

SUMMARY OF EVIDENCE TO HOUSE OF LORDS CONSTITUTION COMMITTEE ON FIXED-TERM PARLIAMENTS, OCTOBER 2010

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1. **Norway** is the only western European parliamentary system with fixed parliamentary terms¹. This system causes difficulty when a government loses a confidence vote in the middle of a parliamentary term:
 - I. In 1986, 1990 and 2000, the **defeat of the Government forced opposition parties to lead a minority government for the remainder of the fixed term.**
2. Because of this difficulty, most western European democracies provide for **dissolution**. Britain is unusual, however, in the amount of discretion it gives the government of the day (whether majority or minority) in calling for such dissolution.

55% clause – political deal

3. The original Coalition pledge for a dissolution to require the support of **55% of all MPs** dictated that the Prime Minister could not seek a snap dissolution, thus **giving the Coalition stability**. The 55% quota protected the Liberal Democrats from a dissolution orchestrated by the Conservatives, as well as protecting the Conservatives from a dissolution favoured by Labour and the Liberal Democrats (who have the combined support of 53% of MPs).
4. The principle of governments binding themselves by ad hoc provisions for dissolution is not in any way constitutionally problematic. Issues are raised only when these provisions are put into **statutory form**. Ad hoc arrangements are by definition appropriate to contemporary circumstances. The provisions of the coalition agreement in 2010 were part of a political deal. There is **no reason why they should be regarded as permanent principles of the constitution**.

66.6% - the revised provision

5. The claim that the 55% clause was an attempt to gerrymander the constitution by allowing a Conservative/Liberal Democrat- but not a Labour/Liberal Democrat – coalition, to obtain a dissolution, was refuted by the Coalition with the revised provision for a **two-thirds vote requirement**.
6. Under the new provision, **either coalition would require the support of other parties**. It remains unclear, however, whether this provision could **bind a future parliament** such that if a majority smaller than two-thirds in a future parliament were to vote for dissolution and the Prime Minister then asked for one, the Queen would be entitled to refuse it. That is an issue for the constitutional lawyers.
7. Such ambiguity might be avoided by future governments by first **repealing the Fixed-term Parliaments bill** with a simple majority and then voting for **new provisions on dissolution**.

¹ Switzerland also has a fixed-term parliament, but it is not strictly a parliamentary system since the executive is drawn from all of the main parties in the legislature, rather than solely from the majority party or parties.

8. The **implication of the two-thirds provision** are therefore as follows:
- I. The current coalition cannot secure a dissolution without the support of the opposition.
 - II. Dissolution is likely only to be possible with the support of both the Conservatives and Labour.
 - III. A government elected by a landslide would have the special privilege of securing an early dissolution.
 - IV. Parliament could be forced to tolerate a minority government or parties forced to form a coalition even in a situation where the majority of MPs want an election.

Constructive votes of no confidence

9. It has been argued that only constructive votes of no confidence should lead to dissolution. In **Germany**, the Bundestag can express lack of confidence in the Federal Chancellor *only* if there is a **positive majority for a prospective successor**. A successful constructive vote permits the Federal President to dismiss the Chancellor and appoint the person nominated by the majority in the Bundestag. This prevents governments from being overthrown by a negative vote of parties unwilling themselves to form a government.
10. The constructive vote of no confidence has been used **twice in post-war Germany**:
- I. 1972 - The opposition lost a constructive vote of no confidence against Willy Brandt by 2 votes. The Chancellor, aware that he was losing his majority, was forced to orchestrate a vote of no confidence against his own government to secure a dissolution.
 - II. 1982 – Chancellor Kohl was successfully installed by a constructive vote of no confidence against Helmut Schmidt.
11. In a **bipolar parliament**, a constructive vote of no confidence is **feasible but unnecessary**. The vote could only be successful in the event of a breakdown of cohesion in the governing party or bloc, in which case it is obvious that a new majority has been created anyway.

In a **multi-party parliament**, a constructive vote of no confidence would be **undesirable**. It would make dissolution more difficult to achieve, thus increasing the danger of weak or lame-duck government.

Motions of no confidence

12. The bill legislates that if no alternative government can be formed within 14 days of a **vote of no confidence**, an early election takes place.
13. This provision is similar to that regulating the Scottish Parliament. However, the Scottish system varies from the proposed Westminster model in two ways:
- I. An early dissolution in Scotland is termed an '**extraordinary general election**' and the '**ordinary general election**' still takes place at the end of the original fixed term. This lessens the potential advantage of an early dissolution for the incumbent government.
 - II. The use of PR in Scotland means that early dissolution is less advantageous to incumbent governments than it would be in Britain, where FPTP makes it more likely that a new

election would produce an overall majority for one party. Were Britain to adopt proportional representation for elections to the House of Commons, then the bill would be more persuasive than it is at present.

Illegitimate use of early dissolution - the Prime Minister's advantage

14. The principle behind the bill is to take away the alleged advantage held by the incumbent Prime Minister when they **choose the date of dissolution**, though the extent of such advantage has perhaps been exaggerated. It can be argued that the PM benefited from this advantage in 5 out of the 18 general elections since the war (1959, 1983, 1987, 2001, 2005) It is likely that the Macmillan, Thatcher and Blair governments would have won the relevant general elections whenever they had been held.
15. An **early dissolution is not always an illegitimate attempt to gain an advantage from temporary popularity**. More respectable reasons include:
 - I. To seek a **personal mandate for a new Prime Minister** e.g. Anthony Eden 1955. David Cameron proposed in April 2010 that a new Prime Minister should go to the country within six months of being appointed and the practise is perhaps more necessary now than in the past as general elections seem to have become more presidential than they were.
 - II. To seek a **mandate for a new policy** e.g. Asquith 1910 sought a mandate for Lloyd George's 'People's Budget' and the Parliament Act, and 1923 Baldwin unsuccessfully sought a mandate for protection.
 - III. The existing **Parliament is unviable** e.g. Harold Wilson 1974.
 - IV. To **validate a change in coalition partners**. Though there is no historical precedent in Britain, this may become a reality with the development of a multi-party system.
16. Providing for dissolution in these circumstances may outweigh the possible disadvantage of a prime minister securing an early dissolution for purposes of party advantage. It is better for **voters to retain the power of decision** on whether an early dissolution is justified or not than to constrain the process of dissolution with constitutional rules.
17. The Scottish provision (also used in Sweden) whereby dissolution yields only an 'extraordinary general election' within the original fixed term could also be used to **limit the Prime Ministerial advantage**.

Likely impact of the Bill

18. Without this provision, the Fixed-term Parliaments bill may make **less difference to the politics of dissolution** than is often thought:
 - I. If a government seeks a radical change of policy, a Parliament is unviable or there is a change of coalition partner, the demand of the public might well be, not that Parliament should continue for five years, but that the **government should test its support at the polls**.
 - II. The bill is **unlikely to strengthen Parliament**. While the two-thirds rule will necessitate the support of MPs from all three major parties, almost all of these will obey a party whip. The bill will alter the conditions under which political leaders can seek a dissolution, but it is hardly likely to give more power to backbench MPs.

- III. The **effect of a no-confidence vote will probably be no different from what it is now**; either an alternative government is available, in which case a government resigns after a vote of no confidence and the alternative government takes office; or it is not, in which case there is a dissolution.

19. An alternative to the provisions in the Bill is to **require that a dissolution motion receives a majority vote in Parliament**. However, this would give the balance of power to a hinge party. If they decided to block dissolution, it would increase the risk of lame-duck government.

Conclusions

20. The debate about the Fixed-term Parliaments bill indicates a conflict between two fundamental principles:

- I. **Parliamentary government** (that parliament shall choose the government).
- II. **Democratic government** (that the people should choose the government).

Though these principles coincide under single-party majority government, we may now be moving into a period of multi-party politics when the principles diverge. In such a situation, the fact that a government enjoys the support of parliament does not necessarily mean that it is acting in accord with democratic principles if, for example, it swaps coalition partners in the middle of a parliament without securing popular endorsement for this change.

21. If we are entering a world of hung parliaments, there is **no reason for dissolutions to be made more difficult**. Indeed, they should perhaps become more frequent since changes of prime minister or changes of coalition partner may be more likely to occur within a single parliament. Making dissolution too difficult can lead to endless parliamentary manoeuvring of the sort which so discredited the Third and Fourth Republics in France.

22. **Dissolution is not necessarily a threat to good parliamentary government**, but can be an important **safeguard** by ensuring that governments are held accountable not only to parliament but also to the people.

23. If that is so, then it is difficult to see what useful purpose is served by the Fixed-term Parliaments bill so long as the House of Commons continues to be elected by either the first past the post system or the alternative vote.

This is a summary of written evidence given by Professor Vernon Bogdanor in October 2010 to the House of Lords Constitution Select Committee. The summary has been produced by The Constitution Society to assist the All-Party Parliamentary Group on the Constitution. For a full copy of the evidence, please contact info@constitutionsoc.org.uk.