

The Presidency in Israel





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Abstract

The president symbolizes the state and its moral and democratic values [...] Through his status, he embodies devotion to the state over sectarian and party-political interests and represents the common denominators that unite and connect the various segments of Israeli society. His personality should reflect the goodness, beauty, morality, and distinctiveness of the Israeli population. He should set an example and serve as a role model through the way he discharges his duty and the conduct of his private life alike (HCJ 5699/07).

The president of Israel is the ceremonial head of state—a primarily representative and symbolic position. The president symbolizes *Mamlakhtiut*, i.e., devotion to the state over sectarian and party-political interests. The presidency enjoys a high level of public trust compared to other state institutions.

The present study reviews the functions of the president in parliamentary democracies, describes the institution of the presidency in Israel, including its legal status and the procedure for election to the position, and explores in detail the president's formal and informal roles, some of them ceremonial and others substantive (discretionary). Lastly, it presents recommendations for more far-reaching changes in the president's powers, conditioned on a wide-ranging reorganization of the relations between the branches of government.

Ceremonial presidents in parliamentary democracies

Almost all parliamentary democracies maintain a separation between the functions of the symbolic head of state (the president, or in monarchies, a king or queen, emperor, or duke) and the head of government (the prime minister), who heads the executive branch.

Ceremonial presidents embody the unity of the state, represent its neutrality, serve as the country's ambassadors to the rest of the world, and in times of crisis may also serve as arbiters and mediators. In most countries the president is elected directly by the people; in others, including Israel, the president is elected indirectly, either by the parliament or by a broader electoral college. Usually presidents must be elected by an absolute majority, and sometimes even a supermajority, in order to ensure broad support so that they can fulfill their symbolic role. All these presidents have the power to pardon offenders; their other powers are mainly formal and ceremonial.

However, presidents also have several discretionary powers that are exercised only in certain circumstances. For example, it is common that the ceremonial head of state grant a candidate the task of forming a government. This ceremonial role may become discretionary when

election results are indecisive. Some presidents have the right to suspend promulgation of a law that is unconstitutional or infringes on human rights, or refuse to approve the appointment of an unsuitable person to a ministerial position. Presidents use these powers only in extreme and exceptional circumstances.

The degree of the president's involvement and exercise of these powers are influenced by the political context. The more stable the political system and the better it functions, the less the president is involved, and vice versa: when there is more uncertainty and instability (such as a political deadlock, extreme polarization, or a constitutional crisis), the president may play an influential role, especially if she has discretionary powers.

The power of the ceremonial president varies from country to country. The Israeli presidency is noticeably weak compared to its counterparts in other parliamentary democracies, particularly due to the paucity of discretionary powers (the president of Israel cannot suspend the promulgation of legislation and does not approve ministerial appointments) and certain ceremonial powers (e.g., in some countries the president formally serves as the commander-in-chief of the military).

The presidency in Israel

The constitutional basis

The main legislation is the Basic Law: The President of the State, enacted in 1964 and amended only ten times since. According to the law, the president is the head of state. He (or she, though as noted below no woman has served as president of Israel) is elected by the Knesset by secret ballot for one seven-year term. To qualify to become president, one must be a citizen and resident of Israel. A candidate for the presidency

must be nominated by ten Knesset members and must receive an absolute majority in the first ballot, or (if no such majority is achieved) a simple majority in the second ballot, to which the two candidates with the most votes advance. The president takes an oath of allegiance to the State of Israel and pledges to discharge his functions faithfully. The president has immunity with regard to the discharge of his functions and immunity from criminal prosecution during his term of office. The Knesset can remove the president from office due to behavior unbecoming his position or due to temporary or permanent incapacity for health reasons. The president can suspend himself due to temporary incapacity. When the president is out of the country or is unable to discharge his duties, the speaker of the Knesset takes his place.

The job of the president as detailed in the law includes various ceremonial roles (accrediting ambassadors, signing laws enacted by the Knesset, signing international agreements ratified by the Knesset, appointing judges chosen by the Judicial Selection Committee), as well as discretionary powers (pardoning offenders, assigning the task of forming a government in accordance with the Basic Law: The Government). Additional duties of the president are stated in other laws (appointing a governor for the Bank of Israel, appointing the president of Magen David Adom, protecting whistleblowers who expose corruption, etc.).

Presidential elections

Since the first presidential election in 1949, and as of the time of writing (2024), there have been 17 contests for the position. Of the 25 candidates, 11 have been elected president—all men, most of them Ashkenazim, with an average age of 67, and all but one with a political background. Only four of the 25 candidates have been women, and there has never been an Arab candidate. An analysis of the candidacies indicates that

there is good reason for the secrecy of the election procedure, as it makes it possible to elect the appropriate person irrespective of party affiliation and without constraints of factional and coalition discipline. Moreover, the analysis shows that candidates with a distinctly political background have a real advantage over candidates coming from outside politics. Until 1998 (inclusive), all presidents were elected on the first ballot, except in 1952. In contrast, in three of the four elections held since 2000, two ballots have been necessary.

Powers and duties

The role of the ceremonial president consists of a mixture of formal and informal powers, most of them ceremonial but some substantive, i.e., with some element of discretion.

Roles and powers of the President of Israel

	Formal	Informal
Ceremonial	<ul style="list-style-type: none"> • Signing laws and international agreements • Opening Knesset sessions • Receiving reports from the government • Accepting the resignation of a prime minister • Accrediting diplomats • Appointing judges • Making other appointments 	<ul style="list-style-type: none"> • "Foreign minister" • "President of the Jewish people" • Awards and ceremonies • Social, educational, and scientific initiatives • The role of the president's wife
Substantive	<ul style="list-style-type: none"> • Assigning the task of forming a government • Approving the dissolution of the Knesset • Pardoning offenders 	<ul style="list-style-type: none"> • Involvement in controversial issues

Substantive roles

Assigning the task of forming a government

The Basic Law: The Government lists three possible scenarios for tasking someone with forming a government. In each case the president has a different degree of discretion.

The initial tasking of the candidate to form a government dictates that the president must, after consulting the representatives of the parliamentary factions, assign the task to a Knesset member who agrees to do so. In this scenario the status of the recommendations of the parliamentary factions is not stated explicitly. The law does not require that the president assign the task to the MK who receives the greatest number of recommendations, nor does it require that he assign it to the head of a parliamentary faction. In cases in which the election results are conclusive, the president enjoys limited discretion. In contrast, when the results are inconclusive, or when there are normative problems related to a candidate, the president's discretion may be broader.

In the second assignment of the task of forming a government, if the first candidate was unsuccessful, the president has the most discretion. He can assign the task to another candidate or inform the speaker of the Knesset that he is not assigning it to anyone.

When assigning the task to a certain MK at the request of a majority of Knesset members, the president has no discretion at all; within two days he must assign the job to the MK whom a majority of Knesset members mentioned in their request.

The controversial aspect of the process is the nature of the president's discretion: Is it merely purposive or might it also be normative? *Purposive* means that the president must consider only which candidate has the

greatest chance of forming a Government that will enjoy the confidence of the Knesset. *Normative* means that the president must also, in extreme and exceptional cases, take into account additional considerations, such as when the candidate with the greatest chance is under indictment or has been inciting to racism. An intermediate position would be that after weighing the purposive consideration, the president can also add a normative criterion to his decision-making.

Agreeing to the prime minister's decision to dissolve the Knesset

According to the Basic Law: The Government, the prime minister may order the Knesset dissolved if the majority of Knesset members are opposed to the government and as a result the government cannot function properly. However, to do so the prime minister must obtain the consent of the president. The wording of the law suggests that the president can exercise discretion in this regard. To this day such orders have been issued twice, and both times the process was approved by the president.

The power to pardon

Like his counterparts in other parliamentary democracies, the president serves as the "compassionate branch of government," with the power to grant pardons, commute sentences, and dismiss criminal charges. The petition is presented to the president and passed on to the Pardons Department in the Justice Ministry, which conveys its recommendation to the president's legal bureau. The president then decides whether to accept or reject the petition. The president's decision to grant a pardon must be countersigned by the justice minister.

There is some disagreement as to whether the justice minister must countersign a presidential pardon. According to one approach, pardoning

is a combined act of the branches of government and the justice minister's signature reflects public accountability for the act of pardoning; therefore, if the president has discretion in deciding whether to grant a pardon, the justice minister does as well. The other position argues that pardoning is entirely the president's prerogative and the minister is required to sign a presidential pardon unless there was a flaw in the process, i.e., it was not based on substantive considerations. The current practice is that the minister may refuse to countersign a presidential pardon only in extreme and exceptional cases. The president's decision to pardon an offender is also subject to judicial review, but here, too, the court intervenes only in extreme and exceptional cases.

Presidential immunity and judicial review

The president enjoys substantive immunity in connection with the performance of his job, and this immunity is lifelong. The president also has immunity from criminal prosecution (but not from the launching of criminal proceedings) so long as he is serving as president. It is generally held that the president personally has immunity in performing his function, but his actions and judgment are justiciable. Nevertheless, the court intervenes only in exceptional cases.

The president as a representative of "Mamlakhtiut" and the tension between being a symbol and a political player

The president of Israel embodies the concept of devotion to the state over sectarian and party-political interests, referred to in Hebrew as "Mamlakhtiut," and as such is committed to the general good and to furthering the common public interest of all citizens. The "presidential dilemma" is manifested in the question of whether the president is a symbol or a political player. Given his symbolic role, in times of crisis, when society is riven by disputes, must the president stay out of the

political debate over controversial issues in order to preserve the prestige of the presidency and keep it outside politics? Or perhaps the president, as head of state, cannot remain silent in view of momentous national events? History shows that the president's statements on controversial issues on the agenda tend to come under fire; hence the topic, the timing, and the manner of the intervention are all significant.

Summary and recommendations

In light of the comparative study and the survey of the president's powers and roles, we present the following recommendations, in two different scenarios: first, within the existing constitutional arrangements; second, as part of a future comprehensive constitutional arrangement.

Changes in the present constitutional reality

Election and tenure

- **Qualifications:** Add to the basic law additional qualifications such as age, and consider disqualifying individuals with a criminal record.
- **Cooling-off period:** Set a three-year cooling-off period after serving as president before being elected to political office, in order to prevent any conflict of interest in discharging presidential duties, especially toward the end of the term of office.
- **Oath of office:** The wording of the presidential oath is "sparse" compared to that of other ceremonial presidents. Therefore consideration should be given to rewording the oath so that the president pledges to discharge his duties while protecting the character of the State of Israel as a Jewish and democratic state and to discharge his duties for the benefit of the citizens of Israel.

Matters that we believe should be left as they are:

- The election procedure that requires an absolute majority in the first ballot and a simple majority in the second ballot
- The absence of a rule stipulating the automatic removal of the president from office in certain circumstances

Substantive powers

- **Pardoning:** The power to pardon offenders should be left in the president's hands. However, there should be a public and professional discussion of controversial substantive issues: What is the status of the justice minister's recommendation? What is the scope of judicial review of presidential pardons? Should it be established that a pardon can be granted only after the judicial branch has had its say?
- **Assigning the task of forming a government:** Despite the vagueness of the law, we recommend leaving the present situation as is. Proposals for making the election results more decisive (so that the head of the largest faction automatically becomes prime minister) would nullify this function of the president, as occurred during the period of direct elections for prime minister.

Strengthening and broadening ceremonial powers

- Consider putting various state projects and awards under the president's auspices so that they are associated with what unites the country and are not subject to political-partisan controversies (the Israel Prize, the Presidents and Prime Ministers Memorial Council, an initiative to mark national days of mourning, symbols, and ceremonies).

The constitutional status of the basic law

- Add to the basic law a clause making it more rigid, so that it can be amended only by a majority of Knesset members.

Anchoring changes in a comprehensive constitutional arrangement

In other parliamentary democracies, symbolic presidents enjoy a broader range of substantive powers. Exercising these powers may put them at the heart of public controversy, but sometimes it can reduce the intensity of political and public conflict.

In our opinion, the time is not ripe for deciding this complex issue. It should be considered only when a constitutional framework is being drafted that ensures checks and balances between the branches of government and the independence of the judiciary.

- **Appointment of ministers:** We believe that the president should not be involved in the appointment of ministers, who are accountable to the prime minister and the Knesset.
- **Suspension of legislation:** We suggest considering giving the president the power to suspend the promulgation of legislation and return it to the Knesset for further deliberation in extreme and exceptional cases, including due to infringement of the core values of the state or of segments of society. A public, political, and professional discussion must be held before the president is granted such power.

To sum up, the study reflects the need for the presidency on the institutional level (the relationship among the branches of government), on the social-public level (the fabric of relations between different groups of citizens), and on the symbolic level (as it is essential for a sense

of identification with and connection to the state). The very existence of the presidency is of great importance in view of the intense political polarization in Israel, the threat to the principle of “Mamlakhtiut,” and the delicate fabric of Israeli society. The president stands apart from the other branches of government, but at the same time has some connection to their activity. He is not a party to controversy, but neither is he detached from events. He has few powers, but he does have the power to express his position and act in a manner befitting his status.



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