

**THE EVOLUTION OF THE CONSTRUCTIVE VOTE OF NO-CONFIDENCE  
AND ITS POLITICAL CONSEQUENCES**

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There are only a handful of parliamentary democracies that use the constructive vote of no-confidence. This interesting mechanism has had little conceptual or empirical research devoted to it. In an attempt to begin to fill this lacuna, this paper traces the historical origins of the constructive vote of no-confidence; delineates its development and expansion; studies its impact on and consequences for the way parliaments and governments operate; and, as a result, attempts to develop further the conceptual distinction between and definitional boundaries of positive and negative parliamentarism.

This bulk of this paper, devoted to the evolution and political consequences of the constructive vote of no-confidence, conducts a three-level comparison. First, it looks at countries that adopted a constructive vote of no-confidence from the beginning,

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<sup>1</sup> This paper is a work in progress, preliminary and incomplete. I would appreciate any comments and suggestions for further development.  
I thank Naama Treidel and Ayelet Rubabshi for their research assistance, and the Lawrence & Nancy Glick Fund for its financial support.

asking if they share certain characteristics or similar goals. It then compares this group of countries to a similar-sized group of parliamentary democracies that have a regular vote of no-confidence, assessing the frequency, dynamics and success of no-confidence motions. It then pays special attention to two case studies where the constructive vote of no-confidence was not adopted from the outset but is a relatively recent political reform – Belgium and Israel.

### **The Explanation, Adoption and Demarcation of the Constructive Vote of No-Confidence**

Both the scholarly literature and the empirical reality tend to distinguish between two types of no-confidence votes: regular and constructive. The former is more prevalent and simpler; in order to pass a regular vote of no-confidence (which, in effect, means the removal of the existing government from power and beginning the process of either replacing it by another government or calling for early elections) the vote must be supported by a majority of the MPs voting. Since this is a clear yes versus no vote, with no third option (other than abstention), this majority can represent an actual majority of the elected representatives or a minority (plurality) of them if not all the MPs take part in the vote. In other words, a minority of the total number of MPs can be the majority in a regular vote of no-confidence. Hypothetically, a government can be brought down by a 2 to 1 vote of no-confidence. In reality, votes of no-confidence tend to attract a large number of MPs, but since this is a “regular” vote the government can still be brought down as long as those supporting the vote are larger in number than those who oppose the motion. Put negatively, a regular vote of no-confidence does not require a majority of the total number of legislators, only of those taking part in the vote.<sup>2</sup> This is similar to what Bergman (1993a) defined as positive parliamentarism concerning a vote of investiture: the government must “win” (i.e., vote against) a regular no-confidence vote by at least a relative majority in order to stay in power.

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<sup>2</sup> There are exceptions where an absolute majority is required in a regular vote of no-confidence, see the discussion later in this paper.

A constructive vote of no-confidence severely limits the ability of the legislature to bring down the government because it demands two elements that do not exist in a regular vote of no-confidence: the support of a majority of the total membership and an agreement on a candidate to lead an alternative government. In other words, a constructive vote of no-confidence is a vote for a new government that must be supported by an absolute majority (and hence, by definition, this same absolute majority opposes the existing government). While it is debatable which of these two conditions is harder to fulfill, and could rely more on particular national political circumstances than cross-national generalizations, the combination of these two makes a successful constructive vote of no-confidence extremely difficult, and thus rare. A constructive vote of no-confidence thus requires even more than what Bergman (1993a:56) delineates as parliamentary democracy. "By definition, then, a government in a parliamentary democracy, must be tolerated by an absolute majority (50% + 1) of the members of the parliament. If an absolute majority actively opposes a government (i.e., is willing to vote to remove it from power), then it will have to resign. This is true of all parliamentary democracies."

The constructive vote of no-confidence can create a situation where an absolute majority of the legislature opposes the government, but cannot agree on a candidate to form an alternative government. Coalition governments in general, and minority governments in particular, are thus strengthened if the vote of no-confidence is constructive, especially if the opposition is bilateral. Hypothetically, in a constructive vote of no-confidence the government can survive even if it supported by only 1 or 2 MPs, as long as the rest are not unified around an alternative candidate to lead a new government.

A regular vote of no-confidence can be examined using numerous variables such as the number of votes needed for it to pass, whether there is a quorum requirement, if the vote can be by secret ballot, etc. But when it comes to a constructive vote of no-confidence some of these parameters are, by definition, irrelevant because they are all equivalent. A constructive vote of no-confidence can thus be assessed according to three main criteria:

1. Who can introduce a constructive vote of no-confidence?

Can any individual MP do so, or is there a minimum number required? The higher the number needed, the more difficult it will be to introduce such a vote.

2. Are there limits on initiating a constructive vote of no-confidence?

Can an MP support a vote of no-confidence frequently, or is there a limit? If there are limits on how many such votes an MP can support, it will be more difficult to gather the necessary number of MPs to introduce a vote of no-confidence.

3. What is the time-frame for a vote of no-confidence?

Can this vote take place quickly, or must a certain number of days pass? The longer the time interval, the more the government has the ability to prepare and react, thus making passage more difficult.

The constructive vote of no-confidence is quite rare; only 7 countries have adopted it (in chronological order): Germany, Spain, Hungary, Slovenia, Poland, Belgium and Israel. All 7 countries did so within a relatively short time, basically during the second half of the 20<sup>th</sup> century. These 7 constitute two very different categories: the first 5 adopted the constructive vote of no-confidence after a lengthy authoritarian period and as they embraced democracy; the last two were already stable democracies and decided to adopt the constructive vote of no-confidence as part of a political reform. This second group will thus be treated separately.

The first country to implement the constructive vote of no-confidence was Germany, immediately after the Second World War. Articles 67 and 68 of the Basic Law of 1949 state that, "The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members," and that, "Forty-eight hours shall elapse between the motion and the election."

Germany thus gave birth to the constructive vote of no-confidence with very few limitations, other than a 48-hour time limit.<sup>3</sup>

No other country adopted this mechanism until the fall of the Franco regime in Spain almost a generation later. The Spanish Constitution of 1978 states in Article 113 that, “The Congress of Deputies may challenge Government policy by passing a motion of censure by an absolute majority of its members. The motion of censure must be proposed by at least one tenth of the Deputies... The motion of censure may not be voted on until five days after it has been submitted... If the motion of censure is not passed by the Congress, its signatories may not submit another during the same session.” Thus, Spain both added stipulations on who can initiate a vote of no-confidence (at least 10% of the chamber) and restricted these MPs from initiating another such vote during the same session. In effect this means that a minority opposition cannot initiate more than four votes of no-confidence per session (there are two sessions each year). Spain also extended the time-frame within which this vote must take place to no less than five days. In short, in all three aspects the vote of no-confidence is “harder” in Spain than it is in Germany.

A little more than a decade later, after the collapse of the Soviet Union, three of the post-communist countries adopted a constructive vote of no-confidence. The Hungarian constitution (the most recent 2011 version) states that, “One-fifth of the Members of the National Assembly may, together with the designation of a candidate for the office of Prime Minister, submit a written motion of no-confidence against the Prime Minister... For such decision of the National Assembly, the votes of more than half of the Members of the National Assembly shall be required... The National Assembly shall decide on the question of confidence after the third day, but no later than eight days following the submission of the motion of no-confidence...”

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<sup>3</sup> Saalfeld (2000) states that this was introduced in order to avoid the instability of the Weimar Republic, where governments were defeated by the legislature without being able to elect a successor. Roberts (2000) argues that the constructive vote of no-confidence contributed to government stability in post-war Germany, but Smith (1991) posits that a stable party system was more responsible for this.

Here we see that no less than 20% of MPs are needed in order to introduce a vote of no-confidence, and that it must be voted on within 3-8 days.<sup>4</sup>

Slovenia's constitution of 1991 states that, "The National Assembly may pass a vote of no confidence in the Government only by electing a new President of the Government on the proposal of at least ten deputies and by a majority vote of all deputies... No less than forty-eight hours must elapse between the lodging of a proposal to elect a new President of the Government and the vote itself..." Since the Slovenian legislature has only 90 members, the requirement of at least 10 MPs is 11%, slightly higher than Spain's 10%, but less than Hungary's 20%. There are no restrictions on how often MPs can initiate a vote of no-confidence, and the 48-hour minimum time-frame contrasts with Germany's 48-hour maximum time-frame.

Poland's 1997 Constitution features the harshest requirements for a constructive vote of no-confidence. "The Sejm shall pass a vote of no confidence in the Council of Ministers by a majority of votes of the statutory number of Deputies, on a motion moved by at least 46 Deputies and which shall specify the name of a candidate for Prime Minister... A motion to pass a resolution... may be put to a vote no sooner than 7 days after it has been submitted. A subsequent motion of a like kind may be submitted no sooner than after the end of 3 months from the day the previous motion was submitted. A subsequent motion may be submitted before the end of 3 months if such motion is submitted by at least 115 Deputies." The requirement of 46 MPs to introduce a vote of no-confidence is exactly 10%, but the restriction that no similar vote can be raised in the subsequent 3 months means that no more than 4 can be introduced in any given year. In order to override this restriction at least 115 MPs (25%) are needed. And, the government has a full week before the vote must take place.

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<sup>4</sup> Earlier versions of the Hungarian constitution (such as the one from 1989) also stated that "The President of the Republic has the right to dissolve the Parliament, simultaneously with the announcement of new elections, if... the Parliament passes a motion of no-confidence in the Government on no less than four occasions in a period of twelve months during the course of one term." This was stricken, however, from the most recent constitution.

TABLE 1: Restrictions on the Constructive Vote of No-Confidence

Country	Introduction	Initiation	Voting
Germany			Within 48 hours
Slovenia	11% of MPs		At least 48 hours
Spain	10% of MPs	If the vote is not passed its signatories may not submit another during the same session	At least 5 days
Hungary	20% of MPs		Between 3-8 days
Poland	10% of MPs	If the vote is not passed, must wait 3 months or receive the support of 25% of MPs for another	At least 7 days

On a continuum of constructive no-confidence votes we can place Germany at the most unrestricted pole, with no limitation on the introduction or the initiation and with a severe time-limit for government reaction – and the vote is secret. Slovenia is located toward the middle. Spain is closer to the more restricted pole, where we find Hungary and, finally, Poland with its stringent limitations on all three factors. The more flexible end strengthens the opposition (comparatively, since the adoption of a constructive vote of no-confidence already severely hampers it), or the legislature, vis-à-vis the government, while the more strict pole supports the executive.

### A Preliminary Comparison

In order to get an initial appraisal of the political consequences of the constructive vote of no-confidence, a preliminary comparison was made between the above 5 countries and another 5 established democracies with multi-party parliamentary systems but a regular vote of no-confidence. The second group of 5 countries was chosen based on various aspects of the regular vote of no-confidence and they are: Austria, Denmark, Norway, Portugal and Sweden. More particularly, we looked at the same three variables that we found to be the most important concerning the constructive vote of no-confidence, plus one added factor.

TABLE 2: Restrictions on the Regular Vote of No-Confidence

Country	Introduction	Initiation	Voting	Majority
Norway				
Denmark			majority quorum	
Austria			1 day, majority quorum	
Sweden	10% of MPs			absolute majority
Portugal	25% of MPs	If the vote is not passed its signatories may not submit another motion during the same session	2 days	absolute majority

We see a variety of restrictions, or lack thereof, from Norway on one end with no restrictions to Portugal on the opposite end with multiple restrictions. The added factor (the type of majority required) shows that the regular vote of no-confidence can also require an absolute majority in order to pass, similar to the constructive vote of no-confidence.

We would expect that as more restrictions exist, and if they are more severe, there will be fewer votes of no-confidence motions introduced; and of those that are introduced, fewer will pass. A preliminary comparison shows that the empirical data does not support this assertion.

TABLE 3: Introduction and Passage of Regular Votes of No-Confidence

Country	Introduction (data from)	Average (per year)	Passed	Success Rate
Norway	23 (1980*)	0.6	0	0
Denmark	3 (1901)	0.02	3	100%
Austria	166 (1926)	1.9	0	0
Sweden	5 (1901)	0.04	0	0
Portugal	26 (1976)	0.7	1	3.8%

\* We do not have data on the introduction of no-confidence votes before 1980, however we know that three such votes passed – one in 1928 and two in 1963 – which is in line with the results from the other cases.

Source: Personal communications with respective national legislatures, Schefbeck (Austria), Laustsen (Denmark), Koller (Norway), Borges (Portugal), Bolmstrom (Sweden).



It quickly becomes apparent that as one moves down the table, from the less restrictive to the more restrictive cases, the number of regular votes of no-confidence introduced varies significantly, as does their success rate. Norway and Portugal, situated at opposite ends of the table, have a similar annual average of no-confidence votes introduced and rates of success. Denmark and Austria, situated close to each other, have the lowest and highest scores on both average votes introduced and rates of success. However, due to both the small number of cases and the small number of examples we cannot assume much beyond early speculation from this data.

Minority government might help explain the huge success rate in Denmark, but not the small number of no-confidence votes initiated, especially since it lacks most of the restrictions. Norway, which also has a history of minority governments, has had many more votes of no-confidence introduced in a much shorter time period — but not a single one has passed.

We can posit, guardedly and *ceteris paribus*, the following: there are relatively few regular votes of no-confidence introduced, from a high of one per legislative session to a low of one per generation; there seems to be no relationship between the restrictions placed on regular votes of no-confidence and the number of such votes introduced; there seems to be no relationship between the restrictions placed on regular votes of no-confidence and their success rate when introduced.

A comparison between the 5 cases with a regular vote of no-confidence to the 5 cases with a constructive vote of no-confidence regrettably sheds little light. Only 8 constructive votes of no-confidence have been initiated in the latter group of countries since Germany first adopted this mechanism 65 years ago, significantly less than the number of regular votes of no-confidence that have been introduced in the same time-frame. The variance across the table in both the introduction and the success of constructive votes of no-confidence is not according to the existence of restrictions, quite similar to the results obtained from the group of regular no-confidence cases.

TABLE 4: Introduction and Passage of Constructive Votes of No-Confidence

Country	Introduction (beginning)	Average (per year)	Passed	Success Rate
Germany	2 (1949)	0.03	1	50%
Spain	2 (1978)	0.06	0	0
Hungary	1 (1989)	0.04	1	100%
Slovenia	2 (1991)	0.09	2	100%
Poland	1 (1992)	0.05	0	0

We can conclude, cautiously and *ceteris paribus*, the following: there are fewer constructive votes of no-confidence introduced than regular votes of no-confidence, but the former have a higher success rate; there seems to be no relationship between the restrictions placed on constructive votes of no-confidence and the number of such votes introduced, similar to regular votes of no-confidence; there might be a relationship between the restrictions placed on constructive votes of no-confidence and their success rate when introduced, but this goes in the opposite direction than the one found for regular votes of no-confidence.

If adopting a constructive vote of no-confidence indeed lowers the number of such votes introduced, this would be in line with the main argument raised by proponents of this mechanism who argue that it stabilizes the government. However, the constructive vote of no-confidence has a higher success rate than a regular vote, even as the restrictions on this type of vote become stricter. If stability is the main goal of those who advocate a constructive vote of no-confidence – in line with those who promote positive parliamentarism – then both its institutional design and some of the empirical data appears to support this. Replacing a government only when the alternative has majority support is a stabilizing measure. Lowering the number of such votes shifts it from being a symbolic mechanism, used politically to undermine the government, to a more operative one. However, increasing its success rate is problematic if the goal is a more stabilizing mechanism. Yet, the overall context shows that even regular votes of no-confidence are rare, and their passage even rarer. The question that beckons is, if the country has not emerged from an authoritarian period (true for all 5 of the cases assessed with constructive votes of

no-confidence) and seeks to implement a stabilizing mechanism from the start, why would an established democracy decide to shift from a regular to a constructive vote of no-confidence, especially since our preliminary comparison shows that the differences are negligible?

### **Belgium and Israel**

Until 1993, Belgium had a regular vote of no-confidence, but then it underwent comprehensive political reform. Along with a shift of power between the two houses – strengthening the lower house – and the creation of a federal state, Belgium adopted the constructive vote of no-confidence. These changes were largely due to the social cleavages in Belgium that cut between the Flemish and Walloon regions, with each side fielding and being represented by separate political parties (Deschouwer 2012). Article 96 of the 1994 Constitution states, “The Federal Government offers its resignation to the King if the House of Representatives, by an absolute majority of its members, adopts a motion of no-confidence proposing a successor to the prime minister for appointment by the King or proposes a successor to the prime minister for appointment by the King within three days of the rejection of a motion of confidence.” Article 46 states, “The King has only the right to dissolve the Chamber of Representatives if the latter, with the absolute majority of its members... adopts a motion of no-confidence with regard to the Federal Government and does not simultaneously propose to the King the appointment of a successor to the prime minister.” The vote of no-confidence can only take place forty-eight hours after its introduction.

These two articles show that on the one hand Belgium can still have a regular vote of no-confidence, albeit with an absolute majority similar to Portugal and Sweden, but that this leads to early elections, as a result of the King’s decision (De Winter, Timmermans and Dumont 2000). On the other hand, Belgium also has a constructive vote of no-confidence because in order to bring down the government both a majority and an alternative candidate to lead a new government are needed. In short, a plurality cannot bring down the government and a majority cannot replace it unless it is unified around a new Prime Minister.

Until 2001, Israel had a regular vote of no-confidence. This was based on the Basic Law: The Government enacted in 1968. In 1992, however, this law was revised changing both the electoral and the political system in Israel (Hazan 1996). The new law established the direct popular election of the Prime Minister, alongside the existing parliamentary elections, thereby shifting Israel from the category of parliamentary regimes and placing it in a unique position. This reform forced a change in the vote of no-confidence, because a plurality in the legislature could not remove a popularly elected Prime Minister. The new law raised the threshold of no-confidence to an absolute majority, and if such a no-confidence vote passed it would bring about the mutual dismissal of the Prime Minister and the parliament, heralding new election for both. The new electoral/political system quickly showed its faults and was abolished after only 9 years (Kenig, Rahat and Hazan 2005). The 2001 Basic Law brought back a pure parliamentary system, abolishing the separate election of the Prime Minister, but maintained the requirement of an absolute majority in a vote of no-confidence and added a second criterion – the need to agree on an alternative candidate. Article 28B states, “An expression of no confidence in the Government will be by a decision adopted by the majority of the Members of Knesset to request that the President assign the task of forming a Government to a certain Knesset member who gave his written consent thereto.” Israel thus adopted a constructive vote of no-confidence.

However, article 28D states, “A Knesset Member to whom the task of forming a Government has been assigned under this section shall have a period of 28 days for its fulfilment. The President of the State may extend the period by additional periods not in the aggregate exceeding 14 days.” In other words, the Israeli version creates a new *formateur*, not a new Prime Minister. If after 42 days the *formateur* is unable to form a government, or if the government presented does not receive the support of the legislature in a vote of investiture, the legislature is dispersed prior to the completion of its term and early elections are held.

These two articles show that Israel has a constructive vote of no-confidence because in order to bring down the government both a majority and an alternative candidate to lead a new government are needed, and this leads to the collapse of the government and then either its reformulation or the decision to hold early elections, based on the success of the *formateur*. However, since a successful vote of no-confidence – with an absolute majority and an alternative candidate – does not automatically replace the existing government with a new one, we shall define it as semi-constructive. In short, as in Belgium a plurality can no longer bring down the government and a majority cannot replace it unless it is unified around a new Prime Minister.

Table 5: No-Confidence Votes in Belgium and Israel, Before and After Reform

	Belgium		Israel	
	<i>Before</i>	<i>After</i>	<i>Before</i>	<i>After</i>
Introduction	Unrestricted, either house	Unrestricted, lower house	Unrestricted	Relatively unrestricted*
Majority needed	Plurality	Absolute	Plurality	Absolute
Type of no-confidence	Regular	Constructive	Regular	Semi-constructive
Vote	?	After 2 days	After 5 days	After 5 days
New government or early elections	Either	Either	Either	Either

\* Article 44 in the Rules of Procedure states that a PPG with less than 7 MPs can only initiate a constructive vote of no-confidence 3 times in each legislative session; one with 7-9 MPs can do so 4 times; and those with 10 or more MPs are unlimited.

It is practically impossible to extrapolate from these two cases, but there are some explanations that are worthy of mention. The Belgian case seems to be less of a political development and more of a sociological change. The dichotomy in Belgian society between Flemish and Walloon groups, geographically separated other than in Brussels, and based on ethnically distinct parties, brought about the comprehensive reforms of the mid-1990s. The requirement of an absolute majority might also be connected to the fact that a significant amount (13% between 1945-1987) of the Belgian governments have been minority governments, as well as to the rather lengthy time it can take to form a coalition (over 500 days in 2010-2011). Moreover, the median relative duration of cabinets in Belgium between 1945-1999

was among the lowest (second only to Italy, according to Saalfeld 2010). However, in the entire pre-reform period a regular vote of no-confidence never passed in Belgium, and was rarely introduced.

Minority governments in Israel are extremely rare, usually lasting for a short time until elections, and the law stipulates strict rules for how long a *formateur* has to present a government to the parliament (42 for the first chosen and then 28 for the second, no third attempt is allowed). In the Israeli case the number of no-confidence motions has increased with time, and has become a weekly ritual. However, during the first 53 years until the reform, only a single regular vote of no-confidence passed. This took place in 1990 and has gone down in history as the “stinky trick”, due to the public scorn that erupted. One of the two main parties in the governing coalition secretly negotiated an alternative majority, supported the vote of no-confidence (which passed 60 to 55 out of the total 120 MPs), but was then unable to form a new government. The crisis period lasted for nearly three months, during which the two major parties tried to outbid each other with ever-increasing offers in order to “purchase” the political support of the smaller parties. The other main party in the outgoing coalition, which was surprised and brought down by the vote of no-confidence, eventually did succeed in forming a new bare majority government of 61 and stayed in office for the remaining two years.

The pain that this crisis caused the Israeli polity served to accelerate mechanisms for change that were already in motion: a grass-roots movement advocating electoral and constitutional reform swelled in numbers and mobilized one of the largest protests in the nation’s history; a petition for governmental reform was signed by over one-half million citizens – almost 15% of Israel’s population; proposals for electoral reform began to be discussed in earnest and quickly moved through the legislative process. In other words, this crisis helped bring about the reformed electoral and political system in 1992, but when it subsequently failed and was abolished in 2001 there was still a strong desire to avoid a possible repeat and thus not to return to a regular vote of no-confidence. The fact that Israel went only partially in the direction of a constructive vote of no-confidence, and not completely,

allows for a repeat of the 1990 crisis, albeit in a reduced manner – the alternative candidate must muster an absolute majority, and if he is subsequently unsuccessful in the formation of a government then early elections will be held.

While the Israeli reform seems to be based on the need to adapt the legislative rules to the changing political system in 2001, along with the traumatic memory of 1990, the Belgian case is likely connected to the systemic reform of the Belgian state and its political institutions. What the two countries share is an extreme multi-party system, exhibited both by high scores of “effective number” of parties and by the rise of ethnic-geographic parties in Belgium and sectarian ones in Israel. The desire to stabilize the government was possibly a significant element in the adoption of the constructive vote of no-confidence in both cases, despite the lack of supporting empirical evidence that this paper has uncovered. However, the number of constructive votes of no-confidence introduced had no reason to change in Belgium, since even the regular vote of no-confidence was so low, and it did not change in Israel, remaining very high and actually increasing. The success rate of regular votes of no-confidence was zero or as close to it as possible, and thus the adoption of a constructive vote of no-confidence could only increase this score.

Table 6: No-confidence Votes Introduced and Passed in Belgium and Israel

Country	No-confidence	Introduction (beginning)	Average (per year)	Passed	Success Rate
Belgium	Regular	3 (1945)	0.06	0	0
	Constructive	0 (1995)	0	0	0
Israel	Regular	698 (1949)	13	1	0.001
	Semi-constructive	588* (2003)	58	0	0

\* Data from 2/03 till 3/13 (in the last 12 months there have been 100!).

### **How is the Constructive Vote of No-Confidence Connected to Positive Parliamentarism?**

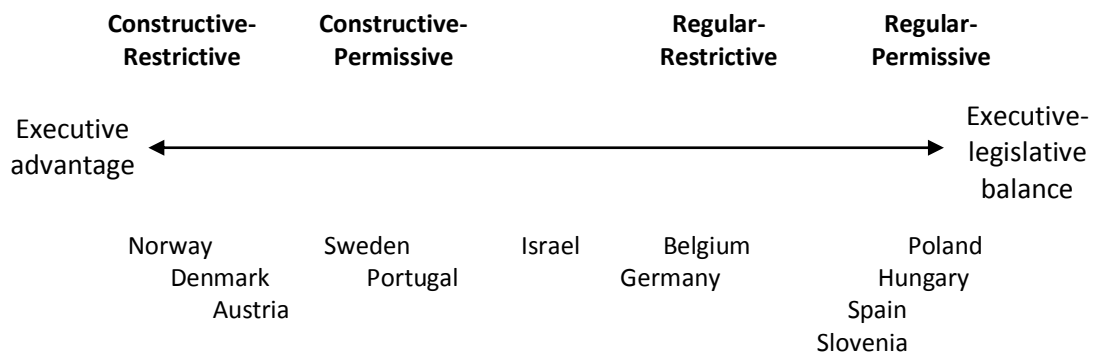
The small number of cases in this paper raises serious methodological concerns, but since we are covering the entire universe of constructive votes of no-confidence we

will attempt to generalize our conceptual findings, as cautiously and as reservedly as possible.

We begin by an attempt to reconceptualize votes of no-confidence. Since the empirical data concerning their introduction and/or passage shows that there are as many variations within the regular vote of no-confidence countries as between this group and those that have adopted a constructive vote of no-confidence, we propose a new formulation based on the restrictions in each type of no-confidence vote. In other words, we suggest that the dichotomy be replaced by a continuum, or at least by four exhaustive categories.

The literature tends to divide between plurality votes of no-confidence on the one hand and majority votes with an alternative candidate on the other. We suggest two interim categories based on the restrictions in each type. The least restrictive category is comprised of cases where the regular vote of no-confidence has little to no limitations. As limitations are added, some quite severe, we reach the second category. In the third category we cross into the constructive vote of no-confidence, but with little to no limitations. The final category includes cases with the more demanding type of no-confidence vote alongside strict limitations. The continuum goes from executive advantage, or dominance, to a balance between the executive and the legislative branches, similar to the delineation of bicameral legislatures from those where the lower house is supreme to a balance between the chambers.

Figure 1: Categorizing Votes of No-Confidence Based on Type and Restrictions





When the delineation between positive and negative parliamentarism is introduced, there are several important political consequences associated with these two types, such as the frequency of minority governments, their relatively small minority (Bergman 1993a) and the length of the government formation process (Bergman 1993b; for a contrasting opinion see De Winter and Dumont 2010). The influence of the type of parliamentarism extends not only to coalition formation theory but also to executive-legislative relations. Negative parliamentarism, where we see more minority governments, smaller minorities and shorter formation processes is, therefore, more favorable toward executive dominance over the legislature because the latter does not have to actively support the creation of the former but only tolerate it. Positive parliamentarism, with more majority governments and a longer formation process, requires the active support of the legislature and thus empowers it, giving the executive less supremacy and creating more of a balance of power between the two branches. However, executive-legislative relations should not be inferred solely by the government formation process; the different types of government termination procedures should also be taken into account because they, too, influence the balance of power between the branches.

As Bergman clearly stated, starting with the title of his seminal (1993a) article, his focus was on formation rules. But he acknowledged that these rules “are only one determinant... Other institutional arrangements might also be important.” (Bergman 1993a:62) When discussing positive parliamentarism in Germany, Bergman mentioned the constructive vote of no-confidence (fn. 8, p. 63).<sup>5</sup> Is positive parliamentarism and its political consequences connected to the constructive vote of no-confidence? Can we assume that a continuum between negative and positive parliamentarism that assesses the balance of power between the two branches will necessarily overlap with a continuum between regular and constructive votes of no-confidence?

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<sup>5</sup> In his article on Sweden (1993b) he describes the first (1963) and second (1966) commissions that discussed both formation and resignation rules, but did not reform the latter.

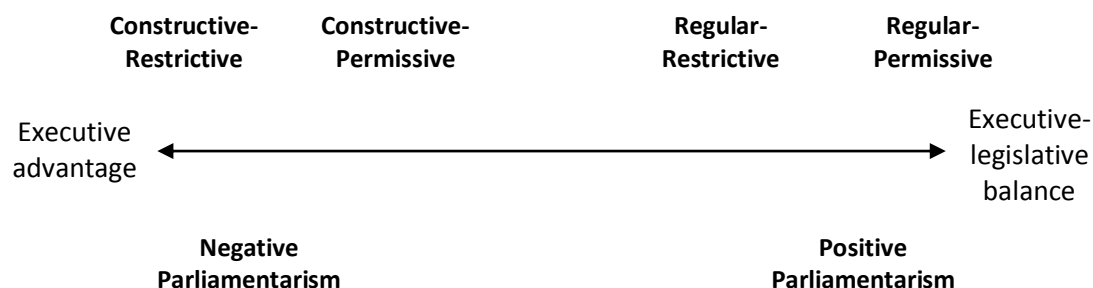
Siaroff (2003) clearly connects between positive and negative parliamentarism on the one hand, and executive-legislative relations on the other. Saalfeld (2010:355) finds that, “The existence of positive parliamentarism increases – as expected – the general risk of discretionary terminations and the risk of cabinet replacements.” Damgaard (2010:320 & 324, emphasis added) does the same, and in explaining discretionary termination he addresses both the type of parliamentarism and the type of no-confidence vote.

A constructive vote of no-confidence... increases the chances of a technical termination... In this sense, our results suggest that the constructive vote of no confidence has precisely the effects that it was designed to have: it stabilizes incumbent governments and makes them less likely to topple. Positive parliamentarism *has the opposite effect*: it reduces the incidence of technical terminations and boosts the likelihood of alternative exits and especially conflictual terminations... Institutions and rules clearly matter, as a constructive vote of no confidence clearly protects incumbent parties against conflictual termination, whereas positive parliamentarism seems to be a difficult environment in which to navigate.

We support this perspective and also argue that the majority needed in a constructive vote of no-confidence has the opposite effect of the (relative) majority required in positive parliamentarism. Negative parliamentarism strengthens the executive branch because there is no vote of investiture and, as Bergman (1993b:287) stated, “The ultimate power of the parliament rests with its ability to unseat an incumbent government.” The constructive vote of no-confidence does the same, reducing the power of the legislature, because while there might be a majority that opposes the government it might not be able to unite around an alternative. Minority governments – especially small minorities, and particularly if the opposition is bilateral – will be much stronger under the combination of negative parliamentarism and a constructive vote of no-confidence. In other words, the lack of a majority in the formation process and the need for a *cohesive* majority in the termination requirements lead to increased cabinet survival and as a result (based on Lijphart’s 1984 & 2012 measure) executive dominance. As Saalfeld (2010:327)

purports, “After all, low levels of cabinet duration may have implications for the extent of which executives are able to dominate legislatures.”

Figure 2: Categorizing Votes of No-Confidence and Types of Parliamentarism



A quick look at the 15 countries originally assessed in the Bergman (1993a) article shows that the combination of negative parliamentarism and a constructive vote of no-confidence is lacking – apparently this does indeed strengthen the executive too much.<sup>6</sup> The executive is strengthened either by negative parliamentarism or by a constructive vote of no-confidence, but not by both. The most unbalanced of empirical examples is where the executive is strengthened by negative parliamentarism and also strengthened by a regular no-confidence vote that requires an absolute majority, such as in Iceland, Portugal and Sweden.

In other words, the two parallel continua in Figure 2 should be separated, because there are several possible combinations, most which have empirical examples. This distinction between the effects on the balance of power between the executive and the legislative branches based on the type of parliamentarism, as opposed to the type of no-confidence vote, can be seen in Figure 3, where the countries in Table 7 below can easily be placed.

<sup>6</sup> The 17 countries in the study by Bergman, Müller, Strøm and Blomgren (2003; Canada and Israel are removed while Austria, France, Greece and Luxembourg are added) add two more cases each of negative and positive parliamentarism, but none has a constructive vote of no-confidence. Two of these, France and Greece, require an absolute majority in a regular vote of no-confidence.

Table 7: Types of Parliamentarism and No-Confidence

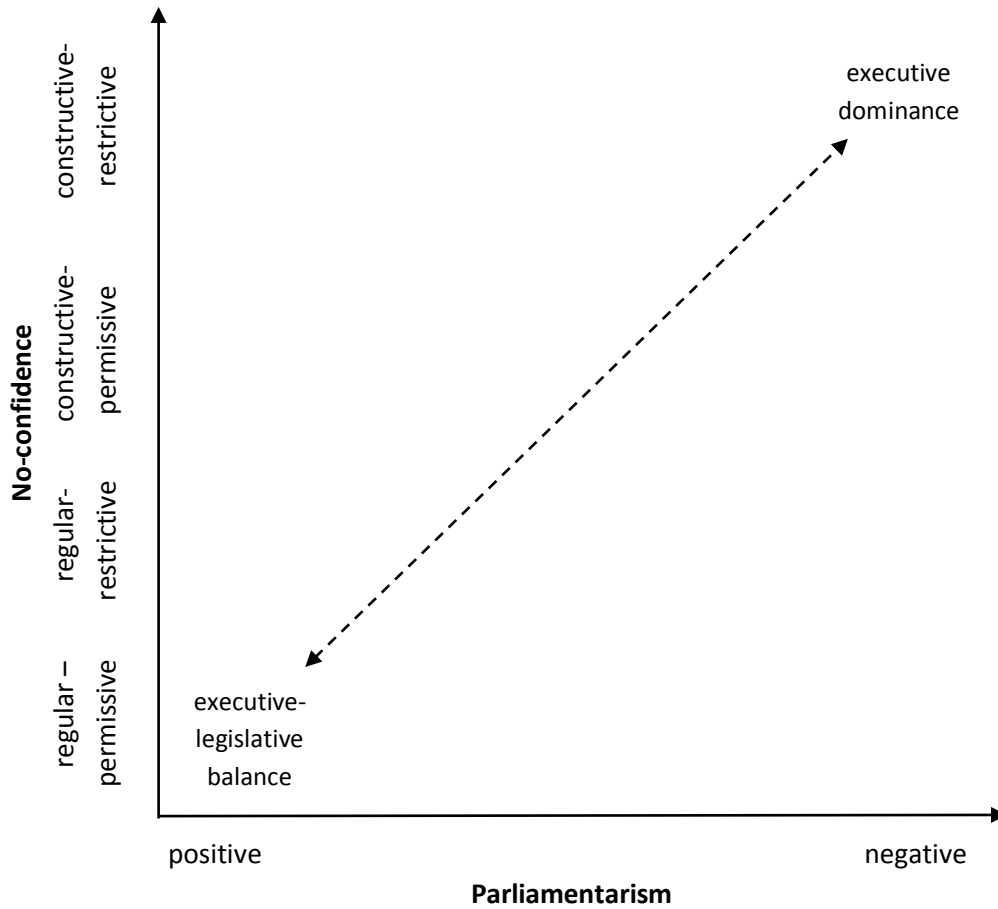
Country	Parliamentarism	No-Confidence
Belgium	Positive	Constructive
Germany	Positive	Constructive
Spain	Positive	Constructive
Israel	Positive	Semi-constructive
Ireland	Positive	Regular
Italy	Positive	Regular
Netherlands	Positive	Regular
Canada	Negative	Regular
Denmark	Negative	Regular
Finland	Negative	Regular
Norway	Negative	Regular
United Kingdom	Negative	Regular
Iceland	Negative	Regular*
Portugal	Negative	Regular*
Sweden	Negative	Regular*

\* Absolute majority required.

It is important to emphasize that where a majority (or plurality) is needed on the parliamentarism continuum, in order to strengthen the legislature and balance its power vis-à-vis the executive during the government formation process, this majority is not needed on the no-confidence continuum. It is the lack of a majority on the no-confidence axis that allows the legislature to have more power. In short, a majority means different things for executive-legislative relations on the two continua.

Put differently, the type of majority in the formation rule tends to mirror the type of majority in the termination rule because these two majorities mean different things. Countries that oblige governments to obtain an absolute majority in parliament in order to take office – strengthening the legislature – balance this by requiring a constructive vote of no-confidence (e.g., Germany and Spain). Countries that do not require an investiture vote – strengthening the executive – offset this by necessitating only a plurality in a regular vote of no-confidence (e.g., Denmark and the UK). Countries can play with these two mechanisms by using more restrictive ones at either the formation or the termination, but the overall effect is either a relatively balanced relationship between the legislature and the executive (a more

Figure 3: The Offsetting Effects of the Type of Parliamentarism and the Kind of No-confidence Vote on the Balance of Power between the Executive and the Legislature



level playing field) or relative executive dominance, but not absolute executive supremacy.<sup>7</sup>

We can even argue that the type of no-confidence is more influential on executive-legislative relations than the type of parliamentarism. Positive parliamentarism requires that a government be supported by a plurality at least. This means that either minority or majority governments can be installed, but that they can be

<sup>7</sup> Two established democracies have discussed adopting the constructive vote of no-confidence (beyond Belgium and Israel, which implemented this mechanism) – Ireland and New Zealand (Constitutional Review Group 1996, Boston 1998). The adoption of a constructive vote of no-confidence in order to strengthen the government in Ireland, alongside its positive parliamentarism, would be in line with the other empirical examples. However, if New Zealand, which exhibits negative parliamentarism because no investiture vote is held, were to adopt the constructive vote of no-confidence, it would be the first example of an imperial executive – which could be the extreme version of the Westminster model.

subsequently brought down at any time – indeed, the risk of discretionary terminations and the risk of cabinet replacements are increased by positive parliamentarism (Damgaard 2010, Saalfeld 2010). However, once a governing coalition is in power, if there is a constructive vote of no-confidence the parties involved face a dilemma. If one of them encounters increasing difficulty in continuing its support of the government, it might not be able to topple the government by withdrawing from the coalition and removing its majority– unless there is both a majority and an agreed alternative. The calculation thus becomes one of joining the opposition and losing the ability to influence government policy-making while the government remains in office, or staying in the coalition and continuing the battle from within. A constructive vote of no-confidence protects executives against discretionary terminations brought about by the parties in the coalition; but while it strengthens the executive vis-à-vis the legislature, it might bring about a more conflictual relationship within the executive.

### **Conclusion**

Loewenberg and Patterson place the selecting and the dismissing of cabinets by the legislature on equal footing (1979:44). Damgaard (2010:301) correctly argues that, “If government formation is crucial in parliamentary democracies... then the termination of the very same cabinets must be equally important.... On the whole, therefore, formation and termination of cabinets delineate political processes that we cannot and should not study in mutual isolation.”

De Winter (1995:137) posits that, “Similar to the distinction made by Bergman (1993a) between positive and negative formation rules, one should distinguish between negative and positive resignation rules.” Interestingly, even though he does not elaborate on this point, the order of positive (first) and negative (second) in the formation rules is switched when he mentions resignation rules – negative comes first, positive second. This is exactly what this paper argues. It is imperative for the study of the type of parliamentarism to address how governments can be brought down, not only how they are formed, and the former has opposite considerations concerning the need of a legislative majority from the latter. Cabinets have better

survival chances if they do not have to pass a vote of investiture (Damgaard 2010, Saalfeld 2010) and this chance increases if they can only be replaced by a constructive vote of no-confidence.

In closing, while the constructive vote of no-confidence appears to make governments less likely to topple – exactly what it was intended to do – it might, on the one hand, not do this much better than regular votes of no-confidence and, on the other hand, create stability at the price of efficiency by escalating inter-party rivalry within the government because the option of “exit” has been significantly reduced. The operation of the government is, therefore, determined not only by the way it is formed but also by the way it can be toppled.

## Epilogue

On 11 March 2014, the Israeli parliament revised, once again, the Basic Law: The Government, particularly the article dealing with the vote of no-confidence. In the previous (2001) version, Article 28B stated, “An expression of no confidence in the Government will be by a decision adopted by the majority of the Members of Knesset to request that the President assign the task of forming a Government to a certain Knesset member who gave his written consent thereto.” However, Article 28D states, “A Knesset Member to whom the task of forming a Government has been assigned under this section shall have a period of 28 days for its fulfilment. The President of the State may extend the period by additional periods not in the aggregate exceeding 14 days.” In other words, the previous Israeli law created a new *formateur*, not a new Prime Minister, and as such we termed it semi-constructive.

The new Article 28B states, “An expression of no-confidence in the Government will be by a decision adopted by the majority of the Members of Knesset to express confidence in an alternative Government that has announced its policy platform, the makeup and division of roles among the Ministers... The new Government will take office from when the Knesset expressed confidence in it and at that time its Ministers will take office.” As of mid-March 2014, Israel has, therefore, adopted a complete constructive vote of no-confidence, along with the provision that an absolute majority can install an alternative Prime Minister – but only if the entire cabinet along with its policy platform are approved.

See: [http://knesset.gov.il/spokesman/eng/PR\\_eng.asp?PRID=11200](http://knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=11200)



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