

Forum on the Elected Presidency

5 August 2011

Orchard Hotel, Ballroom 1 & 2



IPS Forum

The Roles, Responsibilities and Power of the Elected President

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Evolution of a Revolution

1. **Unique Singapore Constitutional Experiment**
2. **'Revolutionary' departure from Westminster system**
3. **'Evolutionary' trajectory – work in progress; major and minor constitutional amendments e.g. 1994 'Defence and security measure': art 151A**
 - **11 amendment bills since 1991**
 - **Efficiency v Accountability**
 - **Detractors e.g. Lee Siew Choh: *"a genuine parliamentary democracy will serve as a better check than an EP with veto powers"***



Origins of the Scheme



1. 1984 National Day Rally Speech – PM Lee Kuan Yew

- “Freak election results” & raiders of reserves
- A “prostrate and bankrupt” Singapore in “one 5 year spending spree”
- No effective safeguards
 - Strong Cabinet Government
 - Coalition government with 1 seat majority
- “Blocking mechanism” for past reserves



Origins of the Scheme: constitution and economic policy

2. Elaboration: 1988 and 1990 White Paper

3. Rejection: institutions and methods

- Upper house/ senate
- Increase powers of PCMR
- Create a Federal reserve
- Enforced annual budget surplus

4. Modification:

- No Vice President
- Additional functions

1988
Reserves
Appointments

+

1990
Corruption
ISA
MRHA

Institutional Design

1. A Competing Centre of Political Power?
2. Target: not unlawful executive action (judicial review) but lawful action against national interests
3. Limited Scope of EP's mandate
 - Specific, not general
 - *Past* reserves not *current* reserves

Institutional Design: Fundamental Considerations

- ***The Parliamentary System should be preserved***: The Prime Minister and Cabinet should keep the initiative to govern the nation. This system has worked satisfactorily and radical changes to it are not desirable. Any constitutional checks and safeguards should be confined to the two stated areas: leaving the Prime Minister and Cabinet full freedom to govern in all other respects." (1988 white paper, para 18(a))
- The President will be entrusted with the duty of protecting the Republic's financial assets and preserving the integrity of the public services. ***He will not be an executive President***, unlike the President of France or Sri Lanka. The Prime Minister and Cabinet will continue to govern the country under our Parliamentary system of government (1988 white paper, para 20)

Institutional Design: Fundamental Considerations

- The President will refuse to concur when he is satisfied that what the Government wants to do is not in the nation's interest. However, the President *cannot initiate* action on his own..." (1988 white paper, para 22)
- President Ong Teng Cheong, Swearing in Speech, 9 Sept 1993

I will do my best to rally all Singaporeans to build a gracious and caring society, and to make Singapore a nation of distinction. But the President does not initiate his own programmes or policies. That is the Government's job. The President's task is to decide when to say no to the Government, and when to say yes, taking everything into account and holding Singapore's interests uppermost. That I promise to do to the best of my ability.

The President's powers are custodial powers. He only exercises them when the Government wants to take certain important actions, and needs the President's concurrence to proceed. This will not happen routinely, but only on exceptional occasions, for example:

Core Tenets: parliamentary system

Discharge and performance of functions of President

21.—(1) Except as provided by this Constitution, the President shall, in the exercise of **his functions under this Constitution** or any other written law, act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet

(2) The President may act in his discretion in the performance of the following functions: (arts 21(2)(a)-(h))

- appoint PM
- withhold consent to dissolution of Parliament
- withhold assent Supply Bill, guarantee, loan
- withhold concurrent: appointments / budgets SBGCs
- ISA and MRHA

(i) any other function the performance of which the President **is authorised by this Constitution** to act in his discretion

Art 24(2) ...the Cabinet shall have the general direction and control of the Government and shall be collectively responsible to Parliament.

**Specific
Authorisation**

v.

**Specific
Prohibition?**

Some Confusion: is the President an 'executive President'?

1. Executive President: set or influence government agenda
2. "Custodial" – not a legal term
 - Presidential Committee for the Protection of Reserves (later the PCA)
"will moderate the custodial powers of the President and act as a check against hasty or arbitrary decisions of the President." (para 23, 1988 white paper)

Some Confusion: is the President an 'executive President'?



PM Goh, 17 Aug 1999 Singapore Parliament Reports cols. 2038-9

- *There should be no confusion. The true Constitutional position is very clear. The President exercises custodial, not executive powers. Only the Government exercises executive powers. Under the Constitution, the Cabinet shall have the general direction and control of the Government. In contrast, the President's custodial powers are reactive and blocking powers. The President does not have any executive power...*
- *The Constitution provides for a directly elected President with custodial, not executive, power.*

The Government Part V

Chapter 1



Art 21(2)
'act on advice of cabinet'



Discretionary Power

Pre EP

art 25 (appointment)
art 26 (tenure)

Post EP

art 21(2)

Chapter 2



Art 24(2)
'general direction and control'



Collectively responsible to **Parliament**



Executive authority of Singapore

23. —(1) The executive authority of Singapore shall be vested in the **President** and exercisable subject to the provisions of this Constitution by him or by the **Cabinet** or any Minister authorised by the Cabinet.



Some Confusion: is the President an 'executive President'?

- Intra-branch separation of powers
- Executive power is divisible – same legal category
- President exercises 'reactive' executive powers but is not an executive President
- Cabinet exercises 'proactive' or initiatory executive power
- 'Custodial' – preferred descriptor

Two Key Mechanism



1. EP is not a 'one man' act – role of unelected advisory bodies e.g. Council of Presidential Advisors (CPA)
 - De facto Senate
2. Limited Mandate – draw down, past reserves
3. Gridlock and crisis in governability? – Parliamentary Override Mechanism

Two Key Mechanism

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Parliamentary Override

Withholding of assent to Supply Bill, etc.

148A.—(1) The President may, acting in his discretion, withhold his assent to any Supply Bill, Supplementary Supply Bill or Final Supply Bill for any financial year if, in his opinion, the estimates of revenue and expenditure for that year, the supplementary estimates or the statement of excess, as the case may be, are likely to lead to a drawing on the reserves which were not accumulated by the Government during its current term of office, except that if the President assents to any such Bill notwithstanding his opinion that the estimates, supplementary estimates or statement of excess are likely to lead to a drawing on those reserves, the President shall state his opinion in writing addressed to the Speaker and shall cause his opinion to be published in the *Gazette*.

Parliament may overrule President's withholding of assent to Supply Bill, etc.

148D.—(1) Where the President withholds his assent under Article 148A to any Supply Bill, Supplementary Supply Bill or Final Supply Bill relating to any financial year contrary to the recommendation of the Council of Presidential Advisers, Parliament may by resolution passed by not less than two-thirds of the total number of the elected Members of Parliament referred to in Article 39 (1) (a) overrule the decision of the President.

Modus Operandi

1. Law in Text and in Action
2. Three Sources of Constitutional Law regulating EP Scheme
 1. Constitutional Text
 2. Constitutional Convention (long practice)
 3. Soft Constitutional Law (SCL) (norms or rules of engagement written down in non-binding instrument)

Three modes of operating

1. “Law” – art 22H, art 100
2. “Politics” – Pres Ong’s 1999 Press Conference and Government Reaction
3. “Diplomacy”
 - 1999 white paper
 - “harmonious working relationship”
 - Pres Nathan and 11 days process: draw down
 - Velvet Gloves v Boxing Gloves

Three modes of operating

1. **“Law”** – art 22H, art 100
2. **“Politics”** – Pres Ong’s 1999 Press Conference and Government Reaction
3. **“Diplomacy”**
 - 1999 white paper: not binding, not exhaustive
 - “harmonious working relationship”
 - Pres Nathan and 11 days process: draw down
 - Velvet Gloves v Boxing Gloves
 - Behind the scenes? E.g. convention of consulting

Comments: Election Process and Duallist Democracy

1. Art 19: subjective and objective criteria

Qualifications and disabilities of President

19.—(1) No person shall be elected as President unless he is qualified for election in accordance with the provisions of this Constitution....

(e) satisfies the Presidential Elections Committee that he is a person of integrity, good character and reputation

Art 19(2)(iv)

(iv) in any other similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector which, in the opinion of the Presidential Elections Committee, has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President

Comments: Election Process and Duallist Democracy

1. Reputation & Right to Reply
2. Source of PEC's evidence?
3. In camera v Open Senate hearings model
4. Degree of Expertise: literal v purposive approach
 - EP not expected to be own accountant
 - EP can consult professional advice
 - EP has CPA to tap on
 - CPA members

The CPA is a highly competent group of people - experienced, seasoned professionals and business persons who know something about markets. And, more importantly, although they are not investment experts they know how to assess an argument and the information that is put before them