

## 5. What is Executive Power?

### READING ITEM 1

#### The Origin and Scope of Executive Powers in Different Forms of Government

This Reading Item has been prepared by Márton Sulyok.

#### INTRODUCTION AND LEARNING OUTCOMES

*Executive power generally defines the scope of presidential authority, and it is largely dependent on whether the president in question solely assumes the position of the head of state, or it also extends to incorporate traditional powers of heads of government as well. In another interpretation, executive power also refers to the scope of powers exercised by the government, with the Prime Minister included (if any), depending on the form of government examined. The scope of presidential (executive) powers varies greatly depending also on the form of government, and in some forms, strong executive powers of a head of state are atypical due to historical reasons or other internal checks and balances. In these, generally, the executive powers of the head of government will be more powerful.*

#### Learning outcomes

1. Understanding the origin and extent of executive powers in different forms of government

**Keywords:** royal prerogatives, social contract, form of government, head of state, head of government

Necessary time for Independent Study: 2 hours

#### Recommended Reading

1. [CDL-AD\(2013\)018 Opinion on the Balance of Powers in the Legislation and Constitution of Monaco](#)
2. [James Clark: Presidential, parliamentary and semi-presidential definitions. Are they satisfactory distinctions? \(Prezi.com\)](#)
3. [Jose A. Cheibub – Zachary Elkins – Tom Ginsburg: Beyond Presidentialism and Parliamentarism \(2013, SSRN\)](#)

### 5.1. The Origin and Extent of Executive Power

Building on what has been described in *Reading Item 1 (on What is a State?)*, certain notions of forms of government shall be reiterated here. The extent of sovereign, executive powers can be very much different under different forms of government, interpreted in light of who is the head of state.

*In monarchies, sovereign powers of the head of state (monarch: king or queen, or even prince) are largely defined by tradition and historical experience.*

- The power of the head of state (as a monarch) has recently been subject to narrow expansion in terms of a more frequent use of the right to abdicate, like in Spain or in Belgium in the past 5-10 years, whereby monarchs resign the throne, designating their heirs.
- The order of succession on the throne is traditionally defined by seniority and monarchic power is inherited. Previously, abdication was not a trend, but since 'royalty' has been more and more present in the public eye in recent years, certain monarchs – when facing old age, difficult decisions or public outrage due to certain political fiascos – have decided to voluntarily terminate their powers.)

*Generally, in republican forms of government, the method of elections regarding the head of state can influence the scope of executive power as well as executive legitimacy.*

In presidential or semi-presidential republics, the head of state is usually elected directly.

- For instance, in France, where the President is elected directly by the people, the President as the head of state will also stand at the helm of government, also assuming the role of head of government. (The President will, however, delegate some of this executive power to the Prime Minister, thereby creating what we call a "two-headed" executive power.)

In parliamentary republics, the head of state is generally elected indirectly, meaning usually by the legislative power, which results in more constrained executive powers on the part of the President of the Republic. Presidential actions in parliamentary system will e.g. require parliamentary authorization for the exercise of such traditionally autonomous executive functions as representation of a state in international relations or do - most of the time – require executive (as in governmental or prime ministerial) authorization or initiative.

- The Hungarian President of the Republic, e.g., can only grant citizenship, when the minister responsible for citizenship affairs countersigns the papers. Thereby the minister assumes political responsibility for any errors, taking away political responsibility from the President.)

**In republics, the powers of the head of state (President of the Republic or President) vary based on the form of government – classified according to the person being the head of government.**

- ✓ *The positions of the head of state and of government may be **united in one person** (President), e.g. in the presidential system of the **United States**, or be **distributed two ways** (like between the President of the Republic and the Prime Minister of **France**), both within the purview of the executive power.*
- ✓ *In **parliamentary forms of government** (developed through the organic, historical, constitutional or democratic transformation of monarchic ones), **powers of the head of state are not always executive powers** – in the traditional sense of the word, i.e. definitive regarding the exercise of executive power carried out by the government. In these forms of government. It is traditionally the **Prime Minister**, who will be the **central figure of the executive power** and who will define the scope of executive action. **Heads of state in these systems will take up more neutral, guardian roles, and will try to balance the operations of the different branches of power.***

### **5.2. Executive Powers in Monarchies**

There are many different types of monarchies that entail similar kinds of executive powers for the head of state. Besides the historical categories of absolute monarchies and constitutional monarchies, nowadays, we mostly talk about parliamentary monarchies and theocratic monarchies or ecclesiocracies, incorporating also a divine element into designating the source of public powers.

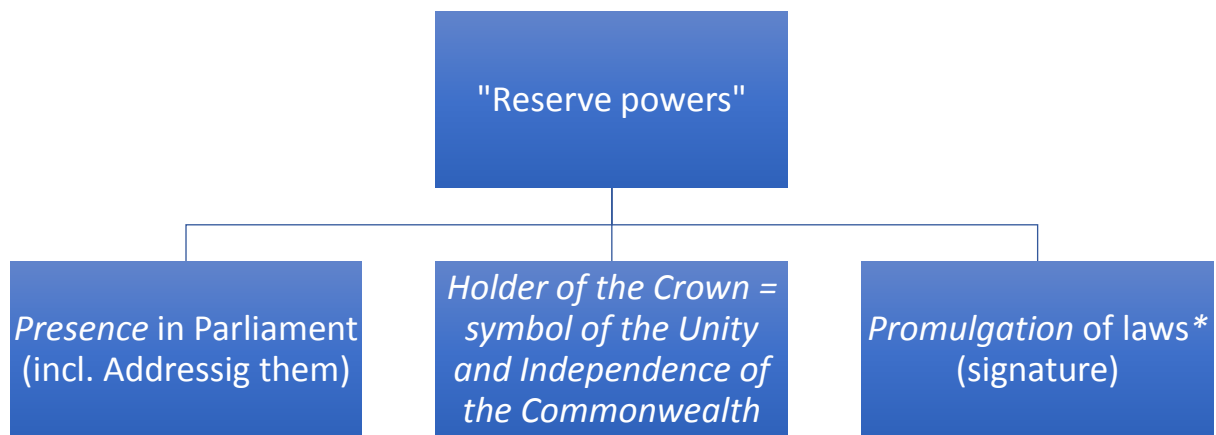
- **Theocratic monarchies** are ***exceptions that make the rule***, which refers the source of the power of the head of state being inherited from the previous monarch. In theocratic monarchies, power is normally said to originate from god, but, e.g., in the case of the Vatican, the **monarch (the Pope) is elected**.
- Not a monarch himself, but the **President of the French Republic**, through his election by the French people, will also simultaneously be **elected to serve as one of the two Co-princes of the Principality of Andorra**, which position he shares with a clergyman, the Spanish Bishop of Urgell. The two monarchs create a diarchic (as opposed to monarchic) form of government.

*It is an interesting fact that a **1278 bilateral treaty** (Paréage of Andorra) established this **model of joint sovereignty**.*

*The first written **constitution of Andorra in 1993** has ratified this system and maintains it ever since. Currently, these positions are held by French President Emmanuel Macron and Bishop Joan-Eric Vives.*

- The archetype of a **constitutional monarchy** was established in the **United Kingdom**, what we nowadays call **parliamentary monarchy**. Key principles regarding sovereignty and the role of the legislative body as the holder of sovereignty have been worked out in the history of the constitutional monarchy. Austin's and Locke's views on the *principle of "king in parliament"* has evolved into *"the king reigns but does not rule"*. Sovereign powers of the head of state have been interpreted here in terms of the **"federal power"** to represent the state in international relations, and a good amount of *reserve powers (also called royal prerogatives)* have been established.

### Royal Prerogatives



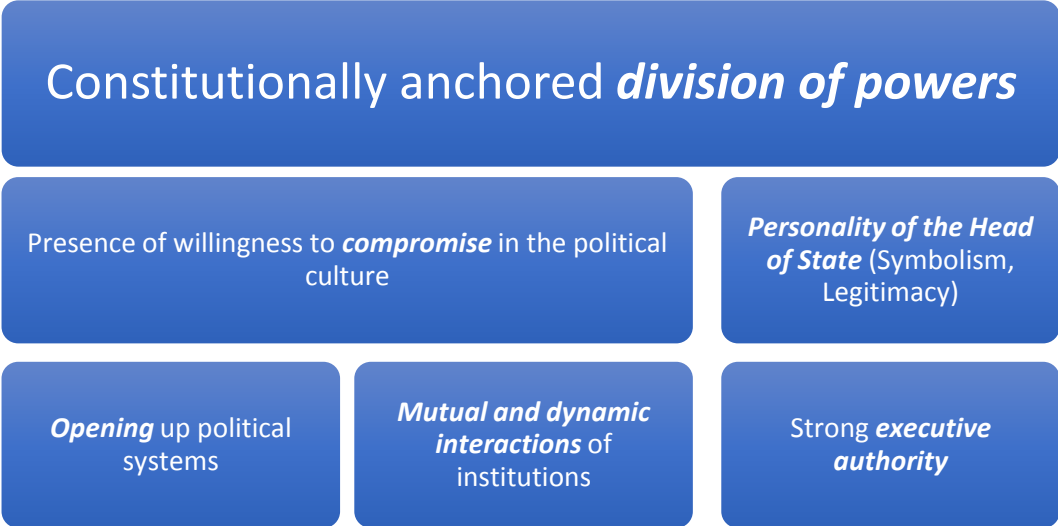
*\*Times change. A few years ago, the Grand Duke of Luxembourg voluntarily terminated his own power to approve legislation in order to avoid political crisis (regarding the promulgation of a controversial abortion law). The **Venice Commission** (below) interpreted this giving up a reserve royal power (prerogative) in the face of ensuing political crisis as a sign "of admirable statesmanship". (See *The Opinion on the Balance of Powers in the Constitution and Legislation of the Principality of Monaco – as Recommended Reading.*)*

**Over time, due to mainly historical reasons (social transformation, organic legal development), later as a result of constitutional, democratic and political processes, monarchic forms of government have developed into republics** and disappeared in certain parts of the world. In other places, limited constitutional or parliamentary, even theocratic monarchies persisted.

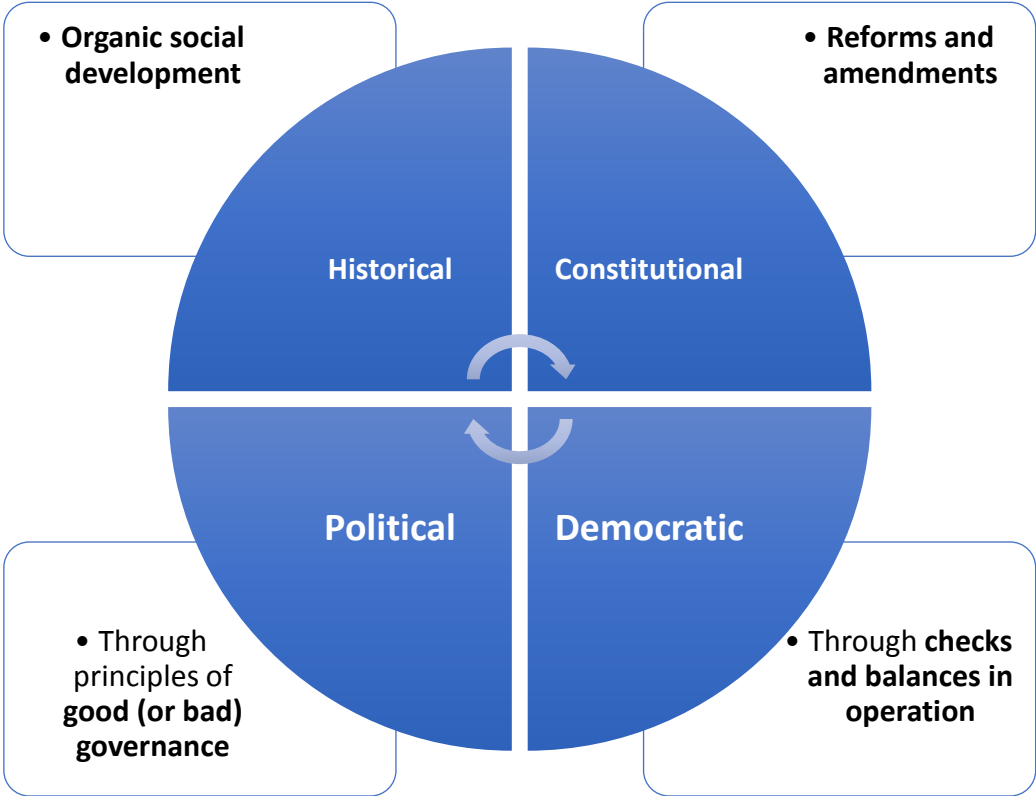
- Assessment of forms of government – in light of constitutional, democratic and political developments - is taken up by the European Commission for Democracy through Law (CDL, otherwise called the Venice Commission). The Venice Commission's mission is to offer *'constitutional assistance'* to the 47 Member States of the Council of Europe, the largest European regional integration, established in 1949. The Commission assesses state laws and constitutional frameworks (settings of power, checks and balances) according to "European standards" and the common constitutional heritage of the Member States.

We could ask the question **what defines a good choice in terms of a form of government?** Considering how forms of government evolved and differentiated over time, even within the most basic classifications of monarchies and republics, we can provide a short list of indicators to answer this question.

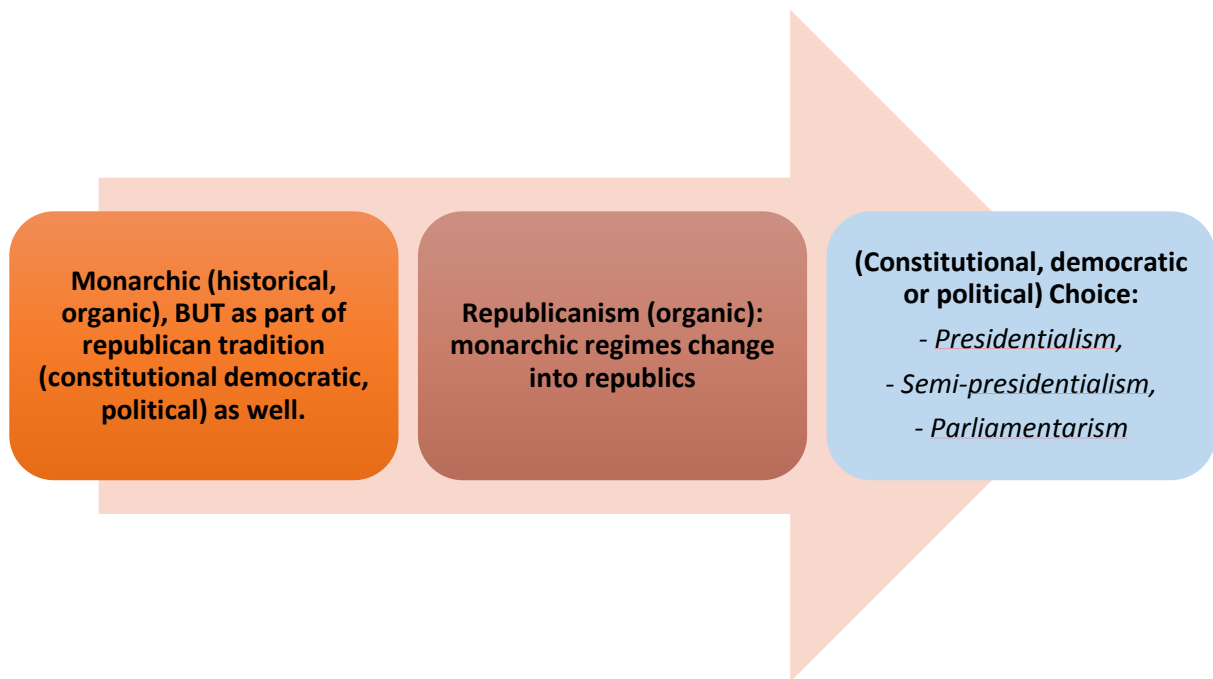
**Indicators for a Good Form of Government**



**The Evolution of Forms of Government**



## Transforming Monarchies into Republics



### 5.3. Executive Powers in Republics

Generally, republican forms of government can be classified into three categories, depending on the internal power structures of the state, which will – in turn – also influence the role and functions of the head of state as the holder of the executive power.

- ✓ Besides the **textbook example of the United States**, *Cyprus* or now *Turkey* is usually classified as a **presidential republican form of government**.
- ✓ In addition to the **French archetype of semi-presidentialism**, *Poland*, *Romania* or *Russia* are understood into the same category, albeit – taking into account political realities beyond the constitutional text – ***Russia can only be qualified as a 'nominal semi-presidential' system.***
- ✓ Among parliamentary republics, we could mention Hungary as a unitary or Germany as a federal state.

**Other approaches** talk about the following classifications in terms of **Parliamentarism**. France is often characterized as a form of **“rationalized Parliamentarism”** (De Gaulle – strong Head of State and of Government), while the above-mentioned Germany and Hungary are described as **“Prime ministerial Presidentialism”** or **“Chancellor Presidentialism”**, which refer to the principle of **chancellor-democracy**, wherein the role of the Prime Minister (Chancellor) as Head of Government increases, as the role of Head of State decreases as the Executive.

## Positions (Roles) and Functions of Republican Heads of State

<i>Role/Position</i>	<i>R+F defined by</i>	<i>Function</i>
<i>Strong</i>	Election conditions	<i>Reactive-proactive (Executive)</i>
<i>Moderate</i>	Oath and Responsibility	<i>Controlling, Supervisory</i>
<i>Weak (Symbolic)</i>	Substitution	<i>Balancing</i>
	Conflict of Interest	
	Immunity and Impeachment	

The exercise and scope/content of executive power in a republican form of government is largely defined by **different power structures** in the different forms. It might also happen that some heads of state will also become heads of government, due to the extensive scope and force of their executive powers.

- In a **parliamentary** form of government, the head of state is usually different from the head of government (weak-symbolic, balancing), and is less influential a political figure.
- In a **semi-presidential** form of government, the head of state (moderate or strong/controlling, supervisory, sometimes even reactive-proactive) shares with the head of government, delegating some of its powers to the other head, the Prime Minister.
- In **presidential** forms of government, a central position at the helm of public power was created, which simplifies the traditional dichotomy of heads of state and government, uniting these positions in one person. The President will become the Executive, being a strong and reactive-proactive political figure.

*The **difference between the internal power structures** of the given form of government are important, as they **may very well influence the ways and means** through which the **political and legal answerability of the executive power**, extending to both presidential and governmental action, will be **realized**.*

(This will be discussed in Reading Item 2)

### **Questions for Self-Check**

1. How does the method of election influence the power of the head of state?
2. What types of royal prerogatives can you recite?
3. What does 'constitutional assistance' by the Venice Commission mean in terms of forms of government?
4. How could you distinguish between the four factors that contribute to the evolution of forms of government? Describe them briefly.
5. What do the following expressions mean? Two-headed executive and rationalized parliamentarism.
6. What is a prime ministerial presidentialism, otherwise called 'chancellor-democracy'?

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