



Paper of

Dr. Eoin O'Malley

DCU

delivered to

The Citizens' Assembly

on

14 April 2018



The practice of Dáil terms and dissolution

Eoin O'Malley
School of Law and Government,
Dublin City University

3 March, 2018

A paper prepared for the members of the Citizens' Assembly meeting on Fixed-Term Parliaments

Introduction

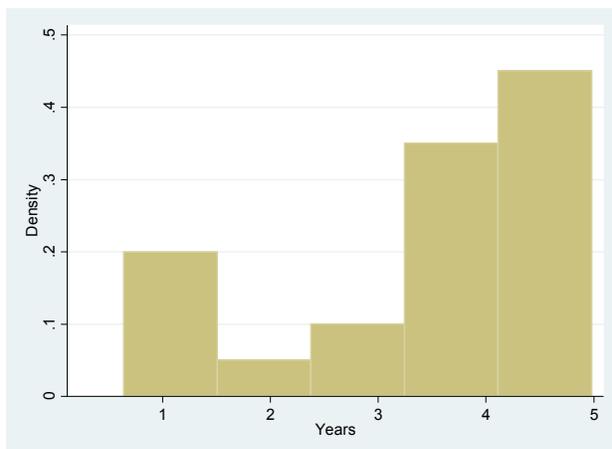
There are clear constitutional limits (seven years) and legislative limits (five years) to the length of Dáil terms, and rules as to how the Houses of the Oireachtas are summoned and dissolved. While the constitution and legislation set out the limits of political action, they often have little bearing on political practice.

In this short paper I will set out how long Dáileanna have lasted and look at the causes of and effects of shortened Dáil terms. While we can see whether dissolutions at different stages of the Dáil term can be associated with different outcomes for a Taoiseach's party, it is not possible to say whether the Taoiseach's control of the Dáil term causes certain outcomes. This is because the counterfactual - what would have happened if the Dáil had been dissolved later or earlier - is the subject of speculation. The paper will also identify some individual cases of where the dissolution power might have been influential, and show that while the President has little effective power according to the constitution, that small power can often be wielded in subtle, but important ways.

Data on Dáil terms and dissolutions

The Dáileanna that have been elected since the 1937 Constitution took effect have lasted on average 1,233 days, or about three years and four months. This average masks a lot of variation. Figure 1 shows that while a number of Dáileanna have lasted about a year or less, most last four or more years. This is shown in more detail in Table 1, from which we can see that on four occasions (1943, 2002, 2007, and 2016) the Dáil effectively went to full term.

Figure 1: The distribution of the length of Dáileanna



On other occasions, such as in 1997, the Dáil as good as went to full term. Sometimes a government will dissolve the Dáil and hold an election slightly earlier than the scheduled election because governments (and oppositions) do not want to have an election campaign in the winter, or will go early if the scheduled election is due to take place during or immediately after a budget period. We could see this during the threatened 2017 election, which might have taken place in the week leading up to Christmas and might have seen the

fall of the budget. Had the same political crisis taken place four months later perhaps we would have seen the dissolution of the Dáil.

Table 1. Basic data on each Dáil term and cause of dissolution

<i>Date of first meeting</i>	<i>Election date</i>	<i>Length in years</i>	<i>Government type</i>	<i>Cause of dissolution</i>
21-Jul-37	17-Jun-38	0.90	minority	Taoiseach's choice
30-Jun-38	22-Jun-43	4.98	majority	full term
01-Jul-43	30-May-44	0.91	minority	Taoiseach's choice
09-Jun-44	04-Feb-48	3.65	majority	Taoiseach's choice
18-Feb-48	30-May-51	3.27	majority coalition	lost confidence/ coalition split
13-Jun-51	18-May-54	2.93	minority	Taoiseach's choice
02-Jun-54	05-Mar-57	2.75	minority coalition	lost confidence/ coalition split
20-Mar-57	04-Oct-61	4.54	majority	Taoiseach's choice
11-Oct-61	07-Apr-65	3.49	minority	Taoiseach's choice
21-Apr-65	18-Jun-69	4.16	majority	Taoiseach's choice
02-Jul-69	28-Feb-73	3.66	majority	Taoiseach's choice
14-Mar-73	16-Jun-77	4.26	majority	Taoiseach's choice
05-Jul-77	11-Jun-81	3.93	majority	Taoiseach's choice
30-Jun-81	18-Feb-82	0.63	minority coalition	lost confidence/ coalition split
08-Mar-82	24-Nov-82	0.71	minority	lost confidence/ coalition split
14-Dec-82	17-Feb-87	4.18	majority coalition	lost confidence/ coalition split
10-Mar-87	15-Jun-89	2.26	minority	Taoiseach's choice
29-Jun-89	25-Nov-92	3.41	majority coalition	lost confidence/ coalition split
14-Dec-92	06-Jun-97	4.47	majority coalition	Taoiseach's choice
26-Jun-97	17-May-02	4.89	minority coalition	full term
06-Jun-02	24-May-07	4.96	majority coalition	full term
14-Jun-07	25-Feb-11	3.70	majority coalition	lost confidence/ coalition split
09-Mar-11	26-Feb-16	4.97	majority coalition	full term

On two occasions the Dáil has been dissolved because the government was defeated in a confidence motion. When this occurs the Taoiseach is obliged to tender his and the government's resignation, although they continue to hold office until a new Taoiseach is appointed. This happened in February 1982 and November 1992. However on many other occasions the Dáil has been dissolved because the government has effectively lost the confidence of the Dáil, usually because a coalition government has broken down, but that dissolution happens before a formal vote takes place. This occurred most recently in 2010/2011 when the Green Party left the government led by Brian Cowen. Before that, in 1987 the Labour Party resigned from the Fine Gael-led government. The Fine Gael government tried to remain in office for a short period after Labour withdrew its support in order to facilitate the passing of a budget, but this proved impossible and the Taoiseach Garret FitzGerald conceded the inevitability of an early election.

President's powers

When a government loses a confidence motion or it becomes clear that the government no longer has the support of Dáil Éireann it has usually been the case that an election ensued. The president's role is mainly to formally accede to the Taoiseach's wishes, but in various Dáileanna presidents have acted to try to avoid early, or what might be viewed as unnecessary elections. In 1944 the Taoiseach Éamon de Valera, having lost a vote in the Dáil, sensed that an overall majority was possible. He approached the President, Douglas Hyde, whose immediate reaction was that he should refuse, no doubt in part because the Dáil was less than a year in office. He was persuaded by his Secretary that there was no likely alternative Taoiseach who could be elected, and so to grant the request for dissolution was the only viable option. A refusal might have meant a caretaker government was in office for an extended period of time, without an election to provide a mechanism to form a government with popular support. It raised a question of when a government ceases to retain the confidence of Dáil Éireann. Taoisigh have an informal power to declare any vote a vote of confidence. Had de Valera actually called a vote he would probably have won it, in which case President Hyde would have had to grant the Taoiseach's request.

In January 1982 Taoiseach, Garret FitzGerald lost the confidence of the Dáil on a budget vote. As such the president, Paddy Hillery, was within his rights to refuse the request for a dissolution. As there had been a recent election, another election so soon might have been seen as unnecessary, or at least unlikely to produce a decisive result. The leader of the opposition, Charles Haughey, through his deputy, Brian Lenihan, approached the president to suggest that Haughey should be given time to see if it were possible for him to form an alternative government without an intervening election. Hillery regarded these approaches as inappropriate, and refused to meet with Lenihan. He granted the dissolution. In 1987 President Hillery is known to have approached the outgoing, and retiring Taoiseach, with a view to ensuring that there would not be an immediate election because of the failure of the new Dáil to elect a Taoiseach.

In 1994 Albert Reynolds' second government, this one a majority coalition with Labour, collapsed. The event appeared to spell the end of Reynolds' political career, and he is thought to have regarded an election as his only hope. However, the then president, Mary Robinson, let it be known to the Taoiseach that as he had ceased to retain the confidence of the Dáil,

she now had and would exercise the power the president has to refuse a dissolution to a Taoiseach who ceased to retain the confidence of the Dáil. In the end, and possibly because it was indicated it would be refused, he did not request the Dáil's dissolution, and for the first (and only) time in independent Ireland a government with a new party composition was formed without an intervening election. As such we can see that the President's role is not purely formal, and the seemingly slight power s/he has can be effectual, even when it is not formally wielded.

Taoiseach's use of the power to request

There are a significant number of cases where the Taoiseach in a minority government will call an early election in order to secure a majority. This happened most recently in 1989, when a cohesive and popular Haughey-led government was cut short by the desire and expectation of the Taoiseach to get an overall majority. In the subsequent election campaign the dissolution was an issue for some voters, as it was thought that Charles Haughey went to the country unnecessarily. Haughey was perhaps only copying a well-worn practice by one of his predecessors, Éamon de Valera, who successfully called early elections on a few occasions to secure or increase his support in the Dáil, including in the 1944 case mentioned above.

In cases where the Taoiseach commands majority support in the Dáil, the president has no choice but to accede to the Taoiseach's wishes. But taoisigh with majorities do not normally want early elections. Majority governments last longer than minority governments. Majority coalitions last 4.14 years on average, majority single party governments, 4.17 years, compared to minority coalitions, which last on average 2.76 years and minority single party governments, 1.87 years. A majority government will usually go early in order to improve its chances of being returned, but also for practical reasons, for instance to avoid an election during holidays, in July and August, in the winter or around a budget. This does not always clearly work. In 1977 the government called an early election, but only did polling after the Dáil was dissolved, which led one minister to wonder whether a Dáil could be 'undissolved'. It was badly beaten in the subsequent election.

The Taoiseach must also take into account the wishes of coalition partners; so for instance it is widely thought that Enda Kenny would have preferred an election in autumn 2015, but was persuaded by the Labour party to go to full term. In many cases of early elections, it was a disagreement between the parties in government, rather than a choice by the Taoiseach that force early elections. They will also consider the perceptions among voters. If an election is seen as having been unnecessarily caused by the Taoiseach, his party might be punished for this, as arguably happened in 1992.

As we observed at the outset it is difficult to say whether the rules benefit the Taoiseach's party or not. For a variety of reasons governing parties tend to lose support. (Comparatively this 'Cost of Ruling' is about four points). In Ireland the Taoiseach's party loses on average 2.8 percentage points in an election. We can see that this varies depending on whether the government went full term or not (see Table 2). In elections where Taoisigh have chosen the timing of the election the Taoiseach's party performs best. The difference is quite big, about two percentage points. It should be noted, however, that these differences are not *statistically significant*, so it is possible that this pattern is coincidental. The small number of

cases makes it hard to draw firm conclusions, but the difference is in the expected direction, and about the level seen in the (admittedly limited) empirical evidence from other countries, so I'd be inclined to conclude that there is *some* partisan advantage to a Taoiseach's party, but that it is contingent on certain circumstances. Minority governments seem to do best in early elections. This makes sense, and may not have anything to do with the nature of the dissolution. Minority governments will be led by parties that have not performed well in the previous election, whereas if a party or coalition of parties has a majority, they may have performed unusually well, and hence might be returning to a 'normal' level of support.

Table 2. 'Cost of Ruling' for Taoiseach's party under various circumstances

	<i>Loss to Taoiseach's party</i>		<i>Loss to Taoiseach's party</i>
<i>Full term</i>	-2.98	<i>Majority</i>	-4.61
<i>Lost confidence</i>	-6.0	<i>Majority coalition</i>	-6.06
<i>Taoiseach's choice</i>	-0.69	<i>Minority</i>	+2.1
	<i>Note: none of these differences are statistically significant</i>	<i>Minority coalition</i>	-0.8

The dissolution power can be expected to have other impacts beyond the electoral one. The power to dissolve the Dáil helps Taoiseach to shape the choices faced by other parties in the government or groups within the party. There is an abundance of cases where small parties in government or factions within the Taoiseach's party are effectively forced to remove their objections to a policy proposed by the Taoiseach or the Taoiseach's party because of the implicit threat that a collapse in the government would lead to an election. In the last Fine Gael-Labour government and in the Fianna Fáil-Green government before that, members of the minority party in government have reported occasions in which they ceded policy to the larger party because of the implicit threat of an election. This is not an unalloyed power for a Taoiseach. It is contingent on the relative fear either side has of an election. Where the smaller party is not afraid of an election, or knows that the Taoiseach's party has more to lose from one, the power of dissolution holds no threat. As such the advantages from a threatened snap election do not lie with a Taoiseach, or his or her party alone. Smaller parties in government can also use the threat of a likely election to extract policy concessions from the Taoiseach.

The threat is usually implied, but a good current example of its use is in the UK where the British prime minister, Theresa May, might struggle to get one of her government's Brexit bills through Parliament. It is suggested that a defeat for her government might cause its fall, and an election, which might lead to a Labour government. This might be expected to concentrate the minds of potential rebels, and bring them to support the government bill.

Conclusion

Dáileanna have had varied length in the eighty years the current constitutional arrangements have been in place. The Dáil term tends to last either a very short time, about a year, or over four years. We have never seen a case where the Taoiseach has been refused a request to dissolve the Dáil, but the president's power to refuse in certain circumstances is not without force. The power to effect an early election is also one that is in practice shared with anyone whose support is needed for a government to remain in office. We can also see that the power can benefit a Taoiseach's party, but that it is highly contingent, and can assist a smaller party in government also.