



Non-Executive Presidencies in Parliamentary Democracies

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About this series

These constitution-building primers are intended to assist in-country constitution-building or constitutional-reform processes by: (i) helping citizens, political parties, civil society organisations, public officials, and members of constituent assemblies, to make wise constitutional choices; and (ii) helping staff of intergovernmental organizations and other external actors to give good, well-informed, context-relevant support to local decision-makers. The primers are designed as an introduction for non-specialist readers, and as a convenient aide-memoire for those with prior knowledge or experience of constitution-building. Arranged thematically around the practical choices faced by constitution-builders, the primers aim to explain complex issues in a quick and easy way.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

Overview

What?

- A non-executive president is a symbolic leader of a state who performs a representative and civic role but does not exercise executive or policymaking power.
- A non-executive president may, nevertheless, possess and exercise some discretionary powers of extraordinary political intervention as a constitutional arbiter or guarantor.

Why?

- A non-executive president separates the representative embodiment of the permanent institutions of the state from the leader of the incumbent government. This may provide additional continuity and stability and may enable more inclusive representation. In addition, a non-executive president may act as a figure of national unity and may moderate political conflicts.

Why not?

- Some argue that a non-executive president with little effective power is an unnecessary addition to the political system.
- Conversely, a non-executive president who possesses effective powers of discretionary intervention may oppose the elected government and cause a divisive power struggle.

Where?

- A non-executive president is found in almost all parliamentary republics. Prominent examples include Bangladesh, Germany, India, Lebanon, Malta, Mongolia and Turkey.

What Is the Issue?

Head of Government and Head of State

Parliamentary systems usually separate the functions of head of state and head of government. The head of state's duties typically include representing the country, performing ceremonial duties as an embodiment of the authority of the state and providing civic leadership as an expression of national identity, values and aspirations.

The head of state might also have limited functions as a constitutional arbiter or guardian: he or she might, for example, have some discretionary power to nominate a prime minister, to dissolve parliament, to make non-political appointments and perhaps even to veto legislation or to call a referendum.

Meanwhile, the head of government (who is usually called the prime minister) is responsible for directing the administration and setting executive policy. He or she appoints and dismisses ministers, is in charge of the implementation and execution of laws and has the ability (subject to the constitution and the law) to direct the power of the state, including the civil service and the armed forces. In a parliamentary system, the head of government also leads the legislature and sets the legislative policy agenda. This includes developing and introducing new legislation in order to pursue policy objectives, and steering legislation through parliament.

A parliamentary democracy may have either a hereditary monarch or elected president as head of state. Monarchies are dealt with in a separate primer. Likewise semi-presidential systems, where the president has executive and policy making roles, are covered elsewhere. This primer is concerned only with aspects of constitutional design applicable to parliamentary republics with a non-executive president.

From the perspective of constitutional design, the major considerations are therefore: (1) how to elect the president, in terms of the electoral body (the whole people, parliament or a special electoral college), the method of voting, the majority required, the rules on candidacy and re-election and the president's term of office; (2) the powers and functions of the president; and (3) the relationship between the president, the prime minister, parliament and the other parts of the political system.

Historical Background

Origins: The parliamentary system, which developed in the European constitutional monarchies of the 18th and 19th centuries, emerged from a gradual transfer of effective governing power from the titular hereditary ruler to ministers whose position was acknowledged to rest, by custom, on the consent of parliament. While the hereditary monarchy was retained, the powers of the monarch passed, by conventional usage, to the responsible ministers, leaving an office with great symbolic importance but little substantive power at the apex of the state.

Thus, the offices of head of government and head of state were separated, with a prime minister acting as chief executive and the monarch relegated to: (1) a symbolic representative role and (2) the exercise, as a constitutional guardian and arbiter, of certain reserve or discretionary powers.

Monarchs, presidents and governors-general: All parliamentary systems of the mid-19th century were also constitutional monarchies, while almost all republics had a powerful presidential executive.

France's Constitutional Laws of 1875 marked a new departure in constitutional design. It was the world's first parliamentary republic: a republic in which the ceremonial, civic and constitutional functions of a monarch would be exercised by an elected non-executive president, while executive and policymaking power would rest in a prime minister responsible to parliament. Today, many

countries around the world adopt the parliamentary republic model, including such diverse countries as Bangladesh, India, Italy, Mongolia, Turkey and Vanuatu.

In addition, in Commonwealth realms (independent former British colonies that have retained the British monarch as their head of state), a governor-general is typically appointed to act *on behalf of the absent monarch*. Governors-general have many of the characteristics of an elected president: they are typically senior public figures, they are not born into office and they typically serve for several years and then retire. Crucially, however, their authority rests on the fact that they represent a hereditary monarch who is the true (notional) head of state rather than being representatives of the people in their own right.

Functions and Powers of Non-executive Presidents

Functions and Powers

The specific powers of non-executive presidents, and the extent of personal discretion they have over the exercise of these powers, vary from country to country. The functional purposes of non-executive presidents (what they are *for* rather than what they actually *do*), however, can generally be considered under the following headings:

Embodying constitutional authority: Non-executive presidents typically embody and represent the legitimate constitutional authority of the state, performing ceremonial and official functions in which the identity and authority of the state as such, rather than that of the incumbent government, is emphasized. For example, the president will usually accredit and receive ambassadors, open sessions of parliament and designate or appoint the prime minister. The president might also formally appoint certain high-ranking officials, and will almost always formally promulgate laws and sign treaties. Non-executive presidents usually have little or no discretion in the performance of these official duties (for example, the president may formally sign a treaty ratified by the parliament, but *must* do so: he/she does not have the discretion to refuse signature), but by their presence they may strengthen the legitimacy of government acts by adding their moral, ceremonial and institutional authority as the embodiment of the state as such (or, if directly elected, as a representative of the people as whole) to the government's partisan mandate.

Protecting the political neutrality of the state: It follows from the above that the separation of offices between head of government and non-executive president helps to maintain a symbolic separation between the incumbent government, which is party-political, and the permanent institutions of the state as such, which are supposed to be politically neutral and universal. The president symbolically ensures that those who lead the government are at least notionally inferior to a higher authority that represents the democratic constitutional order, and that the leader of a ruling party or coalition is subordinate to a non-partisan embodiment of the whole. For this reason, non-executive presidents are particularly associated with those institutions that are supposed to be non-partisan. For example, the president of Malta is *ex officio* chairman of the Commission for the Administration of Justice, and formally appoints members of the Electoral Commission, 'acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition' (Constitution of Malta, Article 60). It is not usually expected that the head of state should direct such institutions in person, but that, by their very presence, they should prevent the misdirection of these institutions for partisan ends.

Continuity (avoidance of power vacuums): Having a non-executive president ensures that there is no power vacuum when the office of the prime minister is vacant (e.g. if a government formation process takes longer than expected and a caretaker cabinet is in office) or when parliament is dissolved. The

president symbolizes that, while there might not be a government, the state is still functioning. This can have implications both for domestic confidence and external prestige. Similarly, in countries where cabinets are short-lived, a non-executive president can be an important source of continuity who maintains institutional memory and collective experience despite high turnover in the office of the prime minister.

The Non-executive President as a Unifying Figure: Italy

The Italian parliamentary elections of 2013 produced no clear winner, and government formation was difficult, with neither a grand coalition of left and right nor a minority government of the left being possible. At the same time, a presidential election was due, and in the divided political landscape it was difficult to select a candidate. Facing this crisis, the incumbent non-partisan president, Giorgio Napolitano, was re-elected for an unprecedented second term by an overwhelming majority, thereby establishing his position as a unifier above politics.

Representation: Non-executive presidents are able to serve as representatives of the nation, promoting its image and reputation both at home and abroad. Being freed, by their non-executive status, from responsibility for day-to-day politics means that they can find more time to engage in such activities and are less easily compromised by the political decisions of their governments.

Civic leadership: As a civic leader, a non-executive president reflects and articulates the shared moral values and aspirations of the people. The civic leadership functions of the president may include patronizing arts and culture, supporting or encouraging charitable activities, visiting local communities, making speeches and hosting cultural events. Being free from day-to-day politics and from partisanship, yet having a national platform from which to speak, a non-executive president can act as the conscience of the nation, perhaps speaking up for those who are otherwise forgotten by the political process. The line between civil leadership and political interference is, however, a thin one: to protect their independence, non-executive heads of state are in many jurisdictions forbidden by law or custom from making public comments that could be interpreted as politically controversial.

Promoting inclusivity: The offices of non-executive president and prime minister may be divided (by law or convention) between different groups in a divided society. In Lebanon, for example, the presidency is held by a Christian, while the office of the prime minister is held by a Muslim. Although this is not specified in the constitution, it is embodied in a National Pact with quasi-constitutional status.

Constitutional arbitration: A non-executive president may be entrusted with certain discretionary powers,¹ which, by law or conventional practice of the constitution, are exercisable at the president's personal discretion. These powers are exempt from the rules of ministerial responsibility, meaning that ministerial countersignature is not required, and ministerial advice may be ignored.

The concept of constitutional *arbitration* is distinct from constitutional *adjudication*, as performed by judicial institutions. It relates to the maintenance of the democratic constitutional order by the moderation and arbitration of political disputes between the main institutions of government (i.e. acting as a balance between the parliament, government and people). These powers may include:

- The discretionary authority to nominate and dismiss the prime minister—usually subject to the rule that the prime minister must enjoy the confidence of the parliamentary majority. Depending on the constitutional rules and the prevailing political circumstances, a president may take an active role in coalition building and may be able to choose between a variety of possible coalitions (e.g. Italy) or may be limited to a much less active role (e.g. Germany).

¹ The terminology used to denote these powers varies. This primer uses the term 'discretionary powers', while, in some parliamentary democracies that have retained a figurehead monarch, such as Australia and Canada, the term 'reserve powers' is more common.

- The discretionary authority, in certain circumstances, to dissolve parliament (e.g. if it is not possible to appoint a prime minister who enjoys parliamentary confidence, or if parliament passes a vote of no confidence in the government but the government refuses to resign) or to refuse a dissolution (e.g. if the government has lost the confidence of parliament, and if a new government that does enjoy the confidence of parliament can be appointed without a parliamentary election).
- The discretionary authority to veto legislation, refer legislation back to parliament for further consideration, to refer legislation to the people in a referendum or to refer legislation to the Supreme Court or Constitutional Court. In Ireland, for example, the president can refer bills to the Supreme Court for a ruling on their constitutionality before enacting legislation. In Latvia, the president can suspend the promulgation of a law for two months, during which time signatures can be gathered to instigate a binding national referendum on the law.
- The discretionary authority to award honours, grant pardons or make certain non-political appointments to public bodies.

Think Point: (1) What reserve/discretionary powers, if any, should the president possess in order to ensure the proper functioning of the parliamentary system and to protect the democratic constitutional order? (2) How is it possible to ensure that the powers of the president are both clear and limited so that they can be used when their use is legitimate but not abused when their use is illegitimate?

Codification of Discretionary Powers

The constitutions of early parliamentary republics typically granted presidents executive powers on paper, with the expectation that these powers would be exercised according to the constitutional conventions (accepted norms of constitutional propriety that, although not written down in the constitution, were nevertheless regarded as politically ethically binding on institutional actors) of parliamentary democracy.

- The French Constitutional Laws of 1875 stated that ministers were ‘collectively responsible to the Chambers for the general policy of the Government’ and that ‘all acts of the President must be counter-signed by a minister’, but did not otherwise define the discretionary scope of the president’s authority. In practice, the system of parliamentary government, the role of the president in the process of government formation and the very narrow—but extant—limits of discretionary presidential power were established by convention through a series of *ad hoc* political decisions taken during the early years of the republic. For example, the misuse of the president’s power to dissolve parliament on one occasion in 1877 rendered the further use of this power unacceptable, but the president’s latitude in selecting the prime minister from a range of possible coalition partners in parliament continued to be recognized.

Newer constitutions, especially those adopted in the democratic reconstructions of Europe after the First and Second World Wars, typically gave formal and explicit recognition to parliamentary principles, and at the same time codified the limited discretionary powers of the president:

- The Basic Law of Germany (1949/1990) explicitly vests executive power in the chancellor (prime minister) and government, not in the president. The president’s discretionary powers are narrowly circumscribed by Article 58, which requires countersignature for all the president’s actions except for the nomination of a chancellor, the dissolution of the *Bundestag* (lower house) if a chancellor cannot be appointed and a request that a chancellor

who has resigned continue in office until a new chancellor is appointed. In addition, Article 82 has been interpreted as permitting the president, despite the countersignature of a minister, to refuse to promulgate laws that have not been enacted in accordance with constitutional provisions. This veto power has rarely been used.

Organic change, flexibility and the risk of constitutional uncertainty: Where written constitutional rules are few or imprecise, and heavy reliance is placed upon conventional rules, the relationships between key institutions can change by organic development in response to crises or other factors:

- The Icelandic presidency, although relatively strong according to the written text of the constitution, was by convention restricted to civic and ceremonial functions only. Well-established conventional rules narrowly limited the scope of presidential discretion in political matters. After the financial crisis of 2008, however, the president was able to make use of constitutional powers that had lain dormant to shape the direction of policymaking, for example, by dissolving parliament and by submitting important legislation to the people in referendums. Thus, Iceland was transformed (at least temporarily) from a parliamentary to a semi-presidential form of government without amending the written constitution.

It may be desirable to allow such flexibility, but uncertainty about the status of conventional rules also opens up the possibility of a constitutional crisis, whereby the legitimacy of an action permissible by the written rules, but long deemed unacceptable under conventional rules, is politically disputed:

- In 1975, the governor-general of Australia, Sir John Kerr, dismissed the prime minister, Gough Whitlam, when the Senate refused to pass the budget. Both the Senate, in refusing to pass the budget, and the governor-general, in dismissing the prime minister and appointing the leader of the opposition, Malcolm Fraser, to office, were clearly within the scope of their constitutional powers *on paper*. However, the extent to which their actions were permitted under constitutional conventions is contested (Ward 1987: 18).

Importance of certainty: In countries where the conventions of parliamentary democracy are already well understood and well entrenched in the practical operation of the political system, it might be acceptable to rely on conventional rules that might be implied, or only partially specified, in the constitution. In newly democratizing states, however, or states where such conventional rules are poorly understood or weakly enforced, it is usually necessary to be more specific and explicit. By being specific, not only is the non-executive nature of the presidency confirmed, preventing the office from becoming too powerful, but disputes over the extent of reserve/discretionary powers and over the legitimate scope of the president's role as a constitutional arbiter can be prevented. This underlines the importance of context: if informal constraints are weak, formal ones must be strong.

Party system and fragmentation: If many parties are likely to achieve parliamentary representation, with no party winning an overall majority, then, depending on the government formation rules in place, the president may have more latitude in the nomination of a prime minister and the building of a coalition. If it is desired to limit the party-political role of the president in government formation, then it is particularly important for the formation rules to be explicit and unambiguous. It might be desirable, for example, for the constitution to empower parliament to elect the prime minister (as in Ireland) so that the presidency is removed from coalition formation.

Design Considerations: Election and Tenure

Electing Bodies

Non-executive presidents in parliamentary republics are typically elected in one of three ways:

- *Election by parliament* is used to elect the non-executive presidents of, *inter alia*, Bangladesh, Greece, Latvia, Malta, Trinidad and Tobago and Turkey. Election by parliament tends to result in a weak president without an independent mandate. Depending on the election rules adopted, however, it may also result in a president who is little more than the nominee of the parliamentary majority, and who, in consequence, lacks independence from the government.
- *Election by a specialist electoral college*, typically combining members of parliament with members of sub-national representative bodies (e.g. state, provincial or local assemblies), might be appropriate in a federal or highly regionalized parliamentary republic. In Germany, for example, the president is elected by the Federal Assembly, where members of the provincial parliaments sit alongside members of the federal lower house. Likewise, in India, the president is elected by an electoral college consisting of the members of both houses of parliament and the members of the state legislative assemblies across the country. In a slight variation of this scheme, the president of Italy is elected by both houses of parliament, which are joined for the purpose by electors chosen by the regional councils of Italy's regions.
- *Direct election by the people*. Direct popular elections are used to select non-executive presidents in, *inter alia*, Austria, Finland, Iceland, Ireland, Portugal and Slovakia. Direct election enables the president to claim a personal mandate distinct from that of the parliamentary majority, which might tempt the president to seek a more active role in the political process. Direct election is also more likely to result in an overtly party-political presidential campaign that might harm the position of the president as a supposedly impartial figure.

Election Rules

- *Electoral systems/majority requirements for direct popular election*: A directly elected non-executive head of state can be elected by one of three methods:
 - (1) *By simple plurality vote*: The candidate with the most votes wins. Although this system seems fair and simple, it has several serious disadvantages: (1) it is subject to the problems of minority rule (as a candidate supported by less than half the voters may be chosen); (2) it tends to narrow the field of candidates to two, thereby denying many a political voice; and (3) it produces a spoiler effect, whereby votes for a third-party candidate may lead to the victory of the less favoured of the two major candidates. To avoid such a spoiler effect, tactical voting is encouraged, whereby voters vote against the candidate they favour the least rather than for the candidate they favour the most.
 - (2) *By a two-round system*: The two-round system is a majoritarian system. In the first round of voting, an absolute majority of votes cast is required for election. If no candidate receives an absolute majority, a second round of voting is held (usually a week or two weeks later) between the two leading candidates. The candidate who wins a simple majority of votes cast in the second round is elected. This system has the advantage of reducing the spoiler effect: voters supporting minority candidates may vote for their favoured candidate in the first round, with the option of switching their vote to their least disfavoured candidate in the second round if their first choice is unsuccessful. Current examples of countries that use such a system include Austria, Finland, Portugal and Slovakia.

- (3) *By an instant run-off (alternative vote) system*: Instant run-off voting, or alternative vote, enables voters to rank candidates in order of preference. If no candidate receives an absolute majority of first-preference votes, the lowest-polling candidate is removed and their votes are redistributed to subsequent preferences. This process of elimination and redistribution continues until one candidate receives a majority. The voting and counting process is slightly more complicated than the two-round system, but it has the logistical advantage that the election can be held on one occasion. The president of Ireland is elected using the instant run-off system.
- *Electoral system/majority requirements for indirect presidential elections*: The above electoral systems can also apply to indirect elections. For example, the president of India is elected using the two-round system. However, indirect election (by an assembly that can meet, potentially deliberate and participate in vote-trading) offers additional possibilities that are usually intended to ensure that the president is a politically neutral, non-partisan figure:
 - (1) *Supermajority rules*: Supermajority rules are used to help promote the election of a politically neutral president who is impartial between the government and opposition parties. A number of variations exist. For example, the parliament of Greece elects the president by a two-thirds majority vote. If after two rounds of voting, no candidate wins a two-thirds majority, a three-fifths majority is required for the third round. If no candidate wins a three-fifths majority, parliament is dissolved, and the new parliament then elects the president by a three-fifths majority, or, if that fails, by an absolute majority. Only if this attempt fails can a president be elected by a simple majority vote of parliament.
 - (2) *Appointment by parliamentary resolution*: Rather than being elected in a competitive election, a president can be appointed by a parliamentary resolution. In Malta, this arrangement usually leads to a situation where the government, which is backed by a parliamentary majority, is able to unilaterally appoint its own candidate as president, thus diminishing the perception of the president as an independent, non-partisan figure. A variation on this arrangement would require bipartisan nomination (for example, by the prime minister and the leader of the largest opposition party in parliament). This was proposed in Australia in 1999, but it was rejected as undemocratic by the voters.
 - *Open or secret ballot*: Presidents can be elected by secret ballot or by an open ballot. If direct popular election is used, a secret ballot is normal. If election by parliament or a composite electoral college consisting of parliamentarians and members of regional assemblies, for example, is adopted, then a secret ballot can help to ensure a non-partisan election and to protect the independence of the head of state from the incumbent government. However, a secret ballot combined with indirect election undermines transparency: it means that the people have no way of knowing how their representatives have voted, and may thus undermine the legitimacy of the president. It is important to consider, in choosing between open and secret ballots, whether the president is supposed to be neutral and isolated from politics or is supposed to represent public opinion.

Think Point: How important is it that a non-executive president be non-partisan? If they are to act as unifying ceremonial figureheads and as impartial constitutional guardians, is it necessary for them to be seen as politically neutral? Or is it more important for them to have the authority and popular mandate that comes from direct election, and from a claim to enjoy the support of a majority of the people?

Term of Office, Re-election and Removal

Terms of office: Non-executive presidents have typically been elected for terms of four (Latvia), five (Greece, Malta), six (Austria) or seven (Ireland, Italy) years. It is usual—although not universal—for the term of office of the president to be longer than that of parliament (or of the lower house, in bicameral systems), such that presidential and parliamentary elections do not coincide. This enables the president to maintain continuity through changes of government.

Re-election: In some cases, non-executive presidents may serve for only one term. In many cases, they are prohibited from serving more than two terms. These provisions are intended to: (i) ensure that the office circulates and does not long remain in the hands of one person; and (ii) enhance the president's independence by freeing him or her from the need to campaign for re-election.

Removal: It is necessary, on the one hand, to give the president sufficient autonomy and security so that their position is not subject to the whims of the parliamentary majority, and, on the other hand, to provide a means of removing an incompetent, corrupt or misbehaving president.

- *Removal by impeachment:* Impeachment is a quasi-judicial process by which the president is accused of particular crimes or misdemeanours (a term that may be broader than crimes), usually by the legislature or the lower house thereof, and is then tried by the upper house, or, in unicameral systems, by the Supreme or Constitutional Court or other judicial or quasi-judicial body. The essence of impeachment is that it requires some charge to be brought against the president and for the president to be found guilty. For example, the Constitution of Ireland allows two-thirds of the members of either house of parliament to impeach the president. The impeachment is then tried by the other house, which may convict — and thereby remove — the President by a two-thirds majority vote.
- *Removal for illness or inability to perform functions:* Some constitutions provide a means other than voluntary resignation for the president to be removed on grounds of illness, incapacity or inability to perform the functions of his or her office. Article 48 of the Constitution of Malta allows the president to be removed 'on the ground of inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause)'. Removal for illness or inability may be subject to a special process intended to insulate it from partisan abuse. The Constitution of Bangladesh, for example, enables parliament to remove a president, by a two-thirds majority vote, if the president is deemed unfit by a medical board to perform his/her duties.
- *Removal by legislative vote for a stated cause:* This process enables the legislature to remove a president (typically for misbehaviour) simply by passing a resolution to that effect, without the need for a formal impeachment process. Removal for a stated cause, unlike impeachment, is ultimately a political, not quasi-judicial, decision. In some states, however, the resolution must be preceded by an investigatory process that has quasi-judicial features. In Israel, for example, the vote to remove a president may only be proposed by a house committee that must hear the president's side of the case before deciding. The decision may also be subject to judicial review, if not for the substance of the decision, then at least for procedural propriety.
- *Removal by referendum:* This mode of removal is rare. Iceland is the exemplary case. If parliament votes, by a three-fourths majority, to remove the president, the president is suspended and a referendum is held within two months. If a majority of those voting in the referendum support the removal of the president, he or she is removed from office; if not, the parliament is automatically dissolved and new elections are held. This process makes the people the ultimate arbiter between the president and parliament: it is democratic risks polarizing public opinion and raising political stakes in moments of crisis.

Alternatives to a Non-executive Presidency

The South African model: A non-executive head of state is not, strictly speaking, necessary in a parliamentary democracy. South Africa, for example, has a system of government that is essentially parliamentary (in that the head of government is chosen by, and responsible to, the legislature), but in which the duties of the head of government and the head of state are combined in an executive presidency. Similar arrangements can be found in Botswana and Nauru. Under this system, the president is a powerful figure who combines executive and legislative policymaking with functions of ceremonial representation and civic leadership. If this model is chosen, it is important, therefore, to ensure the independence and non-partisanship of other institutions (the judiciary and the electoral commission, for example) in order to protect the political system as a whole from the abuse of presidential power.

The speaker as repository of head-of-state functions: In some jurisdictions, the speaker (presiding officer, chairperson) of parliament is entrusted with important constitutional-arbiter functions. In Sweden, for example, the speaker, after consultation with the party leaders in parliament, nominates a candidate for prime minister to be voted upon by parliament. Speakers also typically have a representational role, as the embodiment of parliament and its authority. It is a relatively small step from there to the idea of the speaker doubling as a low-cost, low-profile, non-executive head of state. Although there are no known current examples of this arrangement, it has been relied upon in some historical cases. It would provide many of the benefits of separating the institutions of head of state from that of head of government, without the additional cost, or potentially conflicting roles, of a presidency. In many countries, the speaker is required, by law or convention, to be non-partisan, at least while in the chair. If the Speaker were to act as head of state, serious consideration would have to be given to making a commitment to such non-partisanship explicit and binding in the constitution.

Examples of Systems with Non-executive Heads of State

COUNTRY	MODE OF SELECTION	RESERVE/DISCRETIONARY POWERS	COUNTERSIGNATURE/ADVICE REQUIREMENTS
Bangladesh: Democracy since 1991 Parliamentary republic Unitary Bicameral Pop. 150 million	Election by parliament; mode of election not specified in the constitution Five-year term; may be re-elected once Removable by two-thirds majority vote of parliament, or if two-thirds majority regard president as incapable	'The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament.' Appoints chief justice of the Supreme Court Assumes responsibility during periods of non-party caretaker governments—between the dissolution of parliament and formation of a new government	'In the exercise of all his functions, save only that of appointing the Prime Minister... and the Chief Justice... the President shall act in accordance with the advice of the Prime Minister (article 48.3).

<p>Ireland: Democracy since 1922 Parliamentary republic Unitary Bicameral Pop. 4.6 million</p>	<p>Direct popular election, using alternative vote electoral system Seven-year term; may be re-elected once Removable if impeached by a two-thirds majority of one house of parliament and convicted by two-thirds majority of the other house</p>	<p>Can refer legislation to Supreme Court for ruling on its constitutional validity before granting or withholding assent Can refuse to grant a premature dissolution if advised by a prime minister who has lost the confidence of parliament Can call parliament, or either house, into session Some minor powers with respect to the resolution of disputes between the two houses of parliament</p>	<p>'The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State [an advisory body to assist the President in the exercise of discretionary powers], or on the advice or nomination of, or on receipt of any other communication from, any other person or body' (article 13.9).</p>
<p>Latvia: Democracy since 1991 Parliamentary republic Unitary Unicameral Pop. 2 million</p>	<p>Elected by parliament, by secret ballot and by an absolute majority vote Four-year term; may be re-elected once Removable by a resolution passed by a two-thirds majority</p>	<p>Nominates prime minister Can suspend legislation pending referral to the people in a referendum Can return legislation to Parliament for reconsideration May propose dissolution of parliament (subject to approval by the people in a referendum)</p>	<p>'The President of State shall not bear political responsibility for his/her actions. All decrees of the President of State shall be countersigned by the Prime Minister, or by the minister concerned, who shall thereby assume full responsibility for the decrees, except in cases foreseen in Articles 48 [proposing dissolution] and 56 [appointing the Prime Minister].'</p>
<p>India: Democracy since 1947 Parliamentary republic Federal Bicameral Pop. 1.2 billion</p>	<p>Elected by weighted electoral college consisting of members of the two houses of the union parliament together with members of the state legislatures Five-year term; no restriction on re-election Removable by impeachment</p>	<p>The discretionary powers of the president are not clearly stated in the constitution: indeed, a simple reading of the text would suggest that no such discretion exists. However, some authorities argue that the president can exercise limited conventional discretion in the follow circumstances: (i) Appointing the prime minister if there is no clear leader of the parliamentary majority; (ii) Dismissing the prime minister if the government loses the confidence of the lower house but refuses to resign; (iii) Refusing to dissolve the lower house if the government has lost its confidence and if an alternative government can be formed.</p>	<p>'[The president shall, in the exercise of his functions, act in accordance with the advice of the Council of Ministers] [p] rovided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.'</p> <p>The president appoints judges on the advice of the chief justice (the president can only appoint on the nomination of the chief justice, but is not obliged to accept such nomination).</p>

Decision-making Questions

- (1) What is the problem that the new/reformed constitution is trying to fix? If there is already a non-executive president in place, how have they acted in the past? Have the limits of their powers been unambiguous? Have these limits been well respected in practice?
- (2) What is the aim of establishing a non-executive president? Is there a desire to limit the president's previously excessive power? Or is there a desire to strengthen the president in order to act as a check against the prime minister? Is it intended that the president should be a civic and ceremonial figurehead, or is it intended that they should be a constitutional arbiter with limited but real discretionary powers?
- (3) What are the politics of the situation? Are there short-term electoral pressures in favour of a stronger or weaker presidency? (For example, is there an obvious front-runner candidate for a directly elected resident? Is their inclusion necessary to stabilize and legitimate the democratic

system? Or are they a threat to it?) Would parliamentary parties be able to agree on a candidate for an indirectly elected president—would it cause consensus or deadlock?

- (4) If the president is intended to perform only ceremonial and civic duties, then who, if anyone, is going to perform constitutional-arbiter functions, such as nominating the prime minister, dissolving the legislature and preventing the enactment of unconstitutional laws?
- (5) If the president is intended to be a constitutional arbiter with discretionary or reserve powers, then how can they be prevented from becoming a player in the political game rather than an arbiter who stands above and outside it?
- (6) How clear are the powers and duties of the president in the constitution? How much scope for disagreement is there over the legitimacy or illegitimacy of an exercise of personal discretion by the president? Are all eventualities covered as well as reasonably possible?
- (7) What are the cultural assumptions of leadership? Is there a tradition of a separation between symbolic authority and actual power? Will a position having symbolic authority but little real power be respected, or will it be ridiculed?
- (8) What should the president represent? The people? The state? The nation? The cultural majority? An otherwise under-represented cultural minority? A particular set of values and traditions? How does this relate to the method of election/appointment?
- (9) What sort of person should the president be? What sort of character do they need to perform the functions envisaged of the office? Should the president be wise, diplomatic, tactful and uncontroversial? Or should they be a charismatic leader with the ability to mobilize support for a national vision? How does this relate to the method of election/appointment?
- (10) How broad have consultations with political actors been? Are the provisions related to the head of state in the constitution (or constitutional draft) supported by all relevant actors?

References, resources and further reading

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