Dissolution of Parliament

International IDEA
Constitution-Building Primer

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1. Introduction

The power of dissolution is the power to end the term of office of a parliament (or other legislative body) so as to require new elections to take place. Parliaments are compulsorily or automatically dissolved at the end of their scheduled term of office. Most parliamentary and semi-presidential systems also allow for the premature dissolution of parliament before the scheduled end of its term of office. This can be a way of breaking deadlocks within parliament, or between parliament and the government, by appealing to the people.

Depending on the constitutional rules in each country, dissolution may also be used to renew a government's mandate, for example after a change of prime minister. However, the circumstances in which premature dissolution is permissible can vary considerably. In some constitutions an almost unfettered power of dissolution exists, while in others the dissolution power is very limited and can only be used in specific cases.

In presidential systems, premature dissolution is less necessary (because it is not linked to the process of government formation and removal) and more dangerous (because of the potential for executive dominance and the sidelining of legislatures) and is therefore comparatively rare.

Advantages and risks

The dissolution of parliament is a powerful political tool which, being closely associated with the process of government formation and removal, can affect the overall balance of power in the polity. If a broad power of dissolution is vested in the head of state or head of government, then the political system will tend to concentrate powers in those institutions, which may encourage stable and

effective government, but at the cost of diminished parliamentary scrutiny; if the dissolution power is limited, or is exercised by parliament itself, then parliament will be a relatively stronger institution, which may have advantages in terms of deliberation, inclusion and accountability, but at the potential cost of executive strength and stability.

2. Content and scope

Dissolution is the power to dismiss a parliament or other legislative assembly such that the members of the assembly cease to hold office and new elections are required. Dissolution thus differs from *prorogation*, which suspends the sitting of an assembly but does not cause the members to be removed from office or require new elections to be held.

The first part of this Primer discusses dissolution in general terms, including the origins and history of the dissolution power, its purposes and rationale, and the relationship between the power of dissolution and the dynamics of parliamentary government. The most crucial point is that the dissolution power is a strong lever of political influence in the hands of whichever institution (whether the head of state, the prime minister or parliament itself) is entrusted with its exercise, and that, in consequence, the design of the dissolution power can have a profound effect on executive–legislative relations.

The Primer then discusses the various design options available to constitution-makers, including dissolution by the head of state (within broad or narrow terms of discretion), dissolution by the prime minister or dissolution by a decision of parliament. Less common alternative arrangements, such as popular dissolution by means of a referendum or fixed parliamentary terms without any provision for premature dissolution, are also discussed.

In addition to these basic design choices, constitution-makers will have to consider a range of other secondary issues in relation to the dissolution power, including, for example, whether the parliament elected after a premature dissolution can serve for its full term of office or only for the unexpired portion of the previous term, whether there are certain periods or circumstances in which dissolution is prohibited, and how dissolution may be applied to bicameral parliaments.

3. What is the issue?

Origins and history of the dissolution power

Historically, the dissolution power can be traced to the medieval European parliaments which served as great councils of the 'estates of the realm', summoned from time to time to advise and assist the monarch, make laws and levy taxes. Although some medieval parliaments established the right to be summoned regularly, and some even had the right not to be dissolved without their own consent, it was usual for the monarch to summon and dismiss parliament at will (Myers 1975).

This broad royal power of dissolution was maintained in many of the earliest written parliamentary constitutions. The French Constitutional Charter of 1814, the Belgian Constitution of 1831, the Romanian Constitution of 1866 and the Japanese Constitution of 1889 were all of this type, and, in principle, they allowed the monarch to dissolve parliament at any time, for any reason (Thornhill 2011).

In these early monarchical constitutions, the royal power of dissolution was initially seen as an inherently conservative royal check against parliamentary power, intended to be used at the discretion of the monarch. In many European countries, however, the nature of royal power gradually changed during the 19th century. The rise of organised political parties competing for the votes of an ever-wider electorate meant that leadership responsibility shifted to a prime minister dependent upon the confidence of the parliamentary majority. Monarchs ceased to be effective heads of the executive branch and were increasingly limited by recognised conventional practice to ceremonial and symbolic functions. The power of dissolution would therefore normally be exercised by the monarch only on the advice of the prime minister, although the monarch might still retain a

limited discretionary role in granting or refusing dissolution in certain extraordinary circumstances.

Many 20th-century parliamentary constitutions gave formal, written, constitutional expression to these limitations on the head of state's powers of dissolution. In those constitutions derived from the British tradition, the usual form of such expression was to formally require the head of state (or governor-general) to act on the binding advice of the prime minister, while also specifying certain exceptional circumstances under which it would be permissible to act without or even contrary to such advice. In continental European parliamentary constitutions (those adopted after World War I and World War II, as well as those adopted after the collapse of the Soviet rule over Eastern and Central Europe in 1989–91) it was more usual to prescribe certain limited conditions under which parliament could be dissolved by the president.

Today, parliamentary constitutions provide for a range of dissolution powers, from those in which the government has broad latitude to dissolve parliament at will to those in which parliament must approve its own dissolution or may be dissolved only under specified circumstances (such as when a new government cannot be formed after a general election or loss of confidence). These basic design options are laid out in section 4. First, however, it is necessary to think carefully about the purposes and rationale of the dissolution power, to understand the dynamics at the heart of executive–legislative relations in parliamentary democracies, and to consider how different forms of dissolution power may influence the overall functioning of the political system.

Understanding dissolution and the dynamics of parliamentary government

In parliamentary democracies the government (executive branch) is led by a council of ministers or cabinet, which must have the **confidence** (i.e. the approval and support) of parliament (legislative branch). This means that the government in a parliamentary democracy is indirectly selected: the people elect a parliament, and the parliament then supports a government. The government is typically headed by a prime minister (although other terms, such as first minister, chief minister or chancellor, are sometimes used), who is usually the leader of the majority party or coalition of parties in parliament. Once appointed to office, the government remains responsible to the parliament. This responsibility is exercised through instruments of oversight and control such as parliamentary committees, questions to ministers and plenary debates, but it is ultimately enforced at crucial moments by means of a vote of no confidence, which expresses a fatal withdrawal of parliamentary support from the government (see Box 3.1 for an example).

Box 3.1. Dissolution in action: the 2011 Canadian general elections

In 2011, the three main opposition parties in the Canadian House of Commons joined forces to pass a vote of no confidence in the government led by prime minister Stephen Harper, accusing the latter of 'contempt of parliament' for failing to provide opposition members with adequate information. The Government, faced with having to choose between resignation and dissolution, decided to dissolve parliament. In the following elections, Harper's Conservative Party increased its share of the seats and was returned with an overall majority. In this case, dissolution provided a way of resolving a serious stand-off between the government and parliament by referring the matter to the people as the ultimate decider.

Thus, there is in parliamentary democracies a close relationship between the executive and legislative powers, resting on a careful balance of reciprocal trust between parliament and the government. On the one hand, the parliamentary majority has confidence in the government, trusting it not only to administer the executive branch but also to take the initiative in formulating policy and introducing legislation. Parliament can influence legislation by making specific amendments, and may even occasionally veto legislation or policies proposed by the government, but under normal circumstances a government enjoying the confidence of parliament can expect to pass the bulk of its legislative programme through parliament without serious obstructions or sustained objections. This means that the country can be governed in accordance with a coherent policy developed by the executive.

On the other hand, the government is always dependent on continued parliamentary support. Governments do not serve for fixed terms, but instead hold office only so long as they enjoy the confidence or support of a majority of the members of parliament. Parliament can at any time withdraw this support by means of a vote of no confidence or vote of censure (or, in some countries, by refusing to pass the budget, or by voting against the government's annual statement of intended legislative policy). In that case, one of two things might happen: either (a) the government will be forced to resign and a new government will be formed that is more agreeable to the parliamentary majority; or (b) parliament will be dissolved, leading to new parliamentary elections in which citizens will have to choose (by returning a majority to parliament that is supportive of, or opposed to, the government) whether or not the government should continue in office. Thus, in a well functioning parliamentary democracy the government leads, but only to the extent, and in the direction, that the parliamentary majority is willing to be led.

One of the advantages of a parliamentary system of government is its flexibility. The parliament is an intermediate body, interposed between the

government and the people, which can lead to peaceful and lawful changes of government in between scheduled elections. How this works in practice depends in part on the specific circumstances of each event (such as, for example, whether there is an alternative government in waiting that can be formed without needing an election), but it also depends on the constitutional rules. Some constitutional rules favour the dissolution of parliament and new elections, while other rules favour trying to form a new government without an intervening election.

Given this close association, both conceptually and in practice, between dissolution rules and the rules of government formation and removal, it is important to consider these two constitutional design issues side by side. For more information on government formation and removal mechanisms in parliamentary systems see International IDEA Constitution-Building Primer No. 17, *Government Formation and Removal Mechanisms*.

Purposes and rationale of the dissolution power

Dissolution may serve various purposes in relation to the working of parliamentary democracy. The specific rules in each country may encourage or discourage, allow or prohibit, the use of dissolution for each of these purposes.

Dissolution as a means of enforcing party discipline and strengthening the executive

When a broad discretionary power of dissolution is placed in the hands of the prime minister and/or cabinet, the threat of dissolution can be a powerful instrument of control over the parliamentary majority. A prime minister enjoying an unlimited power of dissolution can never be forced to resign by a vote of no confidence: he or she can only be forced into making a choice between resignation and dissolution, with the option therefore of appealing directly to the people 'over the head', as it were, of parliament. The existence of such a power may limit the willingness of parliaments to pass a vote of no confidence, since, if dissolution rather than the resignation of the government results from a vote of no confidence, members of parliament might lose their seats.

An unlimited power of dissolution thereby serves as a restraint on parliament, discouraging the frivolous use of votes of no confidence and encouraging 'backbenchers' (members of parliament who do not hold government office and are not official opposition spokespersons, so called because they traditionally sit on the back benches of Westminster-style parliaments) to act with deference towards the government.

Dissolution as a catalyst for government formation processes

The government formation process in parliamentary democracies varies between countries depending on the specific constitutional and procedural rules in force

and on factors such as the party system, electoral system and political culture. In most cases where multi-party politics prevails, however, post-election coalition negotiations will be required in order to form a government that enjoys the confidence of parliament. This may take several weeks or even months, and might not always be successful. The threat of dissolution if a government is not formed within a reasonable time may give the negotiating parties an incentive to compromise.

Dissolution as a way of breaking inter-institutional deadlock

The power of dissolution may make it possible to resolve deadlock between the government and the parliamentary majority. As noted above, the parliamentary system assumes that there is a relatively close, harmonious and constructive working relationship between the executive and legislative branches (i.e. between the cabinet ministers and the parliamentary majority). When this relationship breaks down, a dissolution enables the people to determine who should have the upper hand—either by returning a parliamentary majority that is supportive of the government or by returning a different parliamentary majority that will support a different government. A government might invoke this, for example, if one of its major policies or legislative initiatives, for which it claimed a mandate, were to be rejected by parliament.

Dissolution as a way of reinforcing a government's popular mandate

When a government's parliamentary majority has been eroded (e.g. by the defection of members from the governing party to the opposition, or by losing seats in a by-election) or when its levels of public support are called into question (for example, after a major corruption scandal or an economic crisis), the government may wish to reinforce its mandate by dissolving parliament and calling an election. This is a risky strategy, since the incumbent government may lose the election and so be forced out of office. However, a dissolution provides a clear and effective means of testing public confidence in the government, and if the government wins the election it may have renewed vigour.

Dissolution to win a mandate following a change of government

In a parliamentary democracy, the government may sometimes be changed without a new general election (e.g. if the ruling coalition falls apart and a new coalition is then formed, or if the majority party changes its leader by means of an internal leadership election, resulting in a change of prime minister). In such cases, the new government may dissolve parliament in the hope of winning a general election and so gaining a clear mandate from the voters.

Dissolution as a way of testing public opinion on major issues

Sometimes a government has to take major policy decisions that deviate from its previous commitments or that respond in potentially controversial ways to emerging issues that could not be foreseen at the time of the preceding election. In such cases, the government may decide that it needs, for the sake of legitimacy, an explicit public endorsement for its decision. This public endorsement may be sought by dissolving parliament and calling a new election. When used in this way, dissolution may act as a crude and risky substitute for a consultative referendum (crude, because a wide range of issues are necessarily at stake in any general election, not just the specific issue that triggered the dissolution; and risky, from the point of view of the government, since it may result in losing office). The rise of the referendum as a legitimate form of democratic decision-making has rendered dissolution for this reason increasingly obsolete.

Dissolution as a way of choosing the timing of elections

A discretionary power of dissolution makes it possible to hold elections at a time when the result is expected to be most beneficial to those ordering the dissolution. Being able to choose the timing of elections gives incumbents a substantial political advantage. When the government has this power, it may hold snap elections at a time when it is most likely to be returned to office. Of course, it is possible to misread public opinion and to unexpectedly lose a snap election.

Dissolution and patterns of executive–legislative relations

Executive–legislative relations in parliamentary democracies range from those characterized by executive dominance to those in which there is a more equal balance of power and a give-and-take relationship between the executive and legislature (Lijphart 1999). Although there are many other contextual variables—including the electoral system, the effective number of parties in parliament and the detailed constitutional provisions regulating how parliament operates—one of the crucial determinants of executive dominance is whether or not the parliament can be dissolved at the discretion of the government.

Executive dominance

If the government can dissolve parliament at its own discretion, subject to only minimal constraints, the government and parliament will each have power over the other: the government is dependent upon the confidence of parliament, but parliament is also dependent on the government. This will tend to strengthen the executive in relation to parliament, since it means that the government, if faced with strong opposition to legislative proposals or policy decisions, can use the threat of dissolution (which could cause members to lose their seats, prestige,

privileges and livelihoods) to keep rebellious backbench parliamentarians and wavering coalition partners in line.

In particular, the ability of a government that has lost the confidence of parliament to choose between resignation and dissolution weakens parliament with respect to the government. Parliament will be reluctant to risk passing a vote of no confidence, as members might have to face an election and could lose their seats. This leverage over parliament is only effective, however, when the threat of dissolution is credible, and that threat is credible only when the government believes it has a good chance to win the election that follows the dissolution. Therefore the fact that the government can always appeal directly to the people for a new mandate, even if it loses parliamentary confidence, means that the people, rather than parliament, are in practice the ultimate arbiters of whether the government stays in office.

Executive–legislative balance

Conversely, if the constitution protects parliament against early dissolution, especially in situations where the government has lost the confidence of parliament, this will tend to strengthen parliament with respect to the government, and may result in a more balanced form of executive–legislative relations. This is because parliament can choose to dismiss the government, but the government does not have the same reciprocal ability to dissolve the parliament (or, at the very least, cannot do so when faced with a vote of no confidence). Hence, members of parliament can freely vote against the government, while knowing their own seats remain safe. In such cases, there is a more active role for parliament as an intermediate institution between the people and the government, and changes of government during the life of a parliament are more likely to occur.

Which is better?

In the past, and according to many comparative scholars familiar with the British tradition, a broad discretionary dissolution power, exercisable by the government (usually at the discretion of the prime minister), was deemed essential to political stability and to effective policy leadership. Limitations on the dissolution power contributed, according to this view, to the fatal weakness and instability of parliamentary democracy in continental Europe between the two world wars. These ideas were very influential, and when European democracies were faced with instability and ineffective government, strengthening the government's ability to dissolve parliament was often a standard prescription (Headlam-Morley 1928). However, while reformers in countries suffering from weak and unstable government sought to strengthen the executive by giving the government a broader power of dissolution, those in countries with relatively weak parliaments and over-dominant executives tried to move in the other direction, protecting

parliament from being arbitrarily dissolved by placing constitutional restrictions on the power of dissolution (see Box 3.2 for an example).

From a contemporary constitutional design perspective, the most important thing to remember is that the power to dissolve parliament is a blunt and powerful instrument. The institution—be it the head of state, the government or parliament itself—that wields this power will have a strong hand in negotiations with other institutions. Therefore, constitutional designers, in dealing with dissolution provisions, need to ask themselves how power is intended to be distributed in the political system.

Box 3.2. Dissolution in action: changing patterns of dissolution power and executive dominance in France

The Constitutional Laws of the French Third Republic (1875–1940) permitted the President of the Republic to dissolve the Chamber of Deputies (Lower House) only with the consent of the Senate. In practice, this was cumbersome and lacked democratic legitimacy, with the result that the dissolution power fell into disuse. Governments, being unable to dissolve Parliament, had no way of enforcing coalition discipline, and in consequence there was chronic instability and weak, ineffective governance. To prevent recurring political crises, an amendment which would have enabled the president to dissolve the Chamber of Deputies on the advice of the Prime Minister was proposed in 1934, but failed to pass because of fear that 'some future Prime Minister may hold the threat of dissolution over the Chamber as a lever to force through measures which he could never get through by other means' (Spectator, 1934).

The new Constitution of the Fourth Republic (1946–1958) established a stronger—but still limited—power of executive-initiated dissolution, permitting the Council of Ministers to dissolve Parliament if two votes of no confidence were passed in an eighteen-month period (article 51). However, this was insufficient to cure the persistent lack of stability, especially in a system characterized by multi-party politics (see: Williams, 1958).

To promote stability and effective government, the Constitution of the Fifth Republic (1958–) gave the president (directly elected after 1962) a broad power of discretionary dissolution. Unlike the proposed 1934 amendment, the president was not required to act on prime ministerial advice in the exercise of this power. This meant that the president could use dissolution at will, as a means of influencing both parliament and the government. Thus changing the location of the dissolution power was instrumental in transforming France from a parliament-dominated to president-dominated regime.

4. Basic design options

Having surveyed the various purposes for which the dissolution power exists, and having discussed the relationship of the dissolution power to the overall functioning of the parliamentary system, it is now possible to discuss the various design choices that constitution-makers may face. These choices concern the location of the dissolution power and the limits on its exercise:

- In terms of location, the dissolution power may be located primarily in the head of state, the prime minister or cabinet, the parliament itself or sometimes the people, or it may be shared in various ways between these institutions.
- In terms of limits, the dissolution power may be very broad and discretionary, essentially allowing dissolution at will in most circumstances, or it may be narrowly constrained such that dissolution is permissible only in a specified set of circumstances.

Dissolution by the head of state

Dissolution by the head of state at will

One possibility is for the constitution to place the power of dissolution in the hands of the head of state, with the intention and expectation that the head of state may freely use this power according to his or her own judgment and on his or her own responsibility—that is, without being bound by the advice of any other person or institution. The head of state might be required to consult with others before dissolving parliament (article 12 of the Constitution of the French Fifth Republic, for example, enables the president to dissolve the National

Assembly only 'after consulting the Prime Minister and the Presidents of the Houses of Parliament'). Nevertheless, so long as the role of these other institutional actors is only consultative, and is not binding, the ultimate power of dissolution rests in the hands of the head of state.

This power to dissolve parliament at will (which, in the French case, is limited only by the prohibition of another dissolution within the following 12 months) is an important source of presidential power, which gives the head of state a weighty influence over the direction of policy. It places the continuation of parliament, and thus of the government, under the supervision of the head of state. No government would be able to retain office without the confidence not only of parliament but also of the head of state. As such, this tilts the political system away from prime ministerial to presidential leadership. It is therefore applicable, in democratic contexts, only if the head of state is a directly elected official, who has a democratic mandate and the legitimacy necessary to exercise such expansive powers.

Dissolution by the head of state in specified circumstances

Another possible design choice, found in many continental European parliamentary systems, is to specify in the text of the constitution a limited range of circumstances under which the head of state may exercise the power of dissolution. Thus, the head of state may sometimes exercise a limited discretionary power of dissolution in order to resolve political crises and ensure the constructive functioning of executive–legislative relations, but cannot use dissolution as an instrument to dominate parliament or influence government policy.

- The Constitution of the Czech Republic (article 35) outlines four circumstances under which the president may order a dissolution of parliament:
    - if the Chamber of Deputies (lower house of Parliament) does not adopt a resolution of confidence in a newly appointed government which was appointed on the basis of a proposal of the chairperson of the Chamber of Deputies;
    - if the Chamber of Deputies fails, within three months, to reach a decision on a governmental bill which has been declared by the government to be a matter of confidence;
    - if a session of the Chamber of Deputies has been adjourned for a longer period than is permissible; or

- if, for a period of more than three months, the Chamber of Deputies has not formed a quorum, even though its session has not been adjourned and it has, during this period, been repeatedly summoned to a meeting.

- The president of Poland may dissolve parliament in two situations:
  - if a government cannot be formed, or a newly formed government fails to achieve a vote of confidence (articles 154 and 155); or
  - if the budget has not been approved by parliament and presented to the president for signature within four months after a draft budget was submitted to the lower house.
- The Constitution of the Federal Republic of Germany allows the president to dissolve parliament only if:
  - a government enjoying the confidence of a majority of members of the Bundestag (lower house) cannot be formed after a general election (article 63); or
  - if the Bundestag does not pass a vote of confidence proposed by the federal chancellor (article 68).

Although the specific circumstances vary from country to country, these examples illustrate some of the most common grounds on which presidents in parliamentary democracies (or semi-presidential democracies in which the prime minister is the main policymaker and head of the executive) may typically dissolve parliament. In general, these rules allow presidents to order a dissolution only if the relationship of mutual trust, confidence and cooperation between the prime minister and the lower house has broken down. The dissolution power, under these circumstances, is deployed to resolve crises of governance and to bring the parliamentary system back into harmonious working order.

Dissolution by the head of state on the advice of the prime minister

In many parliamentary democracies the constitution formally vests the dissolution power in the hands of the head of state (or a governor-general acting on behalf of the monarch), but with the clear intention that this power should normally be exercised only in accordance with the binding advice of the prime minister.

- The Constitution of Bangladesh (article 72) provides that: 'Parliament shall be summoned, prorogued and dissolved by the President by public

notification' and that 'in the exercise of his functions under this clause, the President shall act in accordance with the advice of the Prime Minister tendered to him in writing'.

- The Constitution of Trinidad and Tobago (article 68) states: 'The President, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament'.

A requirement to act on **advice**, in such constitutions, is a constitutional term of art. It should normally be understood as being binding, meaning that: (a) the head of state cannot normally dissolve parliament except on the basis of a request by the prime minister; and (b) the head of state must normally grant a dissolution on the basis of such request. This arrangement gives broad latitude to the prime minister, both in terms of calling early elections at a time most advantageous to his or her party, and in terms of being able to threaten dissolution in order to forestall any attempted vote of no confidence.

The word 'normally' in the preceding paragraph is very important. Although the advice of the prime minister is in most instances decisive, there may be some special circumstances under which the head of state (or the governor-general as their representative) may, whether by explicit constitutional provision or by convention, either: (a) dissolve parliament without the prime minister's advice; or (b) refuse the prime minister's request for a dissolution of parliament.

Refusal of dissolution if the prime minister has lost the confidence of parliament

Under some constitutions, the head of state may be permitted to refuse a dissolution requested by the prime minister if: (a) the prime minister has lost the confidence of parliament and (b) an alternative government enjoying the confidence of parliament can, in the judgment of the head of state, be formed without the need for a dissolution. Article 13 of Ireland's Constitution, for example, requires the president to dissolve the lower house of parliament (the Dáil Éireann) on the advice of the prime minister. However, the president may, at his or her discretion, refuse a request for dissolution made by a prime minister who 'has ceased to retain the support of a majority in the Dáil Éireann'. In other words, as long as the prime minister retains the confidence of parliament, he or she may advise the president to dissolve parliament at any time, and the president must act in accordance with that advice. However, if the prime minister does not enjoy the confidence of the Dáil Éireann (e.g. after a vote of no confidence or following a general election where the incumbent government has been defeated but is still in office pending the formation of a new government), then the president may exercise a discretionary right to refuse the prime minister's request for a dissolution. A similar provision exists in the Constitution of Pakistan (article 58). Such provisions enable parliament to pass a vote of no confidence in the

prime minister and, if the political circumstances are favourable, to place confidence in a new government to be formed without an intervening general election.

Discretionary dissolution if the prime minister refuses to resign or dissolve parliament

The head of state may be permitted to order the dissolution of parliament, without requiring the advice of the prime minister, if the government, having lost a vote of no confidence, refuses, within a reasonable period of time, to either offer its resignation or to recommend a dissolution. In this way, the head of state has a constitutional responsibility to uphold the principle that if the government loses the confidence of the parliamentary majority, it must without undue delay either resign or face the people in an election.

- Article 76 of the Constitution of Malta states that, 'if the House of Representatives passes a resolution, supported by the votes of a majority of all the members thereof, that it has no confidence in the Government, and the Prime Minister does not within three days either resign from his office or advise a dissolution, the President may dissolve Parliament'.

Dissolution if a government cannot be formed

The head of state may also be permitted to dissolve parliament without the advice of the prime minister if the office of prime minister is vacant and if it is not possible within a reasonable time to appoint (without recourse to a dissolution and a general election) a new prime minister who enjoys the confidence of parliament. The question of whether it is possible to appoint a new prime minister without a dissolution may be a matter for the head of state's personal discretion, which may call for the exercise of careful judgment in light of the political circumstances.

- The Constitution of the Bahamas (article 66), for example, states that, '...if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the confidence of a majority of the members of the House of Assembly, he shall dissolve Parliament'. This provision is not justiciable.
- Another possible design option is to allow a fixed number of attempts at the formation of a government enjoying the confidence of parliament, with an automatic dissolution occurring if these attempts are unsuccessful. This is discussed below under 'Automatic Dissolution'.

Refusal of unnecessary dissolution

The head of state may also be permitted to refuse a dissolution of parliament to a prime minister who does enjoy the confidence of parliament if it appears to the head of state that two conditions are met: (a) that the government can be carried on without a dissolution; and (b) that a dissolution would not be in the national interest.

The presence of the first of these conditions is likely to be fairly clear in most cases, although situations could arise in which the head of state's personal judgment may have to be exercised. For example, if the government loses its majority in parliament because of the result of by-elections or owing to the defection of certain backbenchers to the opposition, it might be possible for that opposition to form a new government without a dissolution.

The second of these conditions is less easily determined, but it might arguably apply if a sudden election would be likely to upset the country's economic stability or diplomatic interests or if the prime minister were advising a dissolution for purely opportunistic reasons.

- Section 55 of the Constitution of Saint Lucia states that, 'if the Prime Minister advises a dissolution and the Governor-General, acting in his own deliberate judgment, considers that the government of Saint Lucia can be carried on without a dissolution and that a dissolution would not be in the interests of Saint Lucia, he may, acting in his own deliberate judgment, refuse to dissolve Parliament'.

Reconsideration of advice

Even in constitutions where the head of state does not have any explicit discretionary right to act without, or contrary to, the prime minister's advice in the exercise of the dissolution power, the head of state may have the right to ask the prime minister to reconsider his or her advice (as permitted, for example, by article 74 of the Constitution of India), thereby opening up some scope for discussion between the head of state and the prime minister on the necessity and propriety of dissolution.

Head of state bound by conventional rules

In the examples listed above, both the principle that the head of state must normally act on the advice of the prime minister in the exercise of the dissolution power and the specific exceptions to that principle are clearly stated in the written text of the constitution as a matter of constitutional law. It is also possible, however, for the rules regulating the exercise of the dissolution power to be found only in unwritten conventions that have emerged by consensus over time and are

generally understood and accepted by the major political actors. Such reliance on mostly unwritten conventional rules can be found in several well-established and stable parliamentary democracies, not only those of British heritage such as Australia and Canada, but also in some older European monarchies such as Denmark and the Netherlands. A literal textual reading of the constitutions of these countries would appear to grant nearly unlimited powers of parliamentary dissolution to the head of state (or the governor-general representing the head of state), although, in practice, the prime minister normally makes the decisions and the personal 'reserve power' of the head of state or governor-general is limited by convention.

However, the enforcement of these unwritten conventional rules depends on the willingness of political actors to be bound by them, whether from a sense of honour and constitutional propriety, or out of fear of losing political support and legitimacy if deeply embedded and strongly supported conventions were to be violated. Because the rules are not stated in the constitutional text, and indeed might not be written in any official document, there may be considerable debate about whether particular rules apply, and how to apply them, in each case. It can be difficult both for citizens and for political actors to know where they stand. Recognizing the shortcomings of such unwritten rules, there is a growing trend for conventions to be recorded and codified in an official and authoritative source such as a **cabinet manual**, as found, for example, in New Zealand and the United Kingdom. Formal resolutions may also be passed 'recognizing and declaring', and thereby codifying and committing to writing, certain conventional rules, but without giving them legal status or incorporating them into the constitutional text, as happened in Australia in the 1980s (Saunders 2011).

Cabinet manuals and other such authoritative written statements of conventions may remove some uncertainties and ambiguities about what the conventions are, and can provide some clarity and guidance in their application. However, since these documents are usually produced and applied by the government, and are descriptive rather than prescriptive in nature, they can be changed by the government to reflect changes in practice without needing a constitutional amendment or even parliamentary approval. The conditions favourable to such evolving interpretation and application of the rules are rarely found in countries that are transitioning to, or trying to consolidate, democracy. So although conventional rules regulating the exercise of the power of dissolution are still found in some old constitutions, in countries with long and successful democratic records, it would generally be unwise to rely on conventional rules when drafting a constitution today, especially for a new democracy.

Dissolution by decision of parliament

Another possible design option is to allow parliament to vote for its own dissolution, thus enabling parliament to decide whether it should dissolve itself before the scheduled end of its term of office. The Constitution of the Solomon Islands (section 73), for example, provides that, 'If at any time Parliament decides by resolution supported by the votes of an absolute majority of the members of Parliament that Parliament should be . . . dissolved, the Governor-General shall forthwith . . . dissolve Parliament by proclamation published in the Gazette'. In this case the formal act of dissolution is performed by the governor-general, but the governor-general performs this act on the basis of a parliamentary decision, not prime ministerial advice.

This arrangement means that the resolution of political crises (for example, following the resignation of the government, a vote of no confidence or an inconclusive general election result producing no clear majority) ultimately remains in parliamentary hands. Any decision to dissolve parliament must be debated in parliament and accepted by parliament (rather than being imposed upon parliament after being decided in secret by the president, prime minister or cabinet). The need to seek the approval of parliament for a premature dissolution might also prevent the frivolous misuse of the dissolution power: members are likely to seek other means of resolving crises (such as a change of government in the event of the passage of a vote of no confidence, or the formation of a minority government in the event of an inconclusive election) rather than put their own seats at risk in an election.

Placing the decision to dissolve parliament in parliament's own hands also means that the government cannot use the threat of dissolution as a means by which to cajole or influence parliament, thus strengthening parliament as a whole, and backbenchers in particular, against domination by the executive. This approach, finally, removes any ambiguity about the existence or proper use of the head of state's discretionary powers, since those powers are expressly vested in parliament and thereby denied to the head of state.

In a multi-party system, the need for an absolute majority of the entire membership of parliament to vote for dissolution may give junior coalition partners a veto over dissolution, thus strengthening their bargaining position vis-à-vis the senior coalition partner, especially at moments of coalition breakdown. This is because the junior partner, in denying the senior partner the ability to dissolve parliament at will when faced with a loss of confidence, can buy the time necessary to pursue coalition negotiations with other parties.

Some parliaments can dissolve themselves only by means of a decision passed by a supermajority. In Lithuania, a three-fifths majority of the total membership of parliament is required. In Kosovo, a two-thirds majority of all members must

vote in favour of dissolution. The likely effect of such provisions (depending, of course, on the political circumstances) is to give the major opposition party or parties a veto over the early dissolution of parliament. This may prevent incumbents from manipulating the date of elections to coincide with a peak in their position in opinion polls.

Automatic/obligatory dissolution

All parliaments are dissolved upon completion of their maximum term of office. Such dissolution may be automatic (i.e. parliament is legally dissolved without any action being taken by the head of state or prime minister) or obligatory (i.e. the head of state is constitutionally obliged to dissolve parliament by a certain date). Either way, there is no discretion in the matter.

Following the logic of parliamentary democracy, other situations leading to automatic or obligatory dissolution of parliament before the completion of its maximum term are usually those associated with the failure of parliament to form a government enjoying majority support, the withdrawal of parliamentary confidence from the government or the failure of parliament and government to cooperate (for example, by failing to pass a budget).

- The Constitution of Fiji (article 62) provides that, 'if after the third vote [on the appointment of a Prime Minister], no person receives the support of more than 50 per cent of the members of Parliament, the Speaker shall notify the President in writing of the inability of Parliament to appoint a Prime Minister, and the President shall, within 24 hours of the notification, dissolve Parliament and issue the writ for a general election to take place'.
- In Sweden (chapter 6: 3), if a government enjoying the confidence of parliament has not been appointed after four rounds of voting, parliament must be dissolved before the government formation process can continue.

Constitutions may also provide for automatic or obligatory dissolution in other circumstances. In Belgium (article 195), for example, the adoption of a proposed constitutional amendment results automatically in the dissolution of parliament (so that the amendment can then be ratified by the next parliament, following a general election). On procedures for constitutional amendment see International IDEA Constitution-Building Primer No. 10, *Constitutional Amendment Procedures*.

Dissolution by public decision (referendum)

Although not very common, there are some constitutions that allow the people themselves to dissolve parliament. The Constitution of Latvia, for example, enables a national referendum on the dissolution of parliament to be held on the proposal of one-tenth of the electorate (article 14) or on the proposal of the president (article 48). These provisions are based on a very democratic principle that: (a) the parliament is the people's agent, and that the people should have the right to dismiss it even between scheduled elections; and (b) in disputes between the president and parliament, the people, who possess sovereign authority, should have the right to make the final decision. While these provisions are highly democratic, there is a danger that recourse to such a referendum could escalate political crises, and could have a divisive, crudely majoritarian, effect.

Another use of referendums is as a way of appealing to the people to resolve disputes between the parliament and the president, such as when parliament initiates a process to remove the president from office. Article 102 of the Constitution of Slovakia, for example, enables parliament to remove the president only by holding a referendum. If the people vote to keep the president in office, then parliament is automatically dissolved. Likewise, the Constitution of Iceland (article 11) states that if a referendum is held on the removal of the president, and if the people do not vote in favour of the president's removal, then the parliament 'shall be immediately dissolved and new elections called'. These provisions are not, strictly speaking, mechanisms for the public dissolution of parliament, since, unlike the Latvian provisions discussed above, they can be triggered only by an impeachment process by which parliament attempts to remove the president from office. Dissolution, if it results, is only a by-product of the people's rejection of the impeachment process. The effect of such rules may be to dissuade parliament from taking impeachment lightly, since it will put itself at risk by doing so.

In Estonia, parliament is dissolved if a bill submitted to a referendum is not supported by the majority of the people (article 105). The rationale for this rule is that if the parliamentary majority is seriously out of step with public opinion, then parliament should be dissolved and new elections held. Another effect of the rule, however, is to discourage parliament from holding a referendum unless the parliamentary majority is relatively sure that it is on the same side as public opinion.

For more on referendums see International IDEA Constitution-Building Primer No. 3, *Direct Democracy*.

No dissolution before completion of parliament's term of office

A final possible design option is simply to prohibit premature dissolution, such that parliament sits for a fixed term and may not be dissolved before that term has reached its scheduled end. This provides parliament with security from arbitrary dissolution, strengthening it as an institution with regard to the executive, especially when compared to systems in which the government or the head of state has a broad discretionary power of dissolution.

However, the complete absence of any mechanism to break deadlocks may be troublesome, especially if it is not possible to form a government that enjoys the confidence of parliament following a general election. If a government loses the confidence of parliament mid-term, and a new government is then formed, the absence of a dissolution provision means there is no way to enable the people to express their views on the shape of the new government by means of a general election.

In consequence, there are very few successful examples of parliamentary constitutions in which there is no provision for early dissolution under any circumstances. The Constitution of Norway, which is over 200 years old, is a rare example. The desired effect of protecting parliament from arbitrary dissolution may be achieved more flexibly by other means (such as by allowing parliament to vote for its own dissolution or by allowing the head of state to dissolve parliament only in certain specified circumstances). Such fixed terms are, however, the norm in presidential systems, where the cabinet depends on the will of the president and not on the confidence of the parliamentary majority.

Combined approaches

The questions 'Who can dissolve parliament?' and 'Under what circumstances?' may be answered in a variety of ways within the same constitution, with the constitution allowing for a variety of possible routes to dissolution by different institutions, in different circumstances and for different reasons.

In designing the rules for dissolution, one should think very carefully about the various functions that dissolution can perform in the political system (as outlined in the previous sections) and consider whether different functions are best entrusted to different actors.

- In Israel (sections 34–35 of the Basic Law: The Knesset), the Knesset (parliament) may be dissolved by means of a law passed by an absolute majority of its members. The Knesset may also be dissolved if it fails to pass a budget, if it fails to grant confidence to a prime minister within a

specified time following a general election or if the prime minister advises the president that he or she has lost the confidence of the Knesset (section 29 of the Basic Law: The Government).

- In Spain, the government can dissolve parliament at will, but dissolution is automatic, on the advice of the speaker, in situations in which a government cannot be formed (article 99).
- The Estonian Constitution prescribes four different paths to premature dissolution, each in different circumstances, and each with different intended effects on the political system (see table of examples at the end of this primer).

5. Additional design options

Date of election and the next meeting of parliament after a dissolution

The dissolution of parliament leads necessarily to a new parliamentary election and, in due course, to the first meeting of the new parliament. During the interval between the dissolution of the previous parliament and the first meeting of the next parliament, there is no parliament in session, meaning that the government can govern without parliamentary scrutiny or supervision. This can be a point of weakness in a democratic system, especially when the dissolution is occasioned by a vote of no confidence in the government. In order to prevent the democratic deficit that would otherwise result from a long interval between the dissolution of parliament and the first meeting of the newly elected parliament almost all constitutions specify that (a) elections must be held within a specified time after a dissolution; and (b) the new parliament must meet within a specified time after the election. These times can vary, although a period of more than about three months between the dissolution of parliament and the first meeting of the next parliament would be rather exceptionally—and perhaps dangerously—long.

Duration of parliamentary terms

In the vast majority of parliamentary democracies, the parliament (or, in bicameral systems, the lower house) is elected for a term of four or five years (IPU 2015). These terms express the maximum period of time that may normally elapse between elections (barring, for example, exceptional circumstances, such as a state of emergency, that might allow elections to be postponed).

If the parliament is dissolved before its term is complete, the electoral countdown or calendar is usually reset, such that the next parliament is also elected for the full term. So if, for example, a parliament with a maximum term of four years is dissolved two years into its term, the next parliament will also, as a rule, be elected for a maximum term of four years. If the government can dissolve parliament at will, and so choose the timing of the election to best suit its own electoral interests, this resetting of the electoral clock can give incumbents a great incentive to dissolve parliament before the end of its maximum term in order to extend their tenure in office by winning a new, fresh mandate.

In some countries (e.g. Sweden) elections take place according to a fixed schedule regardless of any intervening dissolution. The election following an early dissolution is additional to, and does not replace, a scheduled election, and does not have the effect of resetting the countdown to the next election. So if, under this arrangement, a parliament is dissolved two years into its four-year term, then the next parliament will serve for only two years, at which point the scheduled elections will be due to take place. This means that an incumbent government cannot use moments of popularity to renew its lease on power, and thus governments operating under this system will be less inclined to risk a dissolution of parliament from which they could lose power, but not extend their tenure. Of course, it might still be advantageous for a government to dissolve parliament under such conditions (for example, in an attempt to increase the size of its majority and so protect itself against defections, or to obtain a new mandate from the people after a change of leadership or policy direction).

Periods or situations in which dissolution is prohibited

Many constitutions specify certain periods or situations in which parliament may not be dissolved.

Restrictions on the frequency of dissolution

Dissolution may be prohibited within a certain period following a previous dissolution, or within a certain period following a general election. Such rules mean that a parliament newly elected by the people must at least be given a reasonable chance to meet and to function normally before it is dissolved.

This prevents the nullification of election results by repeatedly dissolving parliament until a satisfactory result (in the eyes of whoever wields the power of dissolution) is obtained. It also makes it harder to cower parliament into submission by means of repeated dissolutions that might otherwise intimidate or harass parliamentary leaders.

- The Constitution of Lithuania (article 58), for example, prohibits the president from dissolving parliament during a period of six months after previous extraordinary general elections.
- Portugal's Parliament cannot be dissolved 'during the six months following its election' (article 172), whether that was a scheduled election at the end of parliament's maximum term or following a premature dissolution.

Two points can be raised in relation to these provisions. First, such prohibitions are most useful, and most necessary as a safeguard, when the power of dissolution rests in the hands of a head of state whose own tenure of office is not affected by the dissolution of parliament. When the dissolution power is effectively wielded by a prime minister, whose own party might suffer from its abuse, and whose own tenure of office would be on the line at each election, such prohibition of repeated dissolution is likely to be less necessary. Likewise, when parliament can be dissolved only by its own decision, it is unlikely to use this power in a disruptive way, as it will have no incentive to do so.

Second, there is an obvious incompatibility between such prohibitions on the exercise of dissolution power immediately after an election and the use of dissolution as a way of resolving a deadlock situation, in which a government enjoying the confidence of parliament cannot be formed. There is no fail-safe mechanism that can break the deadlock by means of another election in such cases. It is notable that, in the Lithuanian example cited above, the six-month period during which dissolution is prohibited applies only to dissolutions initiated by the president, but not by parliament. In other words, it prevents the president from arbitrarily dissolving parliament if he or she disagrees with the outcome of an election, but allows parliament to dissolve itself if a viable government cannot be formed in a reasonable time.

Prohibition of repeated dissolution for the same reason

A few constitutions (e.g. Austria, article 29) prohibit the dissolution of parliament more than once for the same reason or the same cause. In principle, this is supposed to protect parliament from repeated, unnecessary dissolutions. It means that the president can dissolve parliament once, in a particular crisis, in order to assess the mood of the people but cannot dissolve it again in the hope of getting a different answer from the people. However, the institutional actor that orders the

dissolution (such as the president or the prime minister) usually has discretion to determine whether a dissolution is for the same reason as a previous dissolution, so in practice this constraint may be more apparent than real.

Prohibition after a vote of no confidence

As previously discussed, some constitutions prohibit the dissolution of parliament following a vote of no confidence or resignation of the government, pending an opportunity to form a new government. In many cases, however, this takes the form of a discretionary right of the head of state to refuse a dissolution requested by a prime minister who has lost the confidence of parliament, rather than an outright prohibition of dissolution.

Prohibition of dissolution at the end of the president's term of office

Some constitutions prohibit the dissolution of parliament during the final months of the president's term of office.

- In Romania (article 89) parliament 'cannot be dissolved during the last six months of the term of office of the President'.
- The Constitution of Portugal likewise prohibits dissolution 'during the last six months of the President of the Republic's term of office' (article 172).
- Similar prohibitions exist in the constitutions of Slovakia (article 102), Tunisia (article 77) and Ukraine (article 90), among others.

Such rules make having a parliamentary election at the same time as, or very close to, a presidential election less likely. This means that the office of president will not be vacant at the same time that parliament is dissolved and a new government formation process is taking place. Thus, at least one of the major institutions will be able to ensure stability and prevent a potentially destabilizing power vacuum.

Prohibition of dissolution to protect inter-institutional checks and balances

Parliaments often have check-and-balance functions in relation to other public institutions, which may include, for example, acting as a body for the impeachment of the president. If a president can dissolve parliament at will, he or she could use (or abuse) this power to avoid accountability. For this reason, constitutions may prohibit dissolution under such circumstances. The Constitution of Croatia (article 104), for example, states that the president may not dissolve parliament if impeachment proceedings have been instituted against the president for violation of the constitution. An alternative approach, which also has the effect of protecting the parliament from dissolution by a president who is subject to impeachment proceedings, is to suspend the president from

office and place the prerogatives of the presidency in the hands of an acting president as soon as impeachment proceedings are initiated.

Prohibition of dissolution during a time of war or state of emergency

Many constitutions prohibit the dissolution of parliament during a time of war or a state of emergency. The provisions of the Constitution of the Republic of China (Taiwan) are quite typical: 'The president shall not dissolve [parliament] while martial law or an emergency decree is in effect' (Additional Articles, article 2). Similar provisions can be found, for example, in Cabo Verde (article 156), Romania (article 89) and Portugal (172). There are three main reasons for this type of prohibition. First, during an invasion, a major war or a state of emergency it might be difficult to hold elections that are free, fair and inclusive (as an aside, it is worth noting that many constitutions also allow scheduled elections to be delayed in such cases). Second, such conditions require stability and continuity, and a dissolution of parliament could be both disruptive and divisive. Third, times of war or emergency frequently involve a broad delegation of leadership power to the executive branch, and it is necessary for parliament to remain in office (and in session) in order to supervise such powers and to ensure that they are not abused. For additional information on postponement of elections during states of emergency see International IDEA Constitution-Building Primer No. 18, *Emergency Powers*.

Dissolution in bicameral systems

In most parliamentary democracies, the responsibility of the government is only to the lower house (that is, to the house that most directly and immediately represents the people). By convention or constitutional law, most upper houses, where they exist, do not have the authority to remove the government by means of a vote of no confidence. As such, most of the discussion of parliamentary dissolution in this primer relates, when applied to bicameral systems, only to the lower house. The upper house is, in many cases, a permanent body whose continuity is unaffected by a dissolution of parliament. However, a small minority of parliamentary systems, as exceptions to this general rule, make the government equally responsible to both houses, and in these cases, the same principles regarding the extent and use of the dissolution power may apply to both houses.

Australia has a unique double-dissolution provision. The House of Representatives can (within broad conventional limits) be dissolved at will by the governor-general on the advice of the prime minister. The Senate, meanwhile, usually serves for fixed terms and cannot be dissolved at will. Nevertheless, if there is a serious impasse between the two houses with regard to a bill, the prime minister may break the deadlock by advising the governor-general to dissolve

both houses at once (section 57). This provision has been used several times in Australia's history, most recently in 2016.

Some older constitutions used to use the upper house as a way of constraining otherwise broad powers of dissolution vested in the president. The 1921 Polish Constitution originally allowed two routes to dissolution of the lower house: by a two-thirds majority vote of its own members or by decision of the president with the consent of a three-fifths majority of the Senate. These rules made it difficult for the government to dissolve parliament in response to a vote of no confidence or a lack of cooperation and support from parliament (Brzezinski 2000).

For more on second chambers see International IDEA Constitution-Building Primer No. 2, *Bicameralism*.

Consultation

Prime ministers who exercise the power of dissolution may in practice be obliged, by conventional usage and by political realities, to consult with cabinet colleagues before dissolving parliament, but explicit constitutional requirements to consult with cabinet colleagues are rare.

When the power of dissolution is effectively vested in, and exercised by, the head of state, however, it is not unusual—especially in semi-presidential systems—for the constitution to require the head of state to seek advice before ordering the dissolution of parliament. Sometimes the head of state is required to consult the prime minister, sometimes the president (speaker) of the parliamentary chamber(s), sometimes other institutions such as an advisory Council of State and sometimes party leaders.

- Article 89 of the Constitution of Romania requires the president to consult 'the presidents of the two chambers and the leaders of the parliamentary groups' before dissolving parliament.
- The President of Portugal is required by article 172 of the Constitution to consult 'the parties with seats in the Assembly', as well as the Council of State (an advisory body that consists of the presiding officer of parliament, the prime minister, the president of the Constitutional Court, the ombudsman, the presidents of the regional governments, former presidents of the republic, five nominees of the president and five members elected by parliament).
- In Ireland, the president must consult with an advisory Council of State, consisting of *ex officio* and appointed members, before refusing dissolution, but the advice of the Council is not binding.

Unlike a requirement to **act on advice**, a requirement to **consult** with another authority does not normally imply an obligation to act in accordance with the advice given (although different countries, by means of conventional practice or judicial interpretation, may affix different meanings to the word). The Constitution of the Bahamas (section 79) provides some guidance on this point, stating: 'Where the Governor-General is directed to exercise any function after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice or recommendation of that person or authority'.

6. Contextual considerations

Decisions about the design, location and limits of the dissolution power need to be taken with the overall balance of power between institutions constantly in view: as has been discussed, dissolution is intrinsically related to the processes of government formation and removal in parliamentary democracies. The allocation of the dissolution power between the branches of government will therefore be part of the overall package of constitutional powers that determines, first, who exercises leadership in the state, and, second, how effectively leaders are constrained and held accountable.

Think Point 1

Is the political system being designed supposed to be one in which the executive dominates policymaking, using the power of dissolution to exert strong leadership over Parliament? Or is it to be a system in which there is a balance of power between the executive and legislative branches?

If the former, what will be done to prevent abuses of power? What extra-parliamentary checks and balances will be used to compensate for Parliament's vulnerability to dissolution?

If the latter, what measures will be taken to ensure stability, responsibility and effective governance? If Parliament is secure from arbitrary dissolution, what other 'tie-break' mechanisms will be used to prevent deadlock?

The head of state: their role and method of selection

The method of selecting the head of state—whether by direct popular election, indirect election by parliament or an electoral college, or by hereditary succession—will have an obvious influence on the democratic legitimacy of the head of state, and, as a consequence, on both: (a) the acceptability of vesting discretionary powers in the head of state; and (b) the likelihood that such discretionary powers, if formally granted by the constitution, will actually be exercised by the head of state.

Hereditary monarchs are in a category of their own. Their role in a functioning democracy is largely symbolic and ceremonial, and their effectiveness as instruments of national unity depends upon maintaining an impartial and non-political stance. A reputation for impartiality may be difficult to sustain if the head of state is called upon to resolve political crises by dissolving (or refusing to dissolve) parliament. One possible solution to this problem is to vest the power of dissolution expressly in the government rather than the head of state, as in Sweden, for example. Another potential solution is for the head of state to be required, in certain circumstances, to act on the advice and with the countersignature of the speaker or presiding officer of parliament, as in Spain.

Governors-general, as representatives of an absentee monarch, are in a similarly weak position. Even when they are granted certain discretionary powers by the constitution, their lack of a personal democratic mandate, coupled with the fact that they can in most cases be dismissed at will by the government, means that they are generally reticent in the use of their powers and construe their freedom of action narrowly when departing from prime ministerial advice. Indirectly elected presidents, despite their lack of a democratic mandate, have some independent standing in relation to the government. This independence comes from the manner of their election (which by convention often involves a search for a trusted and well-respected statesperson who enjoys cross-party support) and in part from the security of tenure offered by their fixed term (O'Brien 2014).

Directly elected presidents, in contrast, especially those who run as members of political parties (rather than being elected as independents), are usually expected to make robust use of their constitutional powers. It must be emphasized, however, that these general observations are not hard-and-fast rules. Some directly elected presidents (such as that of Ireland) have only narrowly limited powers with regard to dissolution. Others (such as the president of Austria) are constrained by conventions and by political circumstances that under normal circumstances would prevent them from using their powers of dissolution at will, despite being popularly elected and having broad powers of dissolution in the text of the constitution.

On the roles and duties of heads of state in parliamentary democracies see International IDEA Constitution-Building Primer No. 6, *Non-Executive Presidents in Parliamentary Democracies* and International IDEA Constitution-Building Primer No. 7, *Constitutional Monarchs in Parliamentary Democracies.*

Party system

The way in which the power of dissolution is likely to be used in practice will depend not only upon the constitutional rules but also upon the shape of the party system, that is, the effective number of parties in parliament, their degree of internal cohesion or factionalism and whether relationships between the parties are centripetal and cooperative or polarized and competitive. The party system, in turn, will be influenced not only by sociological factors that are beyond the control of constitutional designers, but also by other aspects of constitutional design, such as the electoral system.

In a party system characterized by two competitive and disciplined parties, each of which expects to alternate in office and to enjoy an absolute majority in parliament, dissolution rules like those found in many Westminster-influenced democracies, such as Malta and Saint Lucia, which give the head of state discretion in refusing dissolutions requested by the prime minister, or in dissolving parliament on his or her own authority if a prime minister cannot be appointed, are relatively unlikely to be invoked. There is likely always to be one party with a majority, with a clearly designated leader, and that leader will be prime minister and will have broad discretion to dissolve parliament at will. Situations in which the head of state might exercise personal discretion to act without, or contrary to, prime ministerial advice will be very rare.

In a multi-party system, where there is more scope for the formation and collapse of majority coalitions between parliamentary elections, delicate situations calling for dissolution to resolve a political crisis might be more likely to occur. Likewise, in a system where parties are internally divided, and so might either change leaders midway through the term of parliament or lose their majority status due to defections, there is likely to be more recourse to mid-term dissolutions.

Ability to hold elections

The process of holding elections can require a considerable investment of money, time and other resources. In some contexts, there may also be security concerns, and inter-communal tensions can be particularly high during elections. So although regular elections are essential to democracy, holding elections too frequently can place a great burden on society, especially in poorer contexts or

places where the state capacity is less well developed. This being the case, consideration should be given to means by which unnecessary, frivolous or opportunistic dissolutions are, so far as possible, avoided. A good antidote to excessive dissolutions is to make those who order or advise dissolution responsible to the people for their decision (that is to say, that dissolution might result in their own removal from office). When the decision to dissolve parliament rests in the hands of an elected president, they can be relatively immune from the consequences of dissolution, since their own tenure of office remains unaffected by the outcome of the following parliamentary election. When the decision to dissolve parliament rests in the hands of a prime minister, or with the members of parliament themselves, the thought that their own party might be punished by the electorate, and that their own seat might be at risk, could act as an effective restraint against abuse of the dissolution power.

7. Decision-making questions

1. Where is leadership power supposed to reside in the political system: in the parliament itself, in the prime minister and cabinet or in the head of state? How should the dissolution power, in terms of its location and extent, reflect this?
2. What has been the recent historical situation in the country in terms of executive– legislative relations: has the tendency been towards weak, ineffective and unstable government, or has there been a pattern of executive domination and poor parliamentary accountability? What changes to the rules of parliamentary dissolution would best help correct the deficiency?
3. How do the processes of government formation and dissolution interact? How can the constitutional design ensure a coherent relationship between the two? Are there any discrepancies (i.e. situations in which the rules appear to be inconsistent or unclear)?
4. How is the head of state selected—directly by the people, indirectly by parliament or an electoral college or by hereditary succession? What influence will this be likely to have on the range of dissolution powers that can be entrusted to the head of state?
5. If the dissolution power is expected to be exercised by the head of state on the advice of the prime minister, should there be exceptional circumstances in which the head of state might act without, or contrary to, such advice? How clearly is this specified in the constitution?
6. Should there be any circumstances or conditions in which parliament may not be dissolved?

7. What precautions can be taken to prevent power vacuums when parliament is dissolved?
8. Should the dissolution of parliament reset the electoral calendar? Or should ordinary elections continue according to schedule notwithstanding an extraordinary election?

8. Examples

Table 8.1. Dissolution by vote of parliament

Country	Who can dissolve parliament?	Circumstances and limitations	Purpose/comments
Solomon Islands	'If at any time Parliament decides by resolution supported by the votes of an absolute majority of the members of Parliament that Parliament should be . . . dissolved, the Governor-General shall forthwith . . . dissolve Parliament by proclamation published in the Gazette'	'A motion for a resolution under the preceding subsection shall not be passed by Parliament unless notice of the motion has been given to the Speaker at least seven clear days before it is introduced'	These provisions give parliament control over its own dissolution. In practice, early dissolutions are rare. A multi-party system, coupled with this dissolution rule, means that it is more usual for the office of the prime minister to change hands between general elections

Table 8.2. Dissolution by the head of state

Country	Who can dissolve parliament?	Circumstances and limitations	Purpose/comments
France	The president 'after consulting the Prime Minister and the Presidents of the Houses of Parliament'	'No further dissolution shall take place within a year following said election'	This is a very broad and discretionary power of dissolution, which the president can use for partisan purposes, and which greatly strengthens presidential power The president can dissolve parliament in order to appeal, over the heads of the government and the parliamentary majority, to the people
Portugal	The president 'after consulting the parties with seats in the Assembly and the Council of State'	'The Assembly of the Republic shall not be dissolved during the six months following its election, during the last six months of the President of the Republic's term of office, or during a state of siege or state of emergency'	As in France, this rule allows the president broad discretion in the exercise of the dissolution power
Romania	The president 'after consulting with the presidents of the two Chambers and the leaders of the parliamentary groups'	Dissolution is permissible only if 'no vote of confidence has been obtained for the formation of the Government within 60 days of the first request, but only after the rejection of at least two requests for investiture' 'Parliament can be dissolved only once in the course of a year' 'Parliament cannot be dissolved during the last six months of the term of office of the President of Romania, or during a state of mobilization, war, siege or emergency'	Compared with the provisions in France and Portugal, the Romanian Constitution places much stricter limits on the president's use of the dissolution power

Table 8.3. Dissolution by the head of state on advice of the prime minister

Country	Who can dissolve parliament?	Circumstances and limitations	Purpose/comments
Malta	'The President may at any time by proclamation prorogue or dissolve Parliament. In the exercise of his powers under this article the President shall act in accordance with the advice of the Prime Minister'	'Provided that— a. if the House of Representatives passes a resolution, supported by the votes of a majority of all the members thereof, that it has no confidence in the Government, and the Prime Minister does not within three days either resign from his office or advise a dissolution, the President may dissolve Parliament; b. if the office of Prime Minister is vacant and the President considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, the President may dissolve Parliament; and c. if the Prime Minister recommends a dissolution and the President considers that the Government of Malta can be carried on without a dissolution and that a dissolution would not be in the interests of Malta, the President may refuse to dissolve Parliament'	Malta's Constitution allows three exceptions to the general principle that dissolution occurs on the advice of the prime minister; of these, the third is the most politically significant, as it allows a president, at their own discretion, to refrain from dissolving parliament following a vote of no confidence, and to allow a period for the formation of an alternative government without a general election; it also allows the president, at his or her discretion, to prevent vexatious dissolutions In practice, these discretionary powers have not been used, as the two-party system means that situations calling for their use have not occurred
Bangladesh	'Parliament shall be summoned, prorogued and dissolved by the President by public notification: Provided further that in the exercise of his functions under this clause, the President shall act in accordance with the advice of the Prime Minister tendered to him in writing'	Not applicable	This formulation gives the prime minister virtually unlimited discretion over the dissolution of parliament

Jamaica	'The Governor-General may at any time by Proclamation published in the Gazette prorogue or dissolve Parliament. In the exercise of his powers under this section the Governor-General shall act in accordance with the advice of the Prime Minister'	'Provided that if the House of Representatives by a resolution which has received the affirmative vote of a majority of all the members thereof has resolved that it has no confidence in the Government, the Governor-General shall by Proclamation published in the Gazette dissolve Parliament'	The Constitution of Jamaica, like that of Bangladesh, gives the prime minister virtually unlimited scope in recommending a dissolution of parliament It includes a provision that further strengthens the prime minister in relation to parliament: if the house passes a vote of no confidence, then it is automatically dissolved
Pakistan	'The President shall dissolve the National Assembly if so advised by the Prime Minister'	'Reference in this Article to "Prime Minister" shall not be construed to include reference to a Prime Minister against whom a notice of a resolution for a vote of no-confidence has been given in the National Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the National Assembly' 'The President may also dissolve the National Assembly [at] his discretion where, a vote of no-confidence having been passed against the Prime Minister, no other member of the National Assembly commands the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution, as ascertained in a session of the National Assembly summoned for the purpose'	The Constitution of Pakistan also gives the prime minister virtually unlimited scope in recommending a dissolution of parliament Unlike those of Bangladesh and Jamaica, however, it allows parliament to pass a vote of no confidence in the government, and to have a chance at forming a new government without risking a dissolution A prime minister who has lost the confidence of parliament cannot advise a dissolution, and the National Assembly must be given an opportunity to show confidence in a new prime minister before the president may, in the absence thereof, order a dissolution

Table 8.4. Combined approaches

Country	Who can dissolve parliament?	Circumstances and limitations	Purpose/comments
Czechia	1. The president (at his or her own discretion, but only in the circumstances indicated):	(a) If the Assembly of Deputies (lower house) does not adopt a resolution of confidence in a newly appointed government nominated on the proposal of the chair of the Assembly; (b) If the Assembly fails, within three months, to reach a decision on a governmental bill that the government has declared to be a matter of confidence; (c) If a session of the Assembly has been adjourned for a longer period than is permissible; (d) If, for a period of more than three months, the Assembly has not formed a quorum, even though its session has not been adjourned and it has, during this period, been repeatedly summoned to a meeting	To break deadlocks surrounding the formation of a government To strengthen the executive and to make it easier for the government to pass its legislative measures To ensure that parliament is present and is properly performing its duties
	2. The president (obligatory)	If the Assembly votes for its own dissolution by a three-fifths majority of all deputies	To enable parliament to reset itself in the event of a deadlock or the need for a new mandate from the people
Croatia	1. Parliament, by a majority vote of its members (article 78)	No specified reasons or restrictions	To enable parliament to reset itself in the event of a deadlock or the need for a new mandate from the people
	2. President on the proposal of the government and with the countersignature of the prime minister, and after consultations with the representatives of the clubs of parliamentary parties (article 104)	(a) if parliament has passed a vote of no confidence in the government; (b) if parliament has failed to approve the national budget within 120 days from the date when it was proposed	Parliament cannot remove the government from office without the government having a reciprocal opportunity to call new elections Article 104(b) strengthens government in relation to parliament; provides an incentive for parliament to pass a proposed budget without extensive delay
	3. President (obligatory) (articles 112 and 116)	If, after a certain number of attempts, a prime minister who enjoys the confidence of parliament cannot be chosen	To break deadlocks surrounding the formation of a government

Country	Who can dissolve parliament?	Circumstances and limitations	Purpose/comments
Estonia	1. President (obligatory) (article 89)	If, after a certain number of attempts, a prime minister who enjoys the confidence of parliament cannot be chosen	To break deadlocks surrounding the formation of a government
	2. President on the proposal of the government (article 97)	Parliament passes a vote of no confidence in the government	Parliament cannot remove the government from office without the government having a reciprocal opportunity to call new elections
	3. President (obligatory) (article 105)	If a bill submitted to a referendum does not receive a majority of votes in favour	Makes a referendum on a bill into a question of public confidence in parliament. This may discourage the use of referendums if there is any uncertainty about the outcome
	4. President (obligatory) (article 1190)	If parliament has not passed the state budget within two months after the beginning of the budgetary year	Strengthens government in relation to parliament; provides an incentive for parliament to pass the proposed budget without extensive delay

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Annex

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