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Fixed Term Parliaments: Experience and practice in other jurisdictions

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Summary

1. Parliamentary terms are fixed when the timing of elections cannot constitutionally be affected by political choice while flexible parliamentary terms make election timing constitutionally amenable to political influence so that early elections are permitted.
2. In democracies that permit early elections, the extent to which election timing is dependent on political choices is a *matter of degree* and the constitutional variation is extensive. Parliamentary terms can be regarded as *semi-fixed* when early elections are permitted, but cannot be called at the discretion of a single political actor (i.e., the prime minister, government or the president).
3. The circumstances in which early elections are allowed in semi-fixed term parliaments can be summed up under three headings: Dissolution may be allowed (i) subject to the agreement of multiple political actors, (ii) to address specific types of crises (such as, the fall of a government, government formation failure or failure to adopt a budget), and (iii) subject to certain time restrictions.
4. Constitutional parliamentary term lengths are slightly longer in countries with flexible parliamentary terms than in countries with semi-fixed parliamentary terms. Actual durations of parliaments, however, are shorter under flexible than under semi-fixed parliamentary terms.
5. The introduction of fixed or semi-fixed parliamentary terms (i) reduces the electoral advantages that incumbents derive from opportunistic election timing; (ii) reduces the frequency of early elections but does not increase the duration of governments; (iii) reduces the bargaining power of weak governments in legislative bargaining over policy; and (iv) may enhance the incentives for politicians to engage in electorally motivated cyclical economic policy making.
6. The UK Fixed-term Parliaments Act (2011) does not introduce fixed parliamentary terms. Rather, it reduces the prime minister's discretion to time elections.

Introduction

Legislative elections are a fundamental and constitutive aspect of democracy. They are the means by which voters select and empower incoming representatives. Simultaneously, they enable voters to hold their representatives to account and to reward or punish them for past performance. Elections, in other words, are make-or-break moments for democratic politicians; they are the focus of the electoral ambitions of political parties and candidates, shape the work of incumbents and influence the rhythm of policy cycles.

However, legislative elections are often not fixed events in the democratic calendar. While every parliament has a maximum term, many democracies give those same politicians whose fate may be decisively affected by the outcome of elections some influence over early election timing. For instance, all but seven out of 35 constitutions in post-war Europe enable incumbent governments to influence the timing of elections and 42 per cent of all elections are held before the end of the maximum parliamentary term.

Powers to threaten or call early elections are some of the most consequential prerogatives in a parliamentary democracy: First, they offer a means to refer crises and gridlock in government and the assembly to the electorate for resolution. Parliamentary dissolution, in this context, is the ultimate safety mechanism that makes it possible to address situations in which parliament cannot agree to form a government or to lend it the support to govern. Second, discretion to dissolve parliament can be employed by politicians for partisan advantage. Leaders who are empowered to dissolve parliament may call elections at the most advantageous time for them—when they expect to win, which gives rise to incumbency advantages and shapes electoral accountability. For instance, prime ministers often use the power to call early elections when the economy is performing well or when the opposition is unpopular or unprepared for an election. Moreover, actors who have discretion to influence dissolution can ensure that parliamentary politics occur in the shadow of early elections. This has extensive implications for bargaining over governments and public policy.

1. Defining fixed, flexible and semi-fixed parliamentary terms

The fixed or flexible scheduling of parliamentary elections is a matter of constitutional provisions. *Election timing is fixed when it cannot constitutionally be affected by political choice while flexible parliamentary terms make election timing constitutionally amenable to political influence.*¹ For instance, in the United States of America, the timing of congressional elections is constitutionally fixed and therefore independent of the choices of political actors. In the overwhelming majority of parliamentary democracies, however, flexible election timing is the rule because actors inside or outside government are constitutionally empowered to trigger an early dissolution of parliament and early elections. Whenever this is the case, the scheduling of parliamentary elections, i.e., whether an election is held early or at the end of the constitutional inter-election period is, to some extent, a political choice.

¹ Note that common language usage and legal language often employs the terminology of “fixed” and “flexible” parliamentary terms in a manner that departs from this definition. For instance, legislation that reduces, but does not abolish, the dependence of election timing on political choice is occasionally said to introduce “fixed terms.” Two cases in point are Canada’s Act to Amend the Canada Elections Act (2007) and the UK’s Fixed-term Parliaments Act (2011). In both instances the reference to fixed terms is erroneous because political choices can still bring about early elections: In Canada under the 2007 Act, the Governor General retains discretionary power to dissolve Parliament at the request of the Prime Minister; the UK is discussed in section 6 of this paper.

Note, that the reference to “early” elections in this context is descriptive and factual; it does not imply that early elections are more or less desirable than other elections. Throughout this paper I use the term early elections to refer to elections that are called before the end of the constitutional term of parliament, and regular elections to refer to elections that must be held because parliament has reached the end of its term.

Among constitutions that permit early election calling, however, the level of discretion available to political actors in timing elections varies tremendously. While some parliamentary systems, such as the UK prior to the Fixed-term Parliaments Act 2011 and Denmark, grant full discretion to the prime minister to call elections early, others severely constrain the circumstances under which early elections can be invoked. In Romania, for instance, parliament can only be dissolved in response to repeated failures to invest a government and not within the final six months of the president’s term. Thus, in democracies that permit early elections, the extent to which election timing is dependent on political choices is a *matter of degree*. For the purposes of this briefing paper, I define election timing as *semi-fixed* when early elections are permitted, but cannot be called at the discretion of a single political actor (i.e., the prime minister, government or the president).

2. Fixed term and flexible term parliaments in other jurisdictions

Cross-nationally, constitutional processes of parliamentary dissolution and early election calling may involve multiple actors: the prime minister, the government collectively, the legislature and the president as head of state. These actors can play a role at various stages in the procedure. For instance, they may have a role in initiating a process that may lead to dissolution, advancing it, or taking the final decision to dissolve parliament.

To chart the cross-national variation in dissolution powers, Goplerud and Schleiter (2016) develop an index recording the constitutional powers of each actor to bring about the early dissolution of the parliament. The index takes its minimum value when the actor in question has no influence on dissolution (for instance, the president in Slovenia), and its maximum value, when an actor has complete discretion to dissolve parliament (for instance, the prime minister in Denmark and in the UK prior to 2011). Scores between this minimum and maximum apply when the discretion of an actor to call preterm elections is *constrained*.

Constitutions constrain actors’ discretion to dissolve by (i) making their ability to act contingent on the actions of others (for instance, a prime minister may only be able to achieve dissolution subject to the consent of the president), (ii) restricting the situations in which dissolution becomes available (for instance, a prime minister may only be able to request dissolution once his or her government has lost parliamentary confidence), and (iii) restricting the time frame within which dissolution is available (for instance, no dissolution may be allowed within the first year of a parliament’s term). When a constitution foresees multiple paths to dissolution, as is often the case, the index focusses on the widest discretion available to each actor across any of the paths available to them.

Table 1 gives an intuitive summary of the influence on parliamentary dissolution enjoyed by the different actors in 39 democracies. Rather than reporting detailed scores, the table simply indicates whether an actor has high, medium or low influence on dissolution. No score means that an actor entirely lacks the power to affect dissolution.

Three empirical patterns are highlighted by this cross-national overview: First, out of these 39 OECD and EU parliamentary democracies, only one, Norway, does not permit early parliamentary elections. This reflects the fact that parliamentary dissolution is generally seen as an important gridlock resolution mechanism of last resort in parliamentary democracies.

Second, the table makes clear that prime ministers and governments collectively are the actors who most often have extensive discretion to dissolve parliament. Those countries

that give extensive powers to the prime minister and government tend to be older democracies, with monarchical heads of state (or countries whose constitutional choices were strongly influenced by the UK, which is one those older democracies). Historical context is important in understanding the rationale for giving this discretion to prime ministers and governments: Typically these older constitutions were forged through attempts to curtail the powers of the monarch over parliament. Once parliament wrested the power of dissolution from the monarch, it tended to grant it to the democratically formed parliamentary government without much concern for constraining the executive's discretion. Politically, *high discretion* to dissolve parliament gives rise to opportunities for a political actor to use the threat or decision to call an early election for political advantage. For this reason newer democracies tend to restrict the executive's discretion to dissolve. Constitutional constraints curb the opportunities to derive partisan gain from dissolution powers while preserving access to early elections as a gridlock resolution device to address political crises. Broadly speaking, constitutional constraints on early election calling are effective. The more limited the discretion of political actors to invoke early elections, the lower the frequency of early elections.

Third, and turning to the other actors, the table shows that presidents may play an important role in parliamentary dissolutions. The legislature itself is involved in the overwhelming majority of dissolution processes, most often because some decision, omission or dysfunction on its part – such as government dismissal, the failure to pass a budget, or inability to invest a government – is required to open the path to dissolution.

Table 1: Dissolution Powers Cross-Nationally

Country	Actor			
	PM	Government	Legislature	President
Australia	High		Low	
Austria			High	High
Belgium (1831)		High		
Belgium (1995)		Medium	Medium	
Bulgaria (1990)			High	
Bulgaria (1991)			Low	
Canada	High			
Croatia (2000)		Low	Medium	Low
Czech Republic (1992)			Low	Low
Czech Republic (2009)			Low	Low
Denmark	High			
Estonia		Low	Medium	Medium
Finland (1919)				High
Finland (1991)	Medium			Medium
France (1946)		Low	Low	
France (1958)				High
Germany	Low		Low	Medium
Greece (1975)		Low	Low	High
Greece (1986)		Medium	Medium	Low
Hungary (1989)			High	Low
Hungary (2011)			High	Medium
Iceland				High
Ireland	High		Low	Medium
Israel (1958)			High	

Israel (1996)	Medium	Medium	Medium
Israel (2003)	Low	Medium	Low
Italy			High
Japan		High	
Latvia			Medium
Lithuania		Low	Low
Luxembourg		High	
Macedonia		Medium	
Malta	Medium	Low	Medium
Moldova		Low	Low
Netherlands		High	
New Zealand	High		
Norway			
Poland (1989)		Medium	Medium
Poland (1992)		Medium	Medium
Poland (1997)		Medium	Medium
Portugal (1976)		Low	High
Portugal (1982)			High
Romania		Low	Low
Russia	Low	Low	Medium
Slovakia (1992)		Low	Low
Slovakia (1999)		Low	Low
Slovenia	Medium	Low	
Spain	High	Low	
Sweden (1809)		High	
Sweden (1971)	High		
Sweden (1975)		High	Low
Turkey (1982)	Low	High	Medium
UK (1945)	High		
UK (2011)		Medium	
Ukraine (1996/2010)		Low	Low
Ukraine (2004)		Low	Low

Note: A blank cell indicates that the actor has no influence on dissolution. Low = scores > 0 & < 3.33; Medium = scores >= 3.33 & < 6.66; High = scores >= 6.66.

3. Circumstances in which early dissolutions are allowed in semi-fixed term parliaments

Semi-fixed term parliaments can be defined as legislatures that may be dissolved early, but not at the full discretion of a single political actor (i.e., a prime minister, government or president). There are two mechanisms to constrain discretion to dissolve, (i) introducing checks and balances through the involvement of multiple actors in the decision to dissolve, or (ii) imposing material (i.e., situational or temporal) constraints on dissolution. (A full overview of the specific constitutional constraints applied in OECD democracies is available in the supplementary information to Goplerud and Schleiter (2016)).

The objective of involving *multiple actors* in dissolution is to ensure cross-institutional (for instance, presidential and government) and/or cross-partisan support for the dissolution of parliament (for instance, through a 2/3 majority requirement). The objective of *situational constraints* is to ensure that only specific types of crises can trigger dissolution, while other crises must be resolved by the sitting parliament. Constitutions vary greatly in

specifying which types of crises open the path to dissolution. For instance, dissolution may become available when parliament is unable to form a government within a given time frame or after repeated attempts, when parliament has toppled a government through a vote of no confidence, or when it has failed to pass a budget within a given time frame. *Temporal constraints* can have two different purposes. First, constitutions may rule out multiple dissolutions of parliament within a short space of time in order to limit the scope for repeated re-runs of elections, since these may cause political instability and voter fatigue. Second, early parliamentary election calling may be prohibited in the vicinity of presidential elections in order to avoid a synchronization of terms and to side-step the risk that the two elections may influence each other (for instance, through presidential coat-tail effects).

In sum, early election calling can be constrained in a nuanced and flexible manner that can be tailored to the particular needs of a specific political system. As a rule, early elections become more difficult to call the greater the variety of different political actors involved in the process and the greater the material constraints imposed on dissolution.

4. Parliamentary term lengths in countries with and without fixed term and semi-fixed term parliaments

Constitutionally, the term length of European parliaments varies from 3 to 5 years. Norway is the only European country with a completely fixed 4-year parliamentary term. The average constitutional length of a parliamentary term in European democracies with semi-fixed parliamentary terms is also 4 years. Democracies that grant high dissolution powers to the prime minister or cabinet collectively deviate slightly from this pattern. These countries are marginally more likely to feature a 5 year rather than a 4 year constitutional inter-election term.

The *actual* terms served by parliaments, however, reflect the ease with which early elections can be called. As a result, the parliaments that operate under the most flexible terms actually serve only 3.3 years on average, even though they are elected for constitutional terms of 4 or 5 years. Indeed, their actual duration is shorter than the 3.8 years that parliaments serve on average under semi-fixed terms, even though those parliaments are typically elected for a term of only 4 years. In Norway, the constitutional inter-election period of 4 years by definition corresponds to the period that parliaments actually serve.

Hence, constraining the prime minister's discretion to dissolve can be expected to raise the average actual term served by parliament so that it approximates the constitutional maximum term more closely.

5. The impact of introducing fixed or semi-fixed term parliaments on elections, the duration of government and public policies, e.g. economic policy

The impact of dissolution rules on elections, governments and policy is far-reaching and I discuss each area in turn.

Electoral incumbency advantages: Empirical research suggests that restricting discretionary election timing (i.e., introducing semi-fixed or fixed parliamentary terms) levels the electoral playing field between incumbents and opposition parties. Scholars have demonstrated that opportunistic election timing by governments in Canada, where election timing is flexible, yields measurable electoral gains for the incumbent if elections are timed immediately after heightened levels of positive media coverage of the government (Roy and Alcantra 2012). Similarly, a study of the UK finds that prior to the introduction of the Fixed-term Parliaments Act (2011), governments improved their re-election chances by using their discretion to time elections to favourable circumstances (Schleiter and Belu 2018). Fixed

parliamentary terms, the study concludes, are likely to reduce that incumbency advantage significantly. The first cross-national comparative analysis of the electoral effects of opportunistic election timing by prime ministers in 27 East and West European countries shows that opportunistic election calling generates a vote share bonus for the prime minister's party of as much as 5 percentage points (Schleiter and Tavits 2016). This is a large effect that amounts to the vote share of a successful small party in many of the countries included in the study. Restricting the incumbents' discretion to call early elections abolishes these electoral incumbency advantages.

Frequency of elections and government duration: As noted above, restrictive dissolution rules (i.e., semi-fixed or fixed parliamentary terms) generally reduce the frequency of elections. However, they do *not* necessarily generate longer government durations. Instead they simply force political parties to resolve disputes and crises through bargaining within the sitting parliament, for instance through a no confidence vote and an inter-electoral government change (Schleiter and Issar 2016).

Legislative bargaining about policy: Restricting the dissolution powers of the incumbent prime minister and government also has consequences for bargaining between parties in the legislature because it weakens the hand of the executive. Simply put, full discretion to schedule early elections enables incumbents with favourable electoral prospects to extract concessions from other parties that fear losing votes and seats. The threat of an early election, then, is a bargaining tool. Popular incumbents with the power to dissolve parliament can make clear that early elections will be called unless parliament accedes to a particular outcome, such as passing a legislative decision or desisting from doing so. Credible dissolution threats can be expected to be particularly useful to governments that might otherwise struggle to achieve parliamentary agreement. Empirical work shows precisely that: Favourable public opinion is most likely to be used by incumbents to make dissolution threats in legislative bargaining when the government has weak parliamentary support and when an early election would be most costly to unpopular parties, that is, long before the next regular election must be held (Becher and Christiansen 2015). Semi-fixed or fixed parliamentary terms would restrict the ability of weak prime ministers and governments to use dissolution threats as a bargaining tool in order to advance their legislative agenda.

Economic policy cycles: Election timing rules affect not just policy bargaining but also the rhythm of policy cycles. The reason for this is that politicians are acutely aware that voters reward or punish governments for their record in office. When voters evaluate their government, moreover, they do not weigh performance across its term equally. Instead, the evidence suggests that the electorate prioritizes recent government performance, while discounting the more distant past. This gives politicians incentives to pay careful attention to time inconsistencies in the effects of policies. Many policies generate costs and benefits on different time scales. A tax cut, for instance, may improve voter welfare in the short term while imposing costs in the form of cuts to government funded services in the long term. Austerity measures, in contrast, reduce government services (e.g. education, transportation, security and defense, health and social services) in the short term to improve macroeconomic credibility among private investors, which facilitates borrowing from capital markets in the longer run.

Given these time inconsistencies, leaders can attempt to improve their re-election chances and feign good economic performance by implementing policies that increase voter welfare in the short run prior to elections, but have long run costs that will only become evident after polling day. This strategy is referred to as economic manipulation and it is extensively documented in the area of fiscal policy (that is, transfers, tax cuts etc.).

Flexible parliamentary terms attenuate these policy cycles: The power to time elections discretionarily enables incumbents to *substitute* political surfing for costly and

distortive economic manipulation as a means to improve their re-election chances (Kayser, 2005). This substitution effect has been traced empirically in case studies of Japan and India, where politicians time elections to favourable circumstances while economic manipulation prior to elections is muted or absent (Ito, 1990; Chowdhury, 1993). Likewise, a cross-national study reports economic manipulation prior to regular but not early elections (Efthyvoulou 2012). A further study focusses on the related issue of the strategic timing of austerity measures (Hübscher and Sattler 2017). According to this work, electorally vulnerable governments time fiscal cuts early in their term and avoid the implementation of such measures prior to elections. Moreover, flexible election timing attenuates this strategic implementation of economic policy: Leaders with great discretion to time elections pay less careful attention to the timing of austerity measures, while governments with little or no influence on the scheduling of elections are particularly keen to avoid austerity measures prior to elections. These electoral effects on austerity policy are substantively large. The study concludes that electoral concerns are the *most important* political determinant of consolidations, leaving only a minor role for ideological concerns.

This evidence suggests that flexible election timing may reduce the electorally motivated manipulation of the economy and the strategic timing of economic interventions to a degree. In contrast, semi-fixed or fixed parliamentary terms restrict the discretion of incumbents to time elections so that governments may be more likely to resort to economic manipulation and to strategic policy timing to improve their re-election chances. Hence, a discussion about limiting the discretion of the prime minister to time elections may also require careful consideration of the question whether their opportunities to engage in economic manipulation for partisan gain should be curtailed.

6. The UK Fixed-Term Parliaments Act 2011 and its effect

In September 2011, the UK's Conservative-Liberal Democratic coalition government, led by Prime Minister David Cameron, passed the Fixed-term Parliaments Act. The Act constrains the prime minister's discretion to dissolve parliament. The government described its objectives in enacting this legislation as follows: "fixed-term Parliaments will have a positive impact on our country's political system; providing stability, discouraging short-termism, and preventing the manipulation of election dates for political advantage" (HM Government 2011, Introduction).

Historically, UK prime ministers have used the dissolution power in order to time elections to opportune moments, to keep the opposition guessing and to pre-empt anticipated electoral risks. The potential significance of this Act becomes apparent in light of the fact that almost 60 per cent of the UK's general elections in the post-war period (10 out of 17) were early and opportunistically timed by the prime minister.

It is important to note that the Fixed-term Parliaments Act (FTPA) does not truly fix the parliamentary term. Rather, it constrains the discretion of the prime minister to call an early election. In that sense, the Act's title is a misnomer. Under the Act, early elections can be triggered in two ways:

- if parliament votes for an early election by a two-thirds majority of *all* MPs (434).
- if parliament passes a no-confidence vote in the government with a simple majority and then fails to express confidence in a government within 14 days.

Previously, the prime minister had full discretion to ask the Monarch for an early election.

To date two elections have been held since the Act's introduction, a regular election of 2015, triggered by the end of parliament's term, and the early election of 2017, which was called under the provisions of the Act: A two-thirds majority of all MPs voted on April 19, 2017 to dissolve parliament early.

By requiring a parliamentary super-majority, the FTPA gives opposition parties the opportunity to oppose a government's attempt to call an election opportunistically, but does not make a strategic election call impossible. When the opposition fails to oppose the government, incumbents can still achieve an early election, which coincides with circumstances that favour them. This is precisely the route that Theresa May was able to take. For her government, the circumstances in April 2017 appeared propitious: unemployment was at an 11 year low; growth, though weak, was better than official forecasts since the Brexit referendum; and Jeremy Corbyn, leader of the Labour party was deeply unpopular, as was his party, which lagged behind the Conservatives by around 20 percentage points in the opinion polls.

The prime minister (PM) was only able to secure this early election because Labour endorsed it in parliament. The Act could have led to a different outcome. The Labour Party might have decided not to support the PM's election call. Many within Labour argued that the party should abstain. The Scottish National Party did precisely that, which highlights that opposition parties do not inevitably endorse the incumbent's early election call.

An abstention by Labour would have prevented the PM from reaching a majority of two-thirds of all MPs, forcing her into the awkward position of taking the second path to an early election envisaged by the Act – a parliamentary vote of no confidence in her government. This would have required her to instruct her own MPs to vote against her government, highlighting the strategic nature of the election call to voters. More generally, the FTPA creates the opportunity for parliamentary opposition parties to check the PM. Opposition parties may or may not use this opportunity. But with an assertive opposition or a different parliamentary arithmetic the Act can impose a powerful constraint on the PM.

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