

What is Executive Power?

CCLGT

Introduction

- Symbolic and Substantive Executive Powers of the Head of State in Different Forms of Government
- Executive Power in Different Forms of Government
- Abuse of Powers and Political + Legal Answerability

Forms of Government (Head of State) - Recap

- Based on who is Head of State (HoS)

- *Monarchic*

- *Republican*

- **Source and scope of powers** (divine/symbolic, electoral)

- **Order of succession** (Seniority, Abdication, Elections)

- **Legitimacy** (direct, indirect, legal, social, political)

Contracted Powers?

- In monarchies, the **social contract** in the background of the exercise of public powers **sets forth the boundaries of the sovereign exercise of the powers** of a head of state.
- In case these are **abused** – the people have the right to ‘overthrow’ the sovereign (***right to resist***)

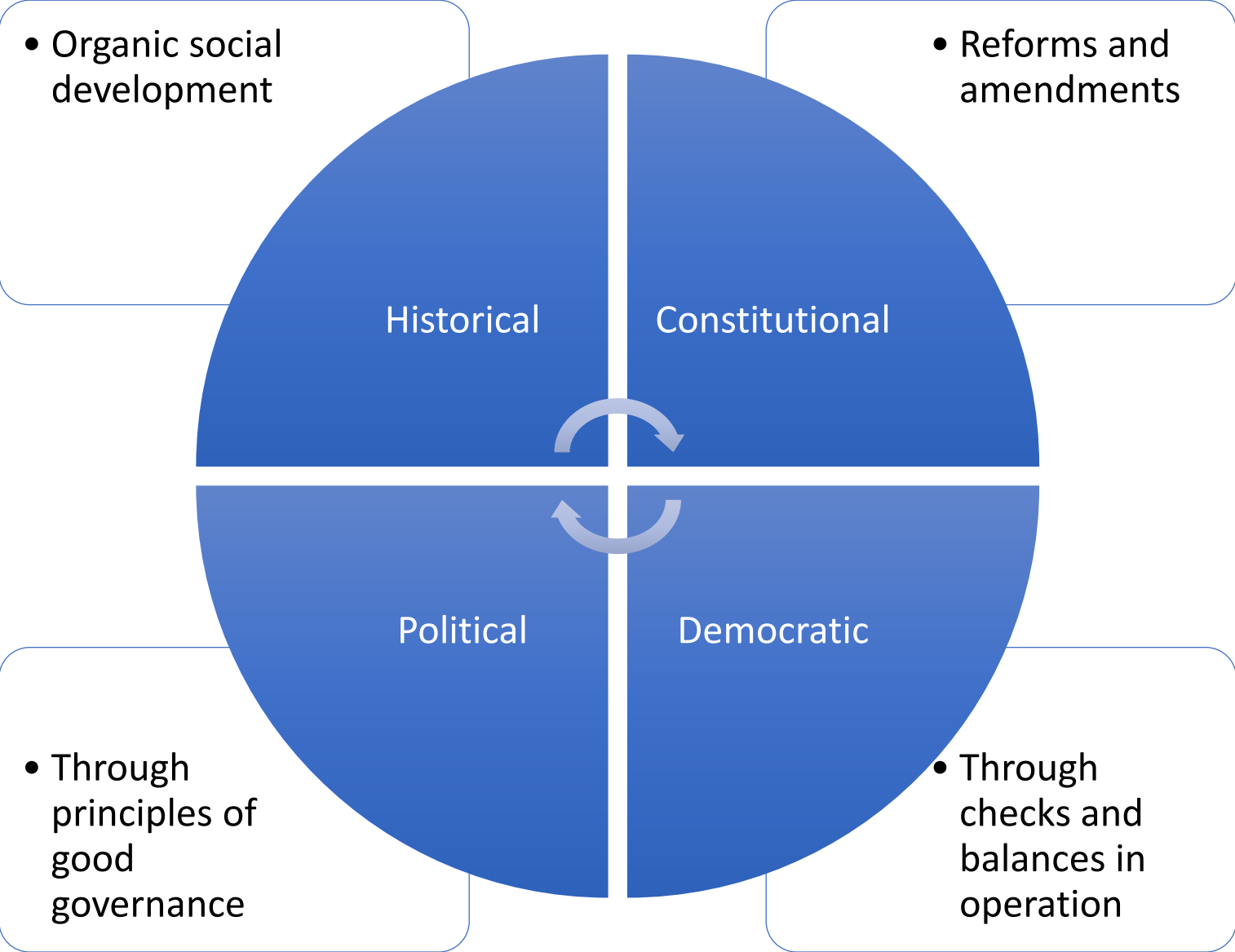
Heads of State in Monarchies

- Powers are ***largely symbolic*** (evolved through historical tradition) – e.g. promulgation of laws, calling session of parliament to order
 - A well-defined scope of “***royal prerogatives***”
- ***No substantive executive force*** in the exercise of these powers (resulting in the fact that *in most republican forms of government these are not of actual substantive value, with key exceptions*)

Mini- and Microstates



Evolution of Forms of Government



Evolution over time

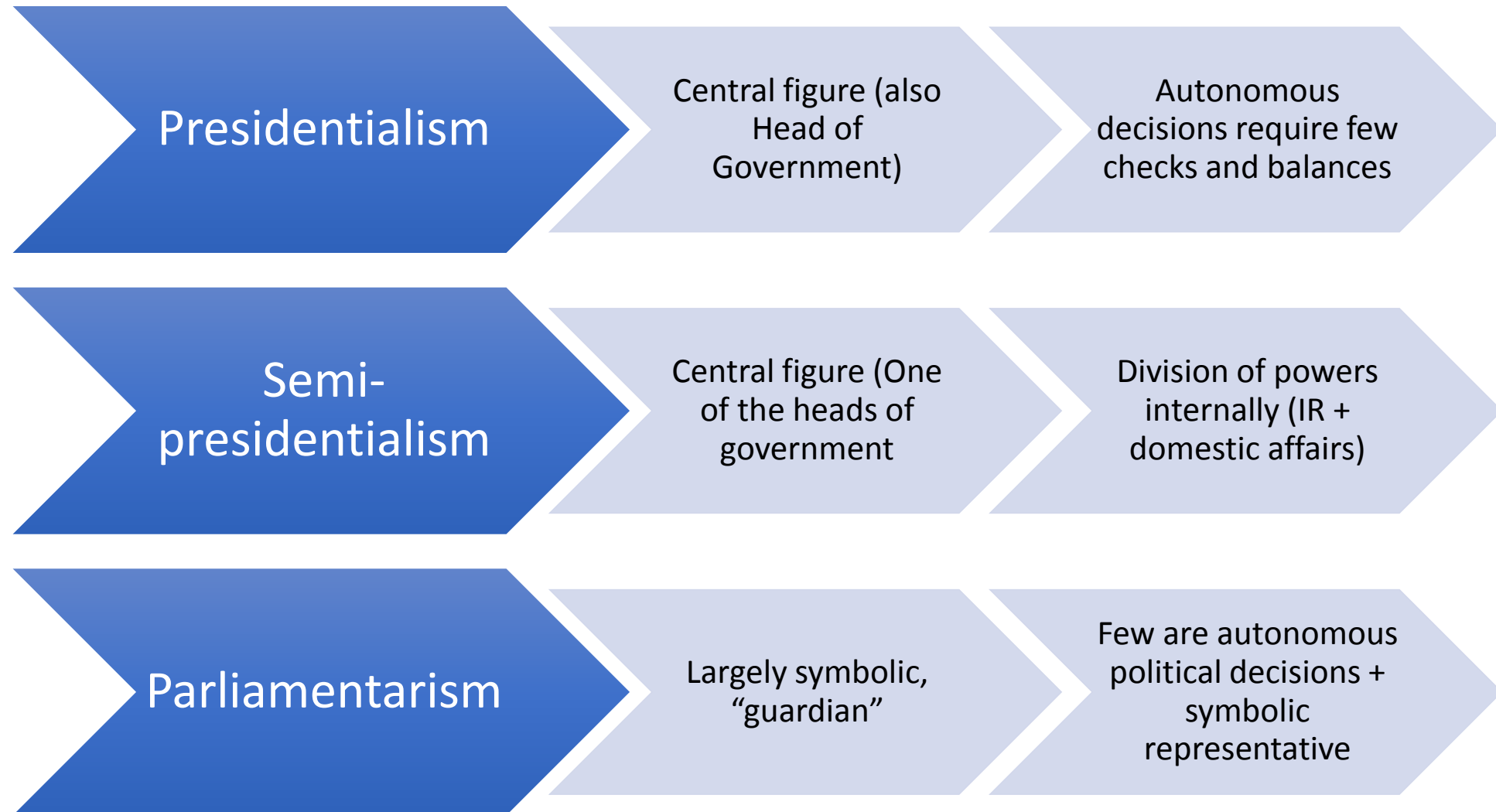
**Monarchic (historical, organic),
BUT as part of republican
tradition (constitutional
democratic, political) as well.**

**Republicanism (organic):
monarchic regimes change into
republics**

**(Constitutional, democratic or
political) Choice:**

- *Presidentialism,*
- *Semi-presidentialism,*
- *Parliamentarism*

Heads of State in Republics



What (Executive?) Powers? - 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 + Responsibility	<i>Controlling, Supervisory</i>
<i>Weak (Symbolic)</i>	Substitution	<i>Balancing</i>
	Conflict of Interest	
	Immunity and Impeachment	

Form of Government – Head of Government (Recap)

- Presidential
 - Semi-presidential
- Parliamentary

- *Defines how branches of power interact in checks and balances (Is there fusion of powers?)*
- *Defines who exercises the executive power? (can be President or PM)*

Two Birds With One Stone

- Based on the **extent of their powers** (see above) *some Heads of State are Heads of Government.*
- The choice of ***Form of Government*** also ***defines*** this.

Executive Powers of the Head of Government

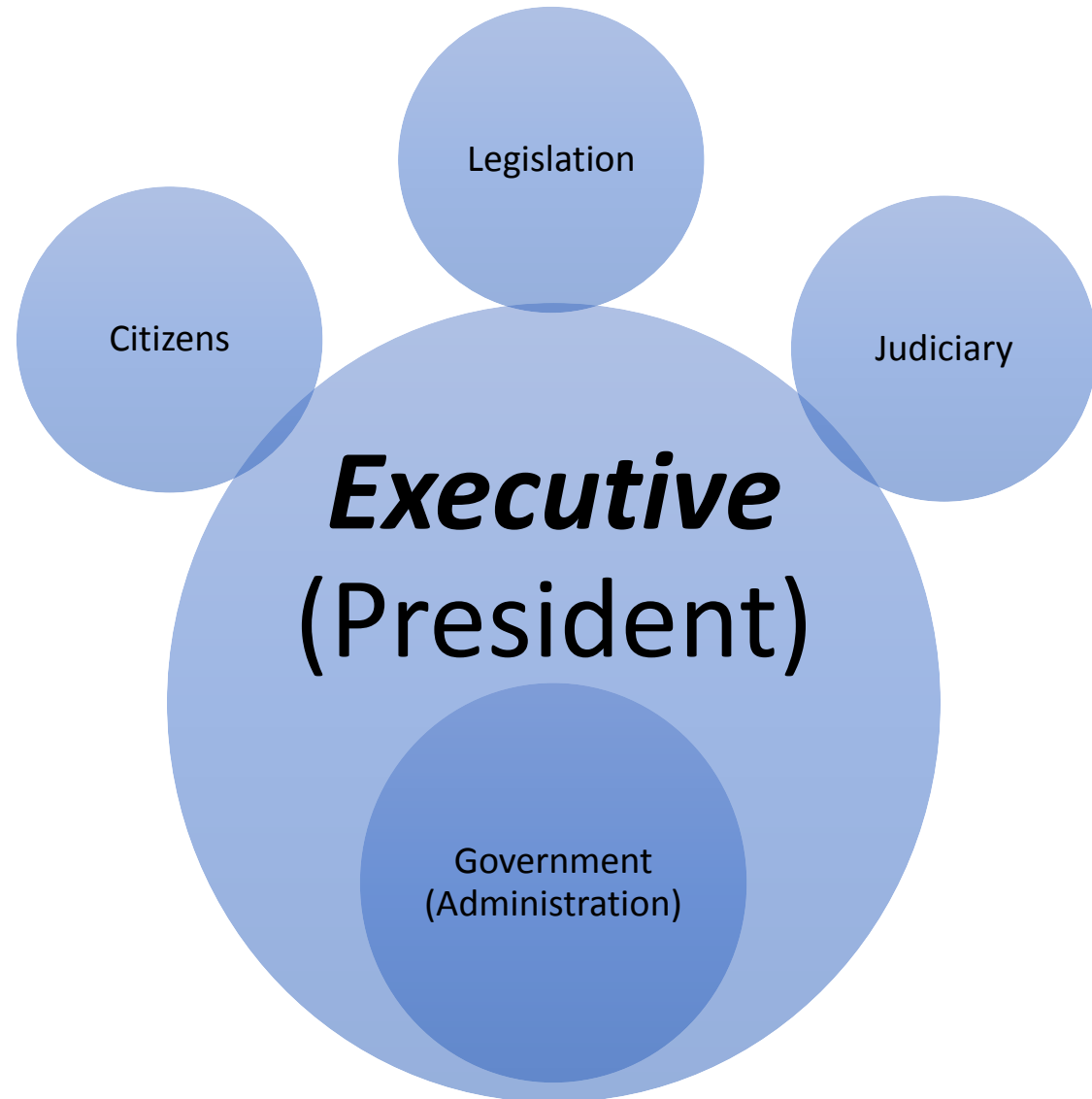
• (Semi-)Presidentialism

- Head of State = Head of Government
 - US: no Prime Minister (VP)
 - FR: President and PM (two-headed executive)
 - directly elected Head of State (broader executive powers)
 - Indirect special system (electors)

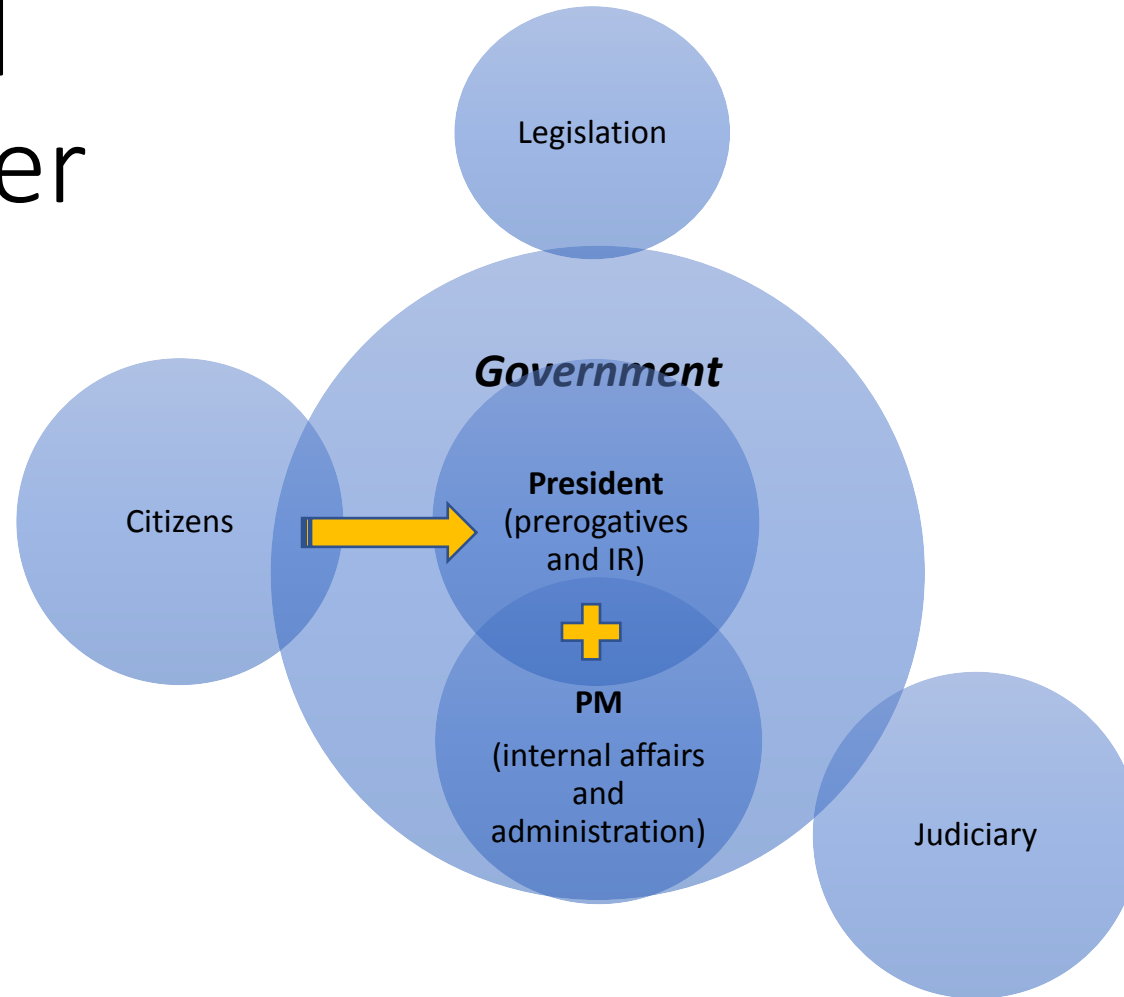
• Parliamentarism

- Head of State different than Head of Government
 - Usu. Indirectly elected (through Parliament) – narrower scope of powers (which are largely symbolic)
 - Central figure is PM as the head of the executive (chancellor-democracy)

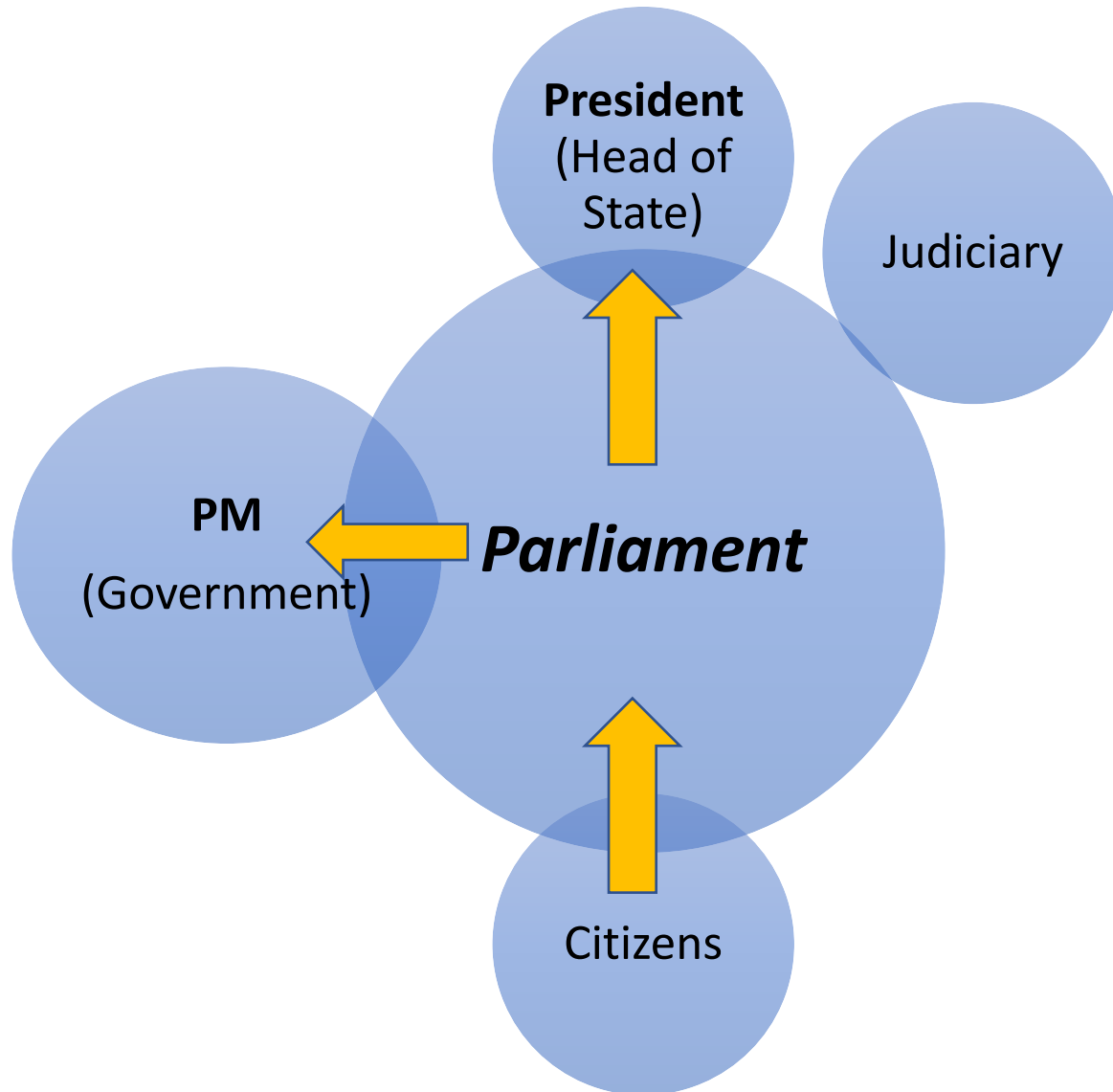
Presidential Executive Power



Semi-Presidential of Executive Power



Parliamentarism and Executive Power



Different Executive Power Structures

- Regarding the position and placement of Executive Power the **internal power structures** of the different Forms of Government **may differ**, which influences the **models of responsibility of the Executive for abuse of power**.
- Important for comparison

Presidential Executive Power - US

- President has:
- Executive privilege (undivided Executive Power)
- Power over Judiciary (appointments (shared with Legislative))
- Limited liability to the Legislative (shared with Judiciary)

Presidential Executive Powers – US

- Sole holder is President – “selects” Vice-President
- Political patronage – selects his administration
- “Commander-in-Chief” (solely exercises control of military)

Semi-Presidential Example - FR

- President (Head of State) is the holder of Executive Power (divides it with PM) along external/internal dimensions / appointment powers (clear internal separation of executive powers) – **Two-Headed Executive (*bicéphale*)**
- PM not Head of State – only Government (Judiciary has influence on them)
- Legislative has a limited influence over President and PM

Semi-Presidential Executive Powers – FR

- President = “commander-in-chief” over nuclear power
 - Prerogatives = ‘ruling over’ overseas territories + sovereign representation of the state in IR
- Prime Minister = “manager” of internal affairs and policies, daily administration

Semi -Presidential Executive Powers – FR

- Exercise of executive power is easier when President and PM are from the *same political world* (along party lines)
- **If NOT: “cohabitation”** – different priorities detrimentally influence the directionality of internal and external policies
- **In cases of cohabitation** the internal checks and balances change and the system becomes similar to Parliamentarism
- If there is **no cohabitation**, then the exercise of power is “in one direction” – most similar to Presidentialism.

Parliamentarism and Executive Power

- **President typically NOT Executive**, except in emergencies (shared “commander-in-chief” powers)
- **SOME influence over Legislative and Judiciary + Executive** (as Government - appointments)
- **PM – Head of Government more influential politically** (center of Government)
- Legislative has (Judiciary might) influence over PM and Government, also over President

Parliamentary Republican Head of State

- Transformed from monarchic tradition - Symbolic powers:
- ***representative of 'constitutional authority'*** – “guardian” over the democratic operation of the state
- Parliamentarism: *holder of sovereignty* = people (parliament)
- Result: e.g. ***parliamentary authorization required for Head of State to act (in an executive function) in IR*** (as representative of ‘constitutional authority’)

Parliamentary Republican Heads of State – Executive-type Powers

- In parliamentary structures, presidential (Head of State) *powers are constrained ('executive' actions require authorization by Government = countersignature)*
- BUT – **special (executive-type) powers include the dissolution of the Legislative** – in cases *where political crisis might ensue* (e.g. inability to adopt the budget) – *“guardian role”*
- **Autonomous political decisions** to give or deny decorations

Checks and Balances – Abuse of Executive Powers

- **(Semi-)Presidentialism**

- Limited legal and political responsibility of Head of State and Government

- Impeachment

- **Parliamentarism**

- Limited legal and political responsibility of Head of State and Government

- Impeachment +

- "lack of confidence" in the administration (for government abuse)

Checks and Balances - Tools

- **Regarding the Office:**

- Term (incl. possible re-election)
- Political involvement of President (desirable or not?)

- **Regarding the Powers:**

- Countersignature
- Extent of autonomous political decisions
- Extent of interactions with Legislative and Judiciary
- Responsibility for Abuse to Whom?

Checks and Balances - Origins

**UK – tradition (parliamentary
sovereignty, legislative
privilege)**

**US – presidential
system (clear
separation and
distribution of
powers)**

**Europe – bad
political and social
experience**

Checks and Balances – Presidentialism (US)

- Congress (both houses) initiate – both decide by 2/3-s – then Judiciary intervenes as the President of the Supreme Court will chair the joint session of Congress regarding the impeachment of the Executive.
- *“The President, Vice President [...] shall be removed from office **on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.**”*

Checks and Balances – Semi-Presidentialism

- President: impeachment only after term of office ends (otherwise immune)
- Removal from office only possible during term in case of a **“breach of his duties patently incompatible with his [...] office”** declared by Parliament sitting as the High Court (presided by the Speaker of the lower house)
- **“Members of the Government shall be criminally liable for acts performed [in office] classified as serious crimes or other major offences.”**

Checks and Balances – Semi-Presidentialism

- President – exercises appointment powers over the PM, who can tender in his resignation, whereby a new PM is reappointed.
- *Checks and Balances preserve the internal integrity of Executive Power and ensure swift changes in key positions. (Uninterrupted exercise)*

Checks and Balances - Parliamentarism

- **Executive Powers normally rests with the PM and Government** – their answerability is realized through

- *Parliamentary procedure*

- **Specialized bodies**

- **Presidential exercise of power** (largely symbolic, with few key exceptions) is judged by the Legislative (and the Judiciary)

- *After term of office ends*

- **During office:** through special jurisdictions

Checks and Balances – Parliament over Government (Executive Power)

- **In Parliamentary Procedure**

- Committees of Inquiry and Investigation
- Plenary session (questions, reports, interpellation)
- Plenary “Motion of no-confidence” OR Confidence Vote

- **Through Specialized Bodies**

- To control Executive Spending (e.g. Courts of Auditors)
- To control Executive Overreach in Administration (e.g. Ombudsmen)

Parliamentary Procedure

- **Committee and Plenary Control**

- Oral and written questions
- Hearings before appointments
- Reporting obligations
- Investigating Executive Overreach in specific cases

Parliamentary Procedure - Confidence

- **Motion of No-Confidence**

- ***Dissatisfied Legislative*** plenary session (or part of it) initiates due to “lack of trust” in PM and Government (e.g. Executive Overreach or Incompetence)
- If voted on with special majority = Term of PM and Government terminates

- **Confidence Vote**

- ***Confident Executive*** initiates a vote on a Government proposal (e.g. bill, law)
- If voted on positively – it enforces the trust of Legislative in Executive (they remain in office)

Parliament Over Executive (with Judiciary)

- For the commission of crimes during office
- Violating the constitution
- Legislative initiates – Special judicial jurisdiction decides (normally Constitutional Court or jurisdiction) = impeachment

Questions for Self-Check

1. How would you describe the meaning and scope of royal prerogatives?
2. Based on Role, how many models of Heads of State we normally distinguish?
3. Are all Heads of State also Heads of Government? Why?
4. What does it mean that in the US Presidential system, the Executive Privilege is undivided?
5. What is understood under the concepts of “two-headed executive” and “cohabitation”?

Questions for Self-Check

6. What tools can be applied to build Checks and Balances against the abuse of Executive Power?
7. Typically what sort of Executive conduct may give rise to impeachment?
8. In parliamentary systems what sort of parliamentary procedures exist to realize the control of the Executive?
9. In parliamentary systems what sort of specialized bodies exist to control Executive overreach?
10. What is a motion of no-confidence? How it is different from a confidence vote?

Resources

- *Topics 'Executive' ([via Consitute Project](#)) – all relevant subfields (examples)*

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