UCLA
UCLA Public Law & Legal Theory Series

Title
The Case for Plural Executives in the Age of Strongmen

Permalink
https://escholarship.org/uc/item/2p31c34c

Journal
UCLA School of Law Public Law & Legal Theory, 26(8)

Author
Gardbaum, Stephen

Publication Date
2024-10-01

eScholarship.org Powered by the California Digital Library
University of California

UCLA School of Law

Public Law & Legal Theory Research Paper No. 24-36

---

# THE CASE FOR PLURAL EXECUTIVES IN THE AGE OF STRONGMEN

BY

STEPHEN GARDBAUM
*STEPHEN YEAZELL ENDOWED CHAIR IN LAW*

---

*International Journal of Constitutional Law* (forthcoming 2026).

# The Case for Plural Executives in the Age of Strongmen

Stephen Gardbaum*

*This article reconsiders the traditional republican mechanism of the plural executive in the context of the global problem of democratic backsliding. It argues that, institutionally, the problem is significantly rooted in the combination of two general modern developments in executive power within democracies that necessitate fresh thinking about its basic structure. These are the rise of executive governance and the distinct phenomenon of "chief executive aggrandizement," the growth in power within the executive of its head or chief. The most extreme version of this latter development has been the emergence of "strongmen" chief executives – both presidents and prime ministers -- whose signature moves have been to further concentrate power in themselves. The article explains that single and plural executives are not a binary but a spectrum before exploring the wide range of possible plural executives resulting from different permutations of three variables: types of plurality; the bases of executive representation; and the "forms" of plural government. The article then revisits conventional arguments in favor of single executives to make a contemporary case for plural ones before assessing the preferred type. The discussion focuses on the extent to which they may better achieve and balance the four key values of democratic governance -- stability, effectiveness, accountability, and representativeness -- which are skewed and threatened by the current combination of executive dominance and chief executive aggrandizement.*

## 1. Introduction

We live in a world of executive governance. Over the course of the past century or so, the executive has everywhere become the most powerful branch of democratic government,[1] no longer limited to executing the laws and policies enacted by the legislature but serving as the primary policymaking institution and political first responder. Although the now-familiar term

* Stephen Yeazell Endowed Chair in Law, UCLA School of Law. Email: gardbaum@law.ucla.edu. Many thanks to Blake Emerson, Aileen Kavanagh, Madhav Khosla, Jon Michaels, participants in the 2025 Southern California International Law Scholars Conference and the 2025 ICON-S panel on executive power in the twenty-first century, as well as two anonymous peer reviewers, for very helpful comments on previous drafts.

[1] In pre-democratic times, the executive was (and in non-democratic contexts is) almost always the most powerful branch, but the rise of democracy was manifested in the growth of popularly accountable legislative power that has since declined.

"executive aggrandizement,"[2] to the extent it covers the same ground, implies that this phenomenon is a pathology of contemporary democratic government, involving significant abuse of power, executive dominance is rather to be seen more as a fact or inevitability in the modern world, for pragmatic reasons that have been well canvassed in the literature.[3]

A second, and distinct, modern development is what I refer to as "*chief* executive aggrandizement." Unlike executive dominance or aggrandizement, which concerns the relative change in power among the branches of government in favor of the executive, chief executive aggrandizement involves the growth in power *within* the executive of its head or chief. This has occurred especially, although by no means only,[4] in parliamentary and semi-presidential forms of government that in theory are more collective or plural than presidentialism. This quite general development is distinct because an empowered executive may still be a "they not an it,"[5] and reflects a shift towards singularity of the executive in addition to its dominance.

The combination of these two modern developments, executive dominance and chief executive aggrandizement, poses new challenges to democratic governance that ultimately require fresh thinking on the structure of executive power. Were we still living in the American

---

[2] *See, e.g.*, Nancy Bormeo, *On Democratic Backsliding*, 27 J. OF DEMOCRACY 1 (2016) (introducing the concept of executive aggrandizement); Tarun Khaitan, *Executive Aggrandizement in Established Democracies*, 17 INT'L. J. CONST. L. 342 (2019); Vanessa Williamson, *Democratic Erosion: The Role of Executive Aggrandizement*, BROOKINGS COMMENTARY(October 30, 2023), https://www.brookings.edu/articles/democratic-erosion-the-role-of-executive-aggrandizement/.

[3] *See, e.g.*, ERIC POSNER & ADRIAN VERMEULE, THE EXECUTIVE UNBOUND (2010); Jerry Mashaw, *Prodelegation: Why Administrators Should Make Political Decisions,* 1 J. L. ECON. & ORG. 81 (1985); William P. Marshall, *Eleven Reasons Why Presidential Power Inevitably Expands and Why it Matters*, 88 B.U. L. REV. 505 (2008); Christos D. Strubakos, *Executive Branch Expansion is an Inevitable Consequence of the Madisonian Psychological Framework*, 54 STETSON L. REV. 121 (2024)..

[4] As we are currently witnessing in the United States, political and judicial adherence to the controversial "unitary executive theory," which posits the President as a single-person branch of government and hierarchically in command of all executive functions, agencies, and personnel, is on the rise. For more on this theory, as well as more plural alternatives within presidentialism, *see infra* Parts 2 & 6.

[5] Indeed, as proponents of the "unbound executive," Posner and Vermeule insist that the executive is a they not an it. *See supra* note 3, at 27.

framers' presumed world of a relatively weak and limited executive (compared to the legislature),[6] then concentrating its power in a single person as a counterweight might be wise, or at least unproblematic. Similarly, if we still had the more collective, power-sharing parliamentary executives of the nineteenth and first half of the twentieth centuries,[7] then executive governance would not pose the same issues. But the modern combination of political power concentrated, first, in the executive and, then within the executive, in its chief raises at least two serious concerns from the perspective of constitutional democracy.

First, the traditional key values of democratic governance – stability, accountability, effectiveness, and representation[8] – are skewed and potentially threatened by such double concentration. For some of them are promoted by, and presume the relative strength and independence of, the legislative and judicial branches of government, and also favor more collective or deliberative modes of decision-making. Unless these values are to be abandoned or replaced, we need to think of new ways of achieving them in the face of executive dominance and chief executive aggrandizement. Second, the risk of such highly concentrated political power in a single person is, as it always has been, tyranny. And this risk has materialized and continues, at least in part, around the world in recent years in the guise of the most extreme version of chief executive aggrandizement. This is the growing authoritarianism of various "strongmen" presidents and prime ministers, whose signature moves have been to further concentrate power in themselves, resulting in the now familiar litany of democratic backsliding,

---

[6] THE FEDERALIST NO. 48, at 309 (James Madison) (Clinton Rossiter ed. 1961) (describing executive powers as "carefully limited" and referencing the political "superiority" of the legislature).

[7] *See, e.g.*, R.H.S. Crossman's introduction to WALTER BAGEHOT, THE ENGLISH CONSTITUTION (Fontana ed., 1963), at 53: "In Bagehot's day, collective Cabinet responsibility meant the responsibility of a group of equal colleagues for decisions taken collectively, after full, free and secret discussion in which all could participate. It now means collective obedience by the whole administration…to the will of the man at the apex of power."

[8] *See, e.g.*, *12 Principles of Good Democratic Governance*, Council of Europe (2019).

the capture or degradation of the other branches and all independent accountability institutions, and the delegitimization and punishment of political opposition. All of this has involved not only the manipulation and undermining of any legal constraints on their actions, but also and increasingly, of political ones.[9]

Given these problems and the seeming inevitability of executive governance in the contemporary world, the necessary rethinking of the structure of executive power must focus on, and seek to counter, the distinct phenomenon of chief executive aggrandizement. Although there are, of course, reasons for the rise of singularity,[10] they do not seem to be as conclusive or indefeasible as those behind executive governance. In other words, as I suggested in previous work,[11] now is the time to explore less singular, more plural alternatives, including co-equal ones. This article is my attempt to follow up on this call in a focused and systematic way.

Fully plural executives have, for the most part, been consigned to the dustbin not only of history,[12] but also of constitutional design. Only two countries in the world currently have such executives at the national level.[13] Although there have been sporadic undercurrents of support over the years for reviving this traditional republican mechanism as a counter to the near-

[9] Attacks on opposition and independent media have seriously undermined, although not entirely destroyed, free and fair elections in several of the relevant countries.

[10] These reasons are discussed in *infra* Part 4.

[11] Stephen Gardbaum, *The Counter Playbook: Resisting the Populist Assault on the Separation of Powers*, 59 COLUM. J. TRANSNAT'L. L. 1, 32 (2020).

[12] The phrase "dustbin of history" has its origins in Augustine Birrell's book of essays Obiter Dicta (1887) ("that great dust heap called 'history'), but was popularized by Leon Trotsky, when he said of the Menshevik decision to leave the 1917 Congress of Soviets, 'Go to the place where you belong from now on – the dustbin of history.'" *See* William Saffire, *On Language; Dust Heaps of History*, N.Y. TIMES (October 16, 1983), https://www.nytimes.com/1983/10/16/magazine/on-language-dust-heaps-of-history.html.

[13] These are Bosnia and Herzegovina and Switzerland (not including unelected military juntas following coups). Although San Marino has two collegial Captains Regent, who serve as joint heads of state, their position is largely ceremonial and without executive power, which is vested in a parliamentary-style government headed de facto by the Secretary of State for Foreign and Political Affairs. *See* CONST. OF SAN MARINO, art. 3 ("The Congress of State shall be vested with the executive power, according to the principles of collegiality and accountability.")

universal contemporary practice of concentrating power in a single chief executive on the part of a few domestic and comparative constitutional scholars,[14] as well as political scientists,[15] the idea has failed to gain steam. Despite huge investments in constitutional design by scholars and practitioners that have generated ingenious suggestions for addressing the current general challenge of democratic backsliding,[16] virtually none of this has involved renewed consideration of the plural executive.[17] And yet such reconsideration would seem to be more relevant than ever, as it is strongmen chief executives who have been responsible for most of the democratic backsliding around the world.[18]

To be sure, single and plural executives are not, or at least are no longer,[19] a binary but a spectrum, running from the pure single-person executive of unitary presidentialism to a pure

---

[14] *See, e.g.*, Christopher R. Berry & Jacob E. Gerson, *The Unbundled Executive*, 75 U. CHI. L. REV. 135 (2008); DAVID ORENTLICHER, TWO PRESIDENTS ARE BETTER THAN ONE: THE CASE FOR A BIPARTISAN EXECUTIVE BRANCH (2013); Laurence Claus, *Tyranny of the One* (review article of STEVEN LEVITSKY & DANIEL ZIBLATT, TYRANNY OF THE MINORITY (2023), CONSTITUTIONAL COMMENTARY (forthcoming) [hereinafter Claus, *Tyranny*]; Laurence Claus, *The Law of Constitutional Capture*, 19 VIENNA J. ON INT'L CONST. L. 267 (2025) [hereinafter Claus, *Law*]. Beyond reconsideration of the plural executive per se, some other scholars have argued for less concentrated power within presidential executives. *See, e.g.*, Blake Emerson & Jon Michaels, *Abandoning Presidential Administration: A Civic Governance Agenda to Promote Democratic Equality and Guard Against Creeping Authoritarianism*, 68 UCLA L. REV.104 (2021).

[15] THOMAS A. BAYLIS, GOVERNING BY COMMITTEE: COLLEGIAL LEADERSHIP IN ADVANCED SOCIETIES ((1989); David Altman, *Collegiate Executives and Direct Democracy in Switzerland and Uruguay: Similar Institutions, Opposite Political Goals, Distinct Results*, 14 SWISS POL. SCI. REV. 483 (2008) [hereinafter Altman, *Collegiate Executives*]; David Altman, *Checking Executive Personalism: Collegial Governments and the Level of Democracy*, 26 SWISS POL. SCI. REV. 316 (2020) [hereinafter Altman, *Executive Personalism*]. Shugart and Carey include, but do not argue for, collegial presidencies in their leading study of the typology of presidential systems, MATTHEW SHUGART & JOHN CAREY, PRESIDENTS AND ASSEMBLIES ((1992).

[16] *See* Bormeo, *supra* note 2; TOM GINSBURG & AZIZ HUQ, HOW TO SAVE A CONSTITUTIONAL DEMOCRACY (2018); Edoardo Grillo, Zhaotian Luo, Monika Nalepa, and Carlo Prato, *Theories of Democratic Backsliding*, 27 ANN. REV. OF POLI. SCI. 381 (2024).

[17] *See, e.g.,* GINSBURG & HUQ, *id*.; MARK GRABER, SANFORD LEVINSON, MARK TUSHNET EDS., CONSTITUTIONAL DEMOCRACY IN CRISIS? (2018); ROSALIND DIXON & DAVID LANDAU, ABUSIVE CONSTITUTIONAL BORROWING (2022); LEVITSKY & ZIBLATT, *supra* note 14. For the few exceptions, *see* works cited in *supra* notes 14-15.

[18] *See, e.g.*, GIDEON RACHMAN, THE AGE OF THE STRONGMAN: HOW THE CULT OF THE LEADER THREATENS DEMOCRACY AROUND THE WORLD (2022).

[19] *See infra* Part 2.

multi-person, co-equal executive of classical republicanism. In many ways, the two major modern alternatives of parliamentary and semi-presidential forms of government fall in between as more plural than presidentialism, although less plural, as less co-equal, than the opposite polar position. But, as discussed in more detail in Part 4 below, the impact of chief executive aggrandizement has often been to concentrate greater power in parliamentary and semi-presidential chief executives than previously and to shift them in the direction of the singular end of the spectrum.

There is a need to *explore* more fully plural alternatives because a wide variety exists – currently, historically, and hypothetically – and not only the two versions usually discussed in the episodic undercurrent of scholarly support.[20] These are the Swiss Federal Council, a seven member collegial executive elected by the legislature, and the partly "unbundled" executive at the state level in the United States, in which one, a few, or several independently elected executive officials with specific subject-matter jurisdiction co-exist with the general or default chief executive.[21] This wider variety is the product of different permutations among the following three sub-categories: (1) types of plurality, including collegial, co-equal executives versus separate, specialized ones (as well as degree); (2) the bases of executive representation, if any, among, for example, states, ethnic groups, and political parties; and (3) the "forms" of plural government, including presidential, parliamentary, and hybrid versions, corresponding primarily to the appointment procedures and tenure of members of the plural executive.[22]

[20] *See* works cited in *supra* notes 14-15.

[21] On the Swiss Federal Council, *see* Claus, *Tyranny*, *supra* note 14; on partly unbundled executives, *see* Berry & Gerson, *supra* note 14.

[22] "Collective executives are not regime dependent: the concept can be applied across the full parliamentarian-presidential continuum." Altman, *Executive Personalism*, *supra* note 15, at 319.

In its attempt to further the necessary fresh thinking on the structure of executive power in comparative constitutional studies, this article presents the case for full plurality as a serious and general constitutional design option in the context of executive governance and as a counter to the distinct phenomenon and risks of chief executive aggrandizement. It does so primarily from the perspective of the extent to which such plurality may help to achieve and better balance the four key values of democratic governance -- stability, effectiveness, accountability, and representativeness -- especially in view of how these values have been both challenged and clarified as a result of the current era of democratic backsliding.

Greater executive plurality could be achieved by the less radical route of seeking to shift all three contemporary forms of government part way along the spectrum in the direction of the plural pole, and the article briefly discusses such possible reforms.[23] These include less unitary presidential systems, reviving the norms and practices of cabinet government, and enhancing the duality of semi-presidentialism. But it also pushes on to present the case for taking seriously the more radical design option of a fully plural executive and considers the respective merits of the variety of types it identifies. The argument here focuses not only on how, and the extent to which, different types of plural executive successfully address the conventional Hamiltonian concerns of ineffectiveness and unaccountability[24] but also on how they may more optimally and reliably contribute to democratic stability and representation.

The article proceeds as follows. Part 2 first explains how modern developments have blurred the traditional binary between single and plural executives and replaced it with a spectrum, before locating the positions that the major types of contemporary executives occupy

[23] *See infra* Part 6.

[24] These concerns originate in THE FEDERALIST No.70 (Alexander Hamilton) and are discussed in Part 5.

along it. This provides the analytical scaffolding for the article as a whole. Part 3 completes the spectrum by exploring the pluralism of polar plural executives arising from different permutations of the following three variables: types of plurality, the bases of executive representation, and the "forms" of government. It also provides examples of these actual and potential kinds of plural executives. Part 4 more fully describes the current context that renders reconsideration of plural executives relevant and timely, indeed urgent, and, in particular, the combination of executive dominance and chief executive aggrandizement, of which the most extreme and dangerous version of the latter has been the recent rise of democratic backsliding strongmen presidents and prime ministers around the world. Especially in this context, Part 5 makes the case for fully plural executives as a serious constitutional design option, primarily in terms of their potentially more optimal promotion of the various values of democratic governance than single executives, especially (but not only) the stability of democracy itself. In so doing, it revisits and critiques Hamilton's famous arguments for singularity. Part 6 briefly considers how the three major existing types of executive could usefully be made more plural before Part 7 addresses the issue of which type of fully plural executive identified in Part 3 is, all things considered, the preferred one.

## 2. Single and Plural Executives: not a Binary but a Spectrum

In the history of political theory and practice, the distinction between a single person and a plural executive was treated as an important binary, reflecting and expressing the basic difference between monarchical and republican government. All previous republics before the United States had fully plural executives, from the subject-matter specific, multiple magistracies

selected by lot in ancient Athens,[25] to the division of executive power between the two annually elected consuls of the early Roman Republic,[26] to the Dutch Republic's States-General.[27] All three roughly contemporaneous republican constitutions of revolutionary France shared this feature.[28]

Indeed, this characteristic is precisely what was understood to differentiate them substantively – and not merely in name – from the only alternative of monarchy. In the then-existing two basic choices of forms of government, ruling monarchy or republic, the former was defined as granting executive power to one person alone (mono-archy, the rule of one), regardless of that person's precise title, and the latter to a plurality. For Montesquieu, a monarchy is a government "in which a single person governs by fixed and established laws," whereas "a republican government is that in which the body, or only part of the people, is possessed of the supreme power."[29] He thereby distinguished two types of republics: the former being a "democracy" and the latter an "aristocracy."[30] For Rousseau, the term "government" meant "the legitimate exercise of the executive power" as authorized by the sovereign, and

---

[25] *See, e.g.*, Adrian Vermeule & Adriaan Lani, *Precautionary Constitutionalism in Ancient Athens*, 34 CARDOZO L. REV. 893 (2013).

[26] *See, e.g.*, ANDREW LINTOTT, THE CONSTITUTION OF THE ROMAN REPUBLIC (1999). The two annual consuls were supplemented by many additional, subject-matter specific, elected magistrates in the later republic, i*d*.

[27] JL Price, *The States General and the Generality*, in JL PRICE ED., HOLLAND AND THE DUTCH REPUBLIC IN THE SEVENTEENTH CENTURY (OUP, 1994).

[28] These were the 24 person Executive Council under the 1793 constitution (never implemented); the 5 person Directorate of the 1795 constitution; and the 3 person Consulate of the 1799 constitution. The First Republic (1792-1804) officially ended when Napoleon became sole executive, as emperor, in 1804. *See generally*, WILLIAM DOYLE, THE OXFORD HISTORY OF THE FRENCH REVOLUTION (1989).

[29] MONTESQUIEU, SPIRIT OF THE LAWS, Book II, 1 (Anne Cohler, Basia Carolyn Miller, Harold Samuel Stone, tr., 1989), at 10.

[30] *Id*., Book II, 2, at 15.

"monarchy" is defined as the form in which the sovereign chooses "to concentrate the whole government in the hands of a single magistrate from whom all others hold their power."[31]

As Rousseau's definition of monarchy clarifies, the distinction between single and plural executives is *not* the number of persons comprising the executive or holding executive office: one versus several or many. Even absolute monarchs like Louis XIV and Henry VIII appointed ministers and other functionaries to consult and carry out their policies. And, of course, modern executives everywhere consist of vast numbers of different actors, some of whom are politically partisan while others (civil servants, etc.) play more impartial and independent roles.[32] This does not make them all plural executives in the relevant sense. The distinction is rather about hierarchy and source of executive power: is there singularity or plurality of highest decisionmaking authority and do the most senior executive officials serve independently or at the will of one person.[33]

The U.S. Constitution invented a new type of single person executive, within a republic, thereby blurring the binary nature of the distinction.[34] Not only did this jar with history, but also

---

[31] JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT, Book III, chapter 3 (G.D.H. Cole, tr., 1973), at 215.

[32] *See, e.g.*, AILEEN KAVANAGH, THE COLLABORATIVE CONSTITUTION 143-48 (2024) (discussing Westminster parliamentary executives).

[33] Daintith and Page famously argued that the United Kingdom has a distinctively plural executive in that legal powers are mostly granted and dispersed to individual government departments and their ministerial heads, rather than to the government as a whole, and that they retain their autonomy and primacy because they are subject to no higher authority in exercising their functions. The authors further argue that "internal control" or internal separation of powers derives from this plural structure of the executive branch. At the same time, however, the authors acknowledge that in terms of political control and coordination, the Cabinet is "the supreme executive authority" (p. 51) and the "ultimate arbiter of all government policy" (*id.*, quoting a 1997 Cabinet Office publication). For the purposes of this article, the relevant sense of single versus plural executives turns precisely and only on this latter issue of political control and hierarchy: where on the single-fully plural spectrum does ultimate political authority and decision-making lie? In this sense, a (relatively) plural executive in the UK would mean that it lies primarily or mostly in the collective body of the Cabinet as a whole and not in the prime minister. TERENCE DAINTITH & ALAN PAGE, THE EXECUTIVE IN THE CONSTITUTION: STRUCTURE, AUTONOMY, AND INTERNAL CONTROL (1999).

[34] Although the U.S. Constitution creates the office of Vice-President of the United States, it does not grant any executive power to this officer. Rather, the Constitution vests certain legislative authority in the Vice-President, as "President of the Senate," with a vote only in the event of a tie. U.S. CONST. art. I, § 3, cl. 4. On the framers'

with the Constitution's own famous and characteristic Madisonian concerns about splitting, subdividing, and preventing the concentration of, political power.[35] For the U.S. Constitution is in one very important component – executive power – highly concentrated from a historical and comparative perspective. The presidential form of government it created is the only one, apart from the now rare ruling monarchy, that (arguably) gives a legal or de jure monopoly on executive authority to a single person.[36]

This tension was illustrated, albeit unwittingly, in two separate columns in the same day's New York Times about a decade ago. An op-ed article by David Brooks, comparing the framers favorably with Machiavelli for (as he claims) taking the latter's insight one step further, stated that "[o]ur founders understood that leaders are as venal and untrustworthy as anybody else. They abhorred concentrated power, and they set up checks and balances to disperse it."[37] Meanwhile, a story on the front page disclosed that then-President Obama had overruled a plan to arm carefully vetted Syrian rebels developed or supported by the Secretary of State, the Secretary of Defense, the chairman of the Joint Chiefs of Staff, and the CIA director. It quotes Senator McCain as being "dismayed" that Mr. Obama had "overruled the senior leaders of his

---

debates and disagreements surrounding the form of executive power and the creation of the presidency, *see* THE RECORDS OF THE FEDERAL CONVENTION 1787 (Max Farrand, ed. 1911). *See also* CHARLES C. THACH, JR., THE CREATION OF THE PRESIDENCY, 1775-1789 (1922).

[35] *See* THE FEDERALIST No. 51 (James Madison).

[36] "The executive Power shall be vested in a President of the United States." U.S. CONST. art II, § 1. The U.S. Supreme Court has twice recently described the President as a single-person branch of government. "[The President is] "the only person who alone composes a branch of government," Trump v. Mazars USA, LLP, 591 U. S. 848, 868 (2020). "Like everyone else, the President is subject to prosecution in his unofficial capacity. But unlike anyone else, the President is a branch of government, and the Constitution vests in him sweeping powers and duties." Trump v. United States, 603 U.S. _ (2024).

[37] David Brooks, *Florence and the Drones*, N.Y. TIMES (February 7, 2013), https://www.nytimes.com/2013/02/08/opinion/brooks-florence-and-the-drones.html.

own national security team who were in unanimous agreement that Americans need to take greater action to change the military balance of power in Syria."[38]

The other two major modern forms of government, established during the two centuries following the creation of U.S. presidentialism, have further undermined the classical binary between single person and plural executives. This is because although both parliamentary and semi-presidential government are *more* plural than presidentialism, they are also *less* plural than the traditional republican criterion of co-equality. In other words, they are both in between the more polar positions and so helped to transform the binary into a spectrum.

Parliamentary executives are more plural or collective than presidential ones in at least three ways. First, at least in Westminster-style parliamentary systems in which all, most, or many of the individual cabinet members are elected legislators,[39] their democratic legitimacy is close to that of the prime minister, if not quite equal, as they are all elected in exactly the same manner, whatever electoral system is employed.[40] This contrasts with presidential systems, where typically the president is the only executive official who is elected.[41] This near democratic equality means that cabinet members are fundamentally colleagues rather than subordinates or effectively employees of the prime minister, whereas the opposite holds for relations between cabinet members and the president within a presidential system. Apart from

---

[38] *Senate Hearing Draws Out a Rift in U.S. Policy in Syria*, N.Y. TIMES (February 7, 2013), https://www.nytimes.com/2013/02/08/us/politics/panetta-speaks-to-senate-panel-on-benghazi-attack.html.

[39] Typically in Westminster-style parliamentary systems, cabinet ministers are by constitutional convention required to be members of the legislature, and preferably of the directly elected chamber, where there is a second, non-elected one, although membership of such a chamber is permitted. Some other parliamentary systems do not have such a (conventional or legal) norm.

[40] One brief exception, where the prime minister (alone) was directly elected to office, occurred in Israel from 1992 until 2001, when the basic law reverted to the standard indirect election. *See* Emanuele Ottolenghe, *Why Direct Election Failed in Israel*, 12 J. OF DEMOCRACY 109 (2001).

[41] Again, in the U.S., the (elected) vice-president is not allocated any executive powers under the Constitution, *see supra* note 34.

advice (and overseeing their bureaucracies), the main task of a cabinet secretary in a presidential system is to implement the president's policy in their designated area.[42] Although parliamentary cabinet members are appointed, and may be fired, by the prime minister, they are not mere appointees or advisors as in a presidential system but, to varying degrees and depending on context and norms, co-decision makers in a system of cabinet government.[43]

Second, within parliamentary systems, there is collective cabinet responsibility for government actions and decisions, not only formally, in the sense that all ministers are required to publicly support decisions or else resign, but also politically. This is because actions and decisions of the cabinet as a whole or of individual members of it can result in the loss of confidence and defeat of the government in the legislature. Within a presidential system, although actions or decisions of cabinet members might hurt a president politically, they cannot have this immediate consequence. Accordingly, there is a more direct and urgent political sense in which parliamentary cabinets sink or swim together as compared with presidential ones.

Finally, a president is free to search broadly and appoint a cabinet of her own liking, and may, if she chooses, stack it with trusted loyalists or members of other political parties. Where it exists, the requirement of obtaining legislative consent may mean that a president does not always get everyone she wants, but the president normally wants (i.e., nominates) everyone she gets. By contrast, prime ministers typically make cabinet appointments under far greater practical political constraints.[44] If head of the majority party in the legislature, their universe of

[42] *See* Marbury v. Madison, 5 U.S. 137, 166 (1803) ("To aid him in the performance of these duties, [the President] is authorized to appoint certain officers, who act by his authority and in conformity with his orders.")

[43] For the formal practices of government decision-making in the United Kingdom, see the current version of The Cabinet Manual at: https://assets.publishing.service.gov.uk/media/5a79d5d7e5274a18ba50f2b6/cabinet-manual.pdf. For New Zealand, https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual.

choice is limited for the most part to members, and usually fellow elected legislators, from the same party. Among these will already be a pre-selected pecking order and set of political heavyweights, including rivals, many of whom a prime minister is expected to appoint and would rather do so to have them disciplined under the doctrine of collective responsibility than free to oppose from the backbenches. If head of a coalition government, the prime minister is constrained to appoint leaders of the allied parties. Moreover, a prime minister must maintain the support and confidence not only of parliament but also, and sometimes more critically, of her party, of which several fellow leaders and potential successors will likely be serving in the cabinet. Otherwise, she will be faced with the prospect of being forced from office in a party leadership contest, as has happened several times in recent years.[45]

These essential and inherent differences between the two systems are poignantly illustrated by two wartime incidents involving a great prime minister and a great president. In May 1940, newly appointed prime minister Winston Churchill was faced with the imminent invasion of Britain following the lightning military defeats of France, Belgium, and the Netherlands by Nazi Germany. Churchill was all for continuing the war and could not countenance the possibility of seeking a negotiated peace with Hitler. Among the five-person war cabinet, however, were those who flirted with the idea that Britain's bargaining position would be better before, rather than after, what seemed like near-certain defeat and occupation. But as prime minister, even in the starkest national security emergency, Churchill was not simply

[44] Although presidents may occasionally be constrained by circumstances to nominate one or more political rivals (for example, Obama's nomination of his primary opponent, Hilary Clinton, as Secretary of State), this is mostly the norm for prime ministers.

[45] Recent examples include Theresa May,(2019), Boris Johnson (2022), and Liz Truss (2022) in the UK, and Kevin Rudd (2010), Julia Gillard (2013), Tony Abbott (2015), and Malcom Turnbull (2018) in Australia, all of whom were forced out of the office of prime minister by threatened or actual loss of support among the governing party's members of parliament.

free to impose his view on the cabinet, and what transpired was five days of intense debate among its members to reach agreement or consensus on a course of action.[46] The outcome was on a knife-edge and only after much discussion, negotiation, and eventual backing down by certain members, did Churchill's position prevail within the cabinet.[47] A few days later, Churchill made his famous "we will fight them in the beaches…we will never surrender" speech to the House of Commons.

By contrast, during the Civil War, President Lincoln is famously quoted to have concluded a cabinet meeting in which he was unanimously outvoted as follows: "Seven nays and one aye, the ayes have it."[48] The actual story may well be apocryphal, but the key point is that it certainly could have happened, as cabinet members have only a purely advisory role vis-à-vis the president. It is unquestioned that it is always legitimate for a president to overrule the views of any one or more cabinet secretaries, even on matters within their areas of responsibility,[49] whereas it is far from unquestioned within parliamentary systems.

In parliamentary systems, there is a second division and plurality of the executive function, between the head of state – either constitutional monarch or president – and head of government, which does not exist under the more concentrated presidential system in which both offices are combined. The extent of this division varies among parliamentary systems from the

[46] The story is brilliantly told in JOHN LUKACS, FIVE DAYS IN LONDON: MAY 1940 (1999).

[47] *Id*.

[48] Peter W. Rodman, *Presidential Command*, N.Y. TIMES (January 16, 2009), https://www.nytimes.com/2009/01/18/books/chapters/chapter-presidential-command.html. Lincoln was uniquely constrained by the circumstances surrounding the imminent civil war to appoint cabinet secretaries not aligned with his own policies and priorities. *See* DORIS KEARNS GOODWIN, TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN (2005).

[49] As the Obama episode recounted at *supra* text accompanying note 35 demonstrates.

almost purely ceremonial (e.g., the UK, Ireland) to the somewhat more actively employed and empowered heads of state (e.g., Italy, Malaysia[50]).

This latter specific division and plurality of the executive is taken further in the second newer form of government than presidentialism, one that developed during the twentieth century: semi-presidentialism.[51] For here, the dual executive offices of president and prime minister are both substantial, versus ceremonial (or episodic[52]), and linked. Typically, the head of state president is independently elected and has significant policymaking authority and powers which, in addition to foreign policy and national security, usually includes choosing the head of government prime minister, who is politically accountable to, and may be forced to resign by, the legislature. In this way, semi-presidentialism is often viewed as a hybrid between presidential and parliamentary government.[53]

If this is how they are more plural than presidentialism, in what way are both of the more recent forms of government less plural than the more polar traditional republican executive? The answer is that neither establishes nor presumes the co-equality of the executive officers. From the very beginning, a parliamentary prime minister was understood to be *primus inter pares*, first among equals, within a collective cabinet; the *chief* executive, if not the sole one. As part of this

---

[50] In Italy, the president of the republic may return a piece of legislation to the legislature, although she must sign it if passed a second time. Where no one party has a majority in parliament, the president has some political discretion as to whom to invite to try and form a collation government. On Malysia, s*ee* Andrew Harding & Harshan Kumarasingham, *The Malay Monarchies in Constitutional and Social Conception*, 9 ASIAN J. OF L.& SOC. 399 (2022) (describing the sometimes active role of the Malaysian king in appointing the prime minister).

[51] On semi-presidentialism, *see* ROBERT ELGIE, SEMI-PRESIDENTIALISM: SUB-TYPES AND DEMOCRATIC PERFORMANCE (2011); Cindy Skach: *The "newest" separation of powers: Semi presidentialism*, 5 INT'L. J. CONST. L. 93 (2007).

[52] In some systems with mostly "ceremonial" presidents, after legislative elections the president is empowered to make a choice as to whom to offer the chance of forming a government where there is no clear party or coalition of parties that has a legislative majority.

[53] *See, e.g.*, Matthew Shugart, *Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns*, 3 FRENCH POLITICS 323 (2005).

role, prime ministers almost always have the power to appoint and dismiss cabinet colleagues, albeit usually subject to political constraints. As will be argued in Part 4, this original or traditional position with its norms of joint decisionmaking has been transformed in recent decades in many parliamentary systems by the general phenomenon of chief executive aggrandizement, which has resulted in concentrating greater power in the prime minister. This is sometimes referred to as the evolution or "passing" from "cabinet" to "prime ministerial government."[54] Accordingly, particular parliamentary systems can and do occupy different positions on the spectrum running from closer to the plurality pole in the case of the few remaining true first among equal prime ministers to much closer to the opposite, single-person one.[55]

Similarly, within semi-presidentialism, the dual executive officials have never been the co-equal ones of the Roman consuls. The modern paradigm for this form of government is the constitution of the French Fifth Republic, essentially designed by General De Gaulle to create for himself a strong presidency in place of the unstable party politics of the prior, parliamentary republics.[56] In fact, in most semi-presidential systems operating within democracies, at any given time one or the other of the president and prime minister is typically the more powerful political actor. Where the president's party has a majority in the legislature, as leader of that party, the president is the central political figure and sets the political agenda in line with her electoral mandate. Here, the prime minister, usually chosen by the president from the ranks of her party, largely serves as the president's subordinate in managing the legislature and

[54] Crossman, *supra* note 7, at 51-57; JOHN P. MACKINTOSH, THE BRITISH CABINET (1962).

[55] *See, e.g.*, Eoin O'Malley, *The Power of Prime Ministers: Results of an Expert Survey*, 28 INT'L POL. SC. REV. 7 (2007).

[56] *See, e.g.*, WILLIAM NESTOR, DE GAULLE'S LEGACY: THE ART OF POWER IN FRANCE'S FIFTH REPUBLIC (2014).

administering the government. By contrast, where a different political party has a majority in the legislature, what the French call periods of "cohabitation," the prime minister has tended to become the more powerful and central executive leader, with the president effectively reduced to leading the opposition within the government.[57]

Although pure presidentialism occupies the single-person pole, as with parliamentarism (and, indeed, semi-presidentialism), actual presidential systems in practice can and do exist at somewhat different positions on the overall single-plural executive spectrum. So, for example, where the model of the "unitary executive"[58] is rejected by creating executive agencies or offices that are intended – by law or by norm – to operate with a certain degree of independence from the president, this introduces an element of plurality within the executive, sometimes referred to as "administrative"[59] or "internal separation of powers."[60] These may include agency heads who are terminable only for cause and not at will, prosecutors exercising independent, professional discretion, and an independent, higher level civil service.[61] Indeed, such independent and quasi-independent executive agencies are an important and common part of the administrative state in *all* forms of government within modern constitutional democracies and contribute towards

[57] Where no political party or bloc has a majority in the legislature, as currently in France, the system of government is fragmented and neither the president nor the prime minister possesses significant political power, although, unlike the prime minister, the president's continuance in office until the end of her term is usually secure.

[58] *See, e.g.*, STEVEN CALABRESI & CHRISTOPHER YOO, THE UNITARY EXECUTIVE: PRESIDENTIAL POWER FROM WASHINGTON TO BUSH (2008); Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, and Future*, 2020 S. CT. REV. 83 (2020).

[59] Jon Michaels, *An Enduring, Evolving Separation of Powers*, 115 COLUM. L. REV. 515 (2015) (using the term "administrative separation of powers" to conceptualize a refashioned theory of checks and balances inside the administrative state).

[60] *See, e.g.*, Neil Katyal, *Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within*, 115 YALE L.J. 2314 (2006); Gillian Metzger, *The Interdependent Relationship Between Internal and External Separation of Powers*, 59 EMORY L.J. 423 (2009).

[61] Michaels, *supra* note 59.

pluralizing the executive everywhere.[62] Similarly, a limited or partially "unbundled executive,"[63] where one, a few, or several independently elected executive officials with specific subject-matter jurisdiction, such as attorneys general or secretaries of state, co-exist with the general or default chief executive.[64]

Importantly, the impact of federalism, or various quasi-federal schemes of devolution, involves some additional executive plurality within any system. In federal presidential systems, many key executive decisions are taken by state/provincial leaders, depending on the precise allocation of powers between the two levels of government, meaning that total executive power is divided between federal and state executives. Compare the preeminent policymaking role of state governors, and the limited one of the U.S. President,[65] during the Covid pandemic with the ubiquitous role and presence of the UK Prime Minister at the time. Similarly, in federal parliamentary systems, the role of state executives may be significant, as in Germany, where not only is the constitution's default position that they administer federal law, but they collectively comprise the Bundesrat, the upper chamber of the federal legislature.[66]

Within parliamentary systems, the choice of electoral system has a major impact on the relative concentration of political power in the prime minister, independent of the formal or

---

[62] Similarly, so-called "fourth branch" or "guarantor" institutions outside the executive branch but with mandates to protect constitutional democracy that include subjecting the executive to some form of independent accountability on particular topics, may also be thought of as deconcentrating and pluralizing executive power. *See* MARK TUSHNET, THE NEW FOURTH BRANCH: INSTITUTIONS FOR PROTECTING CONSTITUTIONAL DEMOCRACY (2021); Tarun Khatan, *Guarantor Institutions*, 16 ASIAN J. COMP. L. S40 (2021).

[63] *See* Berry & Gerson, *supra* note 14.

[64] *See infra* Part 6.

[65] *See* David E. Pozen & Kim Lane Scheppele, *Executive Underreach, in Pandemics and Otherwise*, 114 AM. J. INT'L L. 608 (2020); Tom Ginsburg & Mila Versteeg, *The Bound Executive: Emergency Powers During the Pandemic*, 19 INT'L. J. CONST. L. 1498 (2021).

[66] GERMAN BASIC LAW. arts.83 and 51.

conventional powers of the office.[67] A majoritarian electoral system makes the establishment of a two-party or bloc system, and hence a stable, single party/bloc majority supporting the prime minister, much more likely.[68] By contrast, a proportional representation system usually results in no one party having a legislative majority and so the need for a coalition government,[69] which creates a certain plurality and dispersal of power among the parties and their leaders forming the executive.[70]

Finally, where on the single-plural spectrum any particular executive lies is not only a function of form of government or formal executive powers, tenure, and appointment, but also of political practice, governing norms and conventions, as well as electoral and political party systems. This is why, for example, different parliamentary systems exist at different points on the spectrum.

## 3. Varieties of (Fully) Plural Executives

At the other end of the spectrum, fully plural executives have, do, and may come in a greater variety of modes than their single-person counterparts (i.e., essentially president or prime minister). This greater pluralism of plural executives is important to identify and establish before an assessment of the overall merits of this type of executive and comparison with the single

[67] In this respect, the choice of electoral system in presidential and semi-presidential systems is far narrower than parliamentary ones, in that the direct election of the president requires employment of one or other versions of a majoritarian system (first-past-the-post, second round run-off, or ranked choice) to fill the single position.

[68] This is known within political science as "Duverger's Law." *See* MAURICE DUVERGER, POLITICAL PARTIES (1954). "Much more likely," but not inevitable, as shown by the recent breaking down of two-party systems in both France and the UK despite majoritarian voting rules.

[69] *Id*.

[70] As noted in *infra* note 169 and accompanying text, the choice of electoral system has other effects on the various values of democratic governance.

person can usefully be undertaken. For what may be a perceived disadvantage of one type of plural executive may not be of another.

Broadly-speaking, the variation exists along three dimensions. These are: (1) the type of plurality, or what kind of plural body is involved; (2) the "who" question of membership, of how the plural body is composed and, in particular, who or what is represented on it; and (3) the "form" of plural government, which mostly depends on the appointment mechanism and tenure of executive members and corresponds to the same key variables distinguishing the three main existing types of modern chief executive.

### 3.1 What: the type of plurality

As noted above, plurality in an executive refers to the number of persons exercising the highest decisionmaking authority and contrasts, at the extreme, with the de jure or de facto alternative of a single person. As we have seen, this contrast is more of a spectrum than a binary, with a number of more plural or collective executives than a unitary presidential one that still fall short of the co-equal distribution of power that represents the polar plural end of the continuum. But even at this polar area, plurality is still a somewhat generic concept in that there are two different basic types of executive that satisfy the plurality as equality criterion.

The first is the collegial executive, in which each member has an equal vote and all decisions are made collectively, along the lines of similarly collegial, multi-member courts and legislatures. In principle, the size of such a body can vary from two upwards. The second type is the *fully* "unbundled" executive, in which executive authority is divided into discrete subject-matter areas or functions with each member having singular and full responsibility for a specific area or areas and decisions are made individually by that member alone. Historical examples of

this type include the series of magistrates selected by lot in ancient Athens and the multiple elected praetors of the later Roman Republic.[71] This polar type differs from the slightly more common instances of *partially* unbundled executives that are closer to the middle of the spectrum, where relatively few subject-matter areas are split off from the authority of the "general purpose"[72] or "default" chief executive, so denying the polar equality criterion, as occurs in forty-seven of the fifty state governments in the United States.[73] Here, typically, from one to six executive functions are unbundled and their office-holders directly elected, such as criminal prosecution (attorney general), overseeing revenue and finances (treasurer), and election management (secretary of state), but the general purpose governor is both legally and de facto the more powerful executive officer.

Even within the collegial executive, there are a few interesting and important institutional variations. One is whether its members also hold ministerial positions or serve only as a collective chief executive with a separate cabinet of ministers. Switzerland is an example of the first, where each of the seven members of the Federal Council holds one or more individual ministerial portfolios.[74] By contrast, Bosnia and Herzegovina is an example of the second, where the separate Council of Ministers operates alongside the three-person presidency.[75] Uruguay provides another example, under its constitutions in place between 1919 and 1933 and again from 1952 to 1966.[76] A second variation is whether a collegial executive serves alone or

[71] *See supra* notes 25-26.

[72] Berry & Gerson so designate the governor in U.S. states with partially unbundled executives. *See supra* note 14, at 1399.

[73] The only single executive states are Maine, New Hampshire, and Tennessee.

[74] CONST. OF SWITZERLAND, art.177(2).

[75] CONST. OF BOSNIA AND HERZEGOVINA, art. V.

alongside and with a singular president, as in most early, post-revolutionary state constitutions in the United States[77] and in Uruguay under its 1919 constitution.[78] In principle, a third issue is whether the votes of the individual members of the collegial executive on policy-making decisions are made public or remain private and undisclosed in situations where internal consensus is not reached and a majority position is practically required. As with collegial courts, where the practices of common law courts, such as the U.S. Supreme Court, and civil law constitutional courts often differ on this issue, there are significant practical consequences in terms of outcomes and accountability depending on the choice, only more so.[79]

### 3.2 Who: the bases of representation

The composition of both collegial and unbundled plural executives may be based on a variety of factors, some of which involve the representation of different groups or interests. Typically, we think of the legislature as the branch of government in which the democratic value of representation is most significantly and directly fulfilled, but undoubtedly executives can and do (and perhaps, especially when aggrandized, should) also perform a representative role and plural executives are especially well positioned to do so.

Within a federal political system in particular, one obvious basis of representation is that members of the plural executive may formally or informally be appointed to reflect and represent

---

[76] *See* Altman, *Collegiate Executives*, *supra* note 15.

[77] *See* Gary J. Schmitt and Joseph M. Bessette, *Reading the First State Constitutions on Executive Power: A Window into Article II* (December 01, 2024), https://ssrn.com/abstract=5054535.

[78] In Uruguay, a singular president existed beside a nine-member National Administrative Council. *See* SHUGART & CAREY, *supra* note 15, at 97.

[79] *See* John Ferejohn & Pasquale Pasquino, *Constitutional Adjudication: Lessons from Europe*, 82 TEXAS L. REV. 1671 (2004).

the interests and diversity of the constituent units. For example, during the period of the Dutch Republic (1579 to 1795), its plural executive, the States-General, was formally composed of representatives of the seven provinces, each province having one vote.[80] Slightly more informally, the seven members of the Swiss Federal Council come from different cantons.[81] Of course, such regional representation does not necessarily depend on the existence of a legal federation, but may apply in any system with perceived diversity of interests and perspectives, A plural executive may also be based on the consociational model of representing each of the major ethnic, racial, or religious groups in a divided political society.[82] So, for example, the three-person presidency in Bosnia and Herzegovina is comprised of one person elected from each of the Bosnian, Croat, and Serb communities in the country.[83] In Cyprus, from 1960 to 1963, two effectively co-equal presidents were elected by each of the Greek and Turkish populations.[84] In addition, plural executives may enhance gender – or other types of -- diversity, as with the Swiss Federal Council, where at least three of the seven members are expected to be women.[85]

Perhaps the most significant, complex, and consequential variation of this sort is political party representation within a plural executive, which the option opens up in more and different ways by comparison with the traditional single person variety. The possibilities here create new

[80] Although each province could send as many representatives as it chose. *See* Price, *supra* note 27.

[81] A 1999 amendment to the Swiss Constitution codified prior conventional practice. Art. 175(4) requires that " [I]n electing the Federal Council, care must be taken to ensure that the various geographical and language regions of the country are appropriately represented." But there are no formal quotas or assignments.

[82] Arend Lijphart, *Consociational Democracy*, 21 WORLD POLITICS 207 (1969).
[83] CONST. OF BOSNIA & HERZEGOVINA, art. V.

[84] SHUGART & CAREY, *supra* note 14, at 99-101. Lebanon is also a well-known example of a consociational state, where the still-operating pact dating from independence from France in 1943 allocates the presidency to a Maronite Christian, the prime ministership to a Sunni Muslim, and the speakership of the legislature is a Shi'a Muslim. However, Lebanon does not have a fully plural executive but is rather a semi-presidential system.

[85] Claus, *Tyranny*, *supra* note 14, at 11.

ways to fulfill some of the four key values of democratic governance[86] and also perhaps new challenges or barriers to doing so. These possibilities include requiring or permitting the collegial or unbundled executive to be composed of (a) members of the same political party, (b) members of the same coalition or bloc of parties, (c) the winning and the second largest parties in legislative elections,[87] (d) both of the major parties in a two-party system, and (e) all significantly supported political parties, and on a basis ranging from proportionality to strict equality. In Switzerland, the so-called "magic formula" first agreed to by the four largest party coalitions in 1959, currently allocates two of the seven seats on the Federal Council to each of the Liberals, Social Democrats, and Swiss People's Party, and one to the Centre Party.[88] At the state level in the United States, partially unbundled executives are sometimes *internally* unified and sometimes divided along party lines, depending on election results,[89] as distinct from the better known *inter-branch* party division or unity at the national (or state) level.[90] Thus, governors of one party and lieutenant governors or attorneys general of another are fairly common.[91] Along with the choice of election method and voting system, these potential variations are highly likely to have major consequences for each of the four values of effective,

[86] *See supra* note 8.

[87] As in Uruguay between 1952 and 1966, *see* Altman, *Executive Personalism*, *supra* note 15, at 319.

[88] Parties in the Federal Council since 1848, Swiss Federal Council, available at: https://www.admin.ch/gov/en/start/federal-council/history-of-the-federal-council/federal-councillors-and-their-parties.html.

[89] Adrienne E. Guthman, *Divided Plural Executives: Explaining the Where, the Why, and the Do They Even Matter?*, Ph.D. dissertation, University of Texas, August 2019.

[90] Daryl Levinson & Richard Pildes, *Separation of Parties, not Powers*, 119 HARV. L. REV. 2311 (2006).

[91] Guthman, *supra* note 89.

stable, accountable, and representative governance, some of which will be sketched and discussed in Part 7.[92]

### 3.3 The "forms" of plural government

As is well known, the basic differences among the two more traditional forms of democratic government turn on the election and tenure of the chief executive. Presidents are directly elected, almost always by the citizenry as a whole,[93] and have fixed-terms tenures that cannot (short of the extraordinary mechanism of impeachment) be ended early by the legislature. By contrast, parliamentary prime ministers are indirectly elected by the legislature, to which they remain politically responsible in the sense that their tenure depends on retaining the confidence of a majority of its members and ends if they lose it. Semi-presidentialism is often conceived of as a hybrid of the two, combining a directly elected president with a legislatively responsible prime minister.[94]

In principle, and superimposed on the varieties noted above, each of these three modern forms of government has an equivalent fully plural executive version. So, the "presidential" version of both a collegial and fully unbundled executive involves the independent election of the joint, co-equal presidents who have a fixed term of office and are politically non-responsible to the separately elected legislature. With a collegial body, the method and timing of such independent election could vary among the following: (a) staggered terms so that a certain

[92] One of these consequences, the incentive to focus on public policy rather than gaining or retaining public office resulting from Switzerland's multiparty collegial executive, is discussed in Claus, *Tyranny*, *supra* note 14.

[93] I am putting aside for now the complications arising from the Electoral College in the US (and also initially in France under the Fifth Republic, although this latter is a semi-presidential system).

[94] *See* SHUGART & CAREY, *supra* note 15.

percentage of its members are elected every few years, (b) simultaneous election based on geography (for example, each region elects one member) or ethnicity, (c) the top *x* candidates in a national election where there is a smaller collegial body, and (d) proportional representation according to party vote to fill the available seats. Again, the method of election will have clear consequences for the composition – party, ethnic, etc. – of the executive and will presumably be selected with the intended one in mind. Unlike the single executive office of traditional presidentialism where some type of majoritarian voting system must be used,[95] other options are possible when the offices are plural.

A parliamentary plural executive of either the collegial or fully unbundled type would have its co-equal members elected by, and politically responsible to, the legislature. In the collegial version, the entire body must be so accountable and individual members may be. In the fully unbundled type, individual members of the plural executive must be accountable; there are, in effect, only individual co-equal members and no collective body as such. The need for initial and continuing majority support of the legislature in the parliamentary version means that it involves complex interaction with the variable of party political representation, especially where the legislative election system usually results in the absence of a single majority party. Even where there is such a party, the very plurality of the executive may create greater pressure for multi-party representation than in the case of a single chief executive.

A different hybrid system than semi-presidentialism is also available for a more fully plural executive, in which its members (collegial or unbundled) are elected by the legislature but are politically unaccountable to it, with fixed terms of office. Again, an example of this is the Swiss Federal Council, whose members serve for renewable four-year terms. In addition, at least

[95] Typically, either a run-off between the top two candidates in the first round, plurality voting, or ranked choice.

for the collegial executive, a semi-presidentialist version is also possible, with a plural directly elected presidency and parliamentary government. Bosnia and Herzegovina exemplifies this option, with a directly elected collective presidency and a prime minister chosen by the presidency who, along with the other members of the council of ministers, is politically responsible to the legislature.[96] This version would not make sense for the unbundled executive, as an additional, legislatively responsible government would be needlessly duplicative.

Finally, there is a recently identified variation of parliamentarism, generally known as "semi-parliamentarism," which in essence involves a fully co-equal bicameral legislature with one chamber, to which the government is exclusively responsible, elected by a majoritarian electoral system, and the second chamber elected by a form of proportional representation.[97] Like ordinary parliamentarism, this new variation could also support its own version of both collegial and unbundled executives.

## 4. Chief Executive Aggrandizement

Within the extensive literature on populist challenges to constitutional democracy, perhaps the most generally diagnosed contemporary governance pathology is "executive aggrandizement."[98] At least in the sense of executive dominance, this phenomenon certainly pre-dates, and has occurred even without, the types of more overt democratic backsliding that we have seen in recent years. But it is widely viewed as the central mechanism for the undermining

[96] CONST. OF BOSNIA AND HERZEGOVINA, art. V.

[97] STEFFEN GANGHOF, BEYOND PRESIDENTIALISM AND PARLIAMENTARISM: DEMOCRATIC DESIGN AND THE SEPARATION OF POWERS (2021).

[98] See works cited in *supra* note 2.

of constitutional democracy that remains the chief characteristic and concern of the current period.

And yet, when we reflect on how this undermining is being brought about and by whom, the driving factor is not merely, or most fully described as, executive aggrandizement, which indicates changes in relative power *among* the branches of government. To be sure, as outlined in the Introduction, there has been a well-documented secular growth in the power of executives at the expense of legislatures within democracies,[99] although also (and equally well-documented), and arguably partly in response,[100] in the power of judges.[101] But this seems to miss a conspicuous feature of the current situation for, at least as important, if less emphasized, has been the common phenomenon of changes of power *within* the executive that have concentrated greater authority in the single person of the head of government. The most extreme version of this general trend has, of course, been the rise of strongmen leaders. Accordingly, for our purposes, this key and distinct development may be termed "chief executive aggrandizement."

As also previewed in the Introduction, executive dominance itself should be understood less as a pathology of modern democratic governance than a fact or inevitability. Given the scope and complexity of the contemporary policymaking environment, the need for rapid policy adjustments, and the near-continuous requirement of preventing or responding to one type of

---

[99] In addition to the sources in *id*, *see also* works cited in *supra* note 3; Alasdair Roberts, *Globalization and the Growth of Executive Power: An Old Story,* 24 INDIANA J. OF GLOBAL LEG. STUD. 497 (2017); Melis G. Laebens, *Beyond Democratic Backsliding: Executive Aggrandizement and its Outcomes*, V-Dem Institute Working Paper, September 2023. Arguably, the growth was speeded up by post 9/11 developments. *See generally*, Kim Lane Scheppele, *Law in a Time of Emergency*, 6 U. PA. J. CONST. L 1001 (2004); CONOR GEARTY, HOMELAND INSECURITY (2024).

[100] Stephen Gardbaum, *Separation of Powers and the Growth of Judicial Review in Established Democracies (or Why has the Model of Legislative Supremacy Mostly Been Withdrawn from Sale?)*, 62 AM. J. COMP. L. 613 (2014).

[101] RAN HIRSCHL, TOWARDS JURISTOCRACY (2004).

crisis or another, executives must be granted wide discretion and broad powers to act in the public interest as the primary or everyday governance institution,[102] subject to general laws made by legislatures and enforced by courts as well as continuous institutional and popular accountability for their actions. To be sure, abuse of power is a risk of aggrandized executives, although not a defining feature, and their political accountability to both legislatures and the electorate must be preserved and, where necessary or under threat, bolstered, including by actions of the courts.[103] But executive governance in the administrative state has long been here to stay, there is no realistic alternative to it and we must learn to manage the risks.

By contrast, the distinct phenomenon of chief executive aggrandizement is a more recent, contingent, and reversible development, and a potentially deeply problematic one when combined with the first. The reasons for executive governance by no means necessarily entail executive singularity: "why executive governance?" is not the same question as "why singularity?"

Chief executive aggrandizement has occurred in all three modern forms of government, including both types of formally more plural systems. Within presidentialism, the theory and practice of the unitary executive,[104] whereby all executive functions, agencies, and personnel are directly subject to the hierarchical command of the president, has been on the rise in several countries.[105] Although now paradigmatically associated in the Unites States with the second

[102] *See* works cited in *supra* notes 3 and 99.

[103] On recent, neo-Elyean scholarship on this role for courts in comparative constitutional law, *see* ROSALIND DIXON, RESPONSIVE JUDICIAL REVIEW: DEMOCRACY AND DYSFUNCTION IN THE MODERN AGE (2023); Stephen Gardbaum, *Comparative Political Process Theory*, 18 INT'L. J. CONST. L. 1429 (2020); Manuel Cepeda & David Landau, *A Broad Read of Ely: Political Process Theory for Fragile Democracies*, 19 INT'L J. CONST. L. 548 (2021).

[104] *See supra* note 58.

[105] Including Turkey, Venezuela, and Mexico. *See* David M. Driesen, *The Unitary Executive Theory in Comparative Context*, 72 HASTINGS LJ 1 (2020).

Trump administration, its actions and claims build on those of several other recent presidents and their supporters.[106]

Within parliamentary systems, there is a significant literature on the "presidentialization" of politics and political parties, presenting both evidence for, and explanations of, the widespread, although not universal, phenomenon.[107] In many places, the growing centralization of power and authority in the prime minister/party leader over the cabinet, the party apparatus, and the government bureaucracy, and the increasing focus on individual party leaders before and during elections, as evidenced in newer, presidential-style debates all reflect evolution from cabinet to prime ministerial[108] to (arguably) neo-presidential government. Some of the causes proffered for this personalization of parliamentary politics in recent decades include the erosion of traditional party cleavages and loyalties along socio-economic lines , and so greater focus on the individual candidates for prime minister; the globalization of politics that often highlights the presence and participation of prime ministers in international summit meetings; and the changing structure of mass communication, especially electronic and social media, in ways that place greater emphasis on personality over policy.[109]

Here, it is instructive to compare Winston Churchill's mammoth cabinet meeting in May 1940 discussed in Part 2 above with Prime Minister Tony Blair's decision to go to war against

---

[106] These include George W. Bush, who attempted to displace independent agencies and centralize agency power in his appointed heads at the expense of career employees, and Bill Clinton, whose Assistant White House Counsel and, later, Deputy Assistant for Domestic Policy described and defended many of his policies in the terms of unitary executive theory: Elana Kagan, *Presidential Administration*, 114 HARV. L. REV. 2485 (2001).

[107] GIANLUCCA PASSARELLI ED., THE PRESIDENTIALIZATION OF POLITICAL PARTIES: ORGANIZATIONS, INSTITUTIONS, LEADERS (2015); THOMAS POGUNKTE & PAUL WEBB EDS., THE PRESIDENTIALIZATION OF POLITICS; A COMPARATIVE STUDY OF MODERN DEMOCRACIES (2005); DAVID SAMUELS & MATTHEW SHUGART, PRESIDENTS, PARTIES AND PRIME MINISTERS: HOW THE SEPARATION OF POWERS AFFECTS PARTY ORGANIZATION AND BEHAVIOR (2010).

[108] *See* works cited in *supra* note 54.

[109] *Se*e works cited in *supra* note 107.

Saddam Hussein in 2003. In 2016, the Chilcot inquiry published its long-awaited report,[110] concluding (inter alia) that Blair had bypassed established decision-making processes in the run up to the Iraq War. Two years later, the Chair of the House of Commons Public Administration and Constitutional Affairs Committee, Bernard Jenkin, commented as follows: "In 2002 Tony Blair promised George Bush that 'I will be with you, whatever,' committing the UK to war in Iraq without consulting the Foreign and Defence Secretaries, let alone the rest of the Cabinet. Fifteen years later there are still no safeguards in place within the Government to prevent a Prime Minister acting so recklessly again."[111]

Of course, to the significant extent that semi-presidential regimes have been created in what were previously parliamentary ones, this by definition reflects a step towards presidentialization.[112] Within the semi-presidential form, two subtypes have developed and been distinguished by political scientists: the "president-parliamentary," in which the prime minister and government are responsible to, and dismissible by, both the president and the legislature, and the "premier-presidential," in which they are exclusively accountable to the legislature.[113] The first, as for example in Russia and Taiwan, concentrates more formal power in the president. But in both subtypes among democracies, the respective timing of presidential and legislative

[110] *The Report of the Iraq Inquiry*, 6 July 2016, at: https://www.gov.uk/government/publications/the-report-of-the-iraq-inquiry

[111] "*Key Chilcot lesson must be implemented, says PACAC*, " 29 May 2018, at: https://www.wired-gov.net/wg/news.nsf/print/Key+Chilcot+lesson+must+be+implemented+says+PACAC+30052018112500

[112] De Gaulle's insistence on replacing the unstable parliamentary Fourth Republic is paradigmatic in this context. *See* NESTOR, *supra* note 56.

[113] Shugart & Carey first distinguished the two types, *supra* note 15, at 53-57. Also note that in practice this distinction may collapse or be unstable. For example, although as an instance of premier-presidentialism, formally French Presidents cannot dismiss the prime minister, they can and have asked for their resignation, although in principle the prime minister could refuse (especially one that retains majority support in the legislature).

elections is often key to the likelihood of presidential rule or cohabitation, of which of the two executives is paramount. In some, including France, this timing has been changed to make them close to simultaneous,[114] which substantially increases the probability of highly concentrated power in the president.[115] For when the president's party wins a legislative majority, not only is the president (alone) directly elected but is effectively (although not nominally) also the head of the parliamentary government, resulting in a concentration of power that is arguably greater than in a presidential system, with its formally separated legislature and practically separable legislator re-election interests.[116]

These political, technological, and constitutional design reasons for the growth of executive singularity are readily exploited and enhanced, given the perennial background factor of the desire for self-aggrandizement on the part of political leaders. Ambitious politicians tend to prefer "playing for all the marbles," having a "greasy pole" to climb to the top of, rather than sharing power with their peers. Incumbent chief executives often yearn to accumulate power if they can, sometimes by converting their office to include head of state and not only government,[117] but more usually in less visible and formal ways. And in various modes and to varying degrees, the playbook provided by the most successful accumulators of power in recent years has been irresistibly tempting to follow. More generally, the modern cult of the imperious

[114] Under a constitutional amendment of October 2000, the president's term was reduced from seven to five years in order to match that of the National Assembly and ensure that legislative elections take place soon after the presidential election.

[115] Increases, but does not guarantee, as the 2022 legislative election shows, in which Macron's party lost its majority six weeks after his reelection as president. Indeed, Macron's party lost even further ground in the non-simultaneous, snap election he called in 2024.

[116] I have referred to this scenario as "super-presidentialism." Stephen Gardbaum, *Political Parties, Voting Systems, and the Separation of Powers*, 65 AM. J. COMP. L. 229 (2017).

[117] Examples include Turkey, where then-prime Minister Erdogan had the constitution amended in 2017 to create the new office of executive president for him to fill, and several newly independent African countries in the 1960s.

corporate CEO has influenced conceptions of leadership generally,[118] while perhaps overlooking the fact that a collective board of directors remains the governing body.[119] This, in turn, may reflect the increasing bureaucratization of modern life that Max Weber perhaps prematurely judged in the early part of the twentieth century to favor the "technical superiority of monocratic organization"[120] over collegial. And, more broadly still, no doubt the mass psychological roots of monarchy and monotheism persist, which find it easier to follow or worship singularity than plurality.[121]

The most extreme and dangerous version of chief executive aggrandizement has been the rise of authoritarian populist leaders of the left and right – both presidents and prime ministers – over the past twenty-five years. Starting with Hugo Chávez in the late 1990s, and continuing with Recep Tayyip Erdoğan, Viktor Orbán, Rafael Correa, Evo Morales, Daniel Ortega, Narendra Modi, Rodrigo Duterte, Jaroslaw Kaczyński, Donald Trump, Jair Bolsonaro, Andrés Manuel López Obrador among others in the years since, this global phenomenon has been characterized by almost complete concentration of power in the singular, charismatic leader of the "true" people. This has typically been brought about via strategic assaults on the separation of powers and the capture or undermining of all independent sources of power and accountability (including courts, judicial appointment and electoral commissions, public and private media

[118] *See* JON MICHAELS, THE CONSTITUTIONAL COUP: PRIVATIZATION'S THREAT TO THE AMERICAN REPUBLIC (2017).

[119] This is somewhat analogous to the type of executive council to a governor/president seen in early post-revolutionary state constitutions in the United States and Uruguay in 1919.

[120] MAX WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION 208 (1964).

[121] *See, e.g.*, BRENDA RALPH LEWIS, MONARCHY: THE HISTORY OF AN IDEA (2003); RODNEY STARK, ONE TRUE GOD: HISTORICAL CONSEQUENCES OF MONOTHEISM (2003).

outlets), gaming of the electoral rules in their favor, and the harassment and delegitimization of all democratic opposition as the "enemies of the people."[122]

This contemporary experience exemplifies one of the two major problems for democracy posed by the modern combination of executive dominance and chief executive aggrandizement: the risk of tyranny and replacement of the rule of law by the will of the leader. The second, which may simply be a more granular, itemized, or partial version of the first, is the challenge posed to its various governance values, to be discussed in the following part.

In the current era, characterized by the combination (and correlation) of executive governance, chief executive aggrandizement, strongmen leaders, and democratic decline, the case for executive plurality as a serious design choice to be considered by constitution drafters alongside the more traditional modern forms of government seems intuitively promising and worth pursuing. This is notwithstanding the empirical rarity of contemporary plural executives and the associated reasons for singularity. To be clear, in making this case in what follows, I am not attempting to argue that fully plural executives are always and inherently superior to singular ones in all democracies. As usual, contexts and trade-offs are involved. Rather the goal is to gain a respected place on the menu of options for the first time in more than two centuries.

## 5. The Merits of Plural Executives

### 5.1 The underlying values of democratic governance revisited

In order to properly make and consider this case, we first need to reflect on the various underlying values and goals of democratic governance, especially in light of the current phenomenon of democratic backsliding. When we do so, we will see that each of them has

[122] *See, e.g.,* GINSBURG & HUQ, *supra* note 16; Khaitan, *supra* note 2.

acquired a certain new gloss, or an aspect that comes into sharper relief, when conceptualized from the perspective of our recent democratic experiences.

These values are standardly understood to include stable, accountable, effective, and representative government.[123] Let us begin with the first. Obviously, the stability of democratic governance *itself* is a key and prior value than the stability of any particular democratically elected government or governments at any given time or over a given period. This has become especially clear in the current context of democratic instability and backsliding under the durable governments of re-elected leaders like Orbán and Erdoğan. Moreover, this context has also enabled us to see clearly that sometimes, where they employ the levers of public power to entrench themselves in office, particular democratically elected governments can become *too* stable, from the perspective of both democracy overall and several of the other specific values, for which party contestation, competition, and rotation of power are essential.[124]

The value of accountability, which includes transparency, requires that democratic governments are continuously accountable for their acts and omissions and not only periodically, at elections. We have been rudely reminded over the past decade or so that such continuous accountability necessitates at least a certain degree of independence on the part of non-executive institutions, whether these are legislative, judicial, the "new fourth branch,"[125] or the media. For the distinctive strategy of singular, authoritarian populist leaders of both the right and left has

[123] *See supra* note 8.

[124] In addition to the usual populist suspects of Venezuela, Turkey, and Hungary, the example of the ANC in South Africa attests to the problems of overly stable, dominant party democracies. On the importance of rotation, *see* ANTONIOS KOUROUTAKIS, ROTATION OF POWER: A THEORY OF DEMOCRATIC COMPETITION (2026).

[125] *See* works cited in *supra* note 62.

been to capture or otherwise neutralize the preexisting accountability institutions.[126] In short, some genuine dispersion of power is a pre-condition of democratic accountability.

In thinking about the value of effective and workable government in the public interest,[127] recent experience suggests a distinction between truly effective and merely energetic, vigorous, decisive, or impulsive executive action. It also underscores that effectiveness must include responsiveness to the needs and interests of ordinary voters, and not only mostly elites. At the same time, democratic government cannot only work for that subset of ordinary voters deemed "the true people" but must aim to act in the general public interest of all citizens.

And finally, the traditional sense that the value of representation is mostly fulfilled by the legislative branch of democratic governance has perhaps become open to question in light of two contemporary realities. Ther first is the perceived pathologies of the winner-take-all, exclusive, purely majoritarian, and deeply polarized nature of executive power in many countries, including all authoritarian populist regimes. The consequential risks to democratic governance suggest the importance of this value within the executive branch as well. The second is the general phenomenon of executive governance or dominance at the expense of legislatures. Because the executive has become the most powerful and important branch of democratic governance, there is an obvious sense in which we do not have truly representative government if only the majority is represented in or by it, and much less a minority.[128] This point underscores that even in the context of executive dominance alone, without factoring in chief executive aggrandizement, we

---

[126] *See, e.g.*, WOJCIECH SADURSKI, POLAND'S CONSTITUTIONAL BREAKDOWN (2018).

[127] *See* VICKI C. JACKSON & YASMIN DAWOOD EDS., CONSTITUTIONALISM AND A RIGHT TO EFFECTIVE GOVERNMENT? (2022); Richard H. Pildes, *The Neglected Value of Effective Government*, 2023 U. CHI. LEG. FORUM 185 (2022).

[128] Minority representation may come about because of a mechanism like the U.S. Electoral College, where the candidate gaining a majority of the national popular vote may not be elected, or due to capture of the executive by powerful minority interests. *See generally*, LEVITSKY & ZIBLATT, *supra* note 14.

need to rethink and realign how and where the values of democratic governance are to be promoted. Since the executive is the dominant branch of government, it must also become the dominant forum for these values, as otherwise they will likely be insufficiently realized.

To be sure, even as reconsidered in this way, any given or proposed institutional system, including plural executives, will still involve trade-offs among these four values, just as under the more basic or traditional conceptions. They cannot all be maximized at the same time.

### 5.2 The argument for plural executives

In light of this refocusing on the key underlying values of democratic governance that institutional design is supposed to further,[129] albeit in different ways and with differing priorities among them, the case for plurality in the executive branch appears to be significantly stronger than the almost-universal modern shift in the direction of singularity might suggest.

In a nutshell, this case is that the enhanced singularity of "ordinary" (i.e., non-authoritarian) contemporary chief executive aggrandizement is *not* inherently superior to plural executives in terms of the various values of democratic governance. In other words, there are no clear or categorical benefits. At the same time, the great risk inherent in more singular, highly concentrated executives, especially in the general modern context of executive dominance, is precisely what has materialized and we have been witnessing in so many contexts in recent years. It facilitates the rise of ambitious and ruthless strongmen leaders intent on undermining *all* the values of democratic governance in order to expand and entrench their power.

Let us unpack this by starting with the respective merits of more or less singular executives under broadly "normal" democratic circumstances from the perspective of these

[129] Further, not guarantee.

values. Other things being equal, the stability of particular executives tends to depend on their independent election and/or non-responsibility to the legislature, or their reasonably secure command of a legislative majority, either as a single party or in coalition with others. With respect to these conditions, the relative (or absolute) singularity/plurality of the executive appears largely irrelevant. The indirectly elected but non-politically responsible seven person Swiss Federal Council is quite as stable an executive as a directly elected president.[130] So, too, the directly elected members of an unbundled executive. By the same token, a "presidential" prime minister is only as stable as her party's/coalition's majority in the legislature or hold over the party.

In terms of representation, plural executives are always likely to be more representative than single ones, both of intra- and inter-party voices and interests, as well as those of voters. They create more space for the representation of different views and interests within the executive, including potentially different political parties, and on a more equal basis than under prime ministerial coalition governments.[131] Such greater representation may help to address both sides of the current malaise: the sense of non-responsiveness to the interests and voices of ordinary voters within mainstream democratic governance, and the practice of exclusionary politics by electorally successful populists.

What about the traditional Hamiltonian case for a single executive, which argues for their superior accountability and "energy" compared to plural ones?[132] Putting to one side for the moment that this argument ignores the concomitant risks of single executives,[133] obviously even

[130] It serves for a similar fixed term.

[131] *See supra* notes 69-70 and accompanying text.

[132] THE FEDERALIST NO. 70, at 423, 427 (Alexander Hamilton) *(*Clinton Rossiter ed. 1961).

if these two values of democratic governance point towards single executives, they are not the only ones and, in principle, could still plausibly be outweighed if/where stability and representation point towards plural ones. This case also overlooks the different types of plural executives, by assuming a collegial rather than an unbundled one.[134] Most importantly, the argument for single executives based on accountability and effectiveness has been significantly weakened by subsequent developments, most notably the rise of political parties.

On accountability, Hamilton's argument was soon disproved by the emergence of cabinet government within parliamentary systems in the nineteenth century. During its heyday as a more collegial body, accountability was assured through the doctrine of collective cabinet responsibility for decisions taken together, requiring all members to support and take political responsibility for them in public.[135] More generally, the argument is antiquated because in modern democracies, even with the general shift towards executive singularity, the object of accountability is still significantly the political party (of which the chief executive is the leader) and not only the individual, and plural executives are perfectly compatible with the accountability of the governing party or parties. So, to take the simplest example, a collegial executive consisting of members of the same political party and seeking re-election against a "shadow" collegial executive of the opposition party poses no basic or obvious accountability issue, any more than ordinary parliamentary executives do. Praise or blame attaches primarily to the party. Even apart from party, at least in parliamentary versions, where election or re-election

[133] Hamilton himself acknowledged the traditional republican aversion to single person executives but argued that, even from the perspective of safety, plural executives were more dangerous to liberty than single ones. *See id*., at 429-430 and discussion in *infra* Part 8.

[134] *See* Berry & Gerson, *supra* note 14, at 1404. In Federalist No. 70, Hamilton only considers co-equal, collegial executives and single executives serving with and alongside executive councils.

[135] *See, e.g.,* Crossman, *supra* note 7.

to the plural executive is in the hands of the members of the legislature, there is reason to believe that such "peer review" will be able to focus on the merits and accountability of each individual candidate.[136] Moreover, as Berry and Gerson note, this argument does not apply to unbundled executives, whose jurisdictional limitations, they claim, render them *more* politically accountable and responsive than single, general purpose executives, not less.[137]

On effectiveness, what we do or should value in democracies is effective government in the public interest and, as argued above, this is not simply or always to be equated with energetic, decisive, impulsive, or even merely efficient, executive leadership. This is especially the case in the modern context of no longer "carefully limited"[138] and circumscribed executive authority but of its interbranch dominance, where the framers' presumed "superiority"[139] of legislatures has been significantly replaced and eclipsed. To be sure, there may occasionally be trade-offs where quick and decisive action is both truly necessary and more likely to be made unilaterally but, on the other hand, to the extent that the executive has supplanted the legislature as the primary policymaking institution, effective government will sometimes be enhanced by use of what Hamilton acknowledged to be the greater "deliberation and circumspection"[140] of more collective, legislative modes of decision-making. Hamilton's argument that energy, and

[136] Laurence Claus relates how the Swiss legislature refused to re-elect Christoph Blocher, a billionaire businessman and charismatic right-wing populist party leader, to a second term on the Federal Council. *See* Claus, *Tyranny*, *supra* note 14, at 14-16. On "peer review" for the office of chief executive, *see generally* Stephen Gardbaum & Richard Pildes, *Populism and Institutional Design: Methods of Selecting Candidates for Chief Executive*, 93 NYU L. REV. 647 (2018).

[137] Berry & Gerson, *supra* note 14, at 1405.

[138] THE FEDERALIST NO. 48, *supra* note 6 (describing executive powers as "carefully limited).

[139] *Id,* and THE FEDERALIST *NO. 71,* at 433 *(Alexander Hamilton),* (Clinton Rossier ed. 1961).

[140] FEDERALIST NO. 70, *supra* note 132, at 427.

hence unity, of the executive was essential to the conduct of war and national security[141] reflects the founding era executive priority of the battlefield context over governance[142] and also (understandably) fails to reflect the nature and consequences of modern warfare and weaponry, in which energy and vigor are not necessarily the first two ingredients of effectiveness or success. The value of effective government in the public interest may also be more readily sacrificed to the self-interest of energetic and ambitious politicians aiming to occupy the highest office of chief executive than where coequality or membership of a committee prevails.[143] Moreover, and here the key role of political parties appears again, nothing undermines the effectiveness (and in some contexts also the stability[144]) of democratic governance more than the "gridlock" of US-style presidential systems, when the separated institutional design choice results in the combination of a single person executive and an opposition party-controlled legislature.

Accordingly, the purported benefits of single executives over plural ones turn out to be uncertain, outdated, or highly conditional. At the very least, the comparison involves difficult trade-offs among the relevant values. By contrast, the key and clear advantage of plural executives, as traditionally recognized in republics of the past, is that they reduce the inherent risk of single-person ones that has so clearly and visibly materialized in recent years. By rejecting the concentration of power within the executive in the first place, plural executives are the most obvious and direct design option for seeking to prevent the self-aggrandizement of the

---

[141] *Id.*.

[142] S*ee* Claus, *Law*, *supra* note 14, at304 ("At Philadelphia, the American founders let the battlefield tail wag the governance dog.").

[143] *See* Claus, *Tyranny*, *supra* note 14, at 14.

[144] Juan Linz, *The Perils of Presidentialism*, 1 J. OF DEMOCRACY 51 (190).

strongman president or prime minister that has been the hallmark of democratic backsliding. As we are witnessing in real time, the Hamiltonian argument understates the concomitant risks of single executives[145] to *each* of the governance values and especially to the overarching and prior value of democracy itself.

Once again, most obviously, fundamentally, and directly, it is the stability of democratic governance as a whole that has been challenged by the types of empowered and would-be leaders under consideration. In essence, their actions have hollowed out democracy leaving mostly its shell of periodic elections under conditions of borderline freedom and fairness.[146] The stability of their rule is not a plus for democratic values.

On accountability, as we have seen, it is the continuous, and not only the periodic electoral, accountability of the executive that is a key value of democracy. Indeed, the two are inseparable; only though continuous accountability can voters hope to have an accurate sense of the record and the choice to be made at elections. And yet, the signature move of recent times has been for authoritarian populist single executives to further concentrate and entrench their power by attacking the necessary independence of other institutions that are designed to hold them accountable.[147] In particular, perhaps the most distinctive strategy has been to undermine continuous accountability mechanisms and the separation of powers by capturing or hobbling independent courts, media outlets, and electoral commissions, and employing their majorities to

[145] *See supra* note 133 and *infra* Part 8.

[146] Although there is little suggestion that the administration and counting of elections is not free and fair, the general conditions under which elections take place, with control over the media, election laws, harassment of opponents, etc., are less so.

[147] *See, e.g.*, SADURSKI, *supra* note 126.

subordinate or gag legislatures.[148] In short, accountability has turned out to be the value *most threatened* by the combination of executive dominance and singularity.

Energy and decisiveness have certainly not been lacking on the part of such leaders, but is this effective government of a country in the public interest? Rather, this value has been jettisoned in favor of highly partisan, personalized, self-interested strongman government along localized instantiations of the friend-foe, we-they axis.[149] By contrast, collegial executives promote greater deliberativeness and collective judgment on public policy within the executive versus the type of highly individualized and personalized style of governance we have become accustomed to. This is not generally the style that democratic values call for.

Representative government, which presumes the legitimacy and input of different interests, perspectives, and demographics, whether formally given a voice within the executive or only in the legislature, has been endangered by the type of exclusivist populist politics that delegitimizes opposition and effectively denies equality of citizenship.

By potentially better promoting the values of democratic governance in this way, plural executives also of course protect the stability of democratic governance itself. In short, the phenomenon of democratic backsliding on the part of empowered strongmen leaders has been a materialization of the risks inherent in single executives, risks that are multiplied in the context of executive dominance. Plural executives are a design choice that promises to reduce these risks, without compromising the benefits and positive tasks that democratic governance sets for itself.

---

[148] *Id*.

[149] *See, e.g.*, Rogers Brubaker, *Why Populism?* 46 THEORY AND SOCIETY 357 (2017).

## 6. Pluralizing Existing Executives

One response to the perceived merits of plurality is to attempt to reverse the general modern shift towards the singular pole in all existing forms of government described in Part 4 above. Of course, although this would result in greater plurality than at present, if successful, it would not achieve the more radical transformation required by the polar condition of co-equality. Moreover, there would be no guarantee against the re-emergence of the forces of singularity that we have experienced. Because the primary goal of this article is to have fully plural executives taken seriously as a general design option for the structure of executive power in order to effectively counter the contemporary combination of executive dominance and chief executive aggrandizement, such a response would be a distinct second-best and, accordingly, this section will be brief.

Starting with presidential systems, from what has been written above,[150] one clear method of pluralizing this form of government is to institute the model of the partially unbundled executive, by splitting off one, a few, or several executive functions from the general chief executive and directly electing the relevant officials, as occurs in almost all state governments in the United States.[151] In addition to pluralizing personnel, this will also sometimes result in pluralizing party representation within the executive.[152] A second method is to enhance administrative or internal separation of powers[153] by creating or reforming presidential systems in ways that reject the polar singularity of the "unitary executive"[154] or "presidential

[150] *See supra* Part 3.

[151] *See supra* notes 72-73 and accompanying text.

[152] *See* Guthman, *supra* note 89.

[153] *See supra* notes 59-60.

administration"[155] models. This may include laws or binding norms protecting the independence of senior prosecutors, whether presidentially-appointed or not, the creation and constitutionalization of independent and quasi-independent administrative agencies with a degree of job security for their heads,[156] and a high-level, professional, career civil service that staffs most administrative positions with relatively few political appointees at the helm.[157] Indeed, such internal separation of powers is an essential and key complement to the external variety, as provided by legislatures courts, and fourth branch institutions, in all forms of government and not only presidentialism.[158] Once again, federal or quasi-federal arrangements are also an important tool for dividing and pluralizing presidential executives, a form of multi-level or federal-state unbundling.[159]

As mentioned above, parliamentary executives vary to a significant extent in the degree to which they have participated in the general shift towards the singular pole. For those that have concentrated greater power and authority in the prime minister, such as the United Kingdom and Canada,[160] a range of reforms may succeed in dispersing that power in the direction of the more traditional first among equals and norms of cabinet government. These reforms could involve all

[154] *See* works cited in *supra* note 58.

[155] *See* Kagan, *supra* note 108.

[156] As noted above, see text accompanying *supra* note 62, this type of pluralized executive applies to all forms of democratic government and not only presidentialism.

[157] *See, e.g.*, Kutsal Yesilkagit, Bauer, Michael, Peters, B. Guy, Pierre, Jon, *The Guardian State: Strengthening the Public Service against Democratic Backsliding*, OSF Preprints nkqa8, Center for Open Science.

[158] *See* DAINTITH & PAGE, *supra* note 33, at 388-393; KAVANAGH, *supra* note 32, at 142-144.

[159] Most of these suggestions are contained in what is perhaps the leading recent call for pluralizing the presidential executive in the United States. *See* Emerson & Michaels, *supra* note 14.

[160] *See* O'Malley, *supra* note 55.

four of: (1) the legal and political authority of the office of prime minister and practices of cabinet government; (2) the power of a party leader; (3) the powers and prerogatives of the legislature; and (4) the electoral system employed.

In some parliamentary systems, the formal powers of the prime minister are not codified or specified in constitutions or legislation.[161] This informal or practice-driven approach has facilitated the drift toward centralization, so that self-conscious reform efforts to re-collectivize parliamentary executives can usefully take legal form. The most important goal is to ensure that collective cabinet (or at least cabinet committee) discussion is the main decision-making process on all major policy issues, rather than the cabinet being either left out altogether in favor of prime ministerial or "kitchen cabinet"[162] decision-making or treated as effectively an ex-post rubber stamp. Within several modern parliamentary executives, the concentration of power in prime ministers has been facilitated by, as well as reflected in, their dual position as governing party leader. So, for example, in the United Kingdom there has been greater centralization of the process for selecting local party candidates for Parliament over the past few decades[163] and also increasing use by the party leader of the power to "withdraw the whip" from rebellious rank-and-file members in the legislature.[164] These trends should be reversed. More radically, as in a few parliamentary systems, the office of party leader can be separated from that of (party candidate

[161] For the United Kingdom, *see The Role and Powers of the Prime Minister*, House of Commons Political and Constitutional Reform Committee, First report of Session 2014-2015; DAINTITH & PAGE, *supra* note 33, at 6.

[162] This (British) phrase refers to a small, ad hoc, inner circle of the cabinet chosen by a prime minister.

[163] *See* Andy Gray, *Are party candidate selections and deselections too centralized?*, YORKSHIRE BYLINES (June 10, 2024), https://yorkshirebylines.co.uk/politics/are-party-candidate-selections-and-deselections-too-centralised/

[164] *See The Guardian view on Labour's rebellion: removing the whip is a step too far*, THE GUARDIAN (July 24, 20024), https://www.theguardian.com/commentisfree/article/2024/jul/24/the-guardian-view-on-labours-rebellion-removing-the-whip-is-a-step-too-far ("Removing the party whip was once considered the nuclear option. But it has now become routine.").

for) prime minister.[165] In addition, because (as we have seen) it is the combination of executive dominance and chief executive aggrandizement that renders the latter so risky, steps can usefully be taken to reduce the former. These might include measures to reverse executive domination of the legislature, such as guaranteeing opposition party rights,[166] a minority right to establish committees of inquiry,[167] and creating mechanisms for more independent, less governing party controlled, committee consideration of proposed legislation.[168]

Finally, as electoral systems have major consequences for the nature and composition of parliamentary executives, proportional representation should be increasingly favored. Although traditionally, the choice of majoritarian or proportional election system turned on the trade-off between the values of effective and representative government, the dangers to democracy of the former in overrepresenting and concentrating power within one party and its leader without the support of a majority of voters have either materialized or threatened to do so in several places recently. Accordingly, the inherent plurality of proportional systems as tending to disperse power among political parties, including inside the parliamentary executive, is its greatest virtue in the current context.[169] One additional design proposal to pluralize the executive utilizing

---

[165] Belgium is one example, where party leaders (presidents) are not, and cannot be, the leader of the party in government. *See* Jean-Benoit Pilet & Bram Wauters, *The Selection of Party Leaders in Belgium*, in JEAN-BENOIT PILET & WILLIAM P, CROSS, THE SELECTION OF PARTY LEADERS IN CONTEMPORARY PARLIAMENTARY DEMOCRACIES (2015).

[166] *See* Sujit Choudhry, *Opposition Party Rights in Parliamentary Democracies* (manuscript on file with author).

[167] As under Art. 44 of Germany's Basic Law.

[168] *See, e.g.*, Jess Sargeant & Jack Pannell, *Legislative Process: How to Empower Parliament*, INSTITUTE FOR GOVERNMENT (December 8, 2022), https://www.instituteforgovernment.org.uk/publication/legislative-process-empower-parliament.

[169] I recognize that the greater risk of ineffective government that results may have the effect of increasing support for more extreme, outsider populist parties. *See* Richard H. Pildes, *Skepticism About Proportional Representation for Congress*, 2024 UNIV. OF IL. L. REV. 1529 (2024).

proportional representation is the "semi-parliamentary" system, in which a parliamentary executive is responsible to a first chamber elected by a majoritarian voting system but also faces a co-equal second chamber elected by PR.[170] In this way, although the executive will presumptively control the first chamber, it will likely not have a majority in the second and will be pushed to negotiate on ad hoc bases to secure passage of it measures.[171]

As for semi-presidentialism, somewhat greater plurality is achieved by the "premier-presidential" version, in which the parliamentary executive is exclusively dismissible by the legislature and not also by the president.[172] A clear and greater division of power between the president and prime minister also increases the chances of a more truly dual executive, especially where the office holders are members of different parties. Finally, as mentioned above, the timing of presidential and legislative elections is important for the greater dispersal of power, with a greater gap between the two more likely to result in "cohabitation" and the countering of what otherwise can in practice be the even more concentrated power of the president than in traditional presidentialism.[173]

---

[170] *See* GANGHOF, *supra* note 97.

[171] *See id*; *see also* Tarun Khaitan, *Balancing Accountability and Effectiveness: A Case for Moderated Parliamentarism*, 7 CANADIAN JOURNAL OF COMPARATIVE AND CONTEMPORARY LAW 81 (2021).

[172] *See supra* note 113.

[173] *See supra* notes 114-116 and accompanying text.

## 7. Which Type of (Fully) Plural Executive is Preferable?

Although greater plurality among existing forms of government would go some way towards better protecting and promoting democratic values and reducing the risks of de jure or de facto single person executives, the case for plurality set out in Part 5 aims to push further and help establish fully plural executives as a serious, competitive, and more effective democratic design alternative. Because, as we saw in Part 3, there are several variations of such executives, it is now necessary to determine which type is overall the preferred standard bearer.

Before beginning this task, it is important to note that any such determination will inevitably involve trade-offs among the values of democratic governance, for none of the variations of plural executives is clearly superior with respect to all. Such trade-offs are, of course, in addition to those involved in the prior discussions of the respective merits of single versus plural executives (Part 5) and pluralizing existing forms of government versus replacing them (Part 6).

### 7.1 Type of plurality

Let us start with the basic choice between collegial and unbundled or divided plural executives. The major advantage of the latter, it might be thought, is that it squarely comports with the Hamiltonian concerns, which were originally aimed at the types of collegial executive councils that most initial post-revolutionary state constitutions created.[174] By rendering each of the unbundled executive functions subject to the full authority of a single person, unlike the

[174] THE FEDERALIST No. 70, *supra* note 132.

collegial version, it does not interfere with their effectiveness or accountability, and arguably increases the latter.[175] Although for the reasons given above,[176] these are not, in reality, necessary or inherent concerns with a collegial executive – indeed, in combination with executive dominance, *singularity* is the greatest current threat to accountability -- and so do not amount to an obvious or significant advantage, what else can be said about unbundling?

From the perspective of the stability of democratic governance,[177] a fully unbundled executive would seem to be clearly preferable to a partially unbundled one. This is because the latter is less plural and co-equal, and so poses the risk that the more general purpose executive will come to act as a de facto single person one and so, in some cases, potentially become a strongman leader. For example, despite a partially unbundled executive consisting of seven other independently elected officials,[178] Huey P. Long was often described as a dictator during and after his term as Governor of Louisiana between 1928 and 1932.[179] This risk is obviously greater the less unbundled and more general purpose the executive is.

---

[175] As noted in *supra* note 137, Berry and Gerson argue that unbundled executives are *more* politically accountable than single person ones due to the lesser ability to "hide" favors to lobbyists in one policy area for more popular policies in other areas where subject-matter jurisdiction is limited.

[176] *See supra* Part 5.

[177] Writing shortly before the current era of democratic backsliding, this was not generally the perspective from which Berry and Gerson made the case for unbundled executives. *See supra* note 14.

[178] These other seven elected executive officials were: Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Auditor, Registrar of the State Land Office, and Commissioner of Agriculture and Immigration. CONST. OF LOUISIANA 1921, art. V, ss 1, 2, 18.

[179] *See, e.g.*, Peter King, *Huey Long: the Louisiana Kingfish*, 14 HISTORY TODAY 3 (1964) (describing Long as "often denounced as a dictator, the harbinger of American fascism, and even as the potential Mussolini of America."); Ellen Carmichael, *The Truth About Huey P. Long*, NATIONAL REVIEW (September 7, 2019), https://www.nationalreview.com/2019/09/truth-about-huey-long/ (ascribing to historian Arthur Schlesinger the view that Long "was the closest thing to a dictator the U.S. has ever seen.").

And yet, the fully unbundled model raises *distinct* effectiveness and accountability concerns of its own, and ones that are inherent to the type. On effectiveness, although it might result in greater total "energy" devoted to each individual field, first, the broad splitting of authority among different subject-matters makes it extremely difficult to take a general, coordinated, or overall view of policymaking with seemingly severe consequences for the coherence of executive decision-making.[180] Second, the risk of "boundary" or jurisdictional disputes among the fully unbundled executives, each with complete but limited scope of authority, seems close to unavoidable, even assuming good faith attempts to stay within allocated powers, given the breadth of combined authority and the inevitable mutual impacts and interactions of different fields. This factor also creates a serious accountability problem, with the likelihood of each of the executives attempting to claim credit for successes and pass the buck for policy failures and weaknesses.[181]

How does the collegial version stack up? One of the major advantages of the collegial over both the single person and unbundled plural executive is that it brings the quality of deliberativeness and considered collective judgment to the promotion of effective government in the public interest. While, again, there may perhaps be times where near-instantaneous decision-making is of the essence, so that this characteristic could plausibly undermine effectiveness, there are certainly others where (needlessly) impulsive or idiosyncratic/personality-driven individual decisions have this same result.[182] These are simply and unavoidably different

[180] Berry and Gerson admit this problem with the unbundled executive but argue that (1) it is no worse than with "less unitary" presidential systems and (2) it may be outweighed by the other benefits of this model. See *supra* note 14, at 1410-11.

[181] This would still be the case even in the event that all of the executives were members of the same political party, as they would be independently/separately elected.

[182] *See* Ming-Sung Kuo, *Against Instantaneous Democracy*, 17 INT'L J. CONST. L. 554 (2019).

dimensions of effective government and policymaking in the public interest, which involve a trade-off and decision about relative importance and priority. To the significant extent that the Hamiltonian argument presumed a relatively limited scope for executive authority,[183] and so both less power and danger, the general modern phenomenon of executive governance at the expense of legislatures in particular, arguably heightens the importance of more collegial, "legislative style" deliberation within the transferee institution.

On accountability, collegial executives avoid the jurisdictional and buck passing problems of the fully unbundled version and rely on the combination of collective responsibility for decisions and the accountability of political parties (as much as individuals) to the electorate.[184] Again, the simplest example of a single party collegial executive raises no such concerns. The somewhat more difficult case involves situations in which the executive consists of members of more than one political party. Where this is based on a coalition of two or more parties, the accountability situation is, in principle, no different than a parliamentary coalition government, in which a pre-negotiated coalition agreement usually creates collective responsibility and accountability for its terms. Where a collegial executive consists of all the main political parties, as the result of one or another of the methods of election outlined above,[185] the accountability issue is somewhat more complicated, although in some cases it may be considered proportional to their representation in the executive. As mentioned above, the parliamentary version promises to reduce this concern through the mechanism of "peer review"

[183] *See* Madison's language about a "carefully limited" executive and the "superiority" of the legislature in Federalist No.48, and *supra* notes 6 &139.

[184] *See supra* notes 136-137 and accompanying text.

[185] *See supra* notes 87-88 and accompanying text.

of individual candidates by elected legislators.[186] All this suggests that within collegial executives, there may be trade-offs between the value of representation and deliberation on the one hand, and accountability on the other, but this would go to the issues of which version, form, and composition of the collegial executive might be preferable (the next three issues), rather than its general or overall merits compared to the unbundled. Moreover, the context in which we are reconsidering the structure of executive power is, again, precisely one in which singular strongmen executives have successfully prioritized assaults on the value of accountability.

Which of the three versions of the collegial executive identified above might be preferable? Again, these are: (1) a collegial executive in which its members also hold ministerial positions; (2) one in which they do not, but rather there is a separate cabinet of ministers; and (3) a collegial executive that serves with and alongside a single-person chief executive.[187] Of these, the third option is perhaps the least collegial and creates the risk of sliding de facto towards the single-person executive side of the spectrum, resembling the "default," or more general purpose, president in a partially unbundled executive, or even modern prime ministerial government.

The concern with the first option is that it might come to resemble the *fully* unbundled executive, with each member becoming in practice largely responsible for, and consumed by, their own ministerial portfolio and a resulting decline in genuinely collegial and deliberative decision-making in favor of deference to relative expertise and mostly formal approval by the group as the norm (i.e., departmentalism).[188] This not only undermines perhaps the greatest

[186] *See supra* note 136 and accompanying text.

[187] *See supra* notes 74-79 and accompanying text.

[188] Arguably, this increasingly reflects the situation with the Commission of the European Union, a formally collegial decision-making body exercising certain executive functions, but in which each commissioner has a ministerial-like portfolio and is responsible for directing and running one subject-matter area of regulatory authority.

advantage of plurality, but also potentially raises similar issues of effectiveness and accountability as the fully unbundled model itself. On the other hand, the potential advantage of the first option is size. A collegial executive council with a separate cabinet of ministers could become an unwieldy deliberative and decision-making body. The solution to this, however, would seem to be for effective policy- and decision-making power on the major issues to be exercised by the (smaller) executive council itself, with the larger cabinet of ministers mostly performing departmental and administrative functions, somewhat akin to current presidential cabinets.

### 7.2 Form of government

It will be recalled that the third major variable among types of plural executives, as with single ones, is the "form" of government, which depends most essentially on the method of appointment and tenure of its members.[189] Are they directly (or at least separately) elected or appointed by the legislature? Do they have independent, fixed terms of office or are they politically responsible to, and dismissible by, the legislature? As we have seen, in principle, all three types of collegial, as well as unbundled, executives could exist in versions corresponding to most of the existing forms of single-person executives and also a hybrid version.[190] I have suggested above that a collegial executive in which members do not simultaneously hold

---

Over time, power has concentrated in the hands of the President of the Commission, who increasingly resembles a modern prime minister, if not a president.

[189] *See supra* Part 3.3.

[190] The one exception is the unavailability of a semi-presidential version of the unbundled executive. *See supra* text accompanying note 96.

ministerial positions may be preferable from the perspective of avoiding the risks to the stability of democratic governance inherent in single executives and also optimizing its other basic values. Which of the available forms of government should this version of the plural executive take?

Although functionally this version might most obviously be conceptualized as a collegial presidency, a plural equivalent of the conventional single person one, as we have seen, there is nothing inherent to the office that makes parliamentary or other versions impossible. The fully parliamentary version, of course, would make the members of the collegial executive appointable by, and politically responsible to, the legislature.[191] The separate cabinet of ministers would, in turn, be appointed by the collegial executive but also be responsible to the legislature, as essentially in prime ministerial government.[192] A hybrid version, as in Switzerland, would make executive members appointable by, but not responsible to, the legislature. Unless the collegial executive were to consist of members of both major parties in a two-party system, or all significantly supported parties in a multiparty system (the next variable), the risk of "gridlock" and consequent undermining of effective democratic governance in a presidentialist version favors a parliamentary, hybrid, or semi-parliamentary approach to appointment and tenure. Once again, in these scenarios, there would be clear electoral accountability of the political party comprising or dominating the collegial executive, "peer review" of individual members or candidates, and stability of governments should not generally be a problem. A presidentialist version might also raise a few accountability concerns where reappointment is sought, given the

[191] More specifically, typically to the lower house in a bicameral system.

[192] This might be thought of as roughly the equivalent of appointing non-cabinet rank government ministers in existing parliamentary systems.

need for separate, direct election of its members, even if they belong to the same political party, although significantly less than with the fully unbundled version.[193]

### 7.3 Representation

As discussed above, the "who" question addressing the representativeness of the collegial executive, is perhaps the most difficult design issue, especially with respect to political parties rather than regions or ethnicities, etc. On the one hand, greater inclusion of political parties enhances the value of representation beyond the legislature and also counters the sense of exclusion from the major contemporary locus of political power of all but the governing party (and its allies) that inheres in a single executive. In the increasingly polarized context in which we live, this winner-take-all mentality and the perceived need to maximize the opportunity that power provides, poses a challenge to the stability of democracy. Such inclusion also promotes broader deliberation and input into decisions about what policies are in the public interest, and arguably facilitates greater focus on this issue than gaining or retaining public office.[194]

On the other hand, at least beyond a certain point, greater inclusion does challenge the value of electoral accountability, which significantly depends on the existence of an opposition party or parties.[195] Ultimately, then, there is a real trade-off between the stability of democratic governance, effectiveness as deliberativeness, and greater representativeness in executive decision-making, on the one hand, and periodic electoral accountability and perhaps also

[193] *See supra* note 181.

[194] *See supra* note 143 and accompanying text.

[195] *See* Gregoire Webber, *Opposition*, in JEFF KING & RICHARD BELLAMY EDS., THE CAMBRIDGE HANDBOOK OF CONSTITUTIONAL THEORY (2024).

effectiveness as decisiveness on the other.[196] How this should be resolved will depend largely on context. Where concern about democratic backsliding is a priority, a multiparty collegial executive offers the greatest hedge against it. This is because it serves to counter the general phenomenon of power accreting to single person party leaders that might still affect a one-party plural executive. And even if it does not, a single party plural executive may have a common interest in entrenching itself in power, and the means to do so. In short, plural executives consisting of plural parties afford the greatest protection against democratic backsliding in the context of executive governance that institutional design alone has to offer.

Accordingly, electoral systems should be considered and chosen with the desired party composition of the collegial executive in mind. With parliamentary versions, there is, as usual, no separate election for the executive and so the threshold choice of electoral system is the standard one of majoritarian versus proportional, with its corresponding likely outcomes of two party versus multiparty systems. With presidential and semi-presidential versions, the various possible methods and timings of the separate election for the collegial executive outlined above[197] have somewhat different implications for the possibility of multi-party membership. Although all would make it reasonably likely, proportional representation, of course, would render it a certainty in all but one party, or completely dominant party, systems.

[196] Although continuous political accountability might be reduced by the presence of all main political parties within the collegial executive, there is reason to believe that other types of continuous accountability would be enhanced by reducing the threat of one party abuse, such as entrenchment of power and capture of independent institutions, etc.

[197] *See supra* note 95 and accompanying text.

## 8. Conclusion

> The idea of a council to the executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man….But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is one"; that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and in a word, that all multiplication of the executive is rather dangerous than friendly to liberty.[198]

History has not been kind to Hamilton's opinion. Whatever its plausibility at the time, from the perspective of the twenty-first century, it is hard not to conclude that subsequent experience has demonstrated the falsity of Hamilton's view and the soundness of the republican maxim. Starting a little over a hundred years ago, "liberty" and nascent democracies were abruptly extinguished by a series of totalitarian dictatorships led by single person executives with such cult of personality titles as Duce, Führer, Caudillo, Father of Nations,[199] Great Leader,[200] etc. In the first quarter century of this millennium, liberty and democracy have been more gradually undermined and eroded though subtler, and mostly legal, means by a series of elected strongmen authoritarian populist leaders who claim a direct, unmediated relationship with the "true people."[201] For at least the people in these countries who supported – and in some cases reelected -- them, these charismatic leaders are far more the single object of adulation and trust

[198] THE FEDERALIST, No. 70, *supra* note 132, at 429-30.

[199] Stalin.

[200] *Id*.

[201] *See, e.g.*, Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545 (2018).

than “jealousy and watchfulness.” Accordingly, modern history strongly suggests that with the executive power, as with trade unions and wildebeest, there is safety in numbers.