Presidential Systems
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Content type: Encyclopedia entries
Product: Max Planck Encyclopedia of Comparative Constitutional Law [MPECCoL]
Article last updated: February 2017

Subject(s):
Constitutional processes — Legal system — Executive power — Heads of state and government — Structure of the Executive — Presidential systems — Checks and balances

Published under the direction of the Max Planck Foundation for International Peace and the Rule of Law. General Editors: Rainer Grote, Frauke Lachenmann, Rüdiger Wolfrum.
A. Introduction

1. Of the world’s political systems, the presidential system of government is the most common and popular (→ forms of government). This system of government has its origins in the American presidential system of government and its Constitution of 1787, which created the office of ‘president’ as head of state. The word ‘president’ is derived from the Latin praesidens meaning ‘governor’ (Chambers 835). The word was first used to describe the highest official in a government branch in 1532, when Alexander Mylne, Abbot of Cambuskenneth became the first Lord President of the Scottish Court of Sessions (Scotland’s supreme civil court) (Keith 332). And in 1649, John Bradshaw was elected Lord President of the Council of State of England in the time of Commonwealth (Bradshaw). However, the first time the title ‘president’ was used to denote a head of state is in the United States Constitution of 1787, Art. II Section I of which provided that the ‘executive Power shall be vested in a President of the United States of America’ who shall ‘hold his Office during the term of four years’.

2. Thorpe records that the title ‘president’ had already been in use in the Virginia charters as well as in five other states although the final version of the presidency ‘was a composite office, representing an aggregate of powers and functions’ (Thorpe 33). As the drafters of the American Constitution met to deliberate the terms of their union, they found themselves in a new political situation in which it was necessary to ‘bring into practical working the authority of the people, in place of that of the crown of England, as the source of all political power’ (Curtis 117). Though the term ‘president’ had been used for some time prior to the coming into forces of the American Constitution, it was used to refer to presiding officials such as the President of the Continental Congress or the President of the New York Provincial Congress, none of whom wielded real executive powers.

3. As Ellis noted, prior to 1787 ‘there was no American presidency; indeed, there was no national chief executive of any sort’ since it was ‘a deliberate creation, an invention’ (Ellis 1). The delegates at the Constitutional Convention were generally ambivalent about executive authority and ‘wanted an executive branch that was strong enough to check a runaway legislature, but not so strong as to become despotic’ (Milkis and Nelson 28). In the end, the Convention delegates settled for a stronger, rather than a weaker chief executive with the powers of → commander-in-chief of the armed forces, and with the power to declare war. The president would be elected by an electoral college, and serve a four-year term with no limits on the right to seek re-election. The president could only be removed by way of impeachment.

4. Today, almost all countries which are not monarchies (→ parliamentary monarchy; → monarchical constitutions), have presidents as their heads of state. This does not mean that they operate under a presidential system of government. Many countries operating under a parliamentary system of government also have presidents, but these heads of state are largely ceremonial offices with little executive power. The President of India, for example, is indirectly elected by members of both houses of Parliament but exercises almost all his powers on the advice of the cabinet. And while the President of Ireland is directly elected by the people, his role is also largely ceremonial (Art. 12(2) Constitution of Ireland: 1937). The same goes for many presidents who are titular heads of state but not heads of government in parliamentary systems (→ heads of state and government).

5. At the same time, there are countries, like South Africa, where the president is in effect like the → prime minister in that he or she is the leader of the political party having the largest number of seats in the legislature. In the case of South Africa, the offices of the prime minister and president were merged by the 1983 Constitution. The key difference
between such a system with a powerful president and a true presidential system is that there is no clear separation of powers between legislative and executive powers.

6. While the presidential system of government originated in the United States of America, it soon spread to other parts of the world, most notably Latin America (Cheibub et al), Africa and the countries of the former Soviet Union. As Jean Blondel observed:

In the contemporary world, the presidential republic is to be found particularly in Latin America, Africa and the countries of the ex-Soviet Union; it exists also, but to a more limited extent, in Asia and only to a very limited extent in Europe, even in East-central Europe. The whole ‘movement’ started in the United States, where the notion was truly ‘invented’ in the federal Constitution of 1787 and where it was maintained successfully ever since. From then on, the idea of presidentialism spread and even had a vast development since the second half of the twentieth century (Blondel 1).

7. Today, other than the United States of America, the other countries with presidential systems of government are as follows:

- **Central and South America**: Argentina; Bolivia; Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; El Salvador; Guatemala; Honduras; Mexico; Nicaragua; Panama; Paraguay; Peru; Uruguay; Venezuela.

- **Africa**: Angola; Benin; Burundi; Cameroon; Central African Republic; Chad; Comoros; Republic of Congo; Gabon; Gambia; Ghana; Guinea; Kenya; Liberia; Malawi; Mozambique; Nigeria; Sierra Leone; Seychelles; Sudan; South Sudan; Tanzania; Togo; Zambia; Zimbabwe.

- **Asia**: Indonesia; Maldives; Palau; Philippines; South Korea.

- **Central Asia**: Afghanistan; Iran; Belarus; Cyprus; Kazakhstan; Tajikistan; Turkmenistan; Uzbekistan; Yemen.

8. This list excludes those countries that have a semi-presidential system of government that originated in Weimar Germany, and which was adopted by the French Fifth Republic in 1958 (→ semi-presidential systems).

9. All other presidents in the presidential system of government are elected directly through regular presidential elections. The only exception is the United States of America where the president is elected through an electoral college system of voting.

**B. Features of the Presidential System**

1. **Unique Characteristics**

10. The two main characteristic features of the presidential system are: first, that it consists of a single individual and thus unipersonal; and second that this person is independent of the legislative and the judicial branches of government.

11. The presidential executive is unipersonal in the sense that the entire executive branch of government consists of the singular person of the president (→ executive powers). Members of the cabinet serve at the pleasure of the president. They are appointed independently by the president and are not correspondingly members of the legislature.
the United States, for example, members of the president’s cabinet cannot be members of the legislative branch (Art. I Section 6 US Constitution).

12. Presidential cabinet appointments may, however, be subject to legislative approval or confirmation. For example, Art. II Section 2 of the United States Constitution provides that the president shall have power

by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

13. Unlike parliamentary systems of government, where members of the executive are drawn from the legislature, presidential systems maintain a clear division of power between the two branches. In presidential systems, the bulk, if not all the executive power vests in the single person of the president.

14. Under the presidential system of government, the head of government is also the head of state. At the same time, the president is head of the executive branch of government which is separate and distinct from the legislative branch. In the United States, the president—as head of the executive branch—is elected separately from the members the Senate or the House of Representatives.

2. Terms of Office and Removal

15. Presidential terms of office are fixed, and in some cases, limits are also imposed on the number of terms a president may serve. In America, for example, the term of office the president is four years, and no president may serve more than two consecutive terms in office. In South Korea, the president may be elected to a five-year term in office with no possibility of re-election, while in the Philippines, a president may only serve a single six-year term in office.

16. Unlike in parliamentary systems of government where the government of the day (including the prime minister) may be voted out of office at any time through a no confidence vote in parliament, the president is not so easily displaced (removal of officials). Under normal circumstances, the legislative branch of government, acting as the legislature, has no power to remove the president although they may have power to institute impeachment proceedings against the president. For example, in Austria, the federal assembly (Bundesversammlung) may impeach the president by initiating a referendum (Art. 60(6) Constitution of Austria: 1920, reinstated 1945.), or commencing a suit in the constitutional court against the president for contravention of the constitution (Art. 142(2)(a) Austrian Constitution).

17. In quite a number of countries, the decision to impeach a president is made by the lower house of the legislature, and the ‘trial’ of the president is conducted by the upper house. For example, in Colombia, the decision to impeach the president must be carried by a vote of not less than half the members of the cámara or house of representatives (Art. 199 Constitution of Colombia: 1991), and the trial of the president takes place in the senado or senate. The president may only be removed if the removal motion is secured by a vote of at least two-thirds of the members voting in the senado. In some jurisdictions, the ‘trial’ may actually be before a judicial tribunal. In Venezuela, the Supreme Tribunal of Justice (Supreme Court) is empowered to decide if the president should be impeached and
18. In the United States, the president may be removed by way of impeachment proceedings ‘for, and on conviction of, treason, bribery, or other high crimes and misdemeanors’ (Art. II(4) US Constitution). Under Art. I(2)(5) of the US Constitution, the House of Representatives has the ‘sole power of impeachment’ while Art. I(3)(6) gives sole power to the Senate ‘to try all impeachments’. It further states that the Chief Justice of the United States will preside over all impeachment proceedings involving the president and conviction requires a vote of at least two-thirds of the members present. Only two presidents have been subject to impeachment in America—Andrew Johnson in 1868; and Bill Clinton in 1998. Both of them remained in office after the final vote, with Johnson retaining his office by a single vote (Gerhardt).


3. Powers of the President

20. While presidential systems vary greatly in the specific powers of the president, two common powers are to be found in most of these systems. First, the power to veto legislation. This can often be overridden by a supermajority in the legislature (→ plurality/majority). Second is the power of clemency or → pardon power. There are five other powers which executive presidents may quite commonly possess: (a) legislative powers; (b) appointment powers; (c) financial powers; (d) treaty-making powers; and (e) war-making powers. For example, the president of Brazil is conferred all of these powers under Art. 84 of the Constitution (Art. 84 Constitution of the Federative Republic of Brazil: 1988 (with amendments)).

(a) Legislative Powers

21. In presidential systems, the legislative power is often divided between the legislature on the one hand and the president on the other (→ legislative powers). However, the extent of presidential legislative power varies from polity to polity. Some states favour a stronger president and a weaker legislature, while others favour the contrary. Quite often the president is given executive law-making powers in states of national crisis or in national emergencies. Under Art. 6 of the 1976 amendments to the 1973 Philippines Constitution, the president was empowered to legislate by ‘decrees, orders, or letters of instructions’ whenever the National Assembly ‘fails or is unable to act adequately on any matter for any reason’ (Art. 6, 1976 Amendments to the 1973 Constitution of the Republic of the Philippines; → executive order). However, as this power had been flagrantly abused by President Ferdinand Marcos, it was omitted in the 1987 Constitution.

22. The president of Brazil is vested with extensive legislative powers. The president may propose laws to the national congress (Art. 84(3)) or enact medidas provisórias or provisional measures with the force of law (Art. 84(26)). However, these measures lose their effectiveness from their date of issue unless they are ‘converted into law within a period of thirty days’ by the National Congress (Art. 62). On the other hand, the president of Chile’s role with respect to legislation is simply to ‘concur to the making of laws, ...sanction and promulgate them’ (Art. 32 Constitution of Chile: 1980 (with amendments)).

(b) Financial Powers
23. One common power of presidents in respect of fiscal measures is the power to either break a deadlock over the vote on a budget or to block certain types of spending (→ public finance). Under Art. 59 of the Constitution of the Federal Republic of Nigeria: 1999, for example, the president is empowered may either give or withhold his assent to any money bill passed by the national assembly. If the president withholds his assent, this may be overridden by a vote of at least two-thirds of the members of both houses of the national assembly (Art. 59(4) Constitution of Nigeria).

(c) Appointment Powers

24. Typically, presidents are empowered to appoint members of their → cabinet. The Panama Constitution, for example, empowers the president to ‘appoint and remove freely the Ministers of State’ (Art. 183 Constitution of Panama: 1972). The Indonesian president is similarly free to appoint and dismiss his Ministers of State (Art. 17(2) Constitution of the Republic of Indonesia: 1945 (with amendments)). In some cases, this power may be subject to endorsement or confirmation by the legislative branch of government. The power of appointment may extend to other officers of the state. For example, the Philippines President is empowered to nominate, and ‘with the consent of the Commission of Appointments’, appoint ‘the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in the Constitution (Art. VII Section 16 Philippines Constitution).

(d) Treaty-Making Powers

25. In presidential systems of government, the power to make treaties with other states typically resides with the president (→ treaty power). This is especially since treaty-making is a strictly executive act and the president is the head of the executive branch of the government. However, the coming into force of the treaty may be subject to ratification by the legislative branch. For example, the Philippines Constitution requires that all treaties signed by the president be ratified ‘by at least two-thirds of all the Members of the Senate’ (Art. VII Section 21 Philippines Constitution). In some cases, it may be a power shared with members of the legislature. For example, the Indonesian Constitution provides that the president may ‘conclude treaties with other countries’, but ‘with the approval’ of the Dewan Perwakilan Rakyat (‘DPR’) or House of Representatives (Art. 11(1) Constitution of the Republic of Indonesia). Similarly, Brazil’s president may ‘conclude international treaties, conventions and acts, subject to the approval of the National Congress’ (Art. 84(VIII) Constitution of Brazil).

(e) War-Making Powers

26. Some constitutions openly declare their pacifist intent and thus do not provide for any war-making powers. Others will provide for the president the power to declare war (→ declaration of war), but often subject to the concurrence of the legislative branch. For example, in Indonesia, the president may, ‘with the approval of the DPR’, declare war and make peace (Art. 11(1) Constitution of Indonesia). In Peru, it is the duty of the president ‘to declare war . . . with the authorization of Congress’ (Art. 118(16) Constitution of Peru: 1993).

C. Advantages and Disadvantages of Presidential Systems

27. Proponents of presidential systems of government often cite four advantages of presidential over parliamentary systems: (a) legitimacy from direct elections; (b) separation
of powers; (c) stability; and (d) expediency and responsiveness. However, opponents of presidential systems often cite the same ‘advantages’ as shortcomings of the system as well.

1. Direct Elections and Legitimacy

28. As the president is directly elected by popular vote in most presidential systems, he or she is said to have a direct mandate from ‘the people’ and can thus be said to represent all the voters. For this reason, the president enjoys tremendous legitimacy in the exercise of his or her functions. Through direct elections, presidential systems create a system of ‘dual democratic legitimacy’ (Linz (1994) 6).

2. Separation of Powers

29. This ‘advantage’ relates to the direct elections of presidents. The separate election of the president creates a parallel structure of state power, allowing it to better monitor and check on the powers of the legislature (→ separation of powers). Unlike in the parliamentary system where the prime minister and members of the cabinet are drawn from within the legislature, this clear separation of powers enables the legislature and executive to act independently of each other. In the parliamentary system, the prime minister is often the leader of the majority party is unlikely to be called to account to parliament in the same way the president can be made to account to the legislature in the presidential system. At the same time, strict party discipline in parliamentary systems ensure that party backbenchers toe the party line and disincentivize them from criticizing their party leaders openly in Parliament.

3. Stability

30. The fact that under the presidential system, the term of the president is fixed makes the system more ‘rigid’ (Linz (1994) 6) and hence more stable than parliamentary systems. While parliamentary governments in many countries are relatively stable and do not often suffer motions of ‘no confidence’, some of them have had problems sustaining confidence and maintaining stability. Italy, for example has had an unfortunate reputation of having, in some periods, an annual change in government and prime ministers. This is because under the parliamentary system, elections can and will be called whenever the ruling party or coalition feels it lacks the mandate to carry out their party agendas. Furthermore, in states where multiple parties each have relatively strong following, coalitions are inevitable especially when no single party is likely to obtain a majority in the legislature (→ political parties or fractions in legislative body). This instability is exacerbated in countries with proportional representation.

31. In presidential systems, there is also greater stability in the cabinet. While prime ministers in parliamentary systems often reshuffle their cabinets, either to appease coalitional partners or to promote or demote certain individuals, this is much less common in presidential systems. At the same time, cabinet members in a presidential system may be appointed from a much larger pool of candidates since the president is not restricted to picking his ministers from within the legislature.

32. One problem with this ‘rigidity’ is the fact that in a presidential system it is very difficult to remove a president before his or her term is up. Even if the president is extremely unpopular or ineffectual, he may not be removed except for violation of the constitution or severe dereliction of duty. Prime ministers in parliamentary systems may be voted out of office on a confidence motion and confidence in the head of government can quickly be restored by his or her removal. This also means that in times of a national emergency, the country’s chief executive may not be easily replaced if he or she lacks the
ability or character to lead the country in a time of crisis (→ types and effects of emergency).

33. The problem of ‘rigidity’ is made worse by the fact that a presidential election is a ‘zero-sum’ exercise. Regardless of the candidate’s share of the vote, the winner ‘takes all’ and can govern without the need to secure majority from the population. Of course, this problem is absent in the case where there are only two candidates in a presidential race, but when three or more candidates compete for office, the winner may win by a mere third of the votes cast. As Linz has argued:

The danger that zero-sum presidential elections pose is compounded by the rigidity of the president’s fixed term in office. Winners and losers are sharply defined for the entire period of the presidential mandate... losers must wait four or five years without any access to executive power and patronage. The zero-sum game in presidential regimes raises the stakes of presidential elections and inevitably exacerbates their attendant tension and polarization

(Linz (1990) 56).

34. This latter problem can be resolved if a ‘run-off’ or ‘second ballot’ system is adopted. In such a system, a second round of voting is required if the winning candidate fails to win a clear majority in the first round of voting. The two top candidates will then ‘run-off’ against each other and the second round of voting will secure a majority for the winner (Horowitz 76). This system has been adopted for presidential elections in countries like Afghanistan, Argentina, Brazil, Chile, Ecuador, Ghana and Indonesia.

4. Expediency and Decisiveness?

35. Some proponents of presidential systems claim that they are more efficient and responsive as the president can act quickly in a crisis without having to worry about maintaining the confidence of his cabinet and legislature. Unlike prime ministers who always need to ensure that they are not ousted while pursuing an unpopular measure of policy, presidents cannot be so easily dislodged from office since they are elected independently.

36. At the same time, this separation of power may actually also slow things down because concurrence of both executive and legislature is necessary to effect policy change and even appointment of key state officials. In the United States, for example, the president is empowered to negotiate and conclude treaties on behalf of the state, but all treaties concluded need to be ratified by a two-thirds majority in the Senate (Art. II(2)(2) US Constitution). At the same time, the president may veto legislation passed by Congress (Art. I(7)(1) US Constitution) and return the bill to the originating house of Congress with his objections.

37. This slowing down of policy-making is sometimes touted as an asset since policy change and legislation should not be rushed into hastily. Others have held up this process as a means by which the rights of minorities are safeguarded in that the tyranny of the majority is avoided.

38. However, this can also lead to a situation where a political gridlock results when no branch of government gives way on a particular policy or legislation. This is particularly likely when the president comes from a different political party from that controlling the
Such a confrontation between the president and the legislature can prove crippling.

5. **Tendency towards Authoritarianism**

39. Linz has argued that presidential systems can also lead to the personalization of power (Linz (1990) 54). Because of the zero-sum nature of presidential politics, presidents have a tendency to conflate the support of their supporters with that of the whole nation. Thus, the president, who should ideally represent the whole nation, ends up speaking only for his or her supporters and thus fail to represent the minority voters. Because of this inflated sense of authority and legitimacy, presidential systems have also led to the establishment of authoritarian regimes (Riggs; → authoritarianism).

**Select Bibliography**

- Keith, R, *History of the Affairs of Church and State of Scotland: From the Beginning of the Reformation to the Year 1568* (Spottiswoode Society 1844).