russia and became a model for many other countries in post-Soviet Eurasia.<sup>100</sup>

Russian constitutional text—even after its formal amendment in 2020—contains key rules that combine management and guardian powers in the Russian president.<sup>101</sup> First, the Russian president is given full management authority over the executive branch. The Constitution states that the president shall appoint the prime minister with the "agreement" of the Duma (the lower house of the legislature).<sup>102</sup> However, if the Duma rejects the presidential candidate three times, "the President appoints the Chairman of the Government, dissolves the State Duma, and calls new elections" (Article 111.4). Furthermore, the Constitution gives the president the final decision on when to remove the prime minister and the executive branch government (Article 117.2). Thus, even when the Duma expresses no-confidence in the government (Article 117), the president may choose to ignore this vote and, in the case of a second

<sup>95</sup> Ian Brown, *Clinging to Democracy: Assessing the Russian Legislative–Executive Relationship under Boris Yeltsin's Constitution*, 33 VAND. J. TRANSNAT'L L. 645, 663 (2000).

<sup>96</sup> William Hayden, *Seeds of Unrest: The Political Genesis of the Conflict in Chechnya*, 24 FLETCHER F. WORLD AFF. 49, 69 (2000).

<sup>97</sup> Molly Warner Lien, *Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion*, 30 STAN. J. INT'L L. 41, 110 (1994).

<sup>98</sup> William Partlett & Mikhail Krasnov, *Russia's Non-Transformative Constitutional Founding*, 15 EUR. CONST. L. REV. 22 (2019).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* The proposed amendments to the Russian Constitution strengthen crown-presidentialism in Russia. See Partlett, *supra* note 80.

<sup>102</sup> KONSTITUTSIA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] arts. 83(a), 111(a) (Russ.).

consecutive no-confidence vote, the president has the choice of dismissing either the government or the legislature itself (Article 117.3). Finally, the Russian president has the authority to determine the “domestic and foreign policy of the state” (Article 80.3) and annul the acts of other executive branch officials when they contradict legislation, the constitution, or international law. Russia’s 2020 constitutional amendments further entrench this management power, giving the president the authority to exercise “general authority” over the executive-branch government (Articles 83(b), 110).

The Russian president also exercises wide guardian powers. The Russian president is the head of state and “guarantor of the Constitution,” and has the authority to “adopt measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensure coordinated functioning and interaction of all the bodies of state power” (Article 80). This includes the power to adopt procedures for overcoming disagreements between different branches of government (Article 85). Furthermore, it includes the specific power to dissolve the lower house of the Russian legislature (the Duma) (Article 84). This power is exercisable when the Duma rejects a prime ministerial candidate three times or when it expresses no confidence in the government, as discussed earlier. Finally, it includes the power to directly appoint up to 10% of the upper house (Federation Council) as well as indirect authority over half of the members of the Federation Council which must come from the presidentially accountable, executive branch in Russia’s regions (Article 95.2).<sup>103</sup> These presidential powers over the Russian upper house (Federation Council) further enable the Russian president to dominate the judiciary and other integrity institutions through appointment (such as the Central Election Commission).<sup>104</sup> The recent 2020 constitutional amendments further extend this power, allowing the Russian president to formally remove judges from office (including Constitutional Court judges) (Article 83(e<sup>3</sup>)).<sup>105</sup>

In establishing crown-presidential design, some of Yeltsin’s supporters admitted that they were creating a new form of constitutional design. Sergei Alekseev, one of the chief architects of the constitution, argued that the new constitution would be based on Russia’s centralizing and monarchical history. He explained that the central institution “used to be a monarch, [but] now it’s a President. Generally speaking, since 1918 we have been moving—not in words but in deeds—toward a constitutional monarchy.”<sup>106</sup> But this centralization, he argued, was justified because it is rooted in a “democratic basis: sovereignty [*narodovlastie*]... The people decide the matter.”<sup>107</sup> Yeltsin made a similar point later in justifying the powerful position of the president as coming “from the people in the form of a clear political mandate.”<sup>108</sup>

<sup>103</sup> William Partlett, *The Legality of Liberal Revolution*, 38 REV. CENT. & E. EUR. L. 5, 14 (2013) (describing the precise interaction effects of presidential control over the executive branch and how this allows the president to control the appointment of the upper house).

<sup>104</sup> A proposed change in the 2020 Russian amendments gives the Russian president additional constitutional authority to dismiss judges with the agreement of the upper house of the legislature.

<sup>105</sup> This removal power requires confirmation in the upper house (Federation Council).

<sup>106</sup> Elena Dikun, *No, Not a Tsar but a President* (interview with S. Alekseev), MEGAPOLIS-EXPRESS 26 (May 5, 1993), reprinted in 45 CURRENT DIGEST FOR THE POST-SOVIET PRESS 7 (June 2, 1993).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

Since its adoption, Russian crown-presidentialism has allowed presidents to both dominate politics and evade accountability for policy failures. During the 1990s, President Boris Yeltsin made wide use of his appointment power to gain control over both formal and informal politics and to implement radical economic reforms.<sup>109</sup> For instance, Yeltsin used his broad crown-presidential powers to secure critical informal support for his 1996 reelection. In particular, he took advantage of his vast presidential authority over the privatization process to offer lucrative but undervalued shares in state-owned companies to media oligarchs in return for favorable media coverage in the election.<sup>110</sup> He also used the tools of crown-presidentialism to evade democratic accountability by blaming economic problems on “senior ministers” who he then dismissed.<sup>111</sup>

Since 2000, President Vladimir Putin has made even more effective use of the formal powers of crown-presidentialism to dominate politics. For instance, he has used formal presidential power to create new information-gathering agencies to gather financial data that he can use to control oligarchs with the threat of prosecution.<sup>112</sup> Furthermore, amendments to the Constitution in 2020 allow President Putin the possibility of running for two additional presidential terms. Although Putin may not intend to remain in office that long, the changes signal his dominance to elite factions who were already starting to speculate who would replace him as president in 2024. In this way, the formal powers of crown-presidentialism have allowed President Putin to continue to maintain his control over not just the institutions of state but also the murky world of factional elites that underpin his power.<sup>113</sup>

### ***b) Spread to other post-Soviet republics***

Crown-presidentialism is common in other post-Soviet states. In some places (e.g. Belarus and Kazakhstan), ambitious presidents used referendums and other irregular forms of constitutional change to circumvent semi-presidential systems and push through amendments that would introduce crown-presidential constitutional design. For instance, in Belarus, after a protracted struggle with the legislature, Aleksandr

<sup>109</sup> PETER REDDAWAY & DMITRI GLINSKI, *THE TRAGEDY OF RUSSIA'S REFORMS: MARKET BOLSHEVISM AGAINST DEMOCRACY* (2001).

<sup>110</sup> CHRYSIA FREELAND, *SALE OF THE CENTURY: RUSSIA'S WILD RIDE FROM COMMUNISM TO CAPITALISM* 160–75 (2000) (describing how this transfer of private shares was an informal “pact” that helped to ensure that Yeltsin did not lose the election to Zyuganov and the Communist Party).

<sup>111</sup> Seamus Martin, *Yeltsin Blames Economic Crisis on “Squabbling,”* IRISH TIMES (Oct. 26, 1996), [www.irishtimes.com/news/yeltsin-blames-economic-crisis-on-squabbling-1.99717](http://www.irishtimes.com/news/yeltsin-blames-economic-crisis-on-squabbling-1.99717).

<sup>112</sup> Clifford Gaddy & William Partlett, *Russia's Financial Police State*, NAT'L INTEREST (July 19, 2013), <https://nationalinterest.org/commentary/russias-financial-police-state-8746> (describing how Vladimir Putin has created a new financial monitoring agency to help gather compromising information on key players in the Russian political system that can be used to leverage compliance); William Partlett, *Putin's Artful Jurisprudence*, NAT'L INTEREST (Jan.–Feb. 2013), <https://nationalinterest.org/article/putins-artful-jurisprudence-7882> (describing how Vladimir Putin has used the threat of prosecution to ensure loyalty).

<sup>113</sup> Partlett, *supra* note 80; Mark Galeotti, *Putin Wants to Keep the World Guessing*, FOREIGN POL'Y (March 12, 2020), <https://foreignpolicy.com/2020/03/12/putin-wants-the-world-to-keep-guessing/>.

Lukashenko used a referendum to introduce a series of constitutional amendments that transformed Belarus from presidentialism to a crown-presidential system.<sup>114</sup> Lukashenko argued that centralized presidential power was necessary to build the strength of the reformist state and, in his view, end the senseless battles of a checks and balances system.<sup>115</sup> These amendments helped Lukashenko cement his power.<sup>116</sup> A similar history can be found in Kazakhstan. In Kazakhstan, President Nazarbaev used a referendum to create a new crown-presidential constitution in 1995. He argued that a strong president was needed to resolve differences between branches of government and oversee Kazakh economic development.<sup>117</sup> Crown-presidentialism therefore offered a way to centralize power in the language of constitutional democracy.

In other parts of post-Soviet Eurasia with even stronger elements of informal power politics, elected presidents still adopted crown-presidentialism. Uzbekistan is a good example. After the collapse of the Soviet Union, Islam Karimov made a seemingly seamless transition from leader of the Uzbek Communist Party to elected president. As part of this, he transformed the old Communist Party into his own personal party of power (People's Democratic Party) by decree.<sup>118</sup> President Karimov then introduced a new constitution with crown-presidential design to help him consolidate informal control over competing Uzbek clans.<sup>119</sup> Similar processes were followed in Tajikistan and Azerbaijan.

Turkmenistan is an interesting example. For many years, it was the lone post-Soviet authoritarian state to avoid formally adopting a crown-presidential design. Its constitution afforded the elected president significant power but did not give the President guardian powers to enter into legislative power (through appointment or dismissal).<sup>120</sup> The lack of attention to formal constitutional design suggests the overriding importance of informal power for many years. In fact, the first President—who called himself Turkmenbashi—consolidated power by building an elaborate cult of personality that exerted vast informal power over both the elites and the general population.<sup>121</sup> In 2020, however, the Turkmen Constitution was amended to create a formal upper house of the legislature (the Halk Maslakhaty/People's Council).<sup>122</sup> This new upper house is now partially appointed by the president and has wide powers to confirm

<sup>114</sup> Partlett, *supra* note 3.

<sup>115</sup> *Id.* at 227.

<sup>116</sup> William Partlett, *The Importance of Constitutional Law for Belarusian Democracy: An Analysis of the Amended 1994 Constitution and Considerations for Democratic Reform*, INT'L IDEA INTERIM ANALYSIS (Dec. 2020), <https://constitutionnet.org/sites/default/files/2020-12/the-importance-of-constitutional-law-for-belarusian-democracy.pdf>.

<sup>117</sup> Kniga Nursultan Nazarbaeva "Kazakhstanskiy Put" [Nursultan Nazarbaev's Book "Kazakhstan's Path"], KAZINFORM (July 5, 2016), [www.inform.kz/en/kniga-nursultana-nazarbaeva-kazahstanskiy-put\\_a2927754](http://www.inform.kz/en/kniga-nursultana-nazarbaeva-kazahstanskiy-put_a2927754).

<sup>118</sup> Shahram Akbarzadeh, *Nation-Building in Uzbekistan*, 15 CENT. ASIAN SURVEY 23, 26 (1996).

<sup>119</sup> FRANTZ, *supra* note 19.

<sup>120</sup> TURKMENISTAN CONST. 1992.

<sup>121</sup> Michael Denison, *The Art of the Impossible: Political Symbolism, and the Creation of National Identity and Collective Memory in Post-Soviet Turkmenistan*, 61 EUR.-ASIA STUD. 1167, 1175–8 (2009).

<sup>122</sup> Tariq Saeedi, *Turkmenistan Switches to a Bicameral System of Parliament: Why?*, NEWS CENT. ASIA (Sept. 27, 2019), [www.newscentralasia.net/2019/09/27/turkmenistan-switches-to-bicameral-system-of-parliament-why/](http://www.newscentralasia.net/2019/09/27/turkmenistan-switches-to-bicameral-system-of-parliament-why/).

presidential appointments.<sup>123</sup> The constitutionalization of this upper house now provides the president with formal guardian powers (in addition to wide management powers). This suggests a growing awareness of the importance of formal rules, particularly as Turkmenistan's current president is rumored to be planning to pass the presidency to his son.<sup>124</sup>

Table 2 outlines the textual basis for crown-presidentialism in the rest of post-Soviet Eurasia. Perhaps one of the most notable regional patterns is presidential control of the upper house of the legislature. In four of the five crown-presidential republics in the region (all but Azerbaijan), the president enjoys formal power to directly and indirectly choose members of the upper house. This control draws on older crown-like powers to dominate upper houses, and also provides additional presidential authority to control appointments to important judicial, prosecutorial, and integrity institutions.

## 4.2. Africa

As in post-Soviet Eurasia, scholars initially described the new post-Cold War constitutions in the African states as the beginning of a third wave of democratic change.<sup>125</sup> Many formerly one-party state regimes were viewed as in democratic transition because of their adoption of semi-presidential and presidential design.<sup>126</sup> But strongly personalized, "big men" or "super" presidential rule has persisted.<sup>127</sup> In particular, the African presidency has emerged as the central focus for policy-making and "regular ministerial structures are relegated to an executant's role."<sup>128</sup> This centralization of power in the presidency means that legislative elections are a "sideshow" that matter little to the real exercise of power.<sup>129</sup> H. Kwasi Prempeh argues that:

[T]he modal African presidency has emerged from the recent round of democratic reforms with extant powers substantially intact. . . power in the African state, and with its control of resources and patronage, continues to rest with the president, making the capture and control of the presidency the singular ambition of African politicians.<sup>130</sup>

Consequently, research has found that in "semi-presidential systems the presence of a premier does not imply that the president possesses less power compared to presidential systems."<sup>131</sup> This has ultimately led some to argue that constitutional design in the region is "inadequate" for determining presidential power or regime

<sup>123</sup> TURKMENISTAN CONST. 1992, arts. 78, 80(2).

<sup>124</sup> *Turkmenistan Tinkers with Constitution in Apparent Transition Strategy*, EURASIANET (Sept. 25 2020), <https://eurasianet.org/turkmenistan-tinkers-with-constitution-in-apparent-transition-strategy>.

<sup>125</sup> E. Gyimah-Boadi, *The Rebirth of African Liberalism*, in *DEMOCRATIZATION IN AFRICA: PROGRESS AND RETREAT* 34 (Larry Diamond & Marc F. Plattner eds., 1999).

<sup>126</sup> *Id.*

<sup>127</sup> Cranenburgh, *supra* note 39, at 952. See generally H.W.O. Okoth-Ogendo, *Constitutions without Constitutionalism: Reflections on an African Political Paradox*, in *CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD* 65 (Douglas Greenberg et al. eds., 1993).

<sup>128</sup> Van de Walle, *supra* note 28, at 310.

<sup>129</sup> *Id.*

<sup>130</sup> H. Kwasi Prempeh, *Presidents Untamed*, 19 J. DEMOCRACY 109, 110 (2008).

<sup>131</sup> Cranenburgh, *supra* note 39, at 961.



**Table 2.** Post-Soviet Eurasian crown-presidentialism

State (Legislation)	Management powers	Guardian powers
Belarus (CONST. 1994)	<p><i>Position description:</i></p> <p>The president “guarantees” the realization of the main directions of “domestic and foreign policy” (Article 79) and government is “accountable” to the president (Article 106).</p> <p><i>Power over PM/government:</i></p> <p>The president appoints the Prime Minister (PM) with “consent” of legislature but, if the legislature rejects the president’s proposed PM twice, the PM is automatically appointed, and the president must dissolve the lower house of the legislative branch (Article 106). The legislature’s power to issue a no-confidence vote is only symbolic as the president has the right to reject a no-confidence vote in the government (Article 106). The president also has the right to preside over meetings of the government (Article 84.15).</p>	<p><i>Position description:</i></p> <p>The president is the head of state and represents the “unity of the people. . . [taking] measures for protection of sovereignty of the Republic of Belarus, its homeland security and territorial integrity, provid[ing] political and economic stability, succession and interaction of public authorities, perform[ing] mediation between public authorities” (Article 79).</p> <p><i>Legislative powers:</i></p> <p>The president can dissolve the legislature (Article 106); appoint eight members of the upper house (the Council of the Republic) (Article 91); issue decrees “having the force of laws” (Article 85); and unilaterally call referenda (Article 74).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i></p> <p>Broad appointment power over the Election Commission Commission, National Bank, as well as Constitutional Court with consent of the upper house (Article 84).</p>
Kazakhstan (CONST. 1995)	<p><i>Position description:</i></p> <p>The president is the “management official” that determines the “main directions of domestic and foreign policy” (Articles 40,44)</p> <p><i>Power over PM/government:</i></p> <p>The president appoints the Prime Minister with consent of the legislative branch but can dissolve the legislature if they refuse his choice (Article 63); has the right to reject a no-confidence vote by the legislature (Article 70.4); and has unlimited power to decide when to dismiss the prime minister or other members of the government (Article 70.7).</p>	<p><i>Position description:</i></p> <p>The president is the head of state and “symbol and the guarantor of unity of the people and the government, firmness of the Constitution, rights and freedoms of man and citizen” (Article 40).</p> <p><i>Legislative powers:</i></p> <p>The president can dissolve Parliament for any reason “after consultations with the Chairmen of Parliament and the Prime Minister” (Article 63); appoint fifteen members of the Senate (upper house) (Article 50.2); issue decrees (Article 45); and unilaterally call referenda (Article 44).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i></p> <p>The president appoints and dismisses the National Bank and Central Election Commission with the consent of the upper house (Article 44); and unilaterally appoints Chairman and two additional justices on Constitutional Council (Article 71). Ex-presidents serve on the Constitutional Council for life (Article 71.1).</p>

Table 2. Continued

State (Legislation)	Management powers	Guardian powers
Azerbaijan (CONST. 1995)	<p><i>Position description:</i> The president is the holder of “executive” power (Articles 7, 8).</p> <p><i>Power over PM/government:</i> The president appoints the Prime Minister with “consent” of the legislature, but if refused three times (Article 118.3), has full power to dismiss the legislature and appoint the Prime Minister.</p> <p><i>Power over PM/government:</i> The president has full power to decide when to dismiss the PM or government (Articles 109.5, 109.6); and can ignore a vote of no confidence. Furthermore, if parliament issues two no-confidence votes in a year, the president has the power to dissolve the legislature (Article 98.1). Government explicitly “submits to the president of Azerbaijan and is accountable to it” (Article 114.3).</p>	<p><i>Position description:</i> The president is the head of state and “realizes the unity of the people of Azerbaijan and provides for the continuance of Azerbaijani statehood” and is “guarantor” of independence, territorial integrity, and judicial authority (Article 8.II).</p> <p><i>Legislative power:</i> The president has power to dissolve parliament for a number of reasons, including failure to accept the prime ministerial candidate and carry out its other “obligations” (Article 98); and can issue decrees (Article 113).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i> The president appoints the Chairman of the National Bank (Article 109), Commissioner of the Human Rights Commission (Article 95), and entire Constitutional Court (with consent of legislature) (Article 130).</p>
Tajikistan (CONST. 1994)	<p><i>Position description:</i> The president is the head of the “executive authority” (Article 64). The president “determines the directions of domestic and foreign policy of the republic” (Article 69).</p> <p><i>Power over PM/government:</i> The president has unilateral power to appoint and dismiss members of the government (Article 69.4). Legislature has no power to vote no confidence in PM or executive-branch government. (See Articles 56, 57). Furthermore, the president can suspend the acts of other executive bodies for contradicting the “constitution and the laws” (Article 69.6).</p>	<p><i>Position description:</i> The president is the head of state and “guarantor of the Constitution and the laws, rights and freedoms of man and citizen, national independence, unity and territorial integrity” as well as chief arbiter in “the functioning and interaction of state bodies” (Article 64); and has immunity (Article 72).</p> <p><i>Legislative power:</i> The president can convene special sessions of the legislature and determine the topic for these sessions; and has the power to appoint one quarter of the members of the upper house (Article 49).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i> The president appoints the Chairman and members of the National Bank (with consent of lower house), creates the Council of Justice and appoints judges on this body’s recommendation, and appoints judges to the Constitutional Court (with consent of the upper house) (Article 69).</p>

Table 2. Continued

State (Legislation)	Management powers	Guardian powers
Uzbekistan (CONST. 1992)	<p><i>Position description:</i></p> <p>None.</p> <p><i>Power over PM/government:</i></p> <p>The president appoints the Prime Minister with the “consent” of the legislature but, if the legislature rejects the presidential recommendation twice, the president has the authority to appoint the prime minister without legislative consent and dissolve the recalcitrant legislature (Article 98).</p> <p>Legislature has no binding power of no confidence in the PM or executive-branch government (Articles 95, 98).</p>	<p><i>Position description:</i></p> <p>The president is the head of state and “provides for the approved functioning and interaction of the public authorities” (Article 89) and “acts as the guarantor of observance of the rights and freedoms of citizens, the Constitution and laws of the Republic of Uzbekistan” (Article 93.1).</p> <p><i>Legislative power:</i></p> <p>The president can dismiss the legislature if it threatens the “normal functioning” of government or if the president determines the legislature is ignoring the constitution (Article 95); appoint sixteen members of the upper house (Senate) as well as the head of this upper house (Article 77, 93); and issue decrees that are “binding in all territory of the republic” (Article 94).</p> <p>Ex-presidents become permanent members of the upper house (Article 97).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i></p> <p>The president appoints and dismisses the Central Bank, Constitutional Court, and Supreme Judicial Council (with consent of the upper house) (Article 80).</p>

Source: The constitutional texts are taken from the CIS Legislation database: COMMONWEALTH OF INDEPENDENT STATES LEGISLATION, <https://cis-legislation.com/> (last visited Feb. 22, 2022).

type.<sup>132</sup> Instead, scholars have argued that the historical legacies and informal politics of the region have played a key role in continuing African “big men” rule.<sup>133</sup> Researchers have therefore concluded that constitutional design has largely been unable to overcome the legacy of hegemonic presidents.

Informal politics is clearly an important aspect of this authoritarian resilience in the African states.<sup>134</sup> But crown-presidential constitutional design has also played a neglected role in continued “big men rule” in the region. Prempeh hints at this when he writes that the combination of powers from presidentialism and semi-presidentialism in African constitutions has created a “hybrid form” that has “tended to facilitate or embolden” presidential power.<sup>135</sup> In fact, a close look at the region demonstrates that

<sup>132</sup> *Id.*

<sup>133</sup> See, e.g., Van de Walle, *supra* note 28, at 310.

<sup>134</sup> See, e.g., H. Kwasi Prempeh, *Presidential Power in Comparative Perspective: The Puzzling Persistence of Super Presidency in Post-Authoritarian Africa*, 35 HASTINGS CONST. L. Q. 761 (2008).

<sup>135</sup> *Id.* at 814 (2008).

at least four regimes are crown-presidential in nature (see Table 3). These African constitutions give presidents broad management powers over the executive branch. In addition, they also give presidents guardian powers rooted in the presidential role as an embodiment of the unity of the state.

Table 3 outlines the formal textual basis for crown-presidential design in Africa. In comparison with post-Soviet Eurasian crown-presidentialism, African crown-presidentialism is more often incorrectly classified as presidential. Furthermore, vestiges of Africa's colonial past can be found in the monarchical formulations of "legislative power" in some of these crown-presidential constitutions. In Zambia, for instance, the Parliament consists of the "President and the National Assembly of Zambia."<sup>136</sup> In Zimbabwe, the Constitution describes the "Legislature of Zimbabwe" as "Parliament and the President acting in accordance with this Chapter."<sup>137</sup> These are good examples of the president's pseudo-monarchical guardian power to "enter into" and control legislative power in crown-presidentialism.

## 5. The importance of constitutional design for political ordering

Recognizing crown-presidentialism's role in new authoritarian governance also helps us better understand two additional issues. First, it helps to perceive the benefits of correctly classified, semi-presidential constitutional design. Second, and relatedly, it provides us with important conceptual tools for understanding the importance of formal constitutional design rules in both constructing and dismantling democratic constitutionalism.

### 5.1. The benefits of "real" semi-presidentialism: Ukraine

Once we exclude crown-presidential regimes from countries classified as semi-presidential, the democratic prospects of semi-presidentialism improve markedly. In post-Soviet Eurasia, a good example is Ukraine. In 1996, Ukraine adopted a semi-presidential form of government. Although Ukraine has moved between "presidential-parliamentary" and "premier-presidential" forms of semi-presidentialism, it has retained a semi-presidential form of government despite periodic efforts by presidents to further concentrate power.<sup>138</sup> The Ukrainian president has therefore always had considerable guardian powers as the head of state, including the authority to control legislative power (including through dissolution).<sup>139</sup> But, importantly, the Ukrainian president

<sup>136</sup> ZAM. CONST. 1991 (rev. 2016), art. 61.

<sup>137</sup> ZIM. CONST. 2013, art. 116.

<sup>138</sup> SUJIT CHOUDHRY, THOMAS SEDELIUS, & JULIA KYRYCHENKO, SEMI-PRESIDENTIALISM AND INCLUSIVE GOVERNANCE IN UKRAINE: REFLECTIONS FOR CONSTITUTIONAL REFORM 9 (2018), [www.idea.int/sites/default/files/publications/semi-presidentialism-and-inclusive-governance-in-ukraine.pdf](http://www.idea.int/sites/default/files/publications/semi-presidentialism-and-inclusive-governance-in-ukraine.pdf) (describing how Ukraine has moved from a strongly presidential semi-presidential regime to a strongly parliamentary one).

<sup>139</sup> See UKR. CONST. 1996, art. 102: "The president of Ukraine is guarantor of the state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, rights and freedoms of man and citizen." Recently, Article 102 was amended to also make the Ukrainian president "the guarantor of the realization of strategic rate of the state on acquisition of full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization." UKR. CONST. 1996, art. 102 (amended 2019).

**Table 3.** African crown-presidentialism.

State (Legislation)	Management	Guardian
Cameroon (CONST. 1972)	<p><i>Position description:</i> The president “shall implement the policy of the Nation as defined by the President of the Republic” (Article 11).</p> <p><i>Power over the PM/government:</i> The president has unilateral power to “appoint the Prime Minister (PM) and. . . the other members of Government. He shall define their duties. He shall terminate their appointment. He shall preside over the Council of Ministers” (Article 10.1). A legislative vote of no confidence is ultimately the responsibility of the president. The president “may reappoint the PM and ask him to form a new government” (Article 34).</p>	<p><i>Position description:</i> The president is “[e]lected by the whole Nation, he shall be the symbol of national unity. He shall define the policy of the Nation. He shall ensure respect for the Constitution. He shall, through his arbitration, ensure the proper functioning of public authorities. He shall be the guarantor of the independence of the Nation and of its territorial integrity, of the permanency and continuity of the State and of the respect of international treaties and agreements” (Article 5).</p> <p><i>Legislative power:</i> The president can dissolve the National Assembly (lower house) (Article 8.12); appoint three members of the upper house from each region (Article 20); exercise “statutory authority” (Article 8); and call for referendums on legislative issues (Article 36).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i> The president appoints all judges and “guarantees” judicial power (Article 37) and also three members of the Constitutional Council unilaterally (Article 51).</p>
Mozambique (CONST. 2004)	<p><i>Position description:</i> The president is the “head of government.”</p> <p><i>Power over the PM/government:</i> The president has unilateral power to appoint and remove the PM and other ministers as well as presiding over meetings of the Council of Ministers (Article 160).</p>	<p><i>Position description:</i> The president is the “head of state” and “embod[ies] national unity,” is the “guarantor of the constitution,” and “over[sees] the correct functioning of state offices” (Article 146).</p> <p><i>Legislative power:</i> The president can dissolve the legislature “if it rejects government policy” (Article 188); issue “normative acts” (Article 158); and call referendums (Article 159).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i> The president appoints the head of the Constitutional Council, the Supreme Court, Attorney General, Council of State, and courts (Articles 159, 226).</p>

**Table 3.** Continued

State (Legislation)	Management	Guardian
Zambia (CONST. 1991)	<p><i>Position description:</i> The president is the head of the cabinet and government (Article 91).</p> <p><i>Power over the PM/government:</i> The president has complete control over the executive branch (Articles 113–17).</p>	<p><i>Position description:</i> The president is the “Head of state” and has responsibility to “respect, uphold and safeguard this Constitution; Duty to obey the constitution; safeguard the sovereignty of the Republic; promote democracy and enhance the unity of the Nation; promote and protect the rights and freedoms of a person; and uphold the rule of law” (Article 91).</p> <p><i>Legislative power:</i> The president has the power to dissolve the Parliament (Article 81.4) and to nominate members of Parliament (Article 69(2)).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i> The president appoints the leadership of all courts (Article 140) as well as fourth branch institutions such as the Public Protector (Article 243) and Auditor General (Article 249).</p>
Zimbabwe (CONST. 2013)	<p><i>Position description:</i> The president is the head of government (Article 89).</p> <p><i>Power over the PM/government:</i> The president is the head of the cabinet of ministers (Article 105.1) and appoints all ministers (Article 104), who are then accountable to the president (Article 107). A parliamentary vote of no confidence in the government leads to one of two outcomes: the president (i) removes all ministers from office or (ii) dissolves the parliament (Article 109.4). Furthermore, if the president does nothing, the legislature is dissolved (Article 109.5). All members of the Cabinet are ultimately accountable to the president (Article 107.1).</p>	<p><i>Position description:</i> The president is the “head of state” (Article 89) and must “promote unity and peace in the nation for the benefit and well-being of all the people of Zimbabwe; recognise and respect the ideals and values of the liberation struggle; ensure protection of the fundamental human rights and freedoms and the rule of law” (Article 90).</p> <p><i>Legislative power:</i> The president has the power to dissolve Parliament if they refuse to pass an appropriation bill (Art 143.3); and to call referendums (Art 110.2). The “Legislature of Zimbabwe” as “Parliament and the President acting in accordance with this Chapter” (Article 116).</p> <p><i>Appointment/removal powers over courts / fourth branch institutions:</i> The president has broad power over judicial appointments, Judicial Service Commission (Article 189), Civil Service Commission (Article 201), Police Service (Article 220), and other fourth branch institutions.</p>

Source: The constitutional texts are taken from the database of constitutions in the Constitute Project: CONSTITUTE: THE WORLD’S CONSTITUTIONS TO READ, SEARCH, AND COMPARE, [www.constituteproject.org/](http://www.constituteproject.org/) (last visited Feb. 22, 2022).



does not enjoy full management powers over the executive-branch government. Instead, the Ukrainian Constitution has consistently stated that the unicameral legislature (the Rada) can hold the executive branch government to account (Article 114) through “control of the activity of the Cabinet of Ministers” (Articles 85.13, 114).

This Ukrainian split executive has contributed to political pluralism in Ukraine. It does so by dispersing power and therefore blocking attempts by one group to entrench power in Ukrainian politics. In fact, the Ukrainian parliament has frequently used its power to check presidential power by removing individual ministers.<sup>140</sup> Oleh Protsykh describes how legislative control over the government has contributed to significant “intra-executive conflict” in Ukraine.<sup>141</sup> In many cases, this exercise of parliamentary power over the executive has allowed parliament to block attempts by the Ukrainian president to push through key policies. For instance, in 2006, the Ukrainian Parliament removed key ministers that were pursuing President Yushchenko’s pro-European policy.<sup>142</sup> Although this intra-executive conflict has faced criticism for provoking instability, it has also provided space for protest and political pluralism. This Ukrainian political pluralism contributed to the election of Volodymyr Zelensky as president, who has embarked on a number of democratic reforms.<sup>143</sup>

The democratic advantages of Ukrainian semi-presidentialism need to be recognized so they can be defended against ambitious presidents pushing for crown-presidentialism. During his time as president, Petro Poroshenko, for instance, pushed for additional formal presidential powers in order to consolidate control over Ukraine in the wake of the Maidan protests and the Russian annexation of Crimea. Although these proposed amendments ultimately failed, they suggest the continuing appeal of strong presidential power in the region.<sup>144</sup> An understanding of the typology of crown-presidentialism and its tendency to excessively centralized presidential presidential power can therefore play a role in resisting these forms of centralizing constitutional amendments. Moreover, this better understanding of constitutional design actually suggests that the post-Soviet space provides evidence for the claim that there might be a “democracy-promoting side to divided executive constitutions.”<sup>145</sup> Ukraine is therefore a neglected example of a country with a semi-presidential design that has helped to promote democratic democratic constitutionalism.

## 5.2. Constructing democratic constitutionalism: Kyrgyzstan’s 2010 Constitution

Crown-presidentialism also makes it easier to identify how constitutional design can help to build democratic constitutionalism. Kyrgyzstan’s 2010 Constitution is a good example. During the 1990s, Kyrgyzstan’s first post-Soviet constitution was amended

<sup>140</sup> Oleh Protsykh, *Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine*, 55 EUR.-ASIA STUD. 1077, 1083–5 (2003).

<sup>141</sup> *Id.* at 1080–1.

<sup>142</sup> CHOUDHRY, SEDELIUS, & KYRYCHENKO, *supra* note 138, at 22.

<sup>143</sup> Alexander J. Motyl & Dennis Soltys, *Ukraine’s Democracy Is (Almost) Grown Up*, FOREIGN POL’Y (Aug. 28, 2019), <https://foreignpolicy.com/2019/08/28/ukraines-democracy-is-almost-all-grown-up/>.

<sup>144</sup> Rostyslav Averchuk, *Presidential Power in Ukraine: A Comparative Analysis*, VOX UKRAINE (July 8, 2016), <https://voxukraine.org/en/presidential-power-in-ukraine-comparative-perspective-en/>.

<sup>145</sup> Hale, *supra* note 16, at 240.

to become crown-presidential. In 2007, the Venice Commission described how these powers drew from presidentialism in the United States, Russia, Latin America, and Europe and, in so doing, “established a presidential supremacy beyond limits.”<sup>146</sup> The key design rules included those ensuring the dominance of the president over the executive branch as well as guardian powers that allowed the president to transcend the system of checks and balances.<sup>147</sup> This formal concentration of power became a useful tool for Kyrgyz presidents to dominate both formal and informal politics. The aftermath of Kyrgyzstan’s 2005 “Tulip revolution”—hailed by many as a democratic opening—is a good example. Despite the revolution, Kyrgyz constitutional design was not changed and remained crown-presidential. This proved to be a mistake as it allowed the new president, Kurmanbek Bakiyev, to once again use the formal authority of the president to co-opt key members of the opposition and reassert centralized, authoritarian presidential rule.<sup>148</sup>

In 2010, however, Bakiyev’s authoritarian rule triggered another wave of protests. After his presidency collapsed, a new provisional government—led by Roza Otunbaeva—sought to fundamentally reshape constitutional design.<sup>149</sup> This process of constitution-making was driven by a strong “aversion” to an overly strong president.<sup>150</sup> The new constitution therefore kept an elected president but stripped the president of full management control over the executive branch government. The new constitution also stated that the fraction (or coalition of fractions) in the legislature that has the majority of seats directly appoints the prime minister (Article 84.1) and makes this government “accountable” to the legislature (Article 85). It also added explicit text stating that the legislature has the power to force the president to dismiss the government (Article 85.7).<sup>151</sup> Finally, the 2010 Constitution also sought to reduce the guardian powers enjoyed by the president, removing the description of the president as the “guarantor of the constitutional system.”<sup>152</sup>

These structural changes helped entrench Kyrgyz democracy. This more balanced system helped to foster the development of an independent constitutional chamber.<sup>153</sup> It also helped to contribute to an elected president voluntarily giving up power in

<sup>146</sup> See Eur. Comm’n for Democracy through Law (Venice Commission), Opinion no. 457/2007 on the Constitutional Situation in the Kyrgyz Republic adopted by the Commission at its 73rd Plenary Session, CDL-AD(2007)045 (Dec. 14–15, 2007) at 7, ¶¶ 39, 41:

The list of powers of the President in these Articles and other Articles of the Constitution seems inspired by the wish of the drafters of the Constitution to provide the President with all powers which may be found in European, US, Latin American or Russian constitutionalism... [These establish] a presidential supremacy beyond reasonable limits.

<sup>147</sup> E. Dzkhuraev, S. Toktogazieva, B. Esenkulova, & A. Baetov, *The Law and Politics of Keeping a Constitutional Order: Kyrgyzstan’s Cautionary Story*, 7 HAGUE J. RULE L. 263, 270–4 (2015).

<sup>148</sup> Henry E. Hale, *Formal Constitutions in Informal Politics: Institutions and Democratization in Post-Soviet Eurasia*, 63 WORLD POL. 581, 593–5 (2011).

<sup>149</sup> Dzkhuraev, Toktogazieva, Esenkulova, & Baetov, *supra* note 147, at 270–4.

<sup>150</sup> *Id.*

<sup>151</sup> Eur. Comm’n for Democracy through Law (Venice Commission), Opinion no. 582/2010 on the Draft Constitution of the Kyrgyz Republic, CDL-AD(2010)015 (June 4, 2010), at 9.

<sup>152</sup> *Id.* at 4.

<sup>153</sup> See Dzkhuraev, Toktogazieva, Esenkulova, & Baetov, *supra* note 147, at 270–4.

2017 after losing the election.<sup>154</sup> These were remarkable outcomes in Central Asia, a region normally characterized by dominant presidents and weak courts. Crown-presidentialism is critical to understanding these effects. Without this new typology, no significant change occurred in Kyrgyz constitutional design: prior to 2010, Kyrgyzstan had a semi-presidential constitution and it remained one afterwards. Only once we identify crown-presidentialism as a distinct constitutional design can we perceive the democratic significance of Kyrgyzstan's constitutional reform: the 2010 Constitution transformed Kyrgyzstan from a crown-presidential regime to a semi-presidential one.

The gains made under the 2010 Constitution would, however, prove short-lived. In 2021, a new elected president used a referendum to adopt a new constitution that would restrengthen the office of the president. Although this new 2021 Constitution did not re-establish crown-presidentialism, it is likely to reverse the democratic gains made under the 2010 Constitution.<sup>155</sup>

### 5.3. Building new authoritarianism: Turkey, Syria, and Sri Lanka

Crown-presidentialism has also emerged as a model for countries that are seeking to disguise their authoritarian projects in the language of democratic constitutionalism. Turkey is a good example. Prior to 2017, Turkey was a pluralistic, parliamentary democracy. In recent years, however, President Erdogan has introduced a series of formal constitutional amendments that have transformed Turkey from a parliamentary system to a crown-presidential one.<sup>156</sup> These changes have given the president unchecked management powers, abolishing the prime minister completely and allowing the president to appoint “vice-presidents” and “ministers” to oversee the implementation of policy (Article 106).<sup>157</sup> These ministers are no longer subject to parliamentary oversight or removal through no-confidence votes. Erdogan's amendments also have afforded strong guardian authority to the president, making the office of the president the head of state and affording it the power to dissolve the parliament (Article 116). Furthermore, the president is charged with “safeguard[ing] the existence and independence of the state, the indivisible integrity of the country and the nation, and the absolute sovereignty of the nation (Art[icle] 103).” Finally, the president is given vast power to issue decrees and call referenda. These changes were justified in the language of centralized state discourse, with one supporter arguing that “[t]his change will make Turkey stronger in the region, and it will act faster against threats from inside and outside.”<sup>158</sup>

<sup>154</sup> *Kyrgyzstan Inaugurates New President in Peaceful Transfer of Power*, RADIO FREE LIBERTY/RADIO EUROPE (Nov. 24, 2017), [www.rferl.org/a/kyrgyzstan/28873791.html](http://www.rferl.org/a/kyrgyzstan/28873791.html).

<sup>155</sup> William Partlett, *Kyrgyzstan's 2021 Constitution: A Brief Comparative and Historical Analysis* (April 23, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3834766](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3834766) (describing how in 2021 Kyrgyzstan adopted a new constitution that centralized power in the office of the president).

<sup>156</sup> TURK. CONST. 1982, [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf).

<sup>157</sup> Sule Boyunsuz, *The AKP's Proposal for a “Turkish Type of Presidentialism” in Comparative Context*, 17 *TURKISH STUD.* 68 (2015).

<sup>158</sup> Kareem Fahim & Anthony Faiola, *Turkey's Testy Campaign Over Executive Presidency Sows Divisions at Home and Abroad*, WASH. POST (Mar. 12, 2017), <https://wapo.st/3uNtV4x>.

Crown-presidentialism has given President Erdogan vast formal power to dominate formerly independent institutions such as courts.<sup>159</sup> Control of these formal institutions has helped Erdogan consolidate his power over informal political ordering by weakening and co-opting opposition groups.<sup>160</sup> In particular, these new presidential powers have helped President Erdogan sideline the groups that had sought to move against him in a 2016 coup. Erdogan is also currently using these powers to maintain authoritarian control amidst growing discontent and opposition among his former political allies.<sup>161</sup>

Crown-presidentialism is also a design model for ongoing constitution-making in Syria. In fact, a draft released by the Russian Federation to serve as a model for the Syrian drafters draws heavily on crown-presidential design.<sup>162</sup> In this draft, the president is the leading management official with broad power to appoint and dismiss the prime minister as head of the executive (Article 64). The president also has strong guardian powers, assuming a “guarantor” role and therefore guaranteeing national independence, unity, and the territorial integrity (*tselostnost’*) of the country (Article 55(1)). Second, the president is also given a “coordination” role, ensuring the permanence of the functioning of state power (Article 55(2)). Third, the president serves as “mediator” between institutions of government as well as between the government and society (in order to ensure its unity) (Article 55(3)). Fourth, the president has authority to establish “conciliation procedures” to resolve conflicts between branches of government (Article 55(3)).

In addition, this draft constitution also weakens the checking power of the legislature by creating a bicameral legislature with an upper house—called the Assembly of the Territories—which is drawn from the administrative units of the regions (Article 40.2). The precise nature of the selection from these bodies is left to law (Article 40.3). Thus, it is likely, much as in crown-presidentialism, that the details of the selection of the upper house will be controlled by the president. Although this draft constitution is incomplete, it is possible that some of crown-presidentialism’s design concepts will influence Syria’s new constitution.

Finally, the categories of presidential power in crown-presidentialism also help understand the role of constitutional design rules in recent democratic backsliding in Sri Lanka. Prior to 2015, the Sri Lankan Constitution was a strongly “presidential-parliamentary” regime that was very close to crown-presidentialism.<sup>163</sup> The key formal rule keeping Sri Lanka from crown-presidentialism was that the parliament could pass a vote of no confidence and force the resignation of the prime minister

<sup>159</sup> Zafer Yılmaz, *Erdoğan’s Presidential Regime and Strategic Legalism: Turkish democracy in the Twilight Zone*, 20 S.E. EUR. & BLACK SEA STUD. 265, 278–9 (2020) (describing the position of the president as a kind of sovereign dictatorship”).

<sup>160</sup> *Id.*

<sup>161</sup> Dorian Jones, *Erdogan Fights Back as Challenges Loom from Former Allies*, VOICE AM. (Sept. 9, 2019), [www.voanews.com/europe/erdogan-fights-back-challenges-loom-former-allies](http://www.voanews.com/europe/erdogan-fights-back-challenges-loom-former-allies).

<sup>162</sup> The Russian draft constitution for Syria can be found at the following link (in Russian): <https://ria.ru/20170201/1486902587.html>. See further William Partlett, *Understanding the Origins of Russia’s Constitutional Solution to the Syrian Conflict*, CONSTITUTIONNET (Feb. 24, 2017), <http://constitutionnet.org/news/understanding-origins-russias-constitutional-solution-syrian-conflict>.

<sup>163</sup> SRI LANKA CONST. (rev. 2010), [www.parliament.lk/files/pdf/constitution/constitution-upto-18th.pdf](http://www.parliament.lk/files/pdf/constitution/constitution-upto-18th.pdf).

(Article 49(2)). Other than that, the president had strong textual management powers over the executive-branch government. The president was described as the head of the executive (Article 30) and head of the Cabinet of Ministers (Article 43(2)). As head of the Cabinet of Ministers, the president could assign to itself any of those powers, could reorganize the government, and had full power to appoint an unlimited number of members of Parliament to positions in the government (Article 44). Moreover, this Constitution also gave the president significant guardian power. The president was the “head of state” (Article 30) who had the power to “prorogue” or “dissolve” the Parliament (Article 70).

After a landmark election, the Sri Lanka Parliament passed the Nineteenth Amendment in April 2015.<sup>164</sup> The amendment introduced a much more balanced semi-presidential design. First, these changes reduced the management powers of the President by repealing the entire previous section on executive-branch power vested in the Cabinet of Ministers.<sup>165</sup> The new section placed limits on the number of ministers in the Cabinet in order to ensure that the president could not co-opt too many members of Parliament through appointment to the Cabinet (Article 46). Furthermore, and most importantly, this Nineteenth Amendment removed the preexisting power of the president to remove the prime minister from office.<sup>166</sup> Instead, the prime minister remains in place until the Cabinet is dissolved (Article 46(2)).

Finally, the amendments also reduced the guardian powers of the president. In particular, they deprived the president of the power to dissolve Parliament until four and a half years into its parliamentary term (Article 70).<sup>167</sup> The changes also strengthened the power of the Constitutional Council, which recommends appointments to important judicial and integrity institutions (Article 41A). This weakens the unilateral power of the president to dominate judicial, prosecutorial, and integrity institutions through appointment. The Nineteenth Amendment clearly weakened the ability of the Sri Lankan president to dominate Sri Lankan politics.<sup>168</sup> Most notably, the new rules helped to block an attempt by President Sirisena in 2018 to consolidate power by removing the prime minister and dissolving Parliament.<sup>169</sup>

In 2020, however, a newly elected Sri Lankan president (Gotabaya Rajapaska) and prime minister proposed constitutional changes to overcome the pluralism

<sup>164</sup> Asanga Welikala, *Sri Lanka: The Nineteenth Amendment to the Constitution: From Start to Finish*, CONSTITUTION NET (May 26, 2015), <http://constitutionnet.org/news/sri-lanka-nineteenth-amendment-constitution-start-finish>.

<sup>165</sup> SRI LANKA CONST. amend XIX (2015), [www.parliament.lk/files/pdf/constitution/19th-amendment-act.pdf](http://www.parliament.lk/files/pdf/constitution/19th-amendment-act.pdf).

<sup>166</sup> SRI LANKA CONST. art. 47(a) (1978) <pre-2015>.

<sup>167</sup> *Id.*

<sup>168</sup> Kelana Senaratne, *The Last Days of the Nineteenth Amendment?*, GROUNDVIEWS: JOURNALISM FOR CITIZENS (July 30, 2020), <https://groundviews.org/2020/07/30/the-last-days-of-the-nineteenth-amendment/>.

<sup>169</sup> Rathindra Kuruwita & Zaheena Rasheed, *Sri Lanka's Supreme Court Overturns Sacking of Parliament*, AL-JAZEERA (Dec. 13, 2018), [www.aljazeera.com/news/2018/12/13/sri-lankas-supreme-court-overturns-sacking-of-parliament/](http://www.aljazeera.com/news/2018/12/13/sri-lankas-supreme-court-overturns-sacking-of-parliament/).

engendered by the Nineteenth Amendment.<sup>170</sup> This Twentieth Amendment gives the president important management powers. Most notably, this includes the power to remove the prime minister (Article 47(a)).<sup>171</sup> It also gives increased guardian powers to the president, including the power to dismiss parliament only one year after it is convened (Article 70) and broader appointment power with the disbanding of the Constitutional Council (Article 41A). This formal power once again affords the Sri Lankan President significant power again to dominate both formal and informal political ordering in Sri Lanka. In the short term, it will help the Rajapaska family to more securely extend its informal dominance over the interconnected Sri Lankan political and business world.<sup>172</sup>

## 6. Conclusion

This analysis revises our understanding of post-Cold War constitutional design and its effects. First, it presents crown-presidential constitutional design as a previously unidentified constitutional design type for new authoritarian governance. Across post-Soviet Eurasia, Africa, and the Middle East, crown-presidential constitutional design is justified in the language of democracy and strong governance. But, in reality, it allows the president to dominate both formal and informal politics.

It remains an open question how long crown-presidential constitutional design and its justifications will remain persuasive. Many countries—such as South Africa and Colombia—have pursued similar goals without centralizing power in the office of the president. Furthermore, comparative evidence suggests that crown-presidentialism's centralization devolves into personalism that undermines the success of economic development and state-building by weakening institutions and engendering corruption.<sup>173</sup> In particular, as these state-building problems of concentrated presidential power become more apparent—in large-scale corruption, overly personalized governance, or presidential personality cults—calls to weaken these formal powers and to create a more divided constitutional structure might grow in influence.

Second, and more broadly, crown-presidentialism yields important conceptual clarity to our understanding of the relationship between formal constitutional design

<sup>170</sup> Jayadeva Uyangoda, *Interpreting the Sri Lankan Mandate*, THE HINDU (Aug. 8, 2020), [www.thehindu.com/opinion/lead/interpreting-the-sri-lankan-mandate/article32298967.ece](http://www.thehindu.com/opinion/lead/interpreting-the-sri-lankan-mandate/article32298967.ece). See also Sri Lankan PM Calls for Two Third Majority to Repeal 19th Amendment, TAMIL GUARDIAN (July 3, 2020), [www.tamilguardian.com/content/sri-lankan-pm-calls-two-third-majority-repeal-19th-amendment](http://www.tamilguardian.com/content/sri-lankan-pm-calls-two-third-majority-repeal-19th-amendment).

<sup>171</sup> See SRI LANKA CONST. amend XX (2021), [www.parliament.lk/uploads/acts/gbills/english/6176.pdf](http://www.parliament.lk/uploads/acts/gbills/english/6176.pdf). The amendment, issued on September 2, 2020, also gives the President the power to determine the size of the Cabinet of Ministers and to unilaterally determine the subjects in it (Article 44(1)(a)).

<sup>172</sup> *All in the Family: Sri Lanka's Political Rajapaska Dynasty*, TIMES OF INDIA (Aug. 5, 2020), <https://timesofindia.indiatimes.com/world/south-asia/all-in-the-family-sri-lankas-political-rajapaksa-dynasty/articleshow/77363914.cms>. See also Four Members of Sri Lankan Cabinet Find Place in Sri Lankan Cabinet, AL-JAZEERA (Aug. 12, 2020), [www.aljazeera.com/news/2020/08/members-rajapaksa-family-find-place-sri-lanka-cabinet-200812102121620.html](http://www.aljazeera.com/news/2020/08/members-rajapaksa-family-find-place-sri-lanka-cabinet-200812102121620.html).

<sup>173</sup> GEDDES, WRIGHT, & FRANTZ, *supra* note 15 (arguing that personalized dictatorships are less stable); FRANTZ, *supra* note 19.



and actual political ordering. Initially, it helps rehabilitate both semi-presidential and presidential constitutional design. Although these forms of design do not guarantee democratic governance, they play a more important role in the project of democratization than previously thought. Further, this design typology is a reminder of the importance of formal design rules in shaping both formal *and* informal politics. This reminds us that formal constitutional rules and informal politics do not operate in separate realms but instead interact with one another in important ways.

Crown-presidentialism also provides important conceptual tools for classifying and understanding the different types of presidential power. It demonstrates that presidential systems do not just provide an elected president management power to control the executive branch and the bureaucracy. These systems also sometimes give the elected president crown-like guardian powers that allow the president to control the legislature as well as judicial, prosecutorial, and integrity institutions. Both forms of democratic presidentialism—semi-presidentialism and presidentialism—are careful to ensure that these powers are not *simultaneously* given to the president. When they are combined in the office of the president, however, these powers present the president with a powerful tool for building and maintaining authoritarian power. In fact, their “interaction effects” create a kind of excessively presidential system that provides the elected president with a powerful tool in shaping both formal and informal politics. Exposing crown-presidentialism’s combination of formal powers as a tool in new authoritarian governance helps strip away its democratic legitimacy. Moreover, it demonstrates the important role of constitutional design rules and their “interaction effects” in building not just democratic governance but also authoritarianism.<sup>174</sup>

<sup>174</sup> Scheppele, *supra* note 7, at 560.