2017

Legislative body, dissolution of

Giacomo Delledonne

Legislative body, dissolution of

Giacomo Delledonne

TABLE OF CONTENTS

Main text and assessment

A. Preliminary remarks

1. Definitions and distinctions

Constitutional and statutory provisions regulating the dissolution of the legislative body are a key element of *parliamentarian regimes*, in which the Government – ie the Prime Minister and the other ministers – are required to enjoy the confidence of the legislature (Bradley and Pinelli 2012, 651). The possibility to dissolve the legislative body before the expiration of its term is a major component of parliamentarism, alongside with the power of the legislative itself to force the government to resign after approving a motion of no confidence (→ *no confidence vote*). Norway, where no constitutional provision allows for an early dissolution of the legislature, is a unique exception among parliamentarian regimes (see Constitution of the Kingdom of Norway: 17 May 1814 (as amended to 9 May 2014), Art. 71 (Nor)). Therefore, in parliamentarian systems it is crucial to determine *by whom*, *when* and *how* the legislative body can be dissolved.

A confirmation for this statement comes from comparison between parliamentary regimes, on the one side, and presidential or directorial regimes, on the other side (→ *parliamentary systems*, *presidential systems*). The latter are more clearly based on separation of powers: the legislative cannot force executive power-holders to resign, regardless of whether they are a directly elected President or an indirectly elected directory. On the other hand, early dissolution of the legislative body is not permitted (Constitution of the United States of America: 17 September 1787 (as amended to 7 May 1992), Art. I, sections 2 and 3 (US); Federal Constitution of the Swiss Confederation: 18 April 1999 (as amended to 15 March 2012), Art. 149, para. 2 (Switz); Constitution of the Federative Republic of Brazil: 5 October 1988 (as amended to 15 September 2015, Art. 44 (Braz); Political Constitution of the United Mexican States: 5 February 1917 (as amended to 29 July 2010), Arts 51 and 56 (Mex); Constitution of the Federal Republic of Nigeria: 29 May 1999 (as amended to 29 November 2010), Art. 64, para. 1 (Nigeria); Constitution of the Republic of the Congo: 22 December 2001, Art. 114 ('The President of the Republic cannot dissolve the National Assembly and the National Assembly cannot dismiss the President of the Republic') (Congo); Constitution of the Republic of Indonesia: 18 August 1945 (as amended to 17 August 2002), Art. 7C (Indon); Constitution of the Republic of Korea: 12 July 1948 (as amended to 29 October 1987), Art. 42 (S Kor); Constitution of the Republic of the Philippines: 2 February 1987, Art. VI, sections 4 and 7 (Phil)). However, some recent constitutions seem to have opted for *hybrid arrangements*, under which a directly elected head of state is given the power to dissolve the legislature: this is the case, notably, with a number of Latin American jurisdictions (see later).

Second, differences between prorogation and dissolution should be underlined (→ *legislative body, prorogation of*). In common law jurisdictions, where this distinction is crucial, they are both related to the prerogative powers of the Crown. Prorogation ends a session of parliament, whereas dissolution ends the parliament altogether and requires a new general election. Accordingly, both a new parliament and a new session can be summoned. Traces of this distinction can be found in a number of constitutional charters, most frequently in the common law area (Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as Amended to 27 October 2002), Art. 54 (Pak); Constitution of the Republic of Trinidad and Tobago Act: 29 March 1976 (as amended to 2 November 2000), Art. 68 (Trin & Tobago); Constitution of the Republic of Zimbabwe: 21 December 1979 (as amended to 13 February 2009), Art. 63 (Zim); Constitution Act (No. 114 of 1986): 13 December 1986 (as amended to 16 May 2005), Art. 18 (NZ)).

A third preliminary clarification should be added. When dealing with a *bicameral legislature*, an early dissolution is generally possible for the *lower house*, which is directly elected and can force the government to resign. In general terms, those *upper houses* whose members are either appointed (eg, the British House of Lords, the Canadian Senate, and the Omani Council of State), delegated by regional governments (eg, the German *Bundesrat*, regardless of the long-lasting debate about its legal qualification) or indirectly elected (eg, the French Senate, the Austrian *Bundesrat*, the Indian Council of States and the Dutch First Chamber) cannot be dissolved. Conversely, dissolution is possible for directly elected second chambers, like the Italian Senate, the Australian Senate (in exceptional circumstances), the Spanish Senate, the Romanian Senate, or the Polish Senate (Constitution of the Italian Republic: 22 December 1947 (as amended to 20 April 2012), Art. 88, para. 1 (It); Commonwealth of Australia Constitutional Act: 9 July 1900 (as amended to 31 October 1986), Art. 57 (Austl); Constitution of the Kingdom of Spain: 6 December 1978 (as amended to 27 September 2011), Art. 69, para. 6 (Spain); Constitution of Romania: 21 November 1991 (as amended to 29 October 2003), Art. 89, para. 1 (Rom); Constitution of the Republic of Poland: 2 April 1997, Art. 98 (Pol)). Other second chambers, although directly elected, have only a part (generally, one half or one third) of their members elected at each election: consequently, they cannot be dissolved (Constitution of Japan: 3 November 1946, Art. 46 (Japan); Constitution of the Czech Republic: 16 December 1992 (as amended to 14 November 2002), Art. 16, para. 2 (Czech)). More complex arrangements are also possible, as the Moroccan example shows: the House of Counselors results from a combination of indirect and direct election, and the King may 'dissolve both Houses of Parliament or either of them by royal decree' (Constitution of the Kingdom of Morocco: 1 July 2011, Art. 96 (Morocco)) (→ *second chambers*).

2. List of analysed cases

This article will analyse some selected constitutional systems which illustrate the main problems revolving around the dissolution of the legislative body and their historical evolution. First, the analysis will consider two classical examples of European parliamentarism: the *United Kingdom* and *3rd-Republic France*. In this respect, the British case is paradigmatic as it illustrates the advent of parliamentary monarchy and the so-called Westminster parliamentary system, which has spread to a number of other jurisdictions, mainly (but not exclusively) in the British Commonwealth. In more recent years, reform promoted by the Conservative-Liberal Democrat coalition government has made important changes in this area of constitutional law. The French Third Republic, on the other hand, is a typical example of continental, non-rationalised parliamentarism with a very weak executive power. After that, the focus will be on *Italy*, *Germany* and *Spain*, three important examples of 20th-century *rationalised parliamentarism*, in which the dissolution of the legislative body is regulated in detail by constitutional provisions. Third, two semi-presidential systems will also be presented, in which the presence of a directly elected head of state has deeply affected the conditions for dissolving the legislature: *5th-Republic France* and *Portugal*. Fourth, reference will be made to some jurisdictions in which the head of state is no longer involved in the exercise of any kind of political power (*Sweden*) or self-dissolution of the legislative is formally entrenched in the constitution

(*Austria* and *Israel*). Fifth, dissolution of the legislature by the directly elected head of state in some presidential systems will be mentioned.

B. Historical evolution

1. United Kingdom: the development of constitutional conventions on the dissolution of the House of Commons

Until 2011, in the British legal system there were hardly any constitutional or legislative provisions regulating the dissolution of Parliament. The Septennial Act 1715 and later the Parliament Act 1911 only stated that parliamentary terms could last no longer than seven (later five) years. Under the unwritten constitution of the United Kingdom, early dissolution of Parliament was largely regulated by constitutional conventions which had emerged throughout British constitutional history. In this respect, the history of the English – later British – Parliament deserves particular attention because of its continuous existence since the Middle Ages. It should be added, for the sake of completeness, that Mediaeval Parliament was not a legislative body in the narrow sense, as it combined judicial and legislative functions.

Historically the power to summon and to dissolve the Parliament was part of the royal prerogative, ie, in AV Dicey's words, '[t]he residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown' (Dicey 1959, 424). The way this power was and is used by the monarch of the day has deeply changed over the centuries. Before the time of the Glorious Revolution, the monarch had the power to summon and to dissolve the Parliament whenever he or she wanted to do so, and parliamentary terms had no pre-determined duration.

In the 17th century, the conflict between the Parliament and the Stuart monarchs, concerned among other topics, *who* could dissolve the Parliament. Under King Charles I, the Short Parliament argued that the power of dissolution lay in parliaments themselves (Roberts 2009, 116). However, the royal prerogative was restored after the Restoration. After the accession of the Hanoverians to the British throne, the constitutional history of the United Kingdom was marked by the slow rise of parliamentary government, based on a relation between the ministry and the strongest parliamentary party. Ministerial accountability towards the Parliament was one of the consequences of that transformation. In the 18th century, however, ministers were still accountable both to Parliament and the monarch. Under such circumstances, dissolving the House of Commons (or the menace thereof) was a tool which the monarch could use in order to prevail over a recalcitrant sitting Parliament and have a ministry suiting his own leanings in office. In 1831, the sitting government, after being defeated in the Commons, decided not to resign and asked the King to dissolve the House in order to determine in the polls whether it still relied on voters' support. The last 'royal' dissolution occurred in 1834; after that, it was for the Prime Minister, rather than the ministry as a whole, to play the leading role in the decision *when* to dissolve Parliament. This trend was further enhanced by the 1832 Reform Act, which favoured the emergence of a more cohesive two-party system. The possibility of having the legislature dissolved was a key factor in ensuring parliamentary discipline within the party in power. As Walter Bagehot later observed, '[e]ither the cabinet legislate and act, or, if not, it can dissolve. It is a creature, but it has the power of destroying its creators' (Bagehot 2001, 11).

By the time Bagehot wrote *The English Constitution*, a *constitutional convention* had emerged, according to which the King or Queen of the United Kingdom would grant a dissolution of the House of Commons if requested by the Prime Minister (→ *constitutional conventions*). In Bagehot's words, again, '[t]heoretically, indeed, the power to dissolve parliament is entrusted to the sovereign only; and there are vestiges of doubt whether in *all* cases a sovereign is bound to dissolve Parliament when the cabinet ask him to do so. But neglecting such small and dubious exceptions, the cabinet which was chosen by one House of Commons has an appeal to the next House of Commons' (Bagehot 11). Could the monarch still refuse a dissolution? In 1951, Sir Alan Lascelles, Private Secretary to the King of the day, tried to codify some principles – the so-called *Lascelles Principles* – regarding circumstances and situations justifying a refusal of a dissolution. Refusal was admissible if (a) the sitting Parliament was still vital, viable, and capable of doing its job; (b) a general election

would be detrimental to the national economy, or (c) the monarch could rely on finding another Prime Minister with a working majority in the House.

This well-established state of affairs dramatically changed in the aftermath of the 2010 general election, when a coalition government took office in the UK. As specified below in greater detail, in 2011 the Fixed-Term Parliament Act eliminated the power of the British Prime Minister to unilaterally propose the dissolution of the House of Commons.

Such a constitutional settlement, with the head of state dissolving the legislature on the advice of the head of government, is operating in a number of jurisdictions which do have written constitutions. It is the case, notably, of a number of a countries with historic ties to the United Kingdom, most of which are now members of the Commonwealth of Nations (Constitution of Ireland: 29 December 1937 (as amended to 4 October 2013), Art. 13, para. 2 (Ir); Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as amended to 19 April 2010), Art. 58, paras 1 and 2 (Pak)). This basic rule, however, has not always been observed. In 1926, for example, the Governor General of Canada refused a request by the Prime Minister to dissolve the House of Commons. The same happened in the Union of South Africa in 1939 (see also Constitution of the Republic of India: 26 January 1950 (as amended to 13 January 2012), Art. 85, para. 2, lit. b (India); Constitution of Malaysia: 31 August 1957 (as amended to 27 December 2007), Art. 40, paras 1 and 2 (Malay)). Be that as it may, the possibility for the Prime Minister and leader of the party which commands a majority of seats in the elective legislature to propose – and obtain – a dissolution of parliament is a heuristic tool which allows to identify Westminster or majoritarian parliamentary systems. Finally, similar rules can be found in the constitutions of parliamentary regimes with a monarch as the head of state, which have followed a pattern of evolution similar to that of the United Kingdom (Constitution of Japan: 3 November 1946, Art. 7 (Japan); Constitution of the Kingdom of Denmark: 5 June 1953, Art. 32, para. 2 (Den)). In Japan, controversial constitutional practice shows that the power to dissolve the lower house has been constructed as a personal decision of the Prime Minister. In the early 1950s, a former member of the House of Representatives tried to challenge the constitutionality of a House dissolution before the Supreme Court (*Tomabechi II*): the Court refused to review the dissolution decision because of its 'highly political' nature, which involved 'democratic governance' concerns (Matsui 2010, 103).

On the other hand, other monarchical constitutions are much more laconic, and an analysis of constitutional practices and conventions is necessary for a proper understanding of the relevant provisions (Constitution of the Grand Duchy of Luxembourg: 17 October 1868 (as amended to 12 March 2009), Art. 74, para. 1 (Lux); Constitution of the Kingdom of the Netherlands: 17 February 1983 (as amended to 1995), Art. 64 (Neth)) (→ *constitutions, monarchical*; *parliamentary monarchy*).

2. 'Either submit or resign': dissolution of the lower house in the Third French Republic

After the Franco-Prussian War and the proclamation of Republic in 1870, the French Parliament passed three *constitutional laws* which were clearly inspired by constitutional monarchy and should ultimately pave the way, in the intentions of their drafters, for the restoration of monarchy. The President of the Republic was granted the power to dissolve the Chamber of Deputies, on the recommendation of the Senate, before the expiration of its mandate (Constitutional Law on the Organisation of Power: 24 February 1875, Art. 5, para. 1 (Fr)).

The 1876 general election returned a solid Republican majority in the Chamber of Deputies. Some months later, Marshal de Mac-Mahon, the Conservative President of the Republic, dismissed a Republican government and appointed a new ministry, in accordance with his own political leanings. Facing vehement opposition in the Chamber of Deputies, President de Mac-Mahon decided to dissolve it. The 1877 general election was won, again, by Republican forces. Even before, the Republican leader, Léon Gambetta, had invited the President 'either to submit [to the will of the majority] or to resign' (*se soumettre ou se démettre*). The President finally accepted to appoint a Republican ministry. The constitutional crisis of 1877 decisively shaped the nature of

parliamentarism in France: in spite of the letter of the Constitutional Laws, the President would never make resort to the power to dissolve the lower house. The balance between the legislative and executive powers shifted to the advantage of the former, as the President was no longer able, in practical terms, to dissolve the Chamber – or to threaten to do so – in order to call a quarrelsome majority to order. In the absence of a Westminster-like two-party system, the atrophy of the power to dissolve the Chamber led to a hegemonic role for the parliamentary parties and to chronical political instability.

C. The current state of affairs: a comparative description

1. Rationalising parliamentarism: the dissolution of parliament in Germany and Spain

In many contemporary parliamentary systems, the dissolution of the legislative is based on a much more detailed constitutional or legislative framework. In the second half of the 20th century, detailed regulations of this crucial issue have been included in post-war or post-authoritarian constitutions in order to ensure political stability, but also to protect the position of parliamentary minorities. Three important examples for this trend are Italy and the Federal Republic of Germany, whose current constitutional charter date back to the immediate aftermath of the end of war and the downfall of totalitarian regimes, and Spain after the death of Francisco Franco and the return of parliamentary democracy; the same can be said of Central and Eastern European constitutions which were drafted after the downfall of Communist regimes in that area. Attempts at regulating – and possibly limiting – resort to parliamentary dissolution can be described as part of a wider effort to *rationalise political power in parliamentary systems* (Mirkine-Guetzévitch 1931).

As far as the dissolution of Parliament is concerned, Italy could be described as an example of *weaker rationalisation*: the Constitution only states that 'The President of Republic may dissolve one or both Chamber, having consulted their [respective] Presidents'. Moreover, the dissolution act is only valid if it is countersigned by the President of the Council of Ministers, ie, the head of government (Constitution of the Italian Republic: 22 December 1947 (as amended to 20 April 2012), Arts 88, para. 1, and 89 (It)). Although the debate about the interpretation of this clause has given rise to huge scholarly and political controversy, the dissolution of Parliament is generally defined as a *complex act*, on which the distinct wills of the head of state and the head of government converge. Neither can the President of the Republic dissolve Parliament on his exclusive initiative – unless exceptional circumstances occur, as it was allegedly the case in January 1994 in the aftermath of *Tangentopoli* bribery scandal – nor can the President of the Council of Ministers make resort to a parliamentary dissolution just because he has lost his own parliamentary majority (as Silvio Berlusconi sought in vain in December 1994).

The German Basic Law, which is clearly marked by a critical attitude towards the failure of the Weimar Constitution to provide political stability, mentions two situations which may justify an early dissolution of the Federal Parliament (*Bundestag*). First, if the Chancellor-elect after the failure of earlier attempts is supported only by a plurality of members of the *Bundestag*, the Federal President may decide either to appoint him as Chancellor or to dissolve the legislature (Basic Law of the Federal Republic of Germany: 23 May 1949 (as amended to 11 July 2012), Art. 63, para. 4 (Ger)). Second, if a motion for a vote of confidence submitted by the Chancellor is not supported by a majority of the members of the *Bundestag*, the Federal President *may* decide, at request of the Chancellor himself and unless the legislature has meanwhile elected a new Chancellor by the vote of a majority of its members, to dissolve the *Bundestag* (Ger, Art. 68, para. 1). These procedures should be kept distinct from the constructive vote of no confidence, which permits a majority of members of the *Bundestag* to 'express its lack of confidence in the Federal Chancellor only by electing a successor' at the same time (Ger, Art. 67, para. 1). On two occasions in the history of the Federal Republic, the Chancellor of the day has made use of Art. 68, para. 1 in order to strengthen his position vis-à-vis the *Bundestag*. In 1983, new Chancellor Helmut Kohl felt that it was necessary to increase the democratic legitimacy of his own centre-right coalition composed of Christian Democrats and Free Democrats, which had taken office after a constructive confidence vote in which the Free Democrats had switched allegiance

away from a Social Democrats-led coalition to a conservative one. In 2005 the centre-left coalition of Social Democrats and Greens led by Chancellor Gerhard Schröder had been severely undermined by a regional election in North Rhine-Westphalia. In both these cases, the Chancellor, who could still rely on a majority of members of the *Bundestag*, introduced a "fictitious motion of confidence" (*unechte Vertrauensfrage*) in order to apply for dissolution of Parliament under Art. 68 of the Basic Law. After that, he successfully proposed that the Federal President dissolve the *Bundestag*. Both presidential decisions were challenged before the Federal Constitutional Court by petitioners who argued that Art. 68 had been exploited for partisan purposes and the requirements for dissolving the legislature had not actually been met (→ *Federal Constitutional Court of Germany (Bundesverfassungsgericht)*). According to the Court, the presidential decision to dissolve the *Bundestag* is a discretionary one and, as such, is not reviewable; the Court however, is entitled to review whether or not the factual prerequisites for dissolving the legislative body have been fulfilled, or, more precisely, have manifestly failed to be fulfilled. Both in 1983 and 2005, the Federal Constitutional Court ultimately legitimated the behaviour of the Chancellor, the members of Parliament, and the Federal President (*Bundestagsauflösung I* and *Bundestagsauflösung III*).

As far as the Spanish constitutional system is concerned, what is striking is that it combines Westminster-like traits and elements aiming at fostering political stability. On the one side, the President of the Government (ie, the Spanish head of government), after deliberation by the Council of Ministers and under his sole responsibility, may propose the dissolution of one or both of the houses of parliament, which is proclaimed by the King. The President of the Government cannot make resort to this provision while a motion of censure is pending (Constitution of the Kingdom of Spain: 6 December 1978 (as amended to 27 September 2011), Art. 115, paras 1 and 2 (Spain)) On the other side, however, the Constitution contains a mechanism for coping with long-lasting political crises. After a general election, the King of Spain has to nominate a candidate for the Presidency of the Government, who is appointed after being approved by the Congress of Deputies (ie, the lower house of the Spanish Parliament). If within two months of the first vote for investiture no candidate has obtained the confidence of the Congress, the King dissolves the Congress and the Senate and calls for a new general election (Spain, Art. 99, para. 5).

Similar rules can be found in a number of contemporary parliamentary regimes. First, the head of state might be required to consult or to inform other office-holders before dissolving the legislature: this is the case eg of the recent constitutions of Hungary (Constitution of the Republic of Hungary: 18 April 2011 (as amended to 26 September 2013), Art. 3, para. 4 (Hung)) and Morocco (Constitution of the Kingdom of Morocco: 1 July 2011, Arts 51 and 96 (Morocco)). In an attempt to limit presidential powers, similar provisions can be found in some African constitutions (Constitution of the Republic of Mali: 25 February 1992, Art. 42 (Mali); Constitution of the Islamic Republic of Mauritania: 12 July 1991 (as amended to 25 June 2006), Art. 31 (Mauritania); Constitution of the Republic of Chad: 14 April 1996 (as amended to 3 July 2013), Art. 83 (Chad)). Second, dissolution might be allowed if the legislature fails to designate a new prime minister or government (Constitution of the Republic of Hungary: 18 April 2011 (as amended to 26 September 2013, Art. 3, para. 3 (Hung); Constitution of the Republic of Turkey: 7 November 1982 (as amended to 12 September 2010), Art. 116, paras 1 and 2 (Turk); Coordinated Constitution of the Kingdom of Belgium: 17 February 1994 (as amended to 22 December 2008), Art. 46 (Belg); Constitution of the Republic of Slovenia: 23 December 1991 (as amended to 27 February 2003), Arts 111 and 117 (Slovn); Constitution of the Slovak Republic: 1 September 1992 (as amended to 1 May 2006), Art. 102, para. 1 (Slovk); Constitution of the Republic of Estonia: 28 June 1992 (as amended to 17 October 2005), Arts 60, 78, 89 and 97 (Est); Constitution of the Russian Federation: 12 December 1993 (as amended to 21 July 2014), Arts 111, para. 4, and 117, para. 3 (Russ)).

2. Dissolving the legislature in semi-presidential systems

In typical parliamentarian systems, as already mentioned, it is for the head of state – regardless of whether he is a monarch or an elected president – to dissolve the legislative body. Because of the

rules concerning responsibility of the head of state, however, the dissolution order generally needs to be countersigned (→ *head of state, immunity, in constitutional law*; *impeachment*). This means that the decision to dissolve the legislative body may result from the concurring will of two or more constitutional organs (as the German Federal Constitutional Court seems to have suggested in the two *Bundestagsauflösung* cases) or that one constitutional organ is entitled to take such a decision under control of another organ. As the Lascelles Principles and constitutional practice in some Commonwealth jurisdictions have shown, a refusal is possible (at least theoretically) even in the 'purest' version of Westminster parliamentary regimes.

Semi-presidential regimes clearly depart from this general scheme (→ *semi-presidentialism*). One of their typical features is that the directly elected head of state may dissolve the legislative body without need of ministerial countersignature. According to the Constitution of the Fifth French Republic, 'The President of the Republic may, after consulting the Prime Minister and the Presidents of the Houses of Parliament, declare the National Assembly [ie, the lower house of the French Parliament] dissolved' (Constitution of the French Republic: September 28, 1958 (as amended to 23 July 2008), Art. 12 (Fr)). Moreover, it is specified that 'Instruments of the President of the Republic, other than those provided for under Articles […] 12 […], shall be countersigned by the Prime Minister and, where required, by the ministers concerned' (Fr, Art. 19). Since government is answerable both to the President of the Republic and to the lower house, the former may make use of his own power of dissolution in order to have a more reliable parliamentary majority elected. Dissolving the lower house, however, may also entail some risk for the head of state, above all during 'cohabitation' with a hostile parliamentary majority. After a constitutional amendment shortened the length of the presidential term from seven to five years, resort to the power of dissolution has become far less probable (Fr., Art. 6, para. 1, as amended October 2, 2000). In Francophone Africa, Senegal clearly follows the French model (Constitution of the Republic of Senegal: 22 January 2001 (as amended to 21 October 2008), Arts 43, para 2, and 87 (Sen)). In post-Communist Europe, a similar example can be found in the Constitution of Ukraine (Constitution of Ukraine: 28 June 1996 (as amended to 8 December 2004), Art. 106, paras 1, no. 7, and 4 (Ukr)).

Similar provisions may be found in the Portuguese Constitution: the President of the Republic has the power to dissolve the Assembly of the Republic (ie, the unicameral Portuguese legislature) after having heard the parties represented in the Assembly and the Council of State. The dissolution order does not need to be countersigned by the Government (Constitution of the Portuguese Republic: 2 April 1976 (as amended to 24 July 2004), Arts 136, lit e, and 143 (Port)). Constitutional practice has shown that the head of state generally takes the decision to dissolve the legislature if the government of the day is clearly incapable to perform its constitutional tasks (Martins 2006, 95 f.). Other semi-presidential regimes, notably in Central and Eastern Europe, have opted for more nuanced constitutional arrangements, which clearly try to enhance governmental stability (Constitution of the Republic of Poland: 2 April 1997, Arts 98, 144 and 155 (Pol); Constitution of Romania: 21 November 1991 (as amended to 29 October 2003), Art. 89 (Rom); Constitution of the Republic of Lithuania: 25 October 1992 (as amended to 25 May 2006), Art. 58, para. 2 (Lith); Constitution of the Russian Federation: 12 December 1993 (as amended to 21 July 2014), Arts 111 and 117 (Russ)). Still, some constitutions in that area are ostensibly closer to the French model: this is the case of the Czech Republic – where direct election of the President of the Republic was introduced by constitutional amendment in 2012 – and Bulgaria (Czech, Art. 62, lit. c; Constitution of the Republic of Bulgaria: 12 July 1991 (as amended to 6 February 2007), Art. 102, para. 3 (Bulg)).

3. Recent reform in the United Kingdom: a further step in constitutional rationalisation?

The rationalisation of some features of British parliamentarism was a key element in the agreement between Conservatives and Liberal Democrats which preceded the formation of the First Cameron ministry, in May 2010. Among them, the rules governing dissolution of the House of Commons played a fundamental role. In the previous decades, some scholars and commentators have clearly been uncomfortable with some 'hyper-majoritarian' interpretations of the role of the Prime

Minister under a political, unwritten constitution (Bogdanor 2009, chapter 2). An attempt to depart from that scheme can be noticed, for instance, in the devolution acts of 1998 (→ *devolution*). Under the Scotland Act 1998, the Scottish Parliament may be dissolved either if a dissolution resolution is approved by a majority of two-thirds of the members of Parliament themselves, or if Parliament is unable to nominate a First Minister within 28 days of the latest general election or the death or resignation of the incumbent First Minister of Scotland (Scotland Act 1998, Sections 3 and 46). The Scottish model is somehow similar to the Fixed-Term Parliaments Act 2011, regulating the conditions for dissolving the House of Commons. Under this act, an early dissolution is only admitted if the House of Commons passes either a *dissolution motion*, with the support of two-thirds of the members of the House, or a *no confidence motion* (Fixed-Term Parliaments Act 2011, Section 2) (see also Bogdanor 2011, ch 6). It would be difficult to underestimate the significance of such a reform, which clearly scales down the institutional strength of the Prime Minister – which Bagehot had labelled as an 'elective dictator' – vis-à-vis the parliamentary party in the majority.

4. Self-dissolution

Until now, the analysis has taken for granted that the power to dissolve the legislative body is a typical power of the head of state, acting alone or together with other office-holders. Still, there are some exceptions which deserve mention.

First, some constitutions have stripped away all the political powers of the head of state. This is the case, notably of the Constitution of the Kingdom of Sweden, where it is for the Government to 'decide that an extraordinary election to the *Riksdag* is to be held between ordinary elections' (Instrument of Government 1974 (as amended to 7 December 2010) (Swed)). In other jurisdictions, presidential powers go hand in hand with the power of the legislature itself to order its own dissolution. For instance, the Federal Constitutional Law of Austria mentions two procedures for dissolving the National Council, ie the lower house of the legislature: either by decision of the Federal President or after the National Council votes its own dissolution 'by a simple law' (Federal Constitutional Law of the Republic of Austria: 1920 (as amended to 28 June 2002), Art. 29, paras 1 and 2 (Austria)). Self-dissolution was also the rule in Israel (Basic Law: The Knesset: 12 February 1958, sect. 34 (Isr)); however, after the introduction of (now abolished) direct election of the Prime Minister, other procedures for the dissolution – literally, 'dispersion' – of the Knesset have been introduced, in which the Prime Minister co-operates with the President of Israel (Basic Law. The Government: 28 January, 2003 sect. 29 (Isr)). Similar arrangements can be found in some Central and Eastern European constitutions (Constitution of the Republic of Croatia: 2 December 1990 (as amended to 7 May 2001), Arts 77 and 103 (Croat); Constitution of the Republic of Macedonia: 17 November 1991 (as amended to 12 April 2011), Arts 63 and 93 (Maced)) and in recent constitution of Arabic-speaking countries (Constitution of the Republic of Iraq: 15 October 2005, Art. 64 (Iraq)).

5. Other limitations

In the previous paragraphs, the analysis has mainly looked into *who* can dissolve the legislative body and the procedural conditions which may have to be fulfilled before adopting such a decision. In order to foster political stability, constitutions often provide for a number of further limitations to the exercise of the power of dissolution. First, time limitations may be mentioned. In France and Spain, for instance, no dissolution can take place within a year following a snap election (Fr, Art. 12, para. 4; Spain, Art. 115, para. 3). In South Africa, the President cannot dissolve the National Assembly before three years have passed since the Assembly has been elected (Constitution of the Republic of South Africa: 16 December 1996 (as amended to 1 February 2013), Art. 50, para. 1 (S Afr)). In Tunisia, the President of the Republic cannot dissolve the Assembly of the Representatives of the People 'during the six months following granting confidence to the government, or the six months following legislative elections, or during the last six months of the presidential or parliamentary terms' (Constitution of the Tunisian Republic: 26 January 2014, Art. 77 (Tunis)). Those provisions should prevent either the French, South African and Tunisian Presidents

or the Spanish head of government from initiating unnecessary or too frequent dissolution procedures. In other jurisdictions, the head of state cannot dissolve the legislature in the final part of his or her term of office: this is the case for the so-called Italian and Portuguese "white semester" (It, Art. 88, para. 2; Port, Art. 172, para. 1). As mentioned above, the Tunisian Constitution also contains a "white semester" clause (Tunis, Art. 77). More vaguely, some constitutional charters allow(ed) the head of state to dissolve the Parliament only once on the same ground (Constitution of the German *Reich*: 31 July 1919, Art. 25; Austria, Art. 29, para. 1; Constitution of the Lebanese Republic: 23 May 1926 (as amended to 4 September 2004), Art. 65, no. 4 (Leb)). In order to limit presidential power, the Latvian Constitution contains a peculiar provision, whereby a national referendum is held if the President proposes the dissolution of the *Saeima*, as the national legislature is named. If in the referendum more than half of the votes are cast against the dissolution, the President is removed from office (Constitution of the Republic of Latvia: 15 February 1922 (as amended to 15 November 2005), Arts 48 to 50 (Lat)). Second, the Swedish Constitution does not treat early elections (*extraordinary elections*) as fully-fledged elections: they are 'held between ordinary elections', which invariably take place every four years, so that the *Riksdag* elected after an extraordinary election is a shorter-lived one (Swed, Chapter 3, Arts 3 and 4). Third, it is generally impossible to dissolve the legislature when a state of emergency has been proclaimed (Fr, Art. 16; Ger, Art. 115h; Spain, Art. 116, para. 5; Portugal, Art. 172; Russ, Art. 109, para. 5; Constitution of the Republic of Montenegro: 19 October 2007, Art. 92 (Montenegro)) (→ *National emergency*). Fourth, the head of state might be unable to dissolve the legislature if charges have been brought against him or her (Russ, Art. 109, para. 4) (→ *impeachment*). Fifth, some extraordinary circumstances might compel to call for a new election: this might be the effect of the failure of the legislature to elect the President of the Republic (Constitution of the Hellenic Republic: 7 June 1975 (as amended to 27 May 2008), Art. 32, para. 4 (Greece)), of a vacancy of the throne with no evident successor (Neth, Art. 30, para. 2) or of the adoption of constitutional amendments (Leb, Art. 77; Belg, Art. 195, para. 2) (→ *constitutions, amendment or revision of*).

6. Dissolution of the legislature in presidential regimes: regional and recent trends

As mentioned above, a distinctive feature of presidential regimes is that both the head of state and the legislature sit for fixed terms. As regards the constitutional system of the United States, this decision lends itself to being interpreted as a reaction against abusive exercise of the power of dissolution by colonial governors: '[i]n fact, the king's power to dissolve is one of the grievances proferred in Jefferson's indictment of royal abuses in the Declaration of Independence' (Libonati 2006, 54).

Some recent trends, however, might suggest a more nuanced reading of the implications of presidentialism. On the one hand, a number of Latin American constitution allow for legislative censure and removal of executive officials; on the other hand, some of them give the president the power to dissolve the legislature, thereby 'plac[ing] in his or her hands an excessive power that may reinforce the authoritarian tendencies of presidentialism, especially where presidents continuously seek plebiscitary legitimacy' (Fix-Fierro and Salazar-Ugarte 2012, 645). Historically, however, those attempts at creating stronger links between the chief executive and the legislature can be traced back to a "reformist" tradition in Latin American constitutionalism (Gargarella 2013, 111). Two interesting examples can be mentioned in this regard. In Peru, the President of the Republic has the power to dissolve Congress if the latter has censured or denied its confidence to two Councils of Ministers (Political Constitution of the Republic of Peru: 31 October 1993 (as amended to 5 April 2005), Art. 134 (Peru)). In Uruguay, if the General Assembly – ie the two houses of Parliament – adopts 'disapproval' of one or more members of the Council of Ministers by less than three-fifths of its full membership, 'the President of the Republic, within the next forty-eight hours, may, by express decision, retain the censured Minister, Ministers, or Council of Ministers, and dissolve the Chambers' (Constitution of the Oriental Republic of Uruguay: 27 November 1966 (as amended to 8 December 1996), Art. 148 (Uru)). Within the latest wave of constitution-making in Latin America, the

Ecuadorian Constitution has opted for a clearer strengthening of presidential powers: the President of the Republic is able to dissolve the National Assembly 'when, in his/her opinion, it has taken up duties that do not pertain to it under the Constitution, upon prior favourable ruling by the Constitutional Court; or if it repeatedly without justification obstructs implementation of the National Development Plan or because of a severe political crisis and domestic unrest' (Constitution of the Republic of Ecuador: 28 September 2008 (as amended to 7 May 2011), Art. 148 (Ecuador)).

D. Conclusion

What seems to emerge from comparative analysis is a mixed picture. On the one hand, a number of scholars have pointed to a trend towards a *presidentialisation of politics*, whereby parliamentary systems tend to become more and more similar to Westminster-like regimes in their 'purest', majoritarian form (Poguntke and Webb 2005). As regards the dissolution of the legislative body, this means that the head of government and leader of the majority party is supposed to play the key role in deciding when to dissolve the legislature. Simultaneously, a strategic use of the power of dissolution is supposed to strengthen the position of the head of government in the form of government. At first sight, the interpretation of Art. 68 Ger by political office-holders and the German Federal Constitutional Court may confirm this assumption, although in Germany the possibility to dissolve the *Bundestag* is more clearly limited by constitutional provisions and the active role of the Federal Constitutional Court. The Israeli constitutional reform of 1992 also seemed to embrace that general concept, as it stated that the removal of the Prime Minister after a vote of no confidence would have automatically brought about the dissolution of the Knesset.

On the other hand, other data suggest that a more nuanced assessment of recent evolutions is no less legitimate. The so-called "neo-parliamentary" regime of Israel has been abolished by constitutional amendment in 2003. In Italy, the transition towards an allegedly majoritarian parliamentarism since the mid-1990s has not brought about significant changes with regard to the interpretation of constitutional clauses on the dissolution of Parliament, in which the indirectly elected head of state still plays a meaningful role. But the most striking counterevidence comes from the United Kingdom itself, where the apparent decline of the 'old' two-party system and, more importantly, discontent with some features of Bagehot's "elective dictatorship" brought about fairly radical change to the conditions for exercising the power of dissolution under the Cameron-Clegg ministry. Even granting that the trend towards presidentialisation will keep on, recent innovations may possibly be interpreted as an attempt to constitutionalise – and thereby to limit – some of its aspects, in accordance with the role of constitutionalism as *the form of power* (Rubio Llorente). Supportive evidence also comes from semi-presidential systems, which only rarely follow the French example closely. More recent semi-presidential constitutions – notably in Central and Eastern European countries – show a concern for ensuring governmental stability by means of constitutional rationalisation rather than exclusively relying on presidential arbitration. In this respect, it is worth mentioning that those constitutions which opted for a semi-presidential regime – eg in Poland or Romania – somehow departed from the French model with regard to the regulation of dissolution of the legislature.

Select bibliography

- Ackerman, B, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 633.
- Bagehot, W, and Smith, P, (ed), *The English Constitution* (CUP 2001).
- Bogdanor, V, *The New British Constitution* (Hart Publishing 2009).
- Bogdanor, V, *The Coalition and the Constitution* (Hart Publishing 2011).
- Bradley, AW, and Pinelli, C, 'Parliamentarism', in Sajó, A, and Rosenfeld, M, (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012).
- Cabanis, A, and Martin, ML, *La dissolution parlementaire à la française* (Presses de Sciences Po 2001).

- Chessa, O, 'La fine del modello Westminster. Il nuovo parlamentarismo razionalizzato del Regno Unito' (2015) 20 *Diritto pubblico* 809.
- Dicey, AV, and Wade, ECS, (ed), *An Introduction to the Study of the Law of the Constitution* (10th edition, Macmillan 1959).
- Fix-Fierro, H, and Salazar-Ugarte, P, 'Presidentialism', in Sajó, A, and Rosenfeld, M, (eds), *The Oxford Handbook of Comparative Constitutional Law* OUP 2012).
- Forsey, EA, *The Royal Power of Dissolution of Parliament in the British Commonwealth* (OUP 1968).
- Gargarella, R, *Latin American Constitutionalism 1810-2010: The Engine Room of the Constitution* (OUP 2013).
- Heasman, DJ, 'The Monarch, the Prime Minister, and the Dissolution of Parliament' (1960) 14 *Parliamentary Affairs* 167.
- Hicks, BM, 'The Westminster Approach to Prorogation, Dissolution and Fixed Date Elections' (2012) 35(2) *Canadian Parliamentary Review* 20.
- Lauvaux, P, *La dissolution des assemblées parlementaires* (Economica 1983).
- Libonati, ME, 'The Legislative Branch', in Tarr, GA, and Williams, RF, (eds), *State Constitutions for the Twenty-First Century*, vol 3, *The Agenda of State Constitutional Reform* (State University of New York Press 2006).
- Markesinis, BS, *The Theory and Practice of Dissolution of Parliament* (CUP 1972).
- Martins, A, 'Presidential Elements in Government: The Portuguese Semi-Presidential System' (2006) 2 *European Constitutional Law Review* 81.
- Masuyama, M, and Nyblade, B, 'Japan: The Prime Minister and the Japanese Diet' (2004) 10 *The Journal of Legislative Studies* 250.
- Matsui, S, *The Constitution of Japan: A Contextual Analysis* (Hart Publishing 2010).
- Mirkine Guetzévitch, B, *Les nouvelles tendances du droit constitutionnel* (Marcel Giard 1931).
- Newman, WJ, 'Of Dissolution, Prorogation, and Constitutional Law, Principle and Convention: Maintaining Fundamental Distinctions during a Parliamentary Crisis' (2010) 29 *National Journal of Constitutional Law* 217.
- Norton, P, 'Parliament: A New Assertiveness', in Jowell, JL, Oliver, D, and O'Cinneide, C, (eds), *The Changing Constitution* (8th edition, OUP 2015).
- Poguntke, T, and Webb, P, (eds), *The Presidentialization of Politics: A Comparative Study of Modern Democracies* (OUP 2005).
- Quermonne, JL, 'Chronique d'une dissolution singulière et d'une cohabitation risquée: La continuité de la Ve République en question' (1997) 15 *French Politics and Society* 13.
- Roberts, SK, 'The House of Commons, 1640—60', in Jones, C, (ed), *A Short History of Parliament: England, Great Britain, the United Kingdom, Ireland & Scotland* (The Boydell Press 2009).
- Rubio Llorente, F, *La forma del poder. Estudios sobre la Constitución* (Centro de Estudios Constitucionales 1993).
- Skach, C, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton University Press 2005).
- Strøm, K, and Swindle, SM, 'Strategic Parliamentary Dissolution' (2002) 96 *American Political Science Review* 575.
- Zeh, W, 'Bundestagsauflösung und Neuwahlen' (1983) 22 *Der Staat* 1.

Select cases

- *Tomabechi v Japan (Tomabechi II)* Supreme Court Grand Bench (8 June 1960) 14 *Minshu* 1206 (Japan).

- *Bundestagsauflösung I* 2 BvE 1/83, 2 BvE 2/83, 2 BvE 3/83, and 2 BvE 4/83 (25 January 1983) BVerfGE 62,1 (Ger).
- *Bundestagsauflösung III* 2 BvE 4/05 and 2 BvE 7/05 (25 August 2005) BVerfGE 114, 121 (Ger).

Date of writing: 17 June 2016 (1st revision: 30 September 2016. 2nd revision: 9 April 2017).