4 System of government

Constitutions create a framework for government that enables a country's stability, inclusiveness, and co-operation among branches of power. Chapter 4 draws some practical lessons for promoting those values by providing an overview of presidential, parliamentary, and semi-presidential systems and benchmarking the existing institutional framework in selected OECD constitutional democracies. In particular, it describes the main types of governance arrangements between the executive and legislative powers. It explores how the executive and legislature interact, the patterns of separation of powers between the two and which are the most likely outcomes of the political system resulting from those interactions, with mentions of other important aspects such as the electoral and party systems. It also highlights elements of direct citizen participation.

Key issues

The system of government refers to the governance arrangements that allocate powers between the executive and legislative.

- The quest for the most adequate system of government involves an assessment of the relative merits of each system so as to reach the overarching goals of a particular society.
- It is important to assess which patterns of political decision making would better serve the expectations of the higher number of citizens, while protecting minorities' interests. Social satisfaction with policy outcomes is usually higher the closer the outcome is to the social majorities' preferences.
- The design of constitutional mechanisms has an important impact on the interaction between the branches of power and within individual branches, and represents an important set of choices to consider (e.g. to avoid potentially negative consequences of either systems, such as policy gridlocks or authoritarian tendencies).
- The actual functioning and interaction of these mechanisms depend on national context (and the functioning of other branches such as the judiciary and other mechanisms such as the electoral system). When designing system of government mechanisms, special attention must be paid to countering political fragmentation (in parliamentary systems), ensuring inter-branch co-operation and managing cohabitation (in presidential systems).
- In establishing the electoral system, the value of proportionality would need to be considered in balance with that of majoritarianism. While an inclusive electoral system with low entry thresholds can benefit a culture of co-operative government, often leading to coalition governments, majoritarian electoral systems can lead to the strongest political parties catalysing more political sensitivities into a single option. The greater the representativeness, the more difficult it might be to form stable governments.
- Three main patterns or types of government have emerged historically; these are covered in this chapter:
  - *Parliamentarism* – The single electoral origin of the legislature and the government can make it possible for a parliamentary regime with inclusive electoral rules to facilitate the coexistence of multipartyism with fair representation, socially efficient outcomes and relatively effective government. Parliamentary systems could also help maximise inclusiveness and give rise to coalition governments that are representative of several political choices. However, this could at the same time generate instability and deadlocks due to limited majorities. Parliamentary systems are inherently flexible, as they enable removal of the head of government when the majority of parliament no longer supports the government's approach. However, these mechanisms may also weaken the separation of powers between the executive and the legislative.
  - *Presidentialism* – Presidential systems provides the electorate with a direct mandate that empowers citizens through greater choice**.** They can select both a head of state and members of the legislature, and reward well-performing politicians through re-election. Nonetheless, presidents in this type of system are often elected by slim majorities (a characteristic that hinges on whether there exist runoffs or party systems), and still acquire the power to form full cabinets regardless of the share of seats obtained in parliament or of the policy position of the presidential party in parliament. Presidents do not depend on the legislature, as there is a stronger separation of powers – a situation that can generate a stable government but also political deadlocks when the government is unable to obtain the

support of the legislature for its policy programme. There are several mechanisms for resolving these deadlocks.

- *Semi-presidentialism (or lessened presidentialism)* – This system's distribution of powers represents greater integration of the executive and the legislature than purely presidential systems. It approximates a presidential system that has characteristics of multiparty parliamentary regimes. As such it can, in the best-case scenarios, combine the strengths of the two systems. It can also generate a particular challenge: due to the dual legitimacy of the president and the prime minister, the authority of both may conflict.

Introduction

This chapter presents an overview of the main types of governance arrangements between the executive and legislative powers in some OECD constitutional democracies. It explores how the executive and legislative interact, the patterns of separation of powers between the two, and which are the most likely outcomes of the political system resulting from those interactions. The chapter primarily focuses on the cases of Australia, Colombia, Costa Rica, Finland, Germany, Ireland, New Zealand, Portugal, Spain and Switzerland, with several references to other countries that can support the analysis.

Generally, while there is no consensus on the definition of each system, three patterns or types of government have historically emerged: parliamentary, presidential, and semi-presidential. The interaction patterns between the legislative and executive in any country result from specific historical, geographical, and cultural national contexts.

Choosing one type of government over another in democratic constitution making means deciding which patterns of political decision making would better serve the expectations of the higher number of citizens. Therefore, a policy outcome-oriented approach could help in making the choice. Social satisfaction with policy outcomes is higher the closer the outcome is to the social majorities' preferences (or, as some analysts put it, to an abstract "median voter preference"). Regulation of the elections (i.e. popular access to institutions), the party system, and regulation of institutional interactions following elections (i.e. type of government) are also important for making policy outcomes closer to most of the voters' preferences. They also have a strong influence over how each system of government actually works in practice. Those circumstances often depend upon the party structures in place (most notably whether there are many or few), but also whether the parties are organised around ideological positions or are vehicles for ambitious individuals, and whether those structures are influenced by the electoral rules. In addition to inclusiveness, electoral systems need to ensure open competition for power, space for minority groups to make their voices heard, and a degree of government accountability and stability.

The chapter examines government designs in constitutional democracies by looking into presidential, parliamentary and semi-presidential systems. It will also highlight elements of direct citizen participation through direct democracy mechanisms, and introduce some considerations regarding legislative power. The general thrust of the chapter is to draw some practical lessons in government design that combine stability, inclusiveness, and co-operation among branches of government to produce better policy outcomes. In Colombia for example, government design is aimed "*to work harmoniously for the realisation of the nation's goals*" (art. 113 of the constitution).

Overview of issues

The traditional distinction between parliamentarism and presidentialism still influences constitutional designs in practice around the world. The key difference between the two systems hinges on whether the government is collectively dependent upon the legislature for staying in power (Cheibub, Elkins and Ginsburg, 2013[1]). If a government can be removed by the legislature for political reasons (i.e. not for criminal misconduct), the system can be considered largely parliamentarian. If not, then it is considered presidential (as long as the head of state is popularly elected). Another practical distinction between the presidential and parliamentary system is that in the presidential one, the president acts as both head of the executive and head of state, whereas in the parliamentary system the government acts as executive and president or monarch as head of state. A number of countries have adopted mixed forms of government design (most importantly, semi-presidentialism).

Governments in parliamentary systems tend to follow closely and control the legislative agenda through legislative initiatives in view of potential risks of removal in case of losing an important vote in parliament (e.g. on a budget law). In parliamentary systems, the legislative agenda is normally set by the executive: if the latter loses control of the agenda, it would likely mean that the executive is no longer supported by the majority in parliament, which is likely to lead to a vote of no confidence. In contrast, the risk of removal from power in the middle of their term is lower for governments in presidential systems; hence, there is greater acceptance of the agenda-setting powers of the legislature. Veto power, i.e. the mechanism that allows presidents to react to proposals initiated in the legislature, is typical of presidential constitutions, although that power can be relatively easily overridden by parliament, as happens in Colombia, Costa Rica, Finland and Portugal. Where presidential veto power is difficult to override, it could lead to political impasses that may be ultimately conducive to political unrest and instability.

A further distinction among existing systems is the degree and scope of specific powers assigned to the executive. A distinction can be made between tasks traditionally under the authority of the legislature but with executive involvement, and powers that are often reserved for the executive – such as declaring war or a state of emergency, or granting pardons. Within the first category, executive powers might include the ability to veto bills approved by parliament, enact legislation by decree, take the initiative in some policy matters, initiate referendums or plebiscites, and exercise significant control over the budget.

There are a variety of approaches to maintaining the balance of authority between the executive and the legislature. In addition to removal from office, other attributes can distinguish executive-legislative relations in presidential and parliamentary constitutions (Ginsburg, Cheibub and Elkins, 2013[2]):

1. *Veto power* – Executive veto powers originated with the US Constitution and are a quintessential characteristic of presidential systems. Many constitutions have some sort of presidential or royal approval of legislation and many have a veto, even if it can be overridden or involves only a delay in adopting legislation. Many constitutions allow the head of state (the monarch, the governor-general or the president) to send a bill back for reconsideration by the legislature; often a super majority is required to override the veto; and occasionally the head of state can submit the matter to a public referendum if he remains unhappy with the law, or to a constitutional court to assess the constitutionality of the bill. In Colombia, Costa Rica, Finland and Portugal, parliaments may override presidential vetoes except if the objection concerns unconstitutionality, in which case the constitutional court shall intervene (Colombia and Portugal). The President of Ireland may not veto bills passed by the *Oireachtas* (parliament) but may, after consultation with the Council of State, refer them to the Supreme Court for a ruling on whether they comply with the constitution. The French president does not have the power to veto legislation; they are required to promulgate acts of parliament within fifteen days of their final passage. Yet they can ask parliament to reopen the debate on the act or any part thereof, or forward it to the Constitutional Council for its assessment of unconstitutionality. More details on veto powers will be given below under the section on presidential regimes.

2. *Executive decree* – Executive decree power formerly could be found in presidential and monarchic systems though not in parliamentary constitutions, where executive decrees now do exist but need to be ratified by parliaments and are known as "decrees with the force of laws". The power to legislate by decree can derive from the legislature (where the legislature can control the authority to use this power) or from the constitution directly (i.e. either in exceptional circumstances [such as in state emergencies or when legislature is not in session] or on particular matters) (Böckenförde, Hedling and Wahiu, 2011[3]). The ability to enact norms by the government exists in France (*engagement de responsabilité* in art. 38 of the constitution), but it is granted by the parliament to the government on an *ad hoc* basis.
3. *Legislative initiative* **–** Legislative initiative of the executive has been traditionally part of parliamentary governments, where the executive is granted the power to introduce important bills and therefore shape the legislative agenda. Statutes often delegate to the executive branch the power to create binding norms through such instruments as decrees, secondary legislation or administrative rules. Several constitutions go beyond authorising the use of these instruments (France, arts. 37-38). Given that gaps needing addressing can occur in any statute, constitutions usually do not specify the topics for which decrees can be used. In many parliamentary constitutions, this power extends to include the possibilities of forcing the end of legislative debates, of imposing a yes/no vote, and of tying the outcome of a vote to the survival of the government. The presidential constitutions in turn have traditionally contained at least one of four areas of legislative initiative: ordinary laws, the budget, referendum, and constitutional amendment. In some cases, such as in Brazil, the president holds the *exclusive* power to initiate the budget bill. Constitutions tend to leave the boundary between permissible delegation of the power to fill in details and impermissible lawmaking by the executive alone to be determined by courts through administrative law and constitutional doctrine. For example, the constitution of France allows the government to issue decree laws that would otherwise require legislation, but such laws must be ratified by the legislature relatively quickly (art. 38).
4. *Legislative oversight* – Because of the existence of the confidence vote, it could be assumed that parliamentary constitutions would contain fewer provisions for legislative oversight, such as the requirement that the government reports to the legislature periodically or that the legislature be allowed to investigate the government. Presidential constitutions tend to contain such oversight provisions more frequently than do either parliamentary or semi-presidential constitutions, although the difference is usually small. The three systems contain provisions on parliaments being able to inquire, question and interpellate the executive. In some constitutions (Colombia, France, Costa Rica) impeachment can be used for removal of the president, based on "indignity causes" but not on lack of political confidence.
5. *Cabinet appointment* – Another characteristic of presidential systems is the power to appoint the cabinet. Usually appointments are left to the president's discretion and there seems to be little tradition of collective responsibility of the cabinet in presidential systems. Nevertheless, in a number of countries, executives in parliamentary and semi-presidential constitutions also have this power, at least in the post-1945 era. The power is in practice an executive prerogative common to nearly all constitutions. In presidential systems, presidents generally wield unilateral control of the appointment and removal of cabinet members. Such power is left to the assembly in parliamentary systems that entrust the prime minister to form his/her cabinet, and thus the latter will hold collective political responsibility.
6. Some constitutions recognise a few "prerogative*"* powers of the executive (United States, art. II §2, cl. 2), including the power to pardon (the most common, sometimes accompanied by procedural requirements such as consultation with a pardon council [Greece, art. 47]) and powers in international affairs, including the power to negotiate treaties (the latter is sometimes also within the executive's prerogative power). The existence of prerogative powers can give rise to a conflict between the legislature and the executive, with the former contending that a given executive action

is secondary legislation not authorised by statute, and the latter contending that the action is an exercise of one of the prerogative powers.

Empirical research shows that in cases of dual legitimacy (i.e. separate popular elections of the president and parliament), electoral timing and a distribution of powers able to produce good governance outcomes provide presidents with an incentive to co-operate with parliament. This often implies greater integration between president and parliament, in which the latter also can have powers of legislative initiative and a say in cabinet formation. This has generically been labelled as "parliamentarising presidentialism" (Colomer and Negretto, 2005[4]). These tendencies may be observed in the constitutions of Colombia and Costa Rica, which while remaining presidential systems have enhanced parliamentary decision-making power. But generating those incentives to co-operate is not automatic, as other factors come into play such as the political culture, political fragmentation and the electoral system. The coincidence of mandatory (United States, Costa Rica) or contingent (France) elections is also a relevant explanatory factor. Another factor impacting the likelihood of co-operation among branches is the existence (or not) of a tie-breaking procedure in case of a deadlock between the two powers. In some cases, the possibility of consulting the citizenship is provided for. In others, simultaneous dissolution of the parliament and calling for a presidential election is envisioned (known as *muerte cruzada*: see articles 130 and 148 of the 2008 Ecuadorean Constitution).

Presidential systems

The presidential system of government implies that the executive and legislative branches are separate. It can also imply that their establishment and the time they remain in power are separate. The president normally serves as both the head of state and the head of government, and is elected by popular vote. Usually the term of office of the president is fixed, with no political accountability to the legislature (or dependence on the support of the political parties), including the cabinet whose authority derives exclusively from the president. The president also often has a certain degree of political impact in the lawmaking process. At the same time, degrees of presidential power and accountabilities can vary depending on the constitutional design, thus resulting in different models of presidential systems.

With much caution, the most common impacts of presidential systems on governance could be summarised as follows (Cheibub, 2007[5]):

- Governments are likely not to be supported by a majority of the legislature since generally there are no guarantees in the system that such a majority can exist, except by using electoral calendars allowing for coattail effects seeking government trifectas in presidential bicameral systems.[1]
- Gridlocks between the executive and the legislature could arise and can lead to conflict between the two powers, unless the constitution provides for designs that compel them to co-operate (for instance through easy presidential veto override and parliamentary control mechanisms such as questions, interpellations and impeachment).
- Coalitions are relatively rare as there are limited incentives in the system for individual politicians and their political parties to co-operate with one another and the government. However, the more *parliamentarised* a presidential regime, the likelier are the coalitions.
- Decision making is normally considered to be decentralised – that is, to be such that the president can respond to proposals originated in the legislature, which are in turn organised in such a way as to allow for political representatives to pursue individualistic rather than partisan strategies. Consequently, the government's ability to influence and implement policy can be reduced.[2]

Several areas are deemed important for the effectiveness of the presidential regime (in addition to the notion of "*parliamentarising the presidency*", as described earlier) (Cheibub, 2007[5]):

- The legislative and agenda powers of the presidency
- Electoral rules for legislative and presidential elections
- Constitutional term limits on presidential re-election
- Strong forms of presidentialism
- Presidentialism and political fragmentation
- Adoption of legislation.

These are discussed below.

a) Legislative and agenda powers of the presidency

Any presidential constitution gives some legislative powers to the presidency. The most important powers include:

- *Veto power* – After the legislature passes a bill, many constitutions enable the president to influence or halt it (e.g. Colombia, Portugal). This power stems from the provision that for it to become law, any legislative bill must be signed by the president. The president in turn may object to the bill and hence refuse to sign it. When the president can only refuse the bill in its entirety, they have *complete* or *total veto power*. When the president may object only to portions of the bill, the president has *partial veto power.* Presidents with partial veto power are often not presented with an all-or-nothing choice, but they may have more ways to influence legislation and hence can exercise greater power. When the president vetoes a bill (either partially or completely), the bill is often sent back to the legislature, which is then given the opportunity to reaffirm its will and override the presidential veto. Another distinction can be made with regard to the type of presidential intervention the constitution allows: the president may reject a bill strictly for policy reasons, or challenge the constitutionality of a bill. The first is considered a policy veto, the second a veto on the constitutionality of a bill (e.g. the latter in Colombia and Portugal). Thus, a constitution can define the extent veto powers can also concentrate or limit power. Policy vetoes are more commonly embedded in presidential and semi-presidential systems, where the electorate rather than the legislature elects the president directly. The legislative majority required for veto overriding is usually larger than the majority required for the approval of the bill in the first place. Most presidential constitutions (including the US Constitution and most of the Latin American presidential Constitutions) require a two-thirds majority of the legislature to override a presidential veto. If such a majority exists, then the president is required to sign the bill and it becomes law. Strong presidential veto powers may lead to frequent political gridlocks, whereas if overriding the presidential veto in parliament requires less qualified majorities, the system can work more smoothly (e.g. in Colombia, Costa Rica, Finland and Portugal). The same appears to be the case in systems where the president has no veto or a very weak (delay) veto power (e.g. France).

  The use of vetoes in multiparty presidential systems suggests that the nature of executive-legislative bargaining can be fundamentally altered when multiple parties compose the legislature and when presidential veto prerogatives are extended to incorporate partial (line-item) vetoes. The level of significance of legislation is relevant for predicting vetoes, with landmark legislation being more likely to be vetoed regardless of levels of support for the president in congress. In addition, partial vetoes often can become the preferred alternative when confronting legislation initiated by the president (Palanza and Sin, 2013[6]).

- *Decree power* – This refers to the executive's ability to issue new laws, which exists in a variety of constitutions, both presidential and parliamentary. Decree power varies widely. First, it varies with respect to the areas where it may be issued. Some constitutions only allow for presidential "executive orders", that is administrative acts pertaining to the implementation of laws already approved by the legislature. Others allow for presidential decrees under special circumstances that can be rather broad (e.g. "relevance", "urgency", "economic or financial matters when so required by the national interest", and so on). Second, presidential decree power varies with respect to its time frame. Typically, presidential decrees enter into force as soon as they are issued. In a few cases, some time must elapse before they enter into force, during which the legislature is given the opportunity to reject them. Finally, in some cases executive decrees automatically become permanent laws, whereas in other cases they expire if not approved by the legislature within a given time frame.
- *Exclusive power to introduce legislation* – Usually the president is accorded certain legislative powers, although in some systems (such as in the United States) the constitution allows for legislation to be initiated only from within the congress. In most Latin American presidential democracies, the role of the assembly in initiating legislation is restricted in some areas, such as in legislation pertaining to the size of the armed forces, the creation of public jobs, the structure of public administration and, most importantly, the budget. Normally the assembly can amend these bills, even if constrained by provisions stipulating, for example, that it can only propose amendments that do not increase the deficit or the overall level of spending. And in a bargaining situation, the party that sets the agenda has a large advantage over the other party. Increasingly, in presidential constitutions there is no exclusivity in legislative initiative, as in Colombia. In Costa Rica and Portugal there is a plurality of constitutional bodies that can propose legislation, including through some form of popular initiative.
- *Urgency requests* – In many presidential constitutions, presidents can declare a bill "urgent". When they do, the assembly is required to vote on the bill in a relatively short time (e.g. in 30 or 45 days). This is another constitutional provision that can grant the president the power to significantly influence the legislative agenda. In France, a fast track procedure of legislation is frequently used. Instead of two readings by each house of parliament, only one takes place.
- *Declaring a state of emergency* – The possibility, scope and mechanisms to declare a state of emergency is a crucial feature defining the relation between the executive and other institutions. Constitutions often strike a difficult balance between providing the executive with a certain degree of discretion in taking extraordinary measures to meet a range of critical circumstances that cannot be comprehensively predicted at the time of drafting (such as invasion, natural catastrophe, terrorism or a public health emergency) and empowering other institutions to evaluate or ultimately validate the declaration and its associated measures. The power to declare a state of emergency can entail a concentration of power, and has occasionally given rise to abuses, particularly in post-conflict societies.
- *Impeachment* enables removal of the head of the executive on the grounds of their legal misbehaviour, in contrast to the political control exercised by a vote of no confidence. Two key aspects should be considered: the type of offence that can give rise to an impeachment procedure, which is sometimes limited to severe offences such as treason; and other branches' involvement in that procedure.

b) Electoral rules for legislative and presidential elections

Election rules for the presidency and the parliament affect the way in which these institutions will interact.

- *Parliamentary elections* – Presidential systems could generate stronger policy outcomes if, in principle, the parliamentary fragmentation is low. For this reason, presidential political systems have traditionally tended to limit the number of parties acceding to parliament. This effect is generally achieved by setting up a restrictive electoral system, which could be developed through different ways: a) single-member electoral districts (they can reduce the proportionality of the system and thus the accession to parliament is limited), b) high electoral thresholds to attain seats in parliament; c) legal restrictions on building up new political parties. At the same time, accumulated evidence points to challenges in presidential systems when the number of political parties is relatively low. Importantly there is evidence that when the constitutions of countries like Colombia (after 1991) and Costa Rica (after 1949) eased the access of more layers of the population to parliamentary representation and thus increased parliamentary plurality, that made the systems more stable than before. In these cases, several experts pointed out that the proportional vote for the parliamentary lower chamber could make parliament more inclusive and produce better governance and better policy outcomes (Colomer and Negretto, 2005[4]). Brazil offers a counter-example, with a very pluralist congress.
- There is also evidence that the efficiency of a presidential system can increase with a strong president and a unicameral assembly (Reilly, 2003[7]). Yet there may be costs in terms of representation, and it can become difficult for individual legislators to "represent" their constituencies' interests inside the assembly. Thus, the legislative success of presidents may stem from a restriction on legislators' ability to represent their constituents. As Moe and Caldwell (1994[8]) put it, "when nations choose a presidential or parliamentary form, they are choosing a whole system whose various properties arise endogenously – whether they like it or not – out of the political dynamics that their adopted form sets in motion…Presidential and parliamentary systems come with their own baggage. They are package deals".

In sum, there appear to be two alternatives for enhancing "governability" in presidential systems:

- Limiting representation by restraining the variety of views that can enter the political process: restrictive electoral and party legislation can reduce the number of running parties and increase the likelihood that governments would obtain majorities in the legislature, thus increasing governability and stability.
- Adopting a more inclusive electoral and political party legislation (see Box 4.1). Doing so allows for a larger variety and plurality in the views that can enter the political process, but limits the role that individual representatives have in deliberation and decision making. This alternative requires strengthening the role of the political parties in the policy-making process, such as in the United Kingdom or Spain.

In both approaches, there is a trade-off between "governability" and "representation." Both systems seem to provide similar chances of survival for democracies (Cheibub, 2007[5]). While one of them gives varied political views a further chance of being heard by allowing them to compete more easily in the electoral arena, the other can facilitate agreements and stable majorities in the legislature.

There are several important aspects regarding the way presidents are elected. Two of them seem particularly relevant for governability:

- *Presidential elections* – One of the advantages of presidentialism is that it provides a nationwide constituency for the president's office. This may be advantageous in situations of high political volatility and social heterogeneity, since the presidency may operate as a centripetal force toward unity and integration. But for this to occur, the rules for electing the president would need to be carefully drafted so that they provide an incentive for integration rather than a reinforcement of

existing political, ethnic, income, geographic or religious fault lines. While the adequate formula depends on the local context, it is worth remembering that the rules for presidential elections can be used to mitigate existing socio-political divides.

- *Timing of elections* – Countries have different approaches when it comes to the timing of presidential and legislative elections. In some countries, the two elections can happen always at the same time or be near in time (e.g. in Colombia, Costa Rica and France); happen always at different times (e.g. in Brazil during the 1946-64 democratic period); or they may alternate (e.g. in the United States where, with a legislative term of two years and a presidential term of four years, elections coincide every four years). Emerging evidence suggests that when they occur together, presidential elections can reduce the number of political parties acceding to parliament (Borges and Turgeon, 2019[9]; Costa Lobo, Lago and Lago-Peñas, 2016[10]). Presidents may generate major *coattail effects*[3], thus aiding the election of legislators of their own parties. Thus, if fragmentation of the party system is a concern, the stipulation of concurrent presidential and legislative elections may reduce the number of political parties in competition without implementing a restrictive electoral system for legislative elections. The cases of Colombia, Costa Rica and France may illustrate this point.[4]

Box 4.1. Inclusive electoral systems

Electoral systems are as important as the institutional processes of decision making. Where electoral rules are non-inclusive, effective institutions could promote collective decisions consistent with the preferences of the political actors directly involved in institutional decision making, which may not match those of voters. The electoral system also should ensure a certain stability, in the identification of a winner empowered to govern effectively while making changes possible; but it should also ensure representativity. These goals are not always entirely compatible, and a balance must be struck. It is thus not sufficient that electoral systems are fair and inclusive, as they need to be supplemented by an institutional design able to ensure the effective capacity of political representatives to make decisions producing socially efficient policy, meeting the criteria of collective satisfaction and social utility. In sum, the choice of electoral systems and the choice of type of government can have a strong impact on policy outcomes.

The electoral district magnitude, which is the number of members to be elected in each electoral district, is an important factor to translate votes cast into seats won in a proportional way. The rationale underpinning proportional systems is to reduce the disparity between a party's share of the national vote and its share of the congressional seats. If a major party wins 40% of the votes, it would win approximately 40% of the legislative seats, and a minor party with 10% of the votes would gain 10% of those seats. The congruity between a party's share of the vote and its share of the seats provides an incentive for all parties to support and participate in the system.

Proportionality is often seen as being best achieved using party lists – where political parties present lists of candidates to the voters on a national or regional basis – but preferential voting can also be an effective option. For example, the Single Transferable Vote (STV), used among others in Australia, Ireland and New Zealand, where voters rank-order candidates in multi-member districts, is another well-established proportional system.

The strongest arguments for proportionality derive from the way in which the system can avoid the anomalous results of plurality/majority systems and could better produce a representative legislature. For many new democracies, particularly those facing deep societal divisions, the inclusion of all significant groups in the legislature could be a critical condition for democratic consolidation.[5]

All electoral systems have thresholds of representation, i.e. the minimum level of support a party needs to gain representation. Legal thresholds range from 0.67% in the Netherlands, 3% in Spain and 5% in Germany to 10% in Turkey. The lower the threshold, the higher the representativeness of the system. In contrast, the greater the representativeness, the more difficult it might be to form stable coalition governments – or to have a coherent "opposition" bloc in the parliament.

In parliamentary systems, representation is mainly determined by the election to parliament. In presidential systems, representation also depends on the separate election of the chief executive (the president). In contrast with proportional representation in congressional elections, there appears to be no formula in presidential elections able to guarantee the selection of a candidate who corresponds with the preferences of the median voter. The runoff tends to be the most used mechanism, as in France, Finland, Colombia, Costa Rica and most Latin American presidential systems.

c) Constitutional term limits on presidential re-election

Most constitutions set a limit to the number of times that a president can be re-elected. Two types of term limits can be distinguished: those where there are a limited number of consecutive terms in office allowed, and those where there is an absolute limit on the total years that an individual can be in office. For example, France (article 6 of the Constitution) awards a presidential mandate of 5 years and allows for only one successive re-election, totalling 10 years.

In Latin America, up until the early 1990s, the most common constitutional limit on presidential re-election was the "one term out" rule (e.g. in Mexico), according to which a president had to wait for a full term out of office before standing for election again. Since then, several countries (e.g. Argentina, Costa Rica and Brazil) changed their constitutions and adopted the two-term limit, while others have stayed with the one-term-out mandate. For example, in Colombia, since 2015 the president has been confined to a single four-year term and is barred from running for re-election, even for a non-consecutive term.

Presidential term limits are important as they affect the relationship between the president and voters. Elections are normally considered one of the most important instruments to encourage governments to act in the interests of voters. In principle, in anticipating voters' future judgement of their past performance, political figures should have incentives to pursue the interests of voters in order to be re-elected. While there is debate on whether elections are a sufficient instrument to induce this type of behaviour, it appears that if elections are to affect the behaviour of politicians at all, voters must be able to reprove executives who perform badly by not re-electing them, and they must be able to reward incumbents who perform well by giving them another term in office. Both are necessary if elections are to induce governments to act in the interest of voters.

Term limits appear to restrict the full spectrum of choice of the people as to whom they elect to office, as well as the ability of voters to reward well-performing incumbents. However, the limits are also an essential mechanism to ensure democratic transformation. Individual alternation of the chief executive is considered important for various reasons. In particular, the possibility of indefinite re-election could eventually tempt presidents in power to use their position and powers while in office to create an institutional and social environment that guarantees their subsequent re-election.

Presidentialism can possibly give an advantage to the incumbents when they are legally permitted to run for re-election. In turn, preventing the incumbents from exploiting this advantage by limiting terms in office leads them to leave office even if voters might wish for them to stay. Constitutional term limits could serve as a relevant middle-ground tool. Other instruments to limit the ability of presidents to use the office for undue electoral advantage include strict regulation of campaign finance and procedures, public funding of campaigns, free access to media and the strengthening of agencies that oversee campaigns and elections, such as in Colombia and Costa Rica.

d) Strengthened presidentialism

Strengthened (or exaggerated) presidentialism is a modality of presidentialism in which the constitution concentrates all or many crucial powers in the executive. It is also known as centralised presidentialism. Key powers allotted to the executive may include the exclusive right to initiate legislation in strategic areas; the executive's ability to determine the priority with which bills will be debated in legislature; its capacity to act as co-legislator, as for example through amendatory observations (*indicaciones*) at any time during the discussion of a bill; its ability to attend commissions discussing bills and express opinions; and the power to veto a bill passed by legislature or to reintroduce a bill rejected by one of the houses.

There are in addition differences in the informal powers of the executive and the legislature that favour the former in terms of access to information and staff to prepare discussions and draft bills. The allotment of formal legal powers to the executive by the constitution does not mean that presidents in fact make use of all of them all the time. Presidents tend to negotiate with other political actors, including those from parties different from those represented in parliament. Analyses of this modality of presidentialism tend to distinguish between the large constitutional formal powers attributed to the president and the actual exercise of political power, which is not always in the executive's hands. The contrast between "strengthened" formal constitutional powers allotted by the constitution to the executive and the relative moderation in its actual exercise by presidents could be explained by a political context able to moderate the formal powers in practice.

e) Presidentialism and political fragmentation

Where the party system fragmentation is limited, the need for interparty coalitions is diminished and the perils of presidentialism are usually attenuated. The president may not enjoy a majority in congress, but their party is very likely to be a major party that controls a significant share of the seats. This situation can mitigate the challenge of competing claims to legitimacy because many legislators are likely to support the president. Conflicts between the legislature and the executive arise, but they tend to be less gridlocking than when most legislators are against the president. Mechanisms to handle cohabitation situations would be required, as in Colombia, Costa Rica, and France. The mechanism most used is designing the electoral calendar to produce coattail effects.

With regard to coattail effects, holding assembly elections concurrently with the presidential election results, as noted, in a strong tendency for two major parties to be the most important, even if a proportional electoral system is used. In view of the importance of the presidential election, it tends to divide voters into two camps, and voters are more likely to choose the same party in legislative elections as in Costa Rica and France, as they do when presidential and legislative elections are non-concurring, as in Portugal. If assembly elections are held at times that differ from presidential elections, the political fragmentation of the assembly becomes more likely.

Inter-branch co-operation under presidential government can be achieved by giving the congress the capacity to participate in appointing and dismissing the executive cabinet, including the opportunity to censure and provoke the dismissal of cabinet members, such as in Colombia and Costa Rica. These formulae can be combined in different ways. This has been a common feature in constitutional reforms in Latin America in the 1990s, such as those in Argentina, Colombia, and Paraguay.

f) Adoption of legislation

In presidential systems, both the congress and the president usually can act proactively, introducing legislative proposals, or reactively, approving or rejecting other actors' proposals. When the president has great legislative powers, the ability of the congress to debate, logroll and offer compromises on controversial issues tends to be constrained. Instead, the presidency can take on legislative importance and the incumbent can have tools with which to fine tune legislation to possibly fit their preferences and

limit consensus building in the assembly. Hence, some countries have considered the need to lessen the powers of the president in order to strengthen the representativeness and inclusiveness of democracy For example, in semi-presidential systems (e.g. France and Portugal), the president has little or no legislative power, as that generally tends to lie within the government's mandate.

Considerations in lessening the powers of the presidency

It would be useful to consider factors that can attenuate the challenges of presidentialism, as in, some cases it may be politically more feasible to modify presidential systems than to switch fully to parliamentary government:

- Presidents usually have greatest power if their veto cannot be overridden; they have least power if they have no veto or if a veto can be overridden with a simple majority.
- The partial veto is an important instrument in the hands of some presidents; they can thereby reject parts of bills rather than accepting or rejecting the whole bill. Presidents have greatest power if they can exercise a partial veto that cannot be overridden, and weakest if they have no partial veto.
- Reduce decree powers, i.e. the authority of presidents to make laws without prior consultation with congress.
- Reduce powers granted to presidents to act as the sole agenda setters in certain key policy areas (e.g. taxation, budget, etc.). In such areas, legislation cannot be considered unless first proposed by the president. Exclusive presidential law-making initiatives are most powerful if the assembly cannot amend the president's initiatives but must either accept them as presented or reject them in block.
- Limit the extent to which the president has primacy in the budgetary process, which reduces the ability of congress to change revenues or expenditures. At one end of the spectrum, the president prepares the budget and congress may not amend it. At the other end, the assembly either prepares the budget or has constitutionally unrestricted authority to amend it, as in France.
- Strong presidents may submit legislative proposals to the voters directly, thereby bypassing the congress, while if such presidential powers are lessened this is not possible, and referendums can be a joint proposal of the president and the parliamentary assembly.
- As mentioned, limiting the number of terms that a president can serve in office, and the number of years of each term, could also be an effective limit to the powers of the presidency. For example, in Costa Rica the president is directly elected for a four-year term and can seek a non-consecutive second term.

Parliamentary systems

Many OECD member countries have put in place parliamentary systems of government. The primary overarching feature defining a parliamentary system is the blending of the executive and legislative powers and the accountability of the government to the parliament. The government must have the support of the parliament for it to enter and remain in office. The parliamentary right to a vote of no confidence against the government is the primary criterion that differentiates parliamentarian from presidential systems. The system may have a president (or monarch) with the role of head of state, but that person may not necessarily be popularly elected (although in several countries with parliamentary systems there may be presidents directly elected by the electorate, such as in Ireland or Finland, or by the parliament, such as Germany, who hold limited political power). Moreover they are not the same person as the head of government.

The legislature plays a central role

- In parliamentary systems, *parliament holds significant political control, and is central in the selection of the head of the government* (prime minister). The selection method can range from a formal election that is exclusively in the hands of parliament (e.g. in Sweden) to selection by the president of the nominee from the party who obtained the highest number of seats in the election (as in Greece), to a middle-ground system where the president can nominate a candidate but parliament may appoint another if the candidate is not supported by an absolute majority of votes, whom the president must then appoint (e.g. in Germany). Other systems elect prime ministers based on the emergence of informal agreements through inter-party negotiations in the legislature, followed by an official appointment by the head of state[6] (e.g. Portugal and Spain).
- *The parliament can also remove the head of government* through a vote of no confidence. In other words, the legislature retains the power to decide on the head of government's survival. Despite this, several constitutions introduce restrictions on this possibility, including the ability to vote no confidence only after the prime minister has spent a set period of time in the post, or the ability to dismiss only a limited number of cabinets per term. Some constitutions require a "constructive" motion, meaning that the majority dismissing the head of government must select a new one simultaneously (for example in Germany, Hungary, Poland and Spain). As a result, a motion of no confidence does not automatically force either the resignation of the cabinet or a new election.
- Parliamentary systems also often entrust the legislature with the *authority to oversee other branches of government, particularly the executive*. In other words, aside from political control, there can also be *legal* or at least quasi-legal control to scrutinise the actions of government: the constitution might, for example, empower the legislature to *initiate legal investigations*, including the ability to request officials of the executive branch to appear in the chambers. A majority of constitutions offer some options for the legislature to question the actions of the executive and request an explanation of its policies. On occasion they specify the maximum time frames in which interpellations must be answered (e.g. in Albania). In a number of constitutions, the legislature can conduct an independent investigation of the executive, or is even compelled legally to do so if a percentage of parliamentary votes is reached.
- *In most parliamentary systems, one of the chambers, the lower one, deals with the relationship with government***.** Existent constitutions have created legislatures that either have two chambers (80 countries) or are unicameral (112 countries).[7] Typically, the "lower" chamber (house or congress) is designed to be "closer" to the people – an arrangement ordinarily defended on the grounds that the lower chamber will be more responsive to popular needs and demands. Upper chambers (or senates) usually represent the subnational territories and regions. Bicameral legislatures may increase forms of representation, and can halt the approval of sudden or impulsive laws by requiring additional deliberations. They can also become a limit to the power of a simple majority and to that of powerful interests that may try to control the chamber in different ways. By contrast, unicameral systems may enable passing legislation more efficiently, and as a single body it may become easier for the citizens to monitor. Smaller countries more commonly have unicameral systems, while large or very plural states with high degrees of territorial complexity tend to have bicameral ones. In addition, in some larger and complex countries, transitions to unicameral systems have historically reflected growing authoritarian tendencies.

The executive power is exercised collegially

Executive powers are exercised by a collegial body: the cabinet or council of ministers. The head of government's constitutional position can vary from pre-eminence to virtual equality with the other ministers, but there tends to be a relatively high degree of collegiality in decision making, **traditionally making**

collective responsibility, or "cabinet solidarity", a key formal feature of parliamentary government, even if today this collegiality is diminished in most countries.

Two general issues have featured greatly in political debates on the constitutional regulation of parliamentary systems, one of a conceptual nature and the other more practical. The first debate concerns the relationship between parliamentary government and the separation of powers; the second concerns the role and effectiveness of constitutional regulation to ensure governmental stability (Grote, 2016[11]).

Ensuring the separation of powers

The concept of separation of powers rests on the distinction between three basic functions of the state – executive, legislative and judicial. The separation was meant to apply to the relations between the executive and the legislature, which had to be "balanced" to allow the system to function properly ("*seul le pouvoir arrête le pouvoir", "*only power stops power*"*).[8]

The separation of powers between the executive and the legislative, understood as checks and balances, is more common in presidential systems, but it also has a role to play in a parliamentary system based on close co-operation between the government and the parties forming the majority in parliament. A fundamental distinction exists within parliament between the majority, whose main political mission is support of the government and its agenda, and the opposition parties whose role consists of monitoring and criticising the government's policies and proposing policy alternatives.

An important challenge in constitutional regulation of a parliamentary government is thus the recognition and proper definition of the role and the rights of the political opposition. Regulation should allow it to present its political alternatives freely and to become and remain a credible alternative to replace the current government and its parliamentary majority. In other words, the separation of powers between the executive and the legislative in parliamentary systems should not rely on the judiciary alone. It also necessitates that the statute of the opposition parties in parliament is well defined and respected.[9]

As regards the role and functions of the political opposition in general and parliamentary opposition in particular, there are few international standards that promote the protection of parliamentary opposition and minorities as such. Many national constitutional systems do not regulate these issues. Some categories that ought to be protected are i) procedural rights of participation in parliamentary committees and the right to propose legal amendments (some parliaments even reserve the presidency of certain important committees, such as budget, for the opposition); ii) rights to initiate and participate in the supervision and scrutiny of the government; iii) rights of veto or delay for certain decisions of a fundamental character or landmark decisions; iv) the right to demand constitutional review; v) protection against persecution and abuse (Venice Commission, 2010[12]). Constitutions may recognise these rights of the opposition in a general manner, to be developed by the relevant parliamentary rules.[10]

Stabilising the government

As the government is dependent on the confidence of the legislature, governmental stability becomes a more acute issue in parliamentary than in presidential systems. This requires mechanisms to ensure that the government remains stable and is not constantly challenged. The most important of those instruments are the following.

Regulating the censure motion and parliament's power to appoint a new government

The head of government normally has a wide discretion in deciding whether, and on which issue, to ask the parliament for a vote of confidence. By contrast, the votes of no confidence brought by members of parliament (MPs) are often subject to a number of strict procedural requirements: they must be signed by a minimum number of MPs to be admissible; a vote on the motion may not take place immediately, but

only after a "cooling off" period has lapsed, to allow MPs to reflect properly on the potential consequences of their decision; and confidence can only be withdrawn from the government by a qualified majority vote.[11]

Some constitutions prescribe that for a no confidence motion to proceed, it must contain the name of the person who shall replace the incumbent head of government (constructive censure motion, German Basic Law, art. 67(1); Spain, art. 113). MPs who have signed a censure motion that has been rejected may be barred from bringing a new one before the end of a constitutionally prescribed waiting period (France, art. 49(2); Spain, art. 113(4)).

Constitutional provisions on the formation of the government are usually explicit about the level of parliamentary support needed for a new cabinet to enter office.[12] Constitutional provisions frequently require a *formal vote of parliament* demonstrating its support for the new government, either in the form of the election of the designated candidate for the office of prime minister or chancellor; by the directly elected chamber as a necessary condition for its appointment (Finland, art. 61(1); German Basic Law, art. 63; Spain, art. 99); or in the form of a parliamentary confirmation vote on the government and/or its political programme immediately following its appointment (Poland, art. 154(2); Romania, art. 103(2)).

Some constitutions *ensure that the new government disposes of a stable majority in parliament*: the election or confirmation vote must take place by qualified majority, and only if several attempts to elect or to confirm a new head of government by qualified majority have failed may the election or confirmation proceed with a relative majority of votes[13] (German Basic Law, art. 63; Finland, art. 61; Spain, art. 99(3)). If the proposed prime minister does not achieve a majoritarian support of members of parliament, then the general solution tends to be the dissolution of parliament and a call for fresh parliamentary elections.

Strengthening the position and the powers of the prime minister

Seeking cabinet stability has tended to strengthen the role of the prime minister and led to its explicit constitutional recognition. The prime minister "directs the work of the government" (e.g. France, art. 21(1); Spain, art. 98(2); Poland, art. 55(1); Romania, art. 107(2)), and the chancellor "determines the general guidelines of policy" (German Basic Law, art. 65). Moreover, it is the head of government with whom the final decision rests whether to ask parliament for a vote of confidence and thus to put the government's existence on the line (France, art. 49; Spain, art. 112; German Basic Law, art. 68). If the prime minister resigns, the other members of the government also lose their offices and a new government must be appointed (German Basic Law, art. 69(2); Spain, art. 101(1); Japan, art. 70; see also France, art. 8(1)).

Correspondingly, the prime minister (in France, the president) can dissolve the parliament at any time and call for fresh parliamentary elections, or simply resign. How this works in practice depends in part on the specific circumstances of each event (such as, for example, whether there is a politically feasible, alternative government that can be formed without needing a new election), but it also depends on the existing constitutional rules. Some constitutional rules favour the dissolution of parliament and holding new elections, while other rules favour trying to form a new government without an intervening election. Given this close association, both conceptually and in practice, between dissolution rules and the rules of government formation and removal, it is important to consider these two constitutional design issues side by side.[14]

Source of legitimacy: Double legitimacy and inter-branch co-operation

In most parliamentary systems, the executive is chosen by and is responsible to the parliamentary assembly. The legitimacy of such an executive is thus underpinned by the democratically elected parliament. Nevertheless, it may happen that the existence of two agents of the electorate (president and parliament), each endowed with different although carefully defined authorities, can serve as an advantage for presidentialism. The key is to define the powers and the method of election of the two branches so as to mitigate inter-branch conflict (Mainwaring and Shugart, 1993, p. 10[13]).

At the same time, parliamentary systems tend to vary regarding the extent to which the parliament and its committees are disposed to amend bills submitted by the cabinet and the ease with which majorities may vote to displace a cabinet. As such, the simple dichotomy, presidentialism vs. parliamentarism, while conceptually useful, can prove generally insufficient to assess the relative merits of different constitutional designs (Mainwaring and Shugart, 1993, p. 14[13]).

Mixed or semi-presidential systems

Mixed or semi-presidential systems are characterised by a dual executive approach, where the constitution includes both a popularly elected president and a prime minister and cabinet accountable to the parliament. This usually means that the prime minister is accountable to the legislature (through the vote of no confidence) and the government can be removed by the legislature; and that there is a popularly elected head of state (president), which the legislature cannot remove through censure motion. Thus, neither the president nor the legislature fully controls the selection and appointment of the prime minister, nor their removal from office. A core idea of semi-presidentialism is that the respective roles of the dual executive, the president and the prime minister, should be complementary: the president upholds popular legitimacy and represents the continuity of the state and nation, while the prime minister exercises policy leadership and takes responsibility for the day-to-day functioning of government (double legitimacy).

The number of semi-presidential systems has increased in recent decades (Ginsburg, Elkins and Melton, 2008[14]). Semi-presidential systems can now be found in several OECD countries, including France, Portugal, Lithuania and South Korea. The exercise of political power and the allotment of authority between the two leaders of the executive vary significantly. This can make semi-presidential systems closer to a presidential or to a parliamentary system. In France, when the president and a majority of the national assembly belong to the same party, there is a tendency to *presidentialisation*. Conversely, when the situation is one of cohabitation (like in 1986-88, 1993-95, 1997-2002), there is a tendency to *parliamentarisation*, as the prime minister is truly the leader of the parliamentary majority and the president's power decreases. Examples of recent OECD country transitions from or towards semi-presidentialism to other types of systems can be found in Box 4.2.

Box 4.2. Transitioning from a semi-presidential system

Finland

A case on point on transitioning from a semi-presidential to a fully-fledged parliamentary system can be observed in Finland where the 1999 Constitution (in force from 2000) operated that shift.

Within the framework of a 'mixed constitution', the Finnish political system wavered during a period of 80 years between genuine parliamentarism and effective semi-presidential rule. The new constitution, adopted in the parliament almost unanimously and carried into effect on 1 March 2000, aimed to reduce the powers of the president and to bind the exercise of the President's remaining powers more tightly to the cooperation with the parliamentary government. At the time of drafting, it was considered that the strengthening of the parliament–government axis and the reduction of the President's powers emphasized, as was assumed, the President's role as a support of the government of the time, a moderator in conflicts and a mirror of popular opinion. In the future, it was assumed, the functioning of the political system would be distanced from the political activity and personal activities of the president, but rather by reference to the parliamentary constellation, party interrelations and the ebb and flow of governing coalitions.[15]

After parliamentary elections, the parties represented in the Parliament negotiate on the political programme and composition of the Government. On the basis of the negotiations, and having heard the views of the Speaker of Parliament, the President of the Republic informs Parliament of the nominee for Prime Minister, who is elected by Parliament and then formally appointed by the President of the Republic. The President appoints the other ministers in accordance with a proposal made by the Prime Minister. In the current system the leading position in forming of the Government is within the political parties represented in the Parliament, not on the President of the Republic as before the year 2000.

The President possesses primarily residual powers since 2000. Because the Constitution of Finland vests power to both the President and Government, the President has veto power over parliamentary decisions, although this power can be overruled by a simple majority vote in the Parliament. Legislative power is exercised by Parliament. An act enacted by Parliament must be submitted to the President for confirmation. The President may refuse to confirm the Act, and in this case the Act will be reintroduced in Parliament. The Act can be adopted again in Parliament unchanged in a single vote with a simple majority. If passed, the Act will become law without confirmation by the President.

The President leads the nation's foreign politics in conjunction with the Government and is the commander-in-chief of the Finnish Defence Forces. The President decides on military matters on the recommendation of the Commander of the Defence Forces together with the Prime Minister and the Minister of Defence, generally in an in-camera presentation outside regular Government meetings. Finland's foreign policy is led by the President of the Republic in co-operation with the Government. For other matters, the president exercises his/her governmental powers "in council" with the Government, echoing the royal *curia regis*, usual in other Scandinavian monarchies.[16]

Costa Rica

Costa Rica in 1949 also introduced a degree of *parliamentarisation* of its presidential system in the new constitution and a progressive *technocratisation* of certain key policy areas (e.g., elections, and budget among others). Since then, the country has sustained continuous civilian, inclusive democratic governance. The qualified plurality system for electing presidents and the use of proportional representation (PR) to elect members of the Legislative Assembly encourage politicians to pursue policies favourable to the median voter. The qualified system of plurality rule usually awards the presidency to the candidate who obtains the most votes and at least 40 percent of the valid vote. The

Costa Rican separation of powers does not compel the different parts of government to share responsibility over all or even many governmental functions. The 1949 Constitution instead promotes the isolation of key bureaucratic responsibilities from the vicissitudes of partisan politics. By fragmenting state power, the constitution aims to promote a consensual style of policymaking that, in tandem with regularly held elections, keeps elected officials focused on the median voter. Creating the decentralized sector or the autonomous institutions was also part of the 1949 constitutional convention's effort to remove as many functions of the modern state as possible from the purview of the elected branches of government. As of 2004, there were more than 55 autonomous institutions in Costa Rica, 12 of which were created before 1950.

For the elected branches of the government (president and parliament), the 1949 Constituent Assembly strengthened the powers of the legislature as they reduced those of the executive branch of government by restricting the decree-making power of presidents and confining their powers to the execution of existing laws. The 1949 Constituent Assembly also adopted practices characteristic of parliamentary regimes: it empowered the Legislative Assembly to conduct interpellations of cabinet ministers and to subject them to censure, given two-thirds deputy support. The executive power is exercised in each subject area by the President and the corresponding Minister (art. 140 of the Constitution). The President is both the Chief of State and the Head of Government. The vice-presidents and cabinet members are appointed by the president. The president is directly elected for a four-year term and can seek a non-consecutive second term. The Legislative Assembly or *Asamblea Legislativa* is unicameral, and it has 57 seats. Members are elected by direct popular vote to serve four-year terms. Elections for the 57-seat unicameral Legislative Assembly occur every four years, and deputies are elected by proportional representation. Deputies may not run for two consecutive terms but may run again after skipping a term. To ensure coattail effects, the legislative elections are held concurrently with the first round of the presidential poll.[17]

In dual executives, an important consideration relates to ensuring a fair balance of powers between the president and the prime minister in choosing the members of the cabinet. For example, in France the Prime Minister recommends candidates for appointment or removal to the President, who then decides. Parliament's vote of no confidence affects only the government as such, not its individual composition.

Often the decisive aspect defining a semi-presidential system is the power attributed to the president. Too many powers for the president can make the system shift towards presidentialism or semi-presidentialism; too few and it becomes a parliamentary system of government (Siaroff, 2003[15]).

The president may or may not have a) discretionary power to appoint key individuals like judges, public attorneys, diplomatic and military figures, central bankers, or regulators; b) the right to chair formal cabinet meetings; c) the right to return legislation for further consideration or the right of definite veto on legislation, except if the veto power can be reversed by the parliament; d) broad emergency or decree powers during crises; e) a central role in executive and policy-making issues like foreign affairs and defence; f) a central role in forming the government; namely selecting and/or removing the prime minister and/or other cabinet ministers; g) the ability to dissolve the legislature at will, subject at the most to only temporary restrictions; h) the right to send messages to parliament; i) the right to propose legislation to parliament.

Citizen and stakeholder participation in constitutions

Citizen and stakeholder participation is at the very heart of the concept of democracy. The participation of the governed in the ruling exercise is a fundamental value of modern democratic societies. Citizen and stakeholder participation does not replace formal rules and principles of representative democracy – such as free and fair elections, representative assemblies, accountable executives, a politically neutral public administration, pluralism and respect for human rights (OECD, 2001[16]). Except for the most advanced

forms of participation (such as co-creation or co-production), the ultimate responsibility for decisions usually remains with elected governments, which are accountable to the population. Rather than replacing these formal rules and principles, citizen participation aims to renew and deepen democracy by narrowing the gap between governments and the public they serve (Sheedy, 2008[17]).

Participation is not a linear concept; it can have different modalities as well as degrees of involvement and impact. According to the OECD Recommendation of the Council on Open Government (2017[18]), participation includes "all the ways in which citizens and stakeholders can be involved in the policy cycle and in service design and delivery". Participation thus refers to the efforts by public institutions to hear the views, perspectives and inputs from citizens and stakeholders. Participation allows citizens and stakeholders to influence the activities and decisions of the government at different stages of the policy cycle and through different mechanisms. Evidence shows that participation, if well executed, can produce better policy outcomes that are informed by citizens' needs; improve the legitimacy of even complex and challenging decisions (Sheedy, 2008[17]); and enhance public trust in government and democratic institutions (OECD, 2020[19]).

Constitutions can include the participation of citizens in decision making as part of the system of government. The text can include different participatory mechanisms and set the rules for the interaction with formal representative institutions such as parliament and the executive. The following is a non-exhaustive list of different participatory mechanisms that can be included in a constitution:

- *Citizen agenda-setting* mechanisms such as petitions, citizen initiatives and citizen-initiated referendums, that when supported by a required number of signatures allow the electorate to place a particular issue on the agenda of a government or legislative authority. The constitution can include the right, the conditions for this right to be exercised, and the effects on decision making (binding or consultative).
- *Legislative initiative* grants citizens the right to propose new legislation; however, it regularly requires formal approval by elected representatives (parliament) or support from government. The constitution sets the conditions for citizens to exercise that right and the procedure for reaching the final decision-making stage. This mechanism exists in France, Colombia, Finland, Italy, Mexico, Spain and Latvia, among others.
- *Referendums* grant citizens the right to vote for or against a topic or a proposed piece of legislation. The constitution defines the conditions and rules for organising such processes. Mandatory referendums are held when a referendum vote is required by law for deciding a specific subject (e.g. to adopt a constitution). Referendums also may be initiated by the government or the legislature to gather citizen views on a specific matter. On occasion, minorities that would be affected by a piece of legislature are also entitled to demand such a vote. This is the case in countries such as France, Spain, Mexico and Colombia, among many others.
- *Institutionalised participation and deliberation* mechanisms function on a regular and ongoing basis, compared to an ad hoc participatory mechanism (such as a consultation). Institutionalised participation can exist as consultative bodies (Councils and Conferences in Brazil) or a third chamber such as the Economic, Social and Environmental Council (Conseil Économique Social et Environnemental – CESE) in France. In 2013, deliberative Citizens' Councils were institutionalised in the Austrian state of Vorarlberg, accompanied by guidelines developed by the Office of Future Affairs on how these councils are initiated and the steps involved in the deliberative process. These guidelines provide for the possibility for citizens to initiate such a process by collecting a thousand signatures in support of it. Since then, citizens have already initiated a Citizens' Council twice — over the issues of land use (in 2017) and the future of agriculture (in 2019).
- *Consultation mechanisms* allow citizens to express their opinion on a topic, a question or a legislative text. Consultation mechanisms are usually not binding (compared to a referendum). The

constitution can include mandatory consultations for specific cases (such as major infrastructure projects) and establishes the conditions for these consultations to be organised.

- *Recall* is the name given to a mechanism by which voters can end an elected official's period of office before the next scheduled election for that office. Combining elements of the initiative process and a regular candidate election, a recall initiative is launched when a motion is filed with the relevant administration. Proponents are then required to gather a specified number of signatures in support of the recall measure. In most states in the United States the recall mechanism can be used to recall all elected state officials, from local and county officials up to the office of governor. Judges may also be the subject of recall initiatives. In some US states, some non-elected officials such as administrative officers can also be recalled.[18] Yet while many state constitutions provide for recall, the mechanism is not used at national level. Provision for the recall mechanism outside the United States and at national level is rare, even in countries where direct democracy prevails (e.g. Switzerland). Only in Venezuela does the recall mechanism apply to a country's elected head of state.

Many of the above-mentioned examples are not only compatible with representative democracies, but they can also complement the decisions taken by elected and appointed officials. Present-day mechanisms of citizen participation thus do not operate in isolation, but are linked to the structures of an overall political system that includes major representative democratic institutions (Schiller, 2020[20]). As such, they can complement the mechanisms of representative democracy and enrich them.

Mechanisms such as the referendum are considered part of a direct democracy, in contrast to indirect or representative democracy. The normative theory of direct democracy primarily rests on ideas about popular sovereignty, freedom and political equality.[19] In the most prominent example in modern times, Switzerland practices a form of direct democracy under which any law enacted by the nation's elected legislative branch can be vetoed by a vote of the population.[20] Citizens can also vote at least four times on national proposals every year, as well as vote to require the national legislature to consider amendments to the Swiss constitution. Any Swiss citizen may request an optional referendum to contest a new or revised law. To do so they must gather 50 000 signatures within 100 days. If the referendum goes ahead, the new law is passed or rejected by a simple majority.

Key options and questions to consider

As has been explored in this chapter, the different existing systems of governments present different strengths and challenges. The quest for the most adequate system of government would undoubtedly involve an assessment of the relative merits of each system to reach the overarching goals of a particular society.

A way to frame the choice of one type of government over another in democratic constitution making can be to assess which patterns of political decision making would better serve the expectations of the higher number of citizens. Social satisfaction with policy outcomes is higher the closer the outcome is to the social majorities' preferences (or, as some analysts put it, to an abstract "median voter preference") (see also (Colomer and Negretto, 2005, pp. 60-89[4]; Negretto, 2013[21]).

Focusing on institutional variables related to the system of government without attention to contextual factors can be misleading. The design of constitutional mechanisms such as powers and checks and balances can have an important impact on the interaction between the branches of power and within individual branches, and represents an important set of choices to consider (e.g. to avoid the potentially negative consequences of either systems, such as policy gridlocks or authoritarian tendencies). And the actual functioning and interaction of these mechanisms depend on national context (and the functioning of other branches such as the judiciary – see the Chapter 6 on constitutional courts) (Böckenförde, Hedling and Wahiu, 2011[3]).

Historical lessons

History may shed some light when choosing the type of government, but only to a limited extent. Historical lessons from other countries need to be taken with caution. Nevertheless, some elements could be worth keeping in mind:

- One of the important questions in considering government models relates to the options for deconcentration of executive powers (e.g. involving different actors in decision-making processes, creating a system of checks and balances). History shows that while a strong executive branch can be beneficial in some cases (e.g. in creating stability, in bringing divided countries together, in facilitating long-term planning), high-powered concentration can result, at least partly, in violent conflicts and a shift to autocracy and undemocratic rule. At the same time, a careful balance is needed in order not to create a system where decision making is very complex and delayed (Böckenförde, Hedling and Wahiu, 2011[3]).
- Most of the long-established democracies (i.e. with longevity of at least 25 years of uninterrupted democracy) (Mainwaring and Shugart, 1993[13]) in the world tend to have parliamentary systems (Linz, 1990, pp. 51-69[22]), although the exact nature of the relationship between the system of government and longevity of democracies is unclear (Linz, 1990, p. 7[22]).
- In contrast, the stability of parliamentarism in less developed countries seems to be low. “The poor performance of parliamentarism in poor countries indicates that inauspicious social and economic conditions and limited elite commitment to democracy create grave difficulties, regardless of regime type” (Linz, 1990, p. 8[22]).
- Despite the historical precedents, the choice of institutions usually results from processes of strategic interaction in which actors with different preferences behave in accordance with their own interests: political actors may choose institutions not to enhance social efficiency but to maximise their probability of winning office and their capacity to influence policy outcomes once elected.

Institutional design

As has been outlined throughout this chapter, constitution drafters have **three main institutional design options** with regard to the system of government, each with its own advantages and disadvantages:

- *Parliamentarism*: Governance that derives its legitimacy from the legislature, or in other words, the single electoral origin of the legislature and the cabinet can make it possible for a parliamentary regime with inclusive electoral rules to facilitate the coexistence of multipartyism with fair representation, socially efficient outcomes and relatively effective government. While a consensual parliamentary regime may be less decisive than the Westminster type (“first past the post”), it could nevertheless secure a certain level of legislative effectiveness because it forces the executive to maintain broad support in parliament to remain in power. As such, parliamentary systems are able to maximise the inclusiveness of parliament and can give rise to coalition governments that are representative of several political choices, even in divided societies. At the same time, this might potentially generate instability and deadlocks in parliament due to limited majorities. Parliamentary systems are also inherently flexible, as they enable removal of the head of government or the call of new elections when the majority of parliament no longer supports the government’s approach. However, these mechanisms may also weaken the separation of powers among the executive and the legislative: while parliament may avoid criticism of the government given their close relationship, government may refrain from making bold moves to reduce the chances of a vote of no confidence. Finally, efficiency and effectiveness can be furthered in parliamentary systems since bills are infrequently vetoed.

- *Presidentialism* – Presidential systems provides the electorate with a direct mandate that empowers citizens through greater choice. They can select both a head of state and members of the legislature, and reward well-performing politicians in a more direct manner than is possible in parliamentary systems. Nonetheless, presidents in this type of system are often elected by slim majorities, and still acquire with the right to form cabinets regardless of the share of seats obtained in parliament or the policy position of the presidential party in congress. Despite sometimes thin margins of majority support, the sense of being the representative of the entire nation may lead the president to be intolerant of the opposition. On the other hand, this system can generate a stable government, since fixed terms of office for the president can provide more predictability in the policy-making process than can sometimes be achieved in parliamentary systems, where coalition cabinets and parliamentary agreements are prone to shifting. This system can also present a stronger separation of powers between the legislative and the executive powers, which function as separate structures with autonomous legitimacy. This can enable different actors to propose policies without fear of reprisals and removal that can be experienced in parliamentary systems. In turn, this starker separation can also give rise to political deadlocks when the government is unable to achieve support of congress for its policy programme (Böckenförde, Hedling and Wahiu, 2011[3]).
- *Semi-presidentialism* – The distribution of powers that semi-presidentialism suggests represents a greater integration of separate branches of the government, especially between the executive and parliament, than more purely presidential systems. This greater integration and inclusiveness manifests itself particularly in sharing powers in cabinet formation and in legislative initiative. It approximates the system to the logic of multiparty parliamentary regimes. The semi-presidential experiences of France and Portugal could offer relevant examples, while the experiences of Colombia and Costa Rica show that sharing power between presidents and parliament in presidential regimes can produce policy outcomes satisfying the median voters. In turn, it can generate a particular challenge: due to the dual legitimacy of the president and the prime minister, the authority of both may conflict, particularly when they belong to different political parties. Where semi-presidential systems lean more in their configuration towards one of the systems above, they are likely to give rise to similar challenges.

References

Böckenförde, M., N. Hedling and W. Wahiu (2011), *A practical guide to constitution building*, International Institute for Democracy and Electoral Assistance, https://www.idea.int/sites/default/files/publications/a-practical-guide-to-constitution-building.pdf. [3]

Borges, A. and M. Turgeon (2019), "Presidential coattails in coalitional presidentialism", *Party Politics*, Vol. 25/2, pp. 192-202, http://dx.doi.org/10.1177/1354068817702283. [9]

Cheibub, J. (2007), *Presidentialism, Parliamentarism and Democracy*, Cambridge University Press, http://fdjpkc.fudan.edu.cn/_upload/article/files/10/bd/dd6bb622400a8cccedde721a4568/8a90b72d-e5bf-477b-aad7-34154990497b.pdf. [5]

Cheibub, J., Z. Elkins and T. Ginsburg (2013), "Beyond Presidentialism and Parliamentarism", *British Journal of Political Science*, University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 668, University of Chicago, Public Law Working Paper No. 450, http://dx.doi.org/10.2139/ssrn.2365604. [1]

Colomer, J. and G. Negretto (2005), "Can Presidentialism Work Like Parliamentarism?", *Government and Opposition*, Vol. 40/1, pp. 60-89, http://dx.doi.org/10.1111/j.1477-7053.2005.00143.x. [4]

Costa Lobo, M., I. Lago and S. Lago-Peñas (2016), *Coattail Effects and the Political Consequences of Electoral Systems*, http://dx.doi.org/10.13140/RG.2.1.4871.3842. [10]

Ginsburg, T., J. Cheibub and Z. Elkins (2013), "Beyond Presidentialism and Parliamentarism", *Coase-Sandor Institute for Law & Economics Working Paper* No. 668, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1654&context=law_and_economics. [2]

Ginsburg, T., Z. Elkins and J. Melton (2008), *Comparative Constitutions Project: A Cross-National Historical Dataset of Written Constitutions*, Comparative Constitutions Project, https://comparativeconstitutionsproject.org/. [14]

Grote, R. (2016), "Parliamentary Systems", *Oxford Constitutional Law*, entry in Max Planck Encyclopaedia of Comparative Constitutional Law, https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e410. [11]

Linz, J. (1990), "The Perils of Presidentialism", *Journal of Democracy*, Vol. 1/1, pp. 51–69. [22]

Mainwaring, S. and M. Shugart (1993), "Juan Linz, presidentialism, and democracy: A critical appraisal", *Kellogg Institute for International Studies*, No. 200, Kellogg Institute/University of Notre Dame Press, https://kellogg.nd.edu/documents/1437. [13]

Moe, T. and M. Caldwell (1994), "The institutional foundations of democratic government: A comparison of presidential and parliamentary systems", *Journal of Institutional and Theoretical Economics*, Vol. 150, p. 172. [8]

Negretto, G. (2013), *Making Constitutions*, Cambridge University Press, Cambridge, http://dx.doi.org/10.1017/cbo9781139207836. [21]

Nousiainen, J. (2002), “From Semi-presidentialism to Parliamentary Government: Political and Constitutional Developments in Finland”, *Scandinavian Political Studies*, Vol. 24/2, pp. 95-109, http://dx.doi.org/10.1111/1467-9477.00048. [24]

OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, https://dx.doi.org/10.1787/339306da-en. [19]

OECD (2017), *Recommendation of the Council on Open Government*, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438. [18]

OECD (2001), *Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264195578-en. [16]

Palanza, V. and G. Sin (2013), “Veto Bargaining and the Legislative Process in Multiparty Presidential Systems”, *Comparative Political Studies*, Vol. 47/5, pp. 766-792, http://dx.doi.org/10.1177/0010414013489958. [6]

Parliamentary Assembly of the Council of Europe (2008), “Resolution 1601: Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament”, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17626&lang=en. [23]

Reilly, B. (2003), “Government Structure and Electoral Systems”, https://aceproject.org/ero-en/topics/electoral-systems/E20GovtStructureElectoralSystemsReilly.pdf. [7]

Schiller, T. (2020), *Direct democracy*, Encyclopedia Britannica, https://www.britannica.com/topic/direct-democracy (accessed on 19 April 2021). [20]

Sheedy, A. (2008), *Handbook on Citizen participation: Beyond Consultation*. [17]

Siaroff, A. (2003), “Comparative presidencies: The inadequacy of presidential, semi-presidential and parliamentary distinction”, *European Journal of Political Research* 42, pp. 287-312. [15]

Venice Commission (2010), “Draft Report on the Role of the Opposition in a Democratic Parliament”, http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)100-e. [12]

Notes

[1] A government trifecta is a political situation in which the same political party controls the executive branch and both chambers of the legislative branch in presidential countries that have a bicameral parliament. The term is primarily used in United States, Argentina, Bolivia, Brazil, Colombia and France. The coattail effect or down-ballot effect is the tendency for a popular political party leader to attract votes for other candidates of the same party in an election. For example, the party of a victorious presidential candidate will often win many seats in congress as well; these congressmen are voted into office "on the coattails" of the president. For that effect to happen it is necessary that the presidential and legislative elections are held simultaneously or very near each other on the calendar.

[2] https://cic.nyu.edu/sites/default/files/en_cheibub_sys_gov_parl_pres.pdf.

[3] The coattail effect is the tendency for a popular political party leader to attract votes for other candidates of the same party in an election.

[4] In Costa Rica this is established in the Electoral Code: Código electoral: Ley N.º 8765 (Publicada en el Alcance 37 a La Gaceta n.º 171 de 02 de setiembre de 2009). Article 98: Elections shall in any case be held on the first Sunday in February of the year in which the President and Vice-Presidents of the Republic and Deputies to the Legislative Assembly are to be renewed. The renewal of all these offices shall take place every four years at the same election.

[5] https://aceproject.org/ace-en/topics/es/esg/esg01.

[6] Political scientists refer to the person chosen (by the head of state) to attempt to form a coalition government as the "formateur."

[7] Inter-parliamentary Union, https://data.ipu.org/compare?field=country%3A%3Afield_structure_of_parliament#pie.

[8] "*Pour qu'on ne puisse abuser du pouvoir, il faut que par la disposition des choses le pouvoir arrête le pouvoir.*" ("If power is not to be abused, it is required that power stop power by the way things are arranged")– Montesquieu (1689-1755), L'Esprit des Lois (1748).

[9] See Parliamentary Assembly of the Council of Europe Resolution 1601 (2008[23]) on "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament", https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17626&lang=en. See also Venice Commission (2010[12]), "Draft Report on the Role of the Opposition in a Democratic Parliament", www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)100-e.

[10] See also "Parameters on the relationship between the parliamentary majority and the opposition in a democracy: A checklist", adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019) and endorsed by the Committee of Ministers on 5 February 2020, at: www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)015-e.

[11] See for example Rule 119 of the Rules of Procedure of the European Parliament on the Censure on the European Commission, www.europarl.europa.eu/doceo/document/RULES-8-2018-07-31-RULE-119_EN.html.

[12] For example Art. 99(1) Constitution of Spain; Art. 187(1) Constitution of Portugal; Art. 61(2) Constitution of Finland.

[13] Referring to the majority where more votes for than against are required.

[14] www.idea.int/sites/default/files/publications/dissolution-of-parliament-primer.pdf.

[15] Jaakko Nousiainen (2002[24]): From Semi-presidentialism to Parliamentary Government: Political and Constitutional Developments in Finland, in Scandinavian Political Studies, Vol 24, Issue 2, June 2001, Online 17 December 2002, pages 95-109. https://doi.org/10.1111/1467-9477.00048

[16] See: https://valtioneuvosto.fi/en/government/the-government-and-parliament; https://en.wikipedia.org/wiki/President_of_Finland; https://www.presidentti.fi/en/presidency/duties/; https://finland.fi/life-society/parliamentarism-in-finland/

[17] Lehoucq, F. "Political Competition, Constitutional Arrangements, and the Quality of Public Policies in Costa Rica," *Latin American Politics and Society,* Vol. 52, No. 4 (November 2010): 54-77. http://libres.uncg.edu/ir/uncg/listing.aspx?styp=ti&id=9889

[18] ACE Project: https://aceproject.org/ace-en/focus/direct-democracy/recall/mobile_browsing/onePag.

[19] "Toute loi que le peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi." ("Any law which the people themselves have not ratified is void; it is not a law") – Jean-Jacques Rousseau (1712-1778), Du contrat social (1762).

[20] Switzerland is a federal state comprised of 26 different cantons that created an alliance. The federal constitution was created in 1848, founding the federal parliament and giving central government certain powers. Switzerland represents a collegial executive, with the Federal Council being the executive institution. Each of its seven federal councillors is head of one of the government's departments or ministries, is elected for a four-year term, and cannot be removed from office. The councillors are elected by the Federal Assembly and usually represent the four main parties, which often helps in forming a stable government. They engage in what can be termed as the collective, rotating presidency. The parliament also elects the Swiss president from within the seven federal councillors. They serve for one year only and do not have any more powers than their peers but are considered "the first among equals". The president chairs meetings of the Federal Council and has special duties linked to representing Switzerland when necessary. Federal laws are created by parliament, which comprises two chambers whose members are elected by the Swiss public every four years. The lower house, the National Council, represents the Swiss population as a whole and comprises 200 MPs. The upper house, the Council of States or senate, represents the cantons and has 46 senators. The chambers have the same powers. Together they are known as the Federal Assembly, which is the highest elected authority in the land.