



# Presidential Legislative Powers

# 15

International IDEA  
Constitution-Building Primer





# Presidential Legislative Powers

International IDEA Constitution-Building Primer 15

Elliot Bulmer

© 2017 International Institute for Democracy and Electoral Assistance (International IDEA)  
Second edition

First published in 2015 by International IDEA under the title *Presidential Powers: Legislative Initiative and Agenda-setting*

International IDEA publications are independent of specific national or political interests.  
Views expressed in this publication do not necessarily represent the views of International IDEA,  
its Board or its Council members.



The electronic version of this publication is available under a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 (CC BY-NC-SA 3.0) licence. You are free to copy, distribute and transmit the publication as well as to remix and adapt it, provided it is only for non-commercial purposes, that you appropriately attribute the publication, and that you distribute it under an identical licence.

For more information on this licence visit the Creative Commons website:  
<<http://creativecommons.org/licenses/by-nc-sa/3.0/>>

International IDEA  
Strömsborg  
SE-103 34 Stockholm  
Sweden  
Telephone: +46 8 698 37 00  
Email: [info@idea.int](mailto:info@idea.int)  
Website: <<http://www.idea.int>>

Cover design: International IDEA  
Cover illustration: © 123RF, <<http://www.123rf.com>>  
Produced using Booktype: <<https://booktype.pro>>

ISBN: 978-91-7671-120-0

# Contents

---



- 1. Introduction ..... 3
  - Advantages and risks ..... 3
- 2. Content and scope ..... 4
- 3. What is the issue? ..... 6
- 4. Proactive presidential legislative powers ..... 8
  - Proposing and introducing legislation ..... 8
  - Exclusive powers over financial legislation ..... 9
  - Convening the legislature and setting its agenda ..... 10
  - Decree laws ..... 11
  - Fast-track legislative procedures ..... 15
- 5. Other aspects of presidential–legislative relations ..... 17
  - Vetoing legislation ..... 18
  - Presidentially initiated referendums ..... 18
  - Cabinet ministers in the legislature ..... 19
  - Dissolving the legislature ..... 21
- 6. Avoiding hyper-presidentialism ..... 22
  - Getting the balance right ..... 22
  - Government powers: legislature confirmation, scrutiny and oversight ..... 23

The judiciary and ‘fourth-branch’ institutions .....	24
Federal systems and decentralization .....	25
7. Contextual considerations .....	26
Party system and electoral rules .....	26
Norms and expectations of presidential power .....	29
Public outreach .....	29
Stability and risk of regime collapse.....	30
8. Decision-making questions .....	31
9. Examples .....	33
References .....	38
Annex.....	40
About the author.....	40
About International IDEA .....	40
About this series .....	41

# 1. Introduction

---



In addition to strictly defined executive powers, presidents in presidential and semi-presidential democracies typically possess certain powers of legislative initiative and agenda-setting powers. These enable them to exercise political leadership, for example, by proposing legislation, controlling the legislative agenda and issuing decrees with legal force.

All presidential and semi-presidential constitutions invest the president with some agenda-setting and legislative initiative powers. Newer presidential constitutions, especially those in Latin America, tend to give more explicit legislative initiative powers to presidents. Ceremonial presidents in parliamentary systems typically do not possess legislative or agenda-setting powers, or possess them only to a very limited degree. This reflects the fact that prime ministers, rather than presidents, are expected to exercise policy leadership in such systems.

## Advantages and risks

Elected presidents are increasingly expected to act as ‘chief legislators’ as well as ‘chief executives’. They are expected to set a strategic vision for the country, make an active contribution to the development of policies and provide leadership to other institutions, such as legislatures. To do this, presidents need adequate powers at their disposal.

However, the excessive concentration of powers in the presidency may result in a hyper-presidential regime, in which the president is subject to few effective constraints, undermining both democracy and good government.

## 2. Content and scope

---



This Primer concerns **presidential leadership and proactive legislative and agenda-setting powers** in democracies where the president is popularly elected and has substantial governing powers, either as a **chief executive in a presidential system** (as in Brazil, Colombia, Kenya and the United States) or as a **head of state in a semi-presidential system** (as in France). In such countries, presidents are typically entrusted with a range of leadership powers, which may include:

- the right to propose or to introduce legislative bills;
- exclusive power to draft and propose the budget;
- the right to summon special sessions of the legislature and to control the legislature's agenda;
- the right to issue decrees that have the force of law;
- the right to address the legislature; and
- the right to initiate referendums.

This Primer considers the constitutional design issues surrounding these powers. It discusses the constitutional architecture necessary to sustain a workable and responsible political system that can meet public expectations for effective leadership, on the one hand, without allowing the president to become autocratic, on the other. Since the way in which these constitutional powers are likely to be used in practice will depend on the political situation, and especially on the nature of the relationship between the president and the political parties in the



legislature, a large section of the Primer is devoted to an analysis of the political contexts that constitutional designers need to consider.

On presidential powers in situations where the president is a ceremonial figurehead or non-executive constitutional guardian see International IDEA Constitution-Building Primer No. 6, *Non-Executive Presidents in Parliamentary Democracies*. On the veto powers of presidents see International IDEA Constitution-Building Primer No. 14, *Presidential Veto Powers*.



### 3. What is the issue?

---



The classical model of the **separation of powers**, as developed in the USA in the late-18th century, regards the president primarily as a **chief executive** official. The president appoints and directs cabinet members, presides over the cabinet, commands the armed forces, conducts foreign relations, leads the administration and issues regulations to implement laws. Meanwhile, the power to make laws, including the power to approve budgets, is entrusted, along with other deliberative and oversight functions, to a separately elected legislature (a congress or parliament).

In practice, however, executive presidents rarely if ever act as merely administrative chiefs whose duty is simply to ‘execute’ (implement) the laws made by others. Executive presidents are above all **democratic political leaders**, with electoral promises to fulfil and with the legitimacy, prestige and responsibility that come from a popular mandate. Much the same can be said of presidents in democracies based on the model of the Fifth Republic in France, where administrative leadership and domestic policy implementation are entrusted to a prime minister, but the president is expected to play an active role in initiating legislation and in exercising policy leadership.

Without the powers of legislative leadership and agenda-setting, it may be difficult for presidents to fulfil their electoral promises or to respond to emerging needs or public demands. This may result in a deadlock between the branches of government, which could then impede the passage of necessary laws. Such a deadlock may also lead to an under-performing government, stagnation and poor policy outcomes, and potentially contribute to general frustration and public disillusionment with the democratic system. In extreme cases, a president may attempt to overcome the deadlock by extraconstitutional and undemocratic means (Linz 1992). Thus, wherever an elected president is expected to play an

active part in deciding policy, effective democracy requires that the president have sufficient leadership, legislative and agenda-setting powers to enable her or him to act decisively and responsibly for the public good.

As such, many presidents are not only chief executives, but also **chief legislators**. For example, contemporary presidential constitutions, especially in Latin America, give presidents increased policymaking power. A president may, for instance, have the right to set the legislative agenda and propose bills, pass certain urgent laws by decree, exercise a 'line-item' veto, submit issues to the people in referendums, declare states of emergency, draw up and propose budgets, intervene in subnational governments and make cabinet appointments without legislative approval (Negretto 2013; Cheibub 2011; Shugart and Carey 1992).

Equipped with broad powers of leadership, a modern executive president is expected to do much more than lead one of the three branches of government. Instead, the president is the effective head of the nation, the leader to whom the people entrust the overall governance of the country. This form of populist and proactive presidentialism, according to Mezey (2013: 8–9), 'is characterized by a broadly shared public perception that places the president at the centre of the nation's politics and views him (or her) as the person primarily responsible for dealing with the challenges before the country'.

At the same time, however, it is important to ensure that the president does not possess excessive power that could pose a danger to democracy. Effective presidential leadership powers must be counterbalanced by the restraining influence of other institutions, such as courts, legislatures and 'fourth-branch' institutions (e.g. ombudsmen, auditors, electoral commissions and so on).

### Think Point 1

What has been the nature and extent of presidential leadership power in the past? Is the main constitutional flaw in the country's past ineffective, divided, incoherent and irresponsible government, caused by the president's inability to take the lead, pursue a clear policy and respond to public demands? Or is it over-centralized, authoritarian, unresponsive rule, caused by a concentration of power in the presidency? Is the aim of the constitutional reform process to diffuse and divide powers or to concentrate them?

## 4. Proactive presidential legislative powers

---



### Proposing and introducing legislation

Most presidential and many semi-presidential constitutions give the president the right to propose legislation by means of a message or address, or to introduce bills (either directly by the president or indirectly through a cabinet member) for debate in the legislature.

- The US Constitution (article II, section 3), for example, provides that ‘[The President] shall from time to time give to the Congress information on the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient’.
- In Liberia, the Constitution (article 58) states that, ‘The President shall, on the fourth working Monday in January of each year, present the administration’s legislative program for the ensuing session, and shall once a year report to the Legislature on the state of the Republic’.
- In Argentina (article 100), the presidentially appointed cabinet, with the approval of the president, has the power ‘to submit to Congress the bills on ministries and the national budget’.
- In Costa Rica (article 123), the right to initiate laws belongs to the ‘executive power’ (the president), and to members of the legislature and the people.

- In Colombia (article 154), bills may be introduced by ‘the national government’.
- In Uruguay (article 133), the presidency may initiate legislation ‘through the intermediary of its ministers’.

In some of these examples, the president’s power relates to the duty to provide information to the legislature about the general state of the country. Giving such information may take place in formal settings, such as a ‘state of the nation’ address, which is delivered with solemnity and ceremony, as well as through less formal exchanges, such as press conferences or written messages. Providing information to the legislature is an opportunity not only to propose or recommend particular bills, but also to influence the general tone and direction of public debate, to draw attention to particular policy priorities and to attempt to build support for the president’s agenda both in the legislature and among the general public. In other words, these occasions provide a highly visible forum in which a president can exercise democratic leadership.

### Exclusive powers over financial legislation

Some constitutions give the executive—whether the president or cabinet ministers acting on the president’s authority—the sole right to introduce, or to authorize the introduction of, money bills (i.e. those that concern taxes, customs, loans, appropriations and expenditure, and other financial matters).

Constitutions may also restrict the right of legislatures to amend such bills in such a way that they may only vote for or against the entire bill as presented, or may vote only on amendments accepted by the executive.

- The Constitution of Zambia (article 81), for example, prohibits the National Assembly from considering any bill, or amendment to a bill, that imposes taxes, places a charge on state revenues, makes any payment or withdrawal from the treasury or remits any government debt, ‘except upon the recommendation of the President signified by the Vice-President or a Minister’.
- In Uruguay, only the executive branch can introduce bills concerning certain fiscal and economic measures (article 133).

The intention behind such rules is to ensure that the executive is responsible for the sound management of the public finances. The power to set budgets can help presidents prevent situations in which legislatures approve spending without approving taxes, thereby increasing deficits when it might not be economically

prudent to do so. It can also stop legislatures from engaging in ‘pork-barrel’ politics, where members vote for local spending to the detriment of the nation’s overall financial well-being. Furthermore, it can help maintain the overall coherence of the tax code by preventing the spread of special-interest loopholes.

Since almost all policies have some financial implications, however, such control over the public purse is also generally an effective means by which the executive can exercise leadership across a broad range of domestic policy areas.

If the president and the legislature cannot agree a budget, this can cause a shutdown of the government—a situation where the government is deliberately starved of funds by the legislature. Whether the executive or the legislature ultimately prevails, this tactic is escalatory and potentially destabilizing, and can have severe consequences in terms of economic, social and political costs.

To avoid a government shutdown over the budget, some constitutions provide that, in the event of a budget not passing before the end of the financial year, the budget of the previous year is carried over (see e.g. article 23 of the Constitution of Indonesia). Such provisions may lower the stakes of inter-institutional conflict, since the carrying over of the budget can prevent obstructive legislative majorities from bringing government operations to a halt if they do not get their own way. However, the carrying over of the budget can also favour the status quo, since there may be situations in which simply carrying over the previous year’s budget is easier than negotiating a new budget.

Chile (article 67) has a variation on this rule that more unambiguously favours the president. If the Congress has not passed the budget within 60 days of the president presenting the budget bill, the president’s proposal automatically comes into effect.

## Convening the legislature and setting its agenda

Another possible source of presidential leadership influence is the ability to control the timing and ordering of legislative business by convening the legislature for special sessions.

### Authority to convene special sessions

Legislative assemblies are multi-member bodies that can act decisively only when lawfully summoned and convened. Most legislatures have some control over their own sessions and adjournments, but there must be some permanently existing authority with the ability to convene special sessions of the legislature, outside of appointed times, in order to deal with urgent and unforeseen matters. This power may be vested in the speaker or presiding officer of the legislature, or in a certain number of members (typically, one-third) of the legislature. In some cases, a Permanent Deputation elected by the legislature from among its members fulfils this role. However, in most cases, especially in presidential and semi-presidential

democracies, the president—either alone or in conjunction with these aforementioned institutions—has the authority to convene special sessions. The US President, for example, ‘may, on extraordinary occasions, convene both Houses’ (article II, section 3). The power to convene special sessions of the legislature may enable a president to prioritize certain matters, indicating that something is so important and urgent that the legislature must meet without delay to deal with it. However, when convened in this manner, each chamber of the US Congress can still determine its own priorities and order of business, meaning that this rule gives a US president only political influence, not procedural control, over the agenda.

#### Power to control the agenda

In some countries the executive has formal procedural control over the legislative agenda during special sessions of Congress. The Constitution of Colombia (article 138), for example, states that the Congress ‘will also meet in special sessions by convocation of and for the period of time stipulated by the government. During these special sessions, Congress will only be entitled to discuss the issues submitted for its consideration by the government’. In Costa Rica, similarly, the Constitution (article 118) states that ‘the Executive Power may convoke the Legislative Assembly to extraordinary sessions. In these, it will not take cognizance of matters different from those expressed in the decree of convocation, except if it concerns the appointing of functionaries that corresponds to the Assembly to make, or the legal reforms that are indispensable to resolve the matters submitted to its cognizance.’ This control over the agenda enables the president to influence the timing, direction and priorities of the political debate.

#### Decree laws

Almost all contemporary constitutions allow the executive to enact **regulations** of a legislative or quasi-legislative character in order to implement laws and administer the state. The names of such regulations may vary depending on the language used in the national context, including executive orders, ordinances, orders-in-council, statutory regulations, secondary legislation or, confusingly, decrees. This regulatory power may be explicitly specified in the constitution or implied as an inherent duty of the executive branch.

Some constitutions, however, also make provision for a special **decree-making** power. This differs from the regulatory power in that it enables the power to enact primary legislation, under certain specific conditions, to be exercised by, or delegated to, the executive (Shugart and Carey 1992: 143).

### Decrees issued in cases of urgent necessity

Some constitutions enable presidents to issue legislative decrees in order to be able to respond to urgent matters. Usually, such decrees are supposed to be only temporary in nature:

- The 1988 Constitution of Brazil (article 62) enables the president ‘in relevant and urgent cases’ to enact provisional measures with the force of law across a broad range of policy areas. These decrees lapse after 60 days unless converted into law by Congress within that time. Although this decree-making power is intended to be a ‘response to extraordinary circumstances’, all of Brazil’s presidents since the restoration of democracy have routinely and repeatedly used it to enact non-emergency laws (Reich 2002: 6).
- Before 1994, the Constitution of Argentina did not recognize decrees of urgency, although the habit of using them had nonetheless increasingly been recognized by convention and their legality upheld by the Supreme Court (Negretto 2013: 138–65). The constitutional reform approved in 1994 sought to place this decree-making power on a clear constitutional basis, and thereby to place limitations on its use and prevent its abuse. Thus, the Constitution of Argentina (article 99) now states that the president may issue so-called **decrees of necessity and urgency** ‘only when exceptional circumstances make it impossible to follow the regular procedures provided by this Constitution for the passing of laws’. Their use is prohibited in the case of ‘rules that regulate criminal, tax, or electoral matters or the regime governing political parties’, and they must be ‘decided at a general meeting of Ministers’ and presented within 10 days for consideration by a ‘Standing Bicameral Committee, whose membership must reflect the proportion of the political representation of each Chamber’. It is notable, however, that unlike in Brazil, where decrees lapse automatically if not explicitly confirmed by Congress, decrees of necessity and urgency in Argentina are confirmed by tacit approval, and remain in force unless Congress actively rescinds them (Negretto 2013: 157).

### Decrees issued under a delegation of power from the legislature

A second form of decree-making power enables the executive to issue decrees under a general or particular delegation of power:

- The Constitution of Colombia (article 150) permits Congress to delegate to the president ‘precise extraordinary powers to issue rules with the force of law when public necessity or advantage so requires’; such delegation ‘must be requested expressly by the Government and approval requires the vote of an absolute majority of the members of both chambers’. It remains in effect only ‘for periods of up to six months’. Congress also retains the right to amend decree laws, ‘at any time and at its own initiative’. Moreover, there are substantive limits to the decree-making power, as decree-laws may not be used for ‘issuing codes, legal statutes, organic laws, or tax laws’.
- Similarly, the Constitution of Chile (article 64) allows the delegation of decree-making powers to the president, subject to certain conditions: ‘The President of the Republic can solicit authorization from the National Congress to decree provisions with the force of law for a period not exceeding one year, concerning matters which correspond to the domain of the law’. This decree-making is subject to broad substantive restrictions, since it ‘cannot be extended to nationality, citizenship, elections or to the plebiscite’, to laws concerning ‘the Judicial Power, the National Congress, the Constitutional Tribunal or the Office of the Comptroller General’, or to various classes of special laws for which supermajorities are required. The same article further states that the law which grants the authorization for decree-making powers ‘will specify the precise matters on which the delegation falls and can establish or determine the limitations, restrictions and formalities deemed appropriate’.

It may be entirely rational for legislatures to confer decree-making powers on the executive in this way. In a system based on checks and balances, where law making is a deliberately slow process that requires coordination and negotiation between many political actors (the executive and legislative branches, two houses of a legislature and so on), such decree-making powers may provide a convenient shortcut that enables presidents to respond effectively to urgent political or economic needs. By demonstrating the ability of institutions to respond promptly and effectively to public demands, decree-making powers can strengthen the legitimacy of the democratic system as a whole. These powers are particularly useful for addressing economic crises, when policies to stabilize the currency or to stimulate the economy through spending may call for swift and coherent action.



The delegation of decree-making powers to the executive may also be attractive to legislators because it shields them from bearing responsibility for what might turn out to be risky or unpopular decisions.

The excessive use of decree-making powers, however, can lead to the bypassing of the legislature and a dangerous concentration of power in the presidency, resulting in autocratic decision-making and a lack of accountability. In order to prevent such a concentration and abuse of power, constitutions that allow for decree-making power typically restrict its use in various ways, for example by making this power dependent on a specific or general delegation of authority from the legislature, by enabling the legislature to veto or overturn decrees, by placing time limits on decree-making power, or by prohibiting the use of decree-making power in certain classes of very important legislation.

### Emergency decrees

Another type of decree law permitted by some constitutions is that enacted under a state of emergency. These decrees differ from the policy-orientated legislative decrees discussed above because they can only be issued during a state of emergency or a similar type of exceptional period, such as a state of siege or state of war. Typically, they are directed at ensuring order, stability, public safety and the maintenance of basic services and infrastructure during war, invasion, severe unrest, natural disaster or other calamity. Moreover, in contrast to the legislative decrees discussed above, emergency decrees may in some cases limit or suspend certain fundamental rights.

The rules concerning the declaration of a state of emergency, the duration of a state of emergency, and the limitations and restraints on exceptional power that exist even during a state of emergency, are discussed in International IDEA Constitution-Building Primer No. 18, *Emergency Powers*. However, it is worth noting here that—at least in principle—the greater the freedom of action the president has in declaring and maintaining a state of emergency, and the fewer the limits on the president's decree-making power during an emergency, the greater the risk of these powers being abused in anti-democratic ways. Conversely, restrictions on this power, such as requiring supermajority approval in the legislature for the declaration of a state of emergency, and subjecting emergency decrees to judicial review and legislative scrutiny, may help prevent or limit abuses.



## Fast-track legislative procedures

Another approach to the need for urgent action is to provide the president with a fast-track legislative process, which forces the legislature to act promptly in response to a bill presented by the president.

- The Constitution of Ecuador (article 140), for example, enables the president to send ‘urgent bills on economic matters’ to the National Assembly. The Assembly then has 30 days to adopt, amend or reject such bills. If the Assembly does not adopt, amend or reject a bill presented under this rule within the specified 30-day time limit, then the president may issue it as a decree law. In such cases, the Assembly retains the right to amend or repeal the decree law by the ordinary legislative process. The Ecuadorian procedure gives the president the right to enact a decree law only if the Assembly has not made a decision on the proposal within the time limit, and not if the Assembly rejects the proposal within that time. Thus, the president does not have the power to insist on the outcome of a decision or to bypass the Assembly, but only to (a) frame the decision, by means of a legislative proposal presented to the Assembly; and (b) demand that the Assembly make its decision swiftly.

In semi-presidential democracies, the passage of a bill may be linked to the question of confidence in the government, such that the legislature’s refusal to pass a bill would be regarded as a vote of no confidence that would lead to the resignation of the government and/or an early parliamentary election. Some constitutions even make explicit provision for the formal linking of legislation to confidence in the government, such that the failure of parliament to pass the bill could result in the dissolution of parliament, putting members’ seats at risk. This device, which forces legislators to ‘put up or shut up’, can provide the executive with an effective tool for expediting the passage of bills.

- The French Constitution (article 49), for example, states: ‘The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before the National Assembly. In that event, the bill shall be considered automatically approved unless a resolution of no confidence, tabled within the subsequent twenty-four hours, is passed [...]. In addition, the Prime Minister may use the said procedure for one other Government or Private Member’s Bill per session.’ This process is normally limited to finance bills and social security financing bills, because it is tailored to matters of macro-economic management. There is,

however, provision for one exception to this limitation in each parliamentary session, which allows the government to fast-track one other bill that it regards as especially important and urgent. Formally, this power is vested in the government (the Council of Ministers) and not the president. However, except during relatively rare periods of ‘cohabitation’, when the president and the ministers belong to different parties, the ministers are appointed by, and responsible to, the president, and the president effectively exercises these powers *through* the ministers.

## 5. Other aspects of presidential–legislative relations

---



Comparative scholars of presidential powers often distinguish between the legislative powers of presidents and their non-legislative or governmental powers (see Negretto 2013 and Box 5.1; Sedelius 2006; Shugart and Carey 1992). Legislative powers may include both reactive powers, such as veto powers over legislation, and proactive powers, such as the ability to propose and initiate legislation, as discussed in this primer. Governmental power includes authority over the cabinet and public appointments, as well as general executive and administrative decision-making.

### Box 5.1. Changing patterns of presidential power in Latin America

In a comparative study of Latin American constitutions from 1978 to 2013, Negretto (2013) identified that there had been a general increase in the legislative powers of presidents, and especially in their proactive powers, but that there had also been a corresponding decrease in the governmental powers of presidents, and increasing scope for congressional oversight. In other words, presidents in Latin America are becoming more empowered as chief legislators but have less power—or at least their powers are subject to more checks and balances—as chief executives.

When making choices on constitutional design, it is necessary to consider the whole package of presidential powers, including both legislative and non-

legislative powers. The package of powers will determine the bargaining strength of the president in relation to other institutions and actors, and will therefore shape the role of the president in the political system as a whole (Elkins, Ginsburg and Melton 2012).

## Vetoing legislation

A president may use the power to veto legislation as a tool of influence or a bargaining chip deployed strategically in order to pursue her or his legislative policy agenda. This is particularly true when the president has the ability to use the veto on policy grounds—that is, because the president disagrees with the bill, and not only because of concerns about whether the bill is compatible with the constitution or whether it has been passed according to the proper procedure. In the USA, for example, the increased use of the veto as a ‘political weapon’ has ‘allowed the president to become more involved in legislative matters, and has changed the presidential-congressional dynamic so that Congress is no longer the dominant force in government—as it was until the end of the nineteenth century’ (Slezak 2007: 1). For more on veto powers see International IDEA Constitution-Building Primer No. 14, *Presidential Veto Powers*.

## Presidentially initiated referendums

In several presidential and semi-presidential democracies, the president has the power to call referendums. There are many constitutional design issues surrounding the use of presidentially initiated referendums, including:

- Whether the president can call a referendum at his or her own discretion or only in response to a petition or request presented by another institution (such as, in a presidential system, the cabinet).
- Whether a referendum can be held on any matter, or whether there are certain excluded subjects and, in the latter case, who determines if a referendum question falls within the range of permitted subjects.
- Whether the result of a referendum is legally binding or only consultative.

On referendums more generally see International IDEA Constitution-Building Primer No. 3, *Direct Democracy*.

### Proactive presidentially initiated referendums

In some cases, a president can call a referendum on a matter that has not yet been decided by the legislature. Using this tool, a president can advance his or her own policy agenda by bypassing the legislature and appealing directly to the people.

- In Ecuador, for example, the president may call a referendum ‘on matters he/she deems advisable’ (article 104).
- Romania (article 90) presents, in practice, a similar case: ‘The President after consulting with Parliament, can ask the people to express their will on matters of national interest by means of referendum’. This provision is loosely drafted. The question of whether consultation with parliament implies a need for parliament to consent to the president’s proposal to call a referendum is not clearly answered in the text of the constitution, but in practice Romanian presidents have claimed the authority to call referendums without parliamentary approval.

### Reactive president-initiated referendums

A president’s referendum-calling power may also be reactive rather than initiatory in nature. This means that a president can use a referendum as a form of veto, rather than a means of legislative initiative. Nonetheless, such powers increase the president’s bargaining power and can help a strategically minded president lead or influence the legislative agenda.

- In Tunisia, the president may call a binding referendum on the ratification of treaties or on legislation concerning ‘freedoms and human rights or personal status’ (article 82) and on constitutional amendments (article 144), but only at the end of the legislative process after such treaties or laws have been approved by parliament.
- Similarly, in Chile (article 128) the president may initiate a referendum on a bill only if he or she has vetoed a bill that has been passed by the legislature, and the legislature overturns the veto by a two-thirds majority.

## Cabinet ministers in the legislature

A further constitutional design consideration is whether cabinet ministers are permitted to sit and vote in the legislature.

### Exclusion of executive officials from the legislature

In archetypal presidential democracies, based on the principle of a strict separation between the executive and legislative branches of government, cabinet ministers are not permitted to sit or vote in the legislature. Dual office holding between the legislative and executive branches may be expressly prohibited. The US Constitution (article 1, section 6), for example, states that ‘no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office’. The absence of executive leaders from the legislature means that the president and the administration cannot directly intervene on legislative debates in the chamber, and can influence legislation only externally, through the use of the other powers mentioned in this Primer, or indirectly, through the cooperation of allied members of Congress.

### Presence of executive officials in a non-voting capacity

Some presidential democracies, in order to facilitate better cooperation between the branches of government, allow cabinet ministers to sit in the legislature in a non-voting capacity. The Constitution of Chile (article 37), for example, provides that, ‘Ministers can, when they deem it advantageous, attend the sessions of the Chamber of Deputies or of the Senate and take part in their debates, with priority to make use of their voice, but without the right to vote’. Such provisions allow ministers to take part in legislative debates and to articulate the position of the president and the administration more directly, increasing the potential scope for presidential policy leadership.

### Partial fusion of the executive and legislative branches

Some presidential (and many semi-presidential) democracies, allow—or even require—cabinet ministers to be selected from among the members of the legislature. In Ghana and Zambia, ministers retain their legislative seats after appointment to the cabinet, resulting in a partial fusion of legislative and executive leadership roles. Although the fusion of executive and legislative leadership is not as complete as in a parliamentary system, owing to the existence of a directly elected executive president who is not dependent on legislative confidence, ministers in such systems can introduce, debate and vote on the bills that their departments have drafted, and as such can exercise a strong influence over the legislative process. At the same time, the president’s ability to appoint ministers from among the legislature gives her or him an effective source of patronage over his or her own party in the legislature. Overall, this means that presidents who can appoint their cabinets from among the legislature have strong constitutional means by which to take the legislative initiative and control the legislative agenda.



## Dissolving the legislature

Owing to their arbitration role, presidents in semi-presidential republics often have the power to resolve political deadlocks by dissolving the legislature and appealing to the people. In France, for example, the president may dissolve the National Assembly for any reason (article 12). There is a requirement to consult with the prime minister and with the president of the Assembly, but no requirement to give a reason or to seek their approval. The only restriction is that the National Assembly may not be dissolved for a second time within the space of one year.

In purely presidential republics, the power to dissolve the legislature is quite rare, as it would undermine the principle of the separation of powers as classically understood. Thus, we see that a US president, for example, has no right to dissolve Congress. There are, however, some exceptions. In Ecuador (art. 148), for example, the president may ‘dissolve the National Assembly when, in his/her opinion, it has taken up duties that do not pertain to it under the Constitution, upon prior favourable ruling by the Constitutional Court; or if it repeatedly without justification obstructs implementation of the National Development Plan or because [of] a severe political crisis and domestic unrest.’ This wide-ranging power gives the president the power to enforce his or her will on the legislature by threat of dissolution. For more on the dissolution power see International IDEA Constitution-Building Primer No. 16, *Dissolution of Parliament*.

### Think Point 2

What is the overall balance of presidential powers and counterbalancing powers in the proposed constitution? How will the president’s non-legislative powers help or hinder them in achieving their objectives?



## 6. Avoiding hyper-presidentialism

---



### Getting the balance right

While granting legislative and agenda-setting powers to the president may be beneficial, for all the reasons outlined above, it is also necessary to avoid the excessive concentration of unaccountable power in the presidency. Such concentrations of power are characteristic of **hyper-presidentialism**.

Hyper-presidentialist regimes may meet minimum criteria for democracy (for example, by holding relatively free, fair and regular elections), but they are unlikely to achieve a high quality of democracy or to consolidate democratic stability over time. This is because the concentration of power in the hands of the president without proper checks and balances can weaken the rule of law, undermine judicial independence and human rights protections, facilitate corruption, cause delays in decision-making (since decisions of even relatively minor importance are left to the president rather than delegated) and ultimately erode democracy itself.

Moreover, hyper-presidential systems may tend to personalize rather than institutionalize power, such that the powers of the state are vested in the person of the president and not in the office. This can give rise to political dynasties and to a quasi-monarchical form of politics in which patronage and proximity to the president's family or entourage rather than official position, such as ministerial office or a senior post in the civil service, determine the real degree of influence a person possesses.

Today, hyper-presidentialism remains one of the most pervasive hindrances to democratic consolidation. It is crucial that the president should have the powers

he or she needs to fulfil the mandate and trust given to him/her by the people, but not those powers that would enable her or him to undermine the democratic system. The following sections outline the various options for preventing or limiting hyper-presidential systems.

## Government powers: legislature confirmation, scrutiny and oversight

Oversight, by the legislature, of the president's executive and appointive powers can in principle help promote greater accountability and thereby prevent hyper-presidentialism.

### Approval of appointments

The classical model of presidentialism typically limits, in the name of 'checks and balances', the president's power to appoint his or her own cabinet. In the USA, for example, cabinet appointments are subject to the 'advice and consent' of the Senate, and newly elected presidents sometimes have to compromise with leaders in the Senate in the process of attempting to secure the appointment of nominees. In Kenya, the president appoints cabinet ministers with the approval of the National Assembly (article 152).

In Latin American presidential systems, however, the norm is for presidents to be able to choose their cabinet secretaries at will, without the need for legislative approval. This rule applies in Chile (article 32), Colombia (article 189), Costa Rica (article 139), Ecuador (article 147), El Salvador (article 162), Mexico (article 89) and Paraguay (article 238).

### Censuring the cabinet

Many constitutions, including the overwhelming majority of Latin American constitutions (Negretto 2013: 35–36), allow the legislature to censure—and thereby to remove—members of the cabinet and other senior officials. The Constitution of Colombia (article 135), for example, enables each chamber of the legislature, by an absolute majority, to censure and remove 'ministers, permanent secretaries and heads of administrative departments'. These provisions, however, are not the same as requiring ministers to enjoy the *confidence* of the legislature—as would be the case, for example, in semi-presidential systems such as France, Romania or Tunisia. The key difference is that censure usually requires—at least in principle—some alleged wrongdoing or misconduct, whereas a vote of no confidence can occur simply on the grounds of political disagreement.

- In Kenya (article 152.5), for example, a vote of censure can only be held on the grounds that a cabinet minister has committed a gross violation of the constitution or the law, alleged crimes under national or international

law, or gross misconduct. A proposal to censure a cabinet minister is submitted to a select committee of the legislature for investigation, and a vote on whether to censure the minister can only be taken based on that investigation.

- To highlight this difference between a vote of censure and vote of no confidence, approval by both chambers or by a supermajority is sometimes required for a vote of censure. The Constitution of Bolivia (article 158), for example, requires a two-thirds majority in the legislature to censure and remove cabinet members, while the Constitution of Argentina (article 101) requires an absolute majority in both houses to censure the Chief of the Cabinet.

### Elements of semi-presidentialism

Some constitutions, while retaining the essence of leadership in the presidency, contain various elements of semi-presidentialism. Such provisions may enable the president to determine overall policy objectives while delegating details of administration to the prime minister (or equivalent), thus freeing the president from responsibility since the prime minister can be used as a ‘fall guy’ who takes the blame for unpopular decisions (Sedelius 2006).

- In Peru, the president of the republic nominates a president of the cabinet and, on the advice of the latter, nominates other ministers (article 122); the ministers must receive a collective vote of confidence from the unicameral Congress within 30 days (article 130).
- In Argentina, the constitution establishes the office of the ‘Chief of the Cabinet’ as a sort of executive deputy to the president; the Chief of the Cabinet must attend sessions of Congress at least once a month, and may be scrutinized and even removed by Congress (article 101).

### The judiciary and ‘fourth-branch’ institutions

Hyper-presidentialism can result from excessive presidential influence over the administration of justice. If a president is given extensive leadership powers, it may be vitally important to ensure that the processes for the appointment and removal of judges, for the granting of pardons and for the prosecution of offences are removed from presidential influence. This can be achieved in various ways. The Constitution of Kenya, for example, requires the president to appoint judges on the recommendation of an independent Judicial Service Commission, and additionally requires chief justice and deputy chief justice to be approved by the

National Assembly (article 166). On judicial independence see International IDEA Constitution-Building Primers No. 4, *Judicial Appointments* and No. 5, *Judicial Tenure, Removal, Immunity and Accountability*.

The same applies to ‘fourth-branch’ institutions. These are independent institutions, separate from the executive, legislative and judicial branches, which protect the integrity of the public administration, of public finances and of electoral processes. Fourth branch institutions may include, for example, ombudsmen, auditors-general or ‘courts of accounts’, electoral commissions or other electoral management bodies, public service commissions, and independent central banks or public broadcasting authorities. If the president has strong legislative and agenda-setting powers, these institutions may need to be carefully insulated from presidential control or patronage. The Constitution of Namibia, as one example, requires the president to appoint the ombudsman and prosecutor-general on the advice of the Judicial Service Commission, while the auditor-general and the governor and deputy governor of the Central Bank are appointed on the recommendation of the Public Service Commission (article 32). For more information see International IDEA Constitution-Building Primer No. 19, *Fourth-Branch Institutions*.

The prerogative of pardon is a common prerogative of heads of state, but it is one that can be open to abuse (for example, using the power of pardon to apply laws in a selective way, so that political allies are pardoned for corruption offences). For this reason, some constitutions limit presidential power over pardons by requiring the approval of the legislature (e.g. Bolivia, article 172) or by establishing a board or committee from which the president is obliged to seek advice before exercising this power (e.g. Uganda, article 121).

## Federal systems and decentralization

In addition to the horizontal distribution of power between the national presidency and other branches and institutions of the national government, a vertical distribution of power between the national government and subnational institutions can help to prevent hyper-presidentialism.

A president in a federal system may possess effective legislative leadership powers with regard to national policies, but be constrained by the need to coexist and cooperate with state or provincial governors, whose constitutional powers prevent the excessive accumulation of authority and patronage in the president’s hands. Even in unitary states, the popular election of governors, mayors and other local officials, and the transfer of funding and decision-making powers to local levels may help prevent hyper-presidentialism by dispersing patronage, broadening the base of political leadership and empowering local communities.

For more information see International IDEA Constitution-Building Primers No. 12, *Federalism* and No. 13, *Local Democracy*.

## 7. Contextual considerations

---



### Party system and electoral rules

In addition to the formal constitutional powers of the presidency, the dynamics of party politics are a major determinant of the influence of a president on legislation (Shugart and Carey 1992: 186–93).

Presidents who are backed by a supportive majority in the legislature can usually rely on their supporters to introduce and pass legislation favourable to their policy agenda, and to vote against legislation opposed to their agenda. Conversely, presidents who face a coherent hostile majority will find it difficult to pursue their policy through the legislative process unless they can use their constitutional powers to bypass, coerce or influence the legislature. In some cases, this may result in ceding policy leadership to the legislature.

Presidents faced with a fragmented and leaderless legislature will usually have a free hand in the determination of policy objectives provided that they can build ad hoc alliances on particular issues or use presidential patronage to buy issue-by-issue support. Indeed, where legislatures are fragmented, members may see themselves primarily as brokers whose duty it is to represent and protect particular local and sectional interests rather than to shape national policy, and they may be content to allow presidents to bear almost all the responsibility for policymaking.

### Presidential election rules

Presidents may be elected by a plurality rule (the candidate who receives the most votes wins) or by a ‘more than plurality’ rule, such as an absolute majority rule. According to the latter, a candidate must receive 50 per cent plus one of the votes cast in order to win, and if no candidate receives that majority, a run-off election

must be held. Plurality rules tend to encourage the formation of two-party or two-bloc politics, in which opponents of the incumbent president can hope to succeed only by uniting around one leading candidate. Absolute majority rules enable a more divided opposition to emerge during the first round, with scope for ad hoc coalition formation or alliance-making before the second round. Therefore, presidential election rules can affect the probability of a supportive bloc in the legislature backing a president, and so can affect both the need for, and the likely effect of, presidential legislative initiative and agenda-setting powers.

### Legislative election rules

The electoral system for the legislature will also influence the degree of congressional or parliamentary support that the president is likely to have for his or her policy agenda. Legislative electoral rules that encourage highly individualized, localized or factionalized campaigns (for example, plurality elections in single-member districts, or open-list proportional systems that allow intra- as well as inter-party competition) will tend to increase the number of voting blocs with which the president must reach agreement in order to enact his or her legislative agenda.

The combination of a presidency equipped with strong legislative powers and a factionalized legislature can lead to a ‘constitutional dictatorship’, whereby the president, faced with a divided and unwieldy legislature, looks to achieve objectives by relying on other sources of policymaking power that bypass the assembly. The assembly, meanwhile, lacking a clear and coherent majority, focuses on particularistic concerns and of necessity defers to the president for policy leadership (see Skach 2011: 52–63).

### The timing of elections

Legislative elections may take place either at the same time as presidential elections (**concurrent elections**) or at different times (**non-concurrent** or **staggered** elections). As a general rule, concurrent elections increase the probability of **unified government**—a president who is backed by a supportive majority in the legislature. This is because the citizens choosing a president are likely, in most cases, to vote for legislators who will support the president’s policy agenda. On the other hand, non-concurrent elections—especially if legislative elections are held at a mid-term point in the president’s term of office—are likely to result in an increased likelihood of **divided government**, where the president and the legislative majority are mutually opposed, since voters have a habit in many contexts of punishing the party of the incumbent president at mid-term legislative elections. For example, the decision by France to reduce the president’s term of office to five years (from seven), and thereby to bring presidential and

parliamentary terms into closer alignment, was intended to reduce the possibilities of ‘cohabitation’ (divided government) and so to increase presidential power.

### Interaction between election rules and the timing of elections

The electoral rules and the timing of elections can interact in complex ways. For example, a combination of plurality elections for the presidency and proportional representation for the legislature might result in a fragmented multiparty legislature when elections are non-concurrent, and to result in a two-party system with minor parties when the elections are concurrent (see Shugart and Carey 1992).

### Internal party organization

Presidents who lead political parties (instead of being non-partisan candidates or candidates backed by a loose alliance of parties each under their own leadership) are in a stronger position to make use of their policymaking and legislative powers (Duverger 1992).

Party leadership may provide a parallel source, alongside the state apparatus, of both patronage and control, which may strengthen the president’s hand in relations with the legislature and other institutions. However, this cuts both ways: if the president’s party has an enduring identity that transcends the leadership of any particular individuals, and if the president is at least as dependent on the party’s nomination as the party is on presidential patronage, the party may be a source of restraint on the president as well as a source of support.

### Constitutional design considerations

The electoral system and the timing of elections are constitutional design issues, which can usually be considered in parallel to the question of presidential legislative powers. From a constitutional design perspective, little can be done to regulate the internal relationship between the president and political parties. Even if the constitution contains some general provisions on political parties—providing for their free formation, requiring them to uphold democratic principles, regulating their sources of funding, and so on—much still depends on circumstantial factors that cannot be constitutionally prescribed, such as the stability of internal party structures and the character of individual leaders. It is always important, however, for constitution-builders to remember that the party system may change, especially in transitioning or consolidating democracies, and that a constitutional system designed for one set of circumstances might not work well in other, perhaps unexpected, circumstances.

It is also necessary to remember that, in a democracy, it is impracticable and illogical for the position of president to be both powerful and politically neutral (Skach 2011). If the president has a decision-making role and is expected to be a policy leader, then the president will have to be supported by, and court the

support of, political parties, and must compete for votes on the basis of a general programme, specific campaign promises and their own record, character and competence. If, alternatively, the intention is for a non-partisan president to act as a ceremonial figurehead who embodies national unity and stability, but does not govern, it would be usual to limit the president and keep presidential powers to a minimum.

## Norms and expectations of presidential power

The operation of the presidency in practice depends greatly on the norms and expectations of presidential behaviour operating in the country. As Mezey (2013: 8) writes, there are a 'set of public perceptions, political actions, as well as formal and informal political power arrangements that to a greater or lesser degree characterize all countries that have presidential or semi-presidential constitutions'.

Constitution-makers have to be aware of these norms and expectations in the country, and should think carefully about how they are likely to influence the behaviour and conduct of presidents. For example, in countries with a history of autocratic rule, people may tend to focus exclusively on the president, seeing the president as a source of all power, and expecting the president to have almost omnipotent control over the political system. In such cases, there may be a heightened risk of hyper-presidentialism and therefore an even greater need to strengthen checks and balances, through the other branches and institutions of government, in order to protect democracy from the presidency.

## Public outreach

Presidents usually have a highly visible public profile, which may enable them to influence policies by reaching out to the people. The presidency is an advantageous position from which to speak and to be listened to. Even if a president cannot impose the administration's will on the legislature, a president with a flair for publicity and effective media relations can use the visibility and informal authority of the office to shape the debate and so to influence the overall policy agenda (for example, through televised presidential addresses to the nation, or through presidential press conferences).

The degree of cultural homogeneity in a country may affect the president's ability to conduct effective public outreach. In a country with a common language, the president can address the whole nation in the vernacular, and can argue for his or her policy positions as part of a national conversation. In linguistically divided societies, however, this will be more difficult, and presidents may have to mediate their influence through the cosmopolitan and multilingual elite, represented in the legislature and the political parties, rather than by appealing directly to the people as a whole.



## Stability and risk of regime collapse

A constitution that creates fewer institutional deadlocks to hinder or frustrate the presidential agenda presents fewer temptations to step outside the constitutional rules by violent or military means in order to resolve conflicts between institutions. In countries where there is a history of military intervention, a strong but civilian president equipped with broad policymaking powers may be preferable to perennial coups carried out by generals who are frustrated by deadlock. However, if there is a history of hyper-presidentialism, it might be necessary to take strident measures to curtail presidential powers in order to prevent a return to dictatorial behaviour. These are not prescriptions: in each country, it is necessary to make a fair assessment of the situation and the risks, and respond accordingly (see Box 7.1 for an example).

### Box 7.1. Lessons from history: The dangers of designing the presidency to suit a particular person

In situations where there is a particularly prominent presidential candidate who dominates the political scene, it is tempting for constitution-makers to tailor the office to the individual. However, this is a very short-sighted approach to constitution-making and may store up trouble for the future.

This is exemplified by the experience of early-20th-century Poland. The Polish Constitution of 1921—the country's first democratic constitution—was designed with a very weak, mostly ceremonial presidency in order to prevent Marshal Józef Piłsudski, a popular war hero and likely presidential candidate, from becoming a dictator. Piłsudski, not wishing to occupy such a powerless office, twice refused the presidency.

This constitution resulted in a weak, fragmented parliamentary system in which coherent leadership was absent. Following amendments in 1926 that were intended to strengthen the executive, the Constitution of 1921 was replaced in 1935 with a new constitution that reconfigured the state as a semi-presidential system with a powerful presidency.

Again, Piłsudski's presence influenced the constitutional designers, but in this case it was in the hope that Piłsudski would be elected president and would provide strong leadership. Before he could be elected, however, Piłsudski died. So, on two occasions, the Polish Constitution was designed around a particular person—in the first place to limit his powers, and in the second place to increase them—but in both cases the person who had been expected to take office did not do so.

## 8. Decision-making questions

---



1. What is the overall principle of the constitutional design? Is the constitution primarily intended to harness and direct the power of democratic leaders? Or is it primarily intended to restrain democratic leaders in order to protect minorities, individual rights or property? What consequences does this have for: the ease or difficulty of the legislative process; and the role of the president within that process?
2. Is the president supposed to be: (a) the primary policymaker who takes the main role in initiating policy; (b) one of several competing policymakers who share initiative with the legislature; or (c) primarily a guardian of the constitutional order, whose leadership is exercised only sporadically, such as in times of crisis?
3. What powers does the president need in relation to legislation in order to fulfil those functions?
4. Presidential legislative and agenda-setting powers and presidential veto powers often operate in tandem. How are these powers balanced?
5. How do the president's legislative initiative and agenda-setting powers relate to his or her other powers? Is the overall package of presidential powers sufficient for its intended purposes? Are the powers excessive?
6. What is the prevailing political culture? Are there ingrained habits of presidentialism that will tend to make the president a seemingly natural repository of power? What effect will this have on the operation of the political system as a whole? What accommodation should be made for it in the design of presidential legislative initiative and agenda-setting powers?

7. What is the nature of the party-political landscape? Is the president likely to lead a programmatic party in the legislature that will compete alongside other programmatic parties? Or is the president likely to lead a personalist party? Or will the president be confronted with a divided, factionalized legislature? How will these political conditions shape the need for, and use of, presidential legislative powers? How might the political conditions change in the future, and how can the constitution adapt to such changes?

# 9. Examples



Table 9.1. Presidential legislative powers in Argentina, Colombia and France

	Argentina	Colombia	France
System	Constitution of 1853 / 1994, as amended Presidential federal republic Multi-party system ‘Super-plurality’ (45% rule) run-off elections for presidency; proportional representation for Chamber of Deputies	Constitution of 1991, as amended Presidential unitary republic Multi-party system Majority run-off elections for presidency; proportional representation for Congress	Constitution of 1958, as amended Semi-presidential unitary republic Multi-party system Majority run-off elections for presidency and National Assembly
Proposing and introducing legislation	Article 77: Bills may be proposed by the President as well as by the members of Congress	Article 154: The government may introduce bills as well as members of the Congress	Article 39: ‘The Prime Minister and Members of Parliament shall have the right to initiate bills’
Exclusive powers over financial legislation	Article 52: The Chamber of Deputies, not the President, has the exclusive right to initiate proposed laws on taxes	Article 154: Only the government may introduce bills on national development plans, structure of the public administration, government contracts, loans, and the sale of national assets, taxes, the national bank, public credit, foreign trade and exchange, etc	Article 40: Private Members’ Bills and amendments introduced by Members of Parliament are not admissible if their enactment would result in either a reduction in revenue or an increase of public expenditure

	Argentina	Colombia	France
Summoning the legislature and setting the agenda	<p>Article 99 (8): The President opens the annual sessions of Congress and ‘shall offer an account on that occasion of the state of the Nation, and of the reforms promised by the Constitution, and recommend for the consideration of Congress those measures he deems necessary and fitting’</p> <p>(9) The President ‘extends the regular sessions of Congress, or convokes it for extraordinary sessions when an important interest in order or progress requires it’</p>	<p>Article 138: Congress shall meet in special sessions ‘by convocation of and for the period of time stipulated by the government.’</p> <p>In these sessions, the Congress may only discuss the issues submitted to it by the government, but Congress retains at all times the right to ‘political control’ over the government</p>	<p>Article 48: Government has priority over the legislative agenda for two weeks in every four. The Government can also prioritize finance bills, social security bills, and certain other bills</p>
Decree laws / delegation of legislative powers to executive	<p>Article 99(3): President may issue ‘necessity and urgency’ decrees in the Council of Ministers; these cannot concern criminal law or taxes, and are subject to review by a congressional committee</p>	<p>Article 150 (10): Congress may, for up to six months, delegate to the President powers ‘to issue rules with the force of law when public necessity or advantage so requires’.</p> <p>Such delegation must be approved by an absolute majority vote in both chambers. Congress retains a right to amend decree-laws, ‘at any time and at its own initiative’. Decree-laws may not be used for ‘issuing codes, legal statutes, organic laws, or tax laws’</p>	<p>Article 38: ‘To implement its programme, the Government may ask Parliament for authorization, for a limited period, to take measures by ordinance that are normally the preserve of statute law’</p>
Fast-track procedure	<p>No fast-track procedure</p>	<p>Article 163: The President may ‘solicit the urgent passage of any legislative bill’.</p> <p>This imposes a 30-day limit on consideration by each chamber. The President may also give a bill priority on each day’s legislative agenda.</p>	<p>Article 49: The passage of government bills relating to public finance or social security may be tied to a vote of no-confidence; the bill is passed automatically unless a vote of no-confidence in the government is passed.</p> <p>This procedure may also be invoked for other bills but only once in each session.</p>

	Argentina	Colombia	France
Presidentially initiated referendums	Article 40: The President may call a consultative referendum on matters within the President's competence	No provisions for presidentially-initiated referendums	Article 11: The President (at the request of the Government) may submit to a referendum any government bill concerning the organization of public authorities, economic or social policy, public services, or ratification of certain treaties
Veto power, dissolution power, or other sources of presidential influence over the legislature	Article 83: The President may veto bills passed by Congress (including a 'line item veto); the veto may be over-ridden by a two-thirds majority vote in both chambers	Article 167: The President may veto bills passed by Congress (including a 'line item veto); the veto may be over-ridden by an absolute majority vote in both chambers	Article 12: The President may dissolve National Assembly at will but not more than once in any twelve month period
Semi-presidential features and restrictions on presidential governing powers	Article 100:  The President shall appoint a 'Chief of the Cabinet', who is 'politically responsible to the Congress' and has delegated authority over much of day-to-day governance and domestic policy  Article 101:  Chief of the Cabinet may be censured by a majority vote in both Houses of Congress	Article 115:  Presidential decisions require counter-signature by a responsible Minister  Article 135(9):  Ministers may be censured by a majority vote in either chamber of the Congress	The President's role in domestic policy is limited by the need to co-habit with a Prime Minister who may be from another political party (see Article 21)  Article 50:  The government must resign if the National Assembly passes a resolution of no-confidence, or when it fails to endorse the Government programme or general policy statement

*Note:* Argentina, Colombia and France exemplify Negretto's (2013) expected combination of: (a) extensive presidential legislative powers; and (b) compensatory checks and balances over the president's governmental powers.

Table 9.2. Presidential legislative powers in Kenya and Indonesia

	Kenya	Indonesia
<b>System</b>	Constitution of 2010 Presidential republic: unitary and decentralized Factionalized multi-party system Majority run-off elections for presidency; plurality elections for National Assembly	Constitution of 1945, as amended Presidential republic: unitary with regional decentralization Multi-party system Proportional representation (for lower house)
<b>Proposing and introducing legislation</b>	No specific constitutionally – mandated power to introduce legislation	Article 5: ‘The President shall be entitled to submit bills to the People’s Representative Council (DPR)’
<b>Exclusive powers over financial legislation</b>	No specific constitutionally-mandated power over financial legislation	Article 23: ‘The bill on the State Budget shall be submitted by the President’  If the budget bill presented by the President is not passed by the People’s Representative Council, the Government can implement the previous year’s budget
<b>Summoning the legislature and setting the agenda</b>	Article 132: The President may ‘address the opening of each newly elected Parliament’, may ‘address a special sitting of Parliament once every year’ and ‘address Parliament at any other time’	No summoning or agenda-setting powers in the Constitution
<b>Decree laws / delegation of legislative powers to executive</b>	No specific constitutionally mandated provision for decree laws or the delegation of legislative powers to the executive	Article 22: ‘Should exigencies compel, the President shall have the right to establish government regulations in lieu of laws. Such government regulations must obtain the approval of the People’s Representative Council during its next session. Should there be no such approval, these government regulations shall be revoked’
<b>Fast-track procedure</b>	No fast-track procedure	No fast-track procedure
<b>Presidentially initiated referendums</b>	No provision for presidentially-initiated referendums	No provision for referendums in the Constitution
<b>Veto power, dissolution power, or other sources of presidential influence over the legislature</b>	Article 115: President can veto legislation subject to override by ordinary majority if the President’s proposed amendments are incorporated; otherwise by two-thirds majority	Article 20: No veto power (bills submitted to the President become laws after 30 days, even if the President does not assent to them)

	Kenya	Indonesia
Semi-presidential features and restrictions on presidential governing powers	No semi-presidential features, although legislative approval of certain key state appointments is provided for, as well as strong independent 'fourth-branch' institutions	No semi-presidential features

*Note:* Kenya and Indonesia represent a more traditional model of the separation of the powers, in which the president has only limited powers of legislative leadership, while retaining full and direct control over the executive.



## References



### Where to find constitutions referred to in this Primer

The constitutional texts referred to in this Primer, unless otherwise stated, are drawn from the website of the Constitute Project, <<https://www.constituteproject.org>>.

- Cheibub, J., 'Latin American presidentialism in comparative and historical perspective', *Texas Law Review* 89/7 (2011)
- Duverger, M., 'A New Political System Model: Semi-presidential Government', in A. Lijphart (ed.), *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1992)
- Elkins, Z., Ginsburg, T. and Melton, J., *Constitutional Constraints on Executive Lawmaking*, University College London Constitution Unit Working Paper, 2012
- Linz, J., 'The Perils of Presidentialism', in A. Lijphart (ed.), *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1992)
- Mezey, M. L., *Presidentialism: Power in Comparative Perspective* (Boulder, CO: Lynne Rienner Publishers, 2013)
- Negretto, G., *Making Constitutions: Presidents, Parties and Institutional Choice in Latin America* (Cambridge: Cambridge University Press, 2013)

- Reich, G., 'Executive decree authority in Brazil: How reactive legislators influence policy', *Legislative Studies Quarterly* 27/1 (2002), pp. 5–31
- Sedelius, T., *The Tug-of-War Between Presidents and Prime Ministers: Semi-presidentialism in Central and Eastern Europe* (Örebro: Örebro Studies in Political Science, Örebro University, 2006)
- Shugart, M. S. and Carey, J. M., *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992)
- Skach, C., *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton, NJ: Princeton University Press, 2011)
- Slezak, N. L., *The Presidential Veto: A Strategic Asset* (Washington, DC: Center for the Study of the Presidency and Congress, 2007)

# Annex

---



## About the author

**Elliot Bulmer** is a Programme Officer with International IDEA's Constitution-Building Processes Programme. He holds a PhD from the University of Glasgow and an MA from the University of Edinburgh. He is the editor of International IDEA's Constitution-Building Primer series and specializes in comparative approaches to constitutional and institutional design.

## About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide. International IDEA's mission is to support sustainable democratic change by providing comparative knowledge, assisting in democratic reform, and influencing policies and politics. Based in Stockholm, Sweden, it has offices in Africa, the Asia-Pacific, Europe and Latin America.

Visit our website: <<http://www.idea.int>>.



## About this series

An ongoing series, International IDEA's **Constitution-Building Primers** aim to explain complex constitutional issues in a quick and easy way.

1. What is a Constitution? Principles and Concepts\*
2. Bicameralism<sup>^</sup>
3. Direct Democracy\*
4. Judicial Appointments\*
5. Judicial Tenure, Removal, Immunity and Accountability
6. Non-Executive Presidents in Parliamentary Democracies\*<sup>^</sup>
7. Constitutional Monarchs in Parliamentary Democracies<sup>^</sup>
8. Religion–State Relations<sup>^</sup>
9. Social and Economic Rights<sup>^</sup>
10. Constitutional Amendment Procedures
11. Limitation Clauses<sup>^</sup>
12. Federalism<sup>^</sup>\*
13. Local Democracy<sup>^</sup>
14. Presidential Veto Powers<sup>^</sup>
15. Presidential Legislative Powers
16. Dissolution of Parliament
17. Government Formation and Removal Mechanisms
18. Emergency Powers
19. Fourth-Branch Institutions
20. Constitutional Recognition of Political Parties

<sup>^</sup> Also available in Arabic

\* Also available in Myanmar

Download the Primers from our website: <<http://www.idea.int/publications>>.  
An updated list of Primers is available at <<http://constitutionnet.org/primers>>.



International IDEA's Constitution-Building Primers are designed to assist in-country constitution-building or constitutional-reform processes by helping citizens, political parties, civil society organizations, public officials and members of constituent assemblies make wise constitutional choices.

They also provide guidance for staff of intergovernmental organizations and other external actors working to provide well-informed, context-relevant support to local decision-makers.

Each Primer is written as an introduction for non-specialist readers, and as a convenient aide-memoire for those with prior knowledge of, or experience with, constitution-building. Arranged thematically around the practical choices faced by constitution-builders, the Primers aim to explain complex constitutional issues in a quick and easy way.