

The impact of semi-presidentialism on governance in the Palestinian Authority (2003-2007)

In recent years, semi-presidentialism – where a constitution creates a directly elected fixed-term president and a prime minister and cabinet collectively responsible to the legislature – has become the regime type of choice for nascent democracies. There are now nearly 60 countries with semi-presidential constitutions.¹ And yet, the academic consensus is resolutely opposed to the adoption of semi-presidentialism. When Afghanistan was crafting its new constitution in 2003, a briefing report summed up the general attitude towards this type of constitutional arrangement: this system “risks creating two competing centers of power, which is probably not healthy for a polarized society emerging from conflict.”² In short, while semi-presidentialism may be easy to choose, it is often considered to be difficult to operate.³

In 2002, President Arafat ratified the Basic Law of the Palestinian Authority. In March 2003 the Basic Law was amended, incorporating the position of a prime minister and making the prime minister and cabinet collectively responsible to the legislature. Thus, a semi-presidential system was adopted. In January 2005, following Arafat’s death, Mahmoud Abbas was elected president. He was supported by a Fatah majority in the legislature. However, in January 2006, Hamas gained a majority at the legislative elections. This led to ‘cohabitation’ between a Fatah president and a Hamas prime minister and government and created “two competing centers of power”, which is said to be so damaging for fragile democracies with semi-presidential constitutions. Following the election, and in the context of an extremely difficult domestic and international situation, the Palestinian Authority descended into civil war. By June 2007, the Palestinian Authority had, in effect, split in two, with Hamas ruling the Gaza Strip and Fatah retaining authority over the West Bank. In the same month President Abbas declared a state of emergency and dismissed the

Hamas prime minister, Ismail Haniya, though Hamas maintains that this decision was unconstitutional and still considers Haniya to be the legitimate head of government. Whatever the legality of the situation, by this time the governance structures of the Basic Law had all but broken down.

It is very difficult to determine to what extent semi-presidentialism is responsible for the problems of governance in the Palestinian Authority, but the importance of institutions in shaping the behaviour of political actors in the Palestinian context is often neglected in favour of other factors, which appear at first to be more relevant. Obviously, the internal and external problems faced by the Palestinian Authority are greater than those faced by almost any other jurisdiction in the world and it would be naive to suggest that semi-presidentialism *per se* was anything other than a contributory factor to the problems faced by the Authority since January 2006. In some ways, the stage for a conflict between Fatah, reluctant to relinquish its role as the sole voice of the Palestinians, and Hamas, the new representative of Palestinian nationalism, was already set, but semi-presidential arrangements might have contributed to its timing and acceleration. As Kirschke has demonstrated in the case of sub-Saharan African countries, institutionalized conflict between the president and the legislature can sometimes tip fragile regimes over the democratic edge.⁴ Was this the case in the Palestinian Authority? To what extent are the conventional arguments against semi-presidentialism supported by recent events in the Palestinian Authority? These are the questions this article aims to answer.

These questions are important not merely as they relate to the Palestinian Authority or indeed as they relate to the study of semi-presidentialism generally. They are also important in the context of the growing literature analyzing the influence of institutions on political systems in the Arab world. For a long time, the study of the formal institutions in this region was neglected because it was believed that power was exercised largely through informal processes and channels. While this might have been true in the past, the democratizing and

liberalising reforms of the 1980s and 1990s introduced a degree of political institutionalization that political actors had to contend with. Thus, while elections in most Arab countries still do not produce political change, it is important to analyse them because they reveal societal trends and offer insights into how political actors react to them.⁵ A similar argument can be made for analysing apparently powerless legislatures. An analysis of the effects of semi-presidentialism on the choices of Palestinian political actors contributes to our understanding of the ways in which institutions matter in the Arab world.

To begin, the standard arguments against semi-presidentialism are identified. Next, the constitutional structure of the amended Palestinian Basic Law is briefly outlined. Then, events during the period of cohabitation following the 2006 elections are analyzed to determine whether or not the problems of governance in the Palestinian Authority were associated with the textbook shortcomings of semi-presidentialism.

For the purposes of this article semi-presidentialism is defined as the situation where a country's constitution provides for both a directly elected fixed-term president and a prime minister and cabinet that are collectively responsible to the legislature. This definition is slightly different from Duverger's original presentation of the concept.⁶ However, it is now a common way of defining this constitutional form.⁷ On the basis of this definition, there are now nearly 60 countries with semi-presidential constitutions. This set of countries is very heterogeneous, including established West European examples such as Finland and France, as well as newer examples across the world, including Armenia, Haiti, Mongolia, Poland, Senegal and Taiwan. To make sense of the variety within the class of semi-presidential countries, there is a now standard distinction between two forms of semi-presidentialism. Based on the original work of Shugart and Carey, there are countries with a premier-presidential form of semi-presidentialism, which is where the prime minister is responsible solely to the legislature, while there are other countries with a president-parliamentary

form, which is where the prime minister is responsible both to the legislature and to the president.⁸ Premier-presidential countries include France, Lithuania, Mali and Timor-Leste. President-parliamentary countries include the Central African Republic, Georgia, Russia and, in the past, Weimar Germany. As we shall see, the Palestinian Authority has a president-parliamentary form of semi-presidentialism.

There are many reasons why semi-presidentialism may be a tempting constitutional choice. For example, when there is a weak executive, the introduction of a directly elected president can provide the promise of charismatic leadership. By contrast, if an already powerful president faces social unrest, then creating the post of prime minister and offering it to the opposition can be a way for the president to calm the situation while still remaining in power. That said, however politically expedient the adoption of semi-presidentialism might often be, there is an overwhelming academic consensus against the introduction of this form of government.⁹ Moreover, within the set of semi-presidential countries, several observers have identified president-parliamentarism as a more problematic form of semi-presidentialism than premier-presidentialism.¹⁰ The critics of semi-presidentialism point to the problems supposedly inherent in the institutional structure of semi-presidentialism and suggest that these problems make governance more difficult generally and that in the case of nascent democracies they risk causing the collapse of the fledgling democratic system. If the academic wisdom is correct, therefore, then not only has the Palestinian Authority chosen a potentially damaging type of constitutional arrangement, it has also chosen the most dangerous sub-type of this form of government.

There are various reasons why semi-presidentialism in general and president-parliamentarism in particular are considered to be problematic for new and fragile democracies. For example, Lijphart has warned against the excessive presidentialisation of power that can occur under semi-presidentialism. He

argues that when the president is supported by a disciplined legislative majority semi-presidential systems “actually make it possible for the president to be even more powerful than in most pure presidential systems.”¹¹ Usually, though, the critics of semi-presidentialism focus on the problems caused by the situation where the president does not enjoy the support of a disciplined legislative majority. Given this situation is the one that is potentially relevant to the case of the Palestinian Authority, we outline the two main variations of these problems both in relation to semi-presidentialism as a whole and to its president-parliamentary form specifically.

The first variation focuses on the potential for problems within the dual executive. In semi-presidential countries, the prime minister is responsible to the legislature. Therefore, to be appointed and to remain in office, the prime minister must have at least the tacit support of the legislature. When the president’s party fails to enjoy a legislative majority, then it may be the case that the president has to appoint a prime minister from a different party. In this event, the prime minister may be from a coalition that includes the president’s majority, or from a party or coalition that is opposed to the president. The first scenario - where the president and prime minister are from opposing parties but where the president’s party is represented in government - is called a ‘divided executive’. The second scenario - where the president and prime minister are from opposing parties and where the president’s party is not represented in government - is a particular example of a divided executive called ‘cohabitation’.

The critics of semi-presidentialism have focused on the potential for intra-executive conflict during periods when there is a divided executive and/or cohabitation. While semi-presidentialism seems to offer the potential for opposing actors to share at least some executive power, the critics of semi-presidentialism suggest that such actors are unlikely to be satisfied with only limited executive authority and that the president and prime minister will try to compete for power. In the case of fragile democracies, such competition at the

heart of the executive may be destabilizing. For example, Stepan and Suleiman, worry that the president may be tempted to use decree powers and subvert the rule of law, particularly if the president is the commander-in-chief of the armed forces and has the support of the military. So, they argue that the “main theoretical and political worry about semi-presidentialism, of course, is precisely the question of deadlock and constitutional conflict between the dual executive. A deadlock can become particularly dangerous if the president has special authority over the security forces and some emergency powers” (Stepan and Suleiman, 1995: 399).¹² For his part, Fabbrini also worries that the competition between the president and prime minister may lead to gridlock. He states: “When the president is the leader of the party that controls the National Assembly, the executive gaze rests on him. When a different party controls the Assembly, the executive gaze focuses on the premier, with some conditions imposed by the president. Herein lies the main weakness of semipresidentialism: the possibility of a rift between the president with his popular majority and the premier with his legislative majority. Such a split could hamper or even paralyze the executive.”¹³

The second variation of the problems associated with semi-presidentialism focuses on the relationship between the executive and the legislature. Here, there is a potential problem of dual legitimacy. When the president does not enjoy the support of a disciplined legislative majority and the legislature refuses to support the president’s programme, the president may feel that his/her popular mandate is being undermined. By the same token, though, if the president refuses to cooperate with the legislature and/or tries to bypass it, the legislature may feel that its mandate is being undermined. In a consolidated democracy the resulting gridlock may lead to the inability to pass basic legislation such as the annual budget. This can lead to serious problems of governance. In a fragile democracy the problem of dual legitimacy may be more serious still. Here, it is likely to lead either to a breakdown in the rule of law as

the president rules by decree or to a stalemate between the president and legislature that encourages the military to intervene to break the deadlock. In their work, Linz and Stepan are explicit about the dangers for young democracies of this sort of dual legitimacy: "When supporters of one or the other component of semi-presidentialism feel that the country would be better off if one branch of the democratically legitimated structure of rule would disappear or be closed, the democratic system is endangered and suffers an overall loss of legitimacy, since those questioning one or the other will tend to consider the political system undesirable as long as the side they favor does not prevail ... [I]n a semipresidential system, policy conflicts often express themselves as a conflict between two branches of democracy."¹⁴

In addition to these general criticisms of semi-presidentialism, there are specific criticisms of the president-parliamentary form of semi-presidentialism. Under semi-presidentialism generally, the president must work through the prime minister and the legislature. As most French presidents would be able to confirm, when the president is the *de facto* leader of the legislative majority and the prime minister is subordinate to the president, then the president can be assured that his/her programme will be safely implemented. However, as we have seen, when the president fails to enjoy a supportive majority, there can be problems. In this event, there is a key difference between premier-presidentialism and president-parliamentarism. Under the former, the president cannot dismiss the prime minister. As a result, while all the problems of a divided executive may occur under premier-presidentialism, the president may decide simply to let the prime minister govern, knowing that s/he has no option but to put up with the person who has been approved by the legislature. Under president-parliamentarism, though, the president always retains the option of dismissing the prime minister as a way of trying to break the stalemate. Given the appointment of a replacement still requires the support of the legislature, the president may simply find that the relationship with the new prime minister is

just as problematic, if not more so because of the crisis caused by the dismissal of his/her predecessor. In short, under president-parliamentarism the president's ability to dismiss the prime minister can exacerbate the problems of a divided executive and dual legitimacy that are found generally under semi-presidentialism.

In rest of this article, we examine whether the problems of semi-presidentialism in general and president-parliamentarism in particular contributed to the crisis of governance in the Palestinian Authority following the legislative elections in January 2006. This case is an appropriate one on which to test the predictions of the critics of semi-presidentialism. For example, the introduction of semi-presidentialism coincides with a decline in the quality of governance. The civil war in 2006-07 and the effective partition of the Palestinian Authority is probably evidence enough. However, there is other evidence too. Having risen from 5.5 (Not Free) in 2003 and 2004 to 5 (Partly Free) in 2005 and 2006, the Freedom House ratings for the Palestinian Authority declined to 5.5 (Not Free) in 2007, marking what might be construed as a collapse of democracy.¹⁵ Therefore, we have *prime facie* grounds to explore whether or not there is a link between the introduction of semi-presidentialism in the Palestinian Authority and the decline in the quality of governance.

This case also provides a particularly difficult test for the critics of semi-presidentialism. In the period under consideration the Palestinian Authority faced extremely challenging economic and social conditions and a chronic security crisis. These problems would probably have been enough to lead to a decline in the quality of governance almost anywhere. However, in the face of these problems, if we find evidence that semi-presidentialism had an independent negative effect on the governance situation in the Palestinian Authority, then the critics of semi-presidentialism can reasonably claim that their arguments hold water. To identify such an effect, we need to look for evidence that the actors themselves, and expert commentators, considered the

constitutional arrangement to be a source of at least some of the problems with which the Authority was faced. Given the many other problems faced by these actors, if they single out the constitution as an additional source of problems, then we can conclude that semi-presidentialism had an effect. Before we look for such evidence, we briefly sketch the constitutional framework of the Basic Law.

The Basic Law of the Palestinian Authority

The Basic Law of the Palestinian Authority is the equivalent of an interim constitution that is meant to be in force until a fully sovereignty independent state is achieved and a permanent constitution is adopted. Work on the document began in 1993 and four years later the Legislative Council approved the agreed draft. However, President Arafat did not ratify the Basic Law until 2002. Nonetheless, at that point the Palestinian Authority can be considered to have become a constitutional regime.¹⁶

In 2002, the Basic Law established a presidential system. There was a directly elected president (Art. 51). There was also provision for a Council of Ministers, which was chaired by the president (Art. 62). However, there was no prime minister. The president had the power to remove ministers (Art. 62) and it was explicitly stated that ministers were responsible to the president (Art. 68). The Council of Ministers did require an investiture vote (Art. 64), and the president had the right to request a vote of confidence in the Council of Ministers by the Legislative Council (Art. 71). In addition, at the request of at least ten of its 88 members, the Legislative Council could propose a vote of no-confidence in the Council of Ministers. The motion required a majority of the total number of members of the Legislative Council to be passed (Art. 44). Given that most presidential systems do not include provision for the collective responsibility of the cabinet, the 2002 Basic Law established a rather unusual form of presidentialism, but at this point it was not yet semi-presidential.

In March 2003 the Basic Law was amended. In some respects, the amendments amount to a new constitution. The ordering of the Titles of the constitution was changed. The numbering of Articles was amended. However, in the context of this article, the key change was that the post of prime minister was created and both the prime minister and the Council of Ministers were given explicit powers that were not present in the 2002 document (Arts. 68 and 69). Following the 2003 amendment the president remains directly elected (Art. 34). The president has the power to appoint and dismiss the prime minister (Art. 45). Indeed, it is stated explicitly that the prime minister is accountable to the president and to the Legislative Council (Art. 74). The prime minister chairs the Council of Ministers (Art. 68). As before, the government has to pass an investiture vote (Art. 66) and the Legislative Council can pass a motion of no-confidence in the government (Art. 57 and Art. 78). In these ways, the 2003 version of the Basic Law clearly established a semi-presidential regime. Moreover, given the prime minister was responsible to both the president and the legislature, it established a president-parliamentary form of semi-presidentialism.

In 2005 there was a further amendment to the Basic Law. This amendment was, in itself, very important, but it did not alter the semi-presidential nature of the constitution or its president-parliamentary form. The amendment specified that both the president and Legislative Council served for a four-year term of office. It also specified that the president was limited to two consecutive terms. It should be noted that the amendments did not specify that presidential and legislative elections were concurrent. In fact, they were not synchronised and, indeed, the absence of concurrent elections was the reason for the constitutional crisis that began in January 2006. In the next section, we examine whether semi-presidentialism had an effect on the quality of governance in the Palestinian Authority from 2006-2007. We begin by arguing that conflict between Hamas and Fatah was not inevitable. We then suggests reasons why semi-presidential nature

of the Palestinian institutions may have contributed to the increase in conflict between the rival forces.

Semi-presidentialism and the collapse of Palestinian unity

There is very little doubt that the “ Hamas’s takeover of Gaza and President Abbas’s dismissal of the national unity government ... amount[ed] to a watershed in the Palestinian national movement’s history.”¹⁷ Since its inception, Palestinian nationalism had always been characterised by significant divisions with a number of different ideological strands competing for primacy. At times divisions have been so profound as to affect its very credibility and effectiveness. However, the charismatic leadership of Arafat and the necessity of steadfastness in the face of Israel allowed the nationalist movement to have a resemblance of unity and common intent in the creation of a Palestinian state. The Oslo peace process and the rise of Hamas as a nationalist-religious competitor opposed to the agreement that Fatah and the PLO had signed up to seemed to strain the unity of Palestinian nationalism to the limit, but for a period infighting and conflicts seemed to be under control and were quickly halted through calls for unity. It follows that the events of June 2007 were particularly shocking for ordinary Palestinians who saw political actors take up arms against each other. According to Milton-Edwards this “was nothing short of a civil war in Gaza between Fatah and Hamas.”¹⁸

To some, the events of 2007 were not as a surprise because Fatah and Hamas had been on a collision course for some time due to their scarcely reconcilable ideological and policy differences. Moreover, “once Hamas had beaten Fatah for control of the PA in the PLC elections that took place in January 2006 the rivalry became increasingly difficult to contain.”¹⁹ The rise of Hamas had always represented a problematic development for Fatah, Israel and the international community because of the movement’s ideology, domestic policy preferences and stance on the peace process. Part of the literature regards

Islamist movements as inherently anti-democratic and violent leading them therefore to use elections simply as an instrument to conquer power in order then to abolish democratic institutions and set up a regressive and authoritarian Islamic state.²⁰ It follows that the rise of Hamas in Palestine was perceived as extremely divisive because it introduced religious ideological discourse at the heart of Palestinian nationalism, rendering it less accommodating to both its external and internal rivals. This understanding of political Islam in general and of Hamas in particular would point to the inevitability on the confrontation between Fatah and the Islamist movement, particularly in a context where the “root cause of the Palestinian condition (occupation and the absence of a political settlement with Israel)”²¹ is unresolved. Such an approach is however misleading for a number of reasons.

First of all, the labelling of all political Islamist movements as inherently anti-democratic and violent is highly debatable from a theoretical point of view, as it is impossible to determine *a priori* and in isolation from the surrounding institutional context how a political movement will behave in a pluralistic and competitive environment.²² Empirical evidence also supports the view that Islamist movements should be analysed and understood in the specific contexts within which they operate.²³ In the case of Hamas, it should be for instance highlighted that the movement has always had a high regard for procedural democracy. As both Gunning pointed out, throughout its existence Hamas always displayed a significant degree of internal democracy.²⁴ In addition, Hamas candidates regularly participated in the elections of the representative bodies of the professional organisations, the students’ unions and the local councils, although they boycotted the 1996 PLC elections because they were a direct emanation of Oslo.

Secondly, the link between violence and Islamism should also be challenged. It is often assumed that Islamists directly or indirectly support the use of violence to attain political objectives and this is certainly true for avowedly

jihadi movements operating both within Palestinian society²⁵ and in the wider Muslim world.²⁶ However, Hamas does not fall into this category and its use of violence is much more pragmatic and part of a much broader strategy which includes delivery of social services and electoral politics to achieve the creation of Palestinian state.²⁷ Before 2007, the use of violence on the part of Hamas was almost solely directed towards Israel and was justified with a discourse of resistance. On the domestic scene Hamas had largely refrained from employing violence and when its militants were involved in sporadic clashes with Fatah, it was usually as a response to Arafat's perceived repressive measures against the movement on the instigation of Israel and the United States.²⁸ In addition, Hamas leaders always emphasised that once in power they would respect political and social pluralism.

Finally, it should be highlighted that the position of Hamas regarding the peace process with Israel, the most significant bone of contention with Fatah, is neither as unique nor simple as often portrayed. It is not unique because other Palestinian groups, both religious and secular, rejected the Oslo accords by virtue of the fact that they perceived them to be a 'sell-out.' The attitude of Hamas to the peace process is also not simply rejectionist and ideological as some claim.²⁹ While formally opposed to Oslo, it nevertheless supports peace with the Israelis, although it has a very different conceptualisation of what a just peace involves and what should be done to achieve it. It is obviously an idea of peace that clashes with the one that Israel and the international community have in mind. For instance Hamas has offered a long truce (the *hudna*) if Israel leaves the occupied territories and the withdrawal of Israel should be the pre-condition for future negotiations according to the Hamas leadership.³⁰ This obviously is in stark contrast to what Israel wants and to what the international community offers. In practice, Hamas, by working within the institutions that the Oslo accords set up, demonstrated that it has indirectly recognised Israel and the logic of peace, but this informal recognition will not translate into the abandonment of

armed resistance unless Israel, as the occupying power, withdraws without conditions. This attitude has profound consequences for the relationship with Fatah and the PLO because it points towards a certain convergence of objectives, namely the creation of Palestinian state within the 1967 borders. With this in mind, it should therefore come as no surprise that the armed wings of both Hamas and Fatah co-operated quite regularly during the second uprising. More significantly, Hamas has been very careful throughout its existence to avoid permanent splits of the Palestinian camp despite its opposition to Oslo and the accusations of corruption and poor governance against Fatah and the PLO. The relevance for the movement of the concept of *fitna* (civil strife and dissent), which has to be avoided for practical reasons and in order to obey a religious imperative, should not be underestimated in the context of Hamas's discourse and activism. This concept has guided the way in which the movement operated until the summer of 2007 when a breaking point with Fatah and the PLO was reached.

From this brief analysis, it becomes difficult to argue that there was a significant degree of inevitability about the confrontation between Hamas and Fatah and that the blame should be placed squarely on the Islamic resistance movement. As Robinson highlighted "conflict between these two elements...is not inevitable. Fatah and Hamas cadres went to school together, spent time in Israeli prisons together, and cooperated tactically for many years."³¹ Furthermore, if tensions had always existed and internal Palestinian discord on how both to deal with Israel and to construct a Palestinian state was always present, what explains then the timing of the breakdown of Palestinian nationalism and the collapse of the Authority? Part of the answer lies in the institutional organisation of the Palestinian Authority. This is the subject to which we now turn.

The perils of semi-presidentialism

While the Palestinian Authority operated under an extremely challenging set of economic, social and security conditions in 2006-2007, the semi-presidential structures of the 2003 amended Basic Law highlighted and accelerated divisions between Hamas and Fatah during this period, creating a new arena of confrontation with popular electoral legitimacy at heart of it. They did so by placing the two actors within an institutional context that made it more difficult for them to come to a non-formal arrangement through which differences could be resolved. Simultaneously, the quality and coherence of governance, in an already difficult situation, worsened significantly because deep divisions between Palestinian political actors were exposed, leading Hamas and Fatah to adopt conflicting policies that in the longer run undermined the very unity of the Palestinian Authority.

From the beginning the Hamas government had to contend with the opposition of President Abbas, who appropriated significant powers even before the new government took office and subsequently threatened on a regular basis to dismiss the Haniya government. Through a number of presidential decrees, Abbas "claimed exclusive presidential authority over the police force, the various media outlets ... the Property Sale and Registration Department and control over the crossing points between Israel and the Palestinian territories."³² In addition, threats of dismissal were periodically made and they intensified in December 2006 when the pressure of the international community on Abbas to deal with Hamas became quite strong. The negative influence of the semi-presidential arrangements, in particular the president's ability to dismiss the prime minister, destabilised the cabinet and the PA as a whole because it led Hamas cabinet members to have to continuously reassert their legitimacy and stand up to Abbas. This had two consequences. On the one hand, it heightened the stakes of the game, which became one where proving the legitimacy of both institutions became the objective of politics rather than the justification for implementing

policies. On the other hand, it made it inevitable that the day-to-day running of the PA was neglected by both actors as they were locked into a political battle for institutional supremacy. The victory of Hamas had shocked the international community and Fatah and this victory was unacceptable because it was perceived to undermine decades of international efforts to secure a peaceful resolution to the conflict. Thus, the decision was made that the international community would boycott the Hamas-led government by severing diplomatic ties and halting financial aid, while Fatah would refuse to enter in a national unity government as Hamas had offered in January 2006. This strategy was supposed to render governance ineffective and show up Hamas to the Palestinian electorate as an ineffective political force that would only weaken the Palestinian struggle. As part of this strategy, it was suggested that Abbas could use his constitutional powers to dismiss the government and call for new elections, which would yield a different result and reinstall Fatah in power because the Palestinians would perceive Hamas as a failure. As a *Guardian* report of December 2006 indicated, President Abbas “count[ed] on the fact that 10 months of chaos and increasing poverty will have left Palestinians sufficiently disillusioned with Hamas to return Fatah to power.”³³ The threat of calling for new elections was never carried out because it emerged that Hamas might in fact be returned to be power despite its inability to implement its manifesto and because the movement itself strongly signalled that calling new elections, although a constitutional prerogative of the President, would amount to “a coup against Palestinian legitimacy and the will of the Palestinian people”. The hardliner Hamas leader Siyam stated: “Abbas has the right to dismiss the government but he has no right to give legitimacy to any future government” and added that “there are enough constitutional, legal and popular measures to enable us to confront anything that we regard as harmful to Palestinian national interests, led by our right in the Legislative Council to bring down any government and rob it of any legitimacy”.³⁴

The discussion about the threat of dismissal and the calling of new elections represents a significant example of the impasse that semi-presidentialism provoked and illustrates how such an arrangement increased the likelihood of a showdown between the presidency and the cabinet because it provided the opportunity for both actors to use constitutional prerogatives and popular legitimacy to validate their respective positions and demands. Hamas, often accused of being the spoiler of Palestinian politics, found itself in the position of defending the constitutional status of its members of parliament and its cabinet, leading the movement to utilise exclusively political means and legal discourse to carry out its objectives. If the position of the cabinet had been wholly subordinated to presidential powers, the Hamas leadership and Hamas parliamentarians would have been more reluctant to challenge the policy decisions of the President for fear of provoking a split within the nationalist camp. In the event, though, Hamas did not see new elections as a way of recomposing the nationalist camp and giving way to a national unity government, but as an attempt by a discredited and defeated Fatah to take both legitimacy and policy-making power away from the cabinet. Accordingly, the movement not only questioned the political legitimacy of new elections, but refused in December 2006 to consider a national unity government in which they would have to give up key ministries to Fatah.³⁵ Playing the institutional game taught Hamas that the movement could take the moral high ground and increase its legitimacy among ordinary Palestinians and it is partly for this reason that it was able to very quickly dismantle Fatah power in Gaza and consolidate its rule after June 2007 without losing support in the West Bank.³⁶ The national unity government agreed in March 2007 between Fatah and Hamas to resolve the previous year's impasse never got off the ground because by then the two competing centres of power had realised that the PA institutions would not be able to accommodate the irreconcilable legitimacy claims and policies of the two actors. When Abbas decided to finally dismiss Haniya, Hamas leaders refused to

accept the legitimacy of the decision, making the following descent into chaos and civil war inevitable. The dispute over who has the constitutional right to govern in the PA is not over, but as the *Al Ahram* weekly commentator aptly put it “any talk about legitimacy is no longer relevant, for all constitutional and legal norms have been discarded.”³⁷

When Abbas issued presidential decrees to appropriate a number of functions and powers that should have been left to the cabinet, he signalled very strongly his intention to marginalise Hamas. However, the popular mandate Hamas received in the 2006 elections encouraged the movement to hold firm against Abbas, leading ministers to dispute the president’s decisions and powers. The quality and coherence of governance inevitably suffered from this deadlock and this is evident for instance in the crucial area of policing and security. Following the formation of the Hamas’s government in March 2006, the Minister of Interior Said Siyam set out to claim its constitutional right of transforming the security sector and bringing it entirely under the control of the cabinet. The reform of the security sector was a highly controversial and significant issue within the Palestinian Authority because of its importance for the peace process. According to Hilal and Khan “the initial focus of externally assisted institutional capacity-building in the PNA was in the area of policing, surveillance and the maintenance of internal order. The PNA had to prove its capacity in these areas in order to make progress towards statehood.”³⁸ This led to a proliferation of security services and police forces, which were highly disconnected from one another but which were all connected to the Presidency. Loyalty to Arafat and Fatah was expected and when, therefore, the Hamas cabinet announced that it would exercise its constitutional right to assert its authority in this area through the Ministry of Interior, President Abbas used his role of commander-in-chief and head of the National Security Council to strengthen his grip on the security forces, place them under his direct control and build up his own Presidential Guard. The Hamas cabinet responded to this constitutional challenge by

announcing that it would therefore create a parallel security force, which was made up of members of the al-Qassam Brigades, the armed wing of the movement. The establishment of a new force loyal to Hamas was originally opposed by Abbas, although he eventually accepted their incorporation into the Palestinian police forces to avoid a confrontation so soon after the swearing in of the Hamas cabinet. However, the question of control was never resolved and, therefore, Fatah and Hamas loyalists in the security forces refrained from cooperating. This rift institutionalised two separate and rival security forces whose civilian masters both claimed to be the true representatives of popularly sanctioned law and order. This meant that the quality of policing, already plagued by problems of corruption, nepotism and arbitrary behaviour, significantly decreased and the institutionalisation of two security forces paradoxically provoked more insecurity for ordinary Palestinians caught between two competing security agencies.

While violence might have in any case erupted between Hamas and Fatah because their political objectives were so divergent, the inability to cooperate on the issue of policing and security deepened the rift between them. Both political actors could in fact claim that they had the constitutional and popular mandate to impose their respective wills. Viken convincingly argues that “Hamas’s forces represented a tradition of armed resistance, whereas the Fatah security structures were established by the Oslo accords with the objective of fighting violence and terrorism”³⁹ domestically. While the seeds of the conflict had therefore been already sown, the institutional arrangements deepened the rift because they forced the two actors to a showdown on the use and direction of the security forces given that the presidency saw them as a rampart against what he perceived to be ‘domestic extremism,’ while the Hamas cabinet saw them as a resource to be mobilised against Israel. If a clearer separation of powers had been adopted, it could have been more complicated for any of the two actors to establish a security force claiming to be sole representative of the will of the

Palestinians. Instead, the creation of two centres of power led to the institutionalisation of polarisation, laying the foundations for the civil conflict.

In an October 2006 interview Siyam's frustration with the institutional arrangements strongly emerged as he believed they impinged on his job as minister of interior in place. When asked to comment on rumours regarding the establishment of a Palestinian quasi-army in the West Bank loyal to Fatah and ready to take on Hamas, he replied that "there are things that are going on behind the scenes and without the knowledge of the interior minister, such as bringing arms inside the Gaza Strip. We as a government and an interior minister know nothing about this."⁴⁰ Said Siyam also emphasised more generally that the discord with President Abbas undermined governance because "when we were in the 10th government [the Hamas government that preceded the unity government], the president did not participate with us in any meeting or visit on any level for a whole year. He worked separately from us."⁴¹ While not referring specifically to the issue of security, it emerges quite clearly that the Hamas cabinet felt that institutions within which they were working did not in practice reflect the victory they had won at the polls and the popular mandate they were supposed to be carrying out. With regard to the issue of the control of the security forces, it is interesting to mention that a similar rift occurred when the Minister of Interior was Abbas himself (he was also the Prime Minister) and the president was Arafat, both from Fatah. They clashed often on this issue because they fundamentally disagreed on the type of reforms and future role of the Palestinian security force. Arafat finally won out when Abbas was forced to resign in favour of a Fatah member more loyal to Arafat. This conflict over the control of the security forces did not degenerate into an open conflict as it would with the Hamas cabinet because both Arafat and Abbas belonged to Fatah, indicating that when the president and the prime minister are from the same party semi-presidentialism is not an obstacle to policy coherence and governance, as one of them advances while the other retreats.

The negative consequences of semi-presidentialism are very evident also when one looks at the 'foreign policy' of the Palestinian Authority. When Fatah controlled both the presidency and the cabinet, first Arafat and then Abbas were clearly the only voice of the Palestinians on the international system and, crucially, they were directing the negotiations with Israel through the PLO structures. With the creation of a strong cabinet, the position of Minister of Foreign Affairs became more important, but it is only with the appointment of Hamas leader Mahmoud Zahar that it became clear that the institutional arrangements would have an extremely negative effect on how Palestinian foreign affairs were conducted, leading once again to conflicts and precipitating the collapse of Palestinian unity on the international stage. Upon his appointment as foreign minister, Zahar had this to say about the peace process and negotiations with Israel: "Israel wants to negotiate only for the sake of negotiations, but on the ground, it expands settlements and continues building the separation fence on Palestinian territories. Israel doesn't want peace, nor does it have any peace project. Therefore, we should not deceive our people and tell them that there will be negotiations".⁴² This stance, while coherent with Hamas's campaign promises, completely contradicted the President's attitude towards the peace process and the negotiations with Israel. While Abbas was also critical of what he perceived to be of Israel's inflexible attitude, he remained ready to talk to Israel and to the international community. This was not Hamas's position, which demanded complete Israeli withdrawal from the West Bank, including East Jerusalem, as a pre-condition for talks with Israel. The positions of Fatah and Hamas were well known before Hamas won the elections, but it is the powers the cabinet had in shaping foreign policy that gave Hamas the confidence to contradict Abbas. For Hamas, it was their Minister of Foreign Affairs that spoke for the Palestinians and therefore it was less restrained in undermining Abbas than it might have been without a significant electoral victory and the ensuing constitutional powers it enjoyed. The end of a united

Palestinian voice in international affairs weakened significantly the Authority because it was now apparent that even if a deal had been struck with Abbas, the Palestinian president would be in no position to implement it. A stalemate in the negotiations obviously followed together with the marginalisation of Hamas in the international sphere.

In these ways, the evidence indicates that the semi-presidential system that the Palestinian Authority adopted made the split between Hamas and Fatah inevitable, rendering effective governance of the Authority impossible and virtually ending the Palestinian democratic experiment. The two sides have been playing the blame game since the break-up, but according to Tamimi “Abbas contrived to establish a parallel government whose policies were diametrically opposed to those of the elected government and whose powers had the effect of rendering the legitimate government powerless.”⁴³ Without the legitimacy of new elections having taken place, it is difficult to argue that the President did not overstep its boundaries. As for Hamas, when the attempts to build a national unity government collapsed in March 2007, leading to the break-up of the Authority into two separate entities, Zahar commented that “we *are* the Palestinian Authority. Hamas should govern Gaza *and* the West Bank. What happened was a real coup against the election results,”⁴⁴ Fatah’s cohabitation with Hamas quickly descended into civil war and recriminations on both sides. Thus, the opening up of a new arena of confrontation between Fatah and Hamas catalyzed their differences, making the reconstruction of Palestinian unity a more difficult task than it would otherwise have been.

Conclusion

In January 2006 the Palestinian Authority began a period of cohabitation between a Fatah president and a Hamas prime minister and cabinet. During the next 12 months, the Authority, already weakened by internal economic and social problems and the external security situation, gradually slid into near total

ineffectiveness, institutional incoherence and civil war. The semi-presidential structure of the 2003 amended Basic Law was the source of this destabilising period of competition within the executive. We wish to stress that cohabitation did not determine the outbreak of conflict between Hamas and Fatah. Such conflict was the outcome of divergent interpretations of the conflict with Israel and the product of different ideological convictions. Nonetheless, the problems of cohabitation contributed significantly to the timing and scale of the confrontation between the two actors. The creation of two competing centres of power with equal popular legitimacy raised the political stakes within the system as both actors tried to undermine the position of other. In particular, the president's repeated threats to dismiss the prime minister and call fresh elections while refusing to cooperate with the cabinet was extremely destabilising. In the meantime, crucial issues of governance were neglected and there was deadlock in a number of areas such as foreign policy, peace with Israel and domestic security. In this context, the constitutional crisis was 'resolved' by armed conflict, which created two separate jurisdictions that are one in name only. These events demonstrate that political institutions can, and do, have an impact of political outcomes in the Arab world because political actors take them seriously and are responsive to the structures of incentives and constraints created. Specifically, they underline the perils of semi-presidentialism and, in particular, the perils of the president-parliamentary form of semi-presidentialism. To maximise their chances of survival developing democracies should steer clear of this form of semi-presidentialism, and perhaps semi-presidentialism altogether, if they wish to maximise their chances of surviving.

Notes

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³ Y.S. Wu, 'Semi-presidentialism – easy to choose, difficult to operate', in R. Elgie and S. Moestrup (eds.), *Semi-presidentialism Outside Europe*, Routledge, 2007.

⁴ L. Kirschke, 'Semipresidentialism and the perils of power-sharing in neopatrimonial states', *Comparative Political Studies*, 40, 2007, 1372-1394.

⁵ E. Lust-Okar, *Structuring Conflict in the Arab World*, Cambridge University Press, 2005.

⁶ M. Duverger, 'A New Political System Model: Semi-Presidential Government', *European Journal of Political Research*, 8, 1980, 165-187.

⁷ In this article, we do not wish to enter into the debate about the pros and cons of different definitions of semi-presidentialism, but suffice it to say that, given the powers of the president in the Basic Law, the Palestinian Authority would almost certainly be classed as semi-presidential under Duverger's wording of the definition as well. See for instance R. Elgie, 'The politics of semi-presidentialism', in R. Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford University Press, 1999 and M. Shugart, 'Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns', *French Politics* 3, 2005, 323-351.

⁸ M. Shugart and J. M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge University Press, 1992.

⁹ See for instance J. Linz, (1994), 'Presidential or Parliamentary Democracy: Does It Make a Difference?' in J. Linz and A. Valenzuela (eds.), *The Failure of Presidential Democracy. Comparative Perspectives*, Johns Hopkins University Press, 1994.

¹⁰ See for instance R. Elgie, 'The perils of semi-presidentialism. Are they exaggerated?', *Democratization*, 15, 2008, 49-66 and S. Roper, 'Are All Semi-Presidential Regimes the Same? A Comparison of Premier-Presidential Regimes', *Comparative Politics*, 34, 2002, 253-72.

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¹² MISSING REFERENCE.

¹³ S. Fabbrini, 'Presidents, parliaments, and good government', *Journal of Democracy*, 6, 1995, p. 133.

¹⁴ J. Linz, and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, The Johns Hopkins University Press, 1996, p. 286.

¹⁵ Source: <http://www.freedomhouse.org/template.cfm?page=15>. Accessed 7 November 2008. *Freedom in World* reports 2004-2008 inclusive. Scores for Related and Disputed Territories.

¹⁶ The text of 2002 Basic Law and the subsequent amendments to it are available in English at: <http://www.palestinianbasiclaw.org/>. Accessed 7 November 2008.

¹⁷ International Crisis Group, *After Gaza*, Middle East Report, 68, 2007, p. i.

¹⁸ B. Milton-Edwards, ' Hamas: victory with ballots and bullets', *Global Change, Peace and Security*, 19, 2007, p. 301.

¹⁹ B. Milton-Edwards, 'Prepared for power: Hamas, governance and conflict', *Civil Wars*, 7, 2005, p. 311.

²⁰ See for instance S. Berman, 'Islamism, Revolution and Civil Society', *Perspectives on Politics*, 1, 2003, 257-272 and L. Ben Mansour, *Frères musulmans, frères féroces. Voyage dans l'enfer du discours Islamiste*, Ramasay, 2002.

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²⁷ See for instance M. Klein, ' Hamas in Power', *Middle East Journal*, 61, 2007, 442-459 and S. Mishal and A. Sela, *The Palestinian Hamas*, Columbia University Press, 2000.

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²⁹ M. Levitt, *Hamas. Politics, Charity and Terrorism in the service of jihad*, Yale University Press, 2006.

³⁰ See Special Issue, 'Interviews from Gaza. What Hamas wants', *Middle East Policy*, 9, 2002.

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³² A. Tamimi, *Hamas. Unwritten Chapters*, Hurst and Company, 2007, p. 229.

³³ Source: <http://www.guardian.co.uk/world/2006/dec/17/israel> Accessed 20 November 2008.

³⁴ Source: http://news.bbc.co.uk/2/hi/middle_east/6185241.stm Accessed on 20 November 2008.

³⁵ Source: <http://www.nytimes.com/2006/12/10/world/middleeast/10mideast.html> Accessed 20 November 2008.

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⁴⁰ The text of the interview given to Al Jazeera on 22 October 2006 is available in English at: <http://www.fromoccupiedpalestine.org/node/1691> Accessed 19 November 2008.

⁴¹ The text of the interview is available in English at: <http://www.asharqalawsat.com/english/news.asp?section=3&id=10988> Accessed 19 November 2008.

⁴² Source: <http://www.themiddleeastnow.com/news/zaharmap.html> Accessed 20 November 2008.

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