

Fixed-Term Parliaments: Electing the Opposition

Abstract

Constitutional reform requires a cautious approach that draws heavily on the theory of institutions. Too often arguments for particular constitutional arrangements are one-dimensional and limited in scope and imagination. This paper illustrates this theme by discussing the debate over fixed- and variable-term parliaments, and by offering a somewhat novel argument that focuses on the role of the opposition within a parliamentary system.

Introduction

The constitutional debate between fixed- and variable-terms of office for elected governments has recently been enlivened in the UK in the aftermath of the scandal surrounding MPs expenses in May 2009 (for evidence of the campaign see <http://www.fixedterm.org.uk/>). The scandal was met by renewed calls for a wide variety of constitutional reforms that were at least nominally aimed at reconnecting citizens with the parliamentary process, and limiting the discretionary power of MPs and government. Quite what the link from MPs expenses to fixed-term parliaments may be is not clear; perhaps it is no more than the thought that if we cannot trust MPs in one domain (expenses), we should not trust MPs, or the government, in any domain (determining the date of a general election) where there is an alternative institutional arrangement that operates without requiring trust. In any case, just as the advocates of constitutional reform have taken the opportunity to renew calls for their preferred measures, so I will take the opportunity to take up the argument.

The UK is by no means alone in having constitutional arrangements that allow of variable terms. Although details differ, Australia, Denmark, Iceland, Ireland, India, Japan, New Zealand and

Turkey are among those where there is at least at least some discretion in the timing of elections, and in a substantial number of these countries there have been calls for reform to fix the dates of national elections (see Chowdhury (1993)). In the case of Canada this reform has been introduced recently, although the government that introduced it did not then serve its full term (for discussion of the Canadian case see Reid (1998) Blais et al (2004), Leuprecht and McHugh (2008)).

The broad idea behind the argument for fixed-term parliaments is that allowing the government of the day the choice of the election date grants them an undue political advantage, generating an electoral bias in favour of the incumbent. Governments, so it is claimed, face an incentive to ride the waves of popularity, and such 'political surfing' (Inoguchi 1979) is argued to act against the longer-term public interest. The case of Germany - where Chancellor Schröder effectively orchestrated the loss of a motion of no confidence in July 2005 in order to precipitate a federal election - might be cited as evidence that, in systems in which the incumbent government has no formal discretion over the date of the election, they seek to gain such discretion informally; thereby suggesting that they see discretion as a valuable means of gaining electoral support. While this example is suggestive, it is hardly conclusive. The trigger was clearly an electoral loss to the CDU in North Rhine-Westphalia in May 2005 that put Schröder's SPD in the position of a minority government, rather than simply Schröder's expectation of electoral advantage, and the eventual outcome of the federal election in September 2005 was the emergence of a coalition Government headed by Angela Merkel's CDU, so that the evidence of actual advantage is also rather limited (Proksch and Slapin 2006). While this episode may have been Schröder's attempt at 'surfing', it can hardly be said to have been entirely successful, or to demonstrate a general argument.

While I do not dispute the validity of the claim that discretion over the election date generates a degree of incumbency bias, I will argue this claim falls far short of demonstrating the superiority of a system of fixed-term-parliaments. There are counter-arguments, some of which are themselves relatively standard, but I will also offer a somewhat novel argument against fixed-term parliaments that revolves around the idea of electing the opposition.

The remainder of this essay takes the following form: in the next section I issue a general call for caution in matters of constitutional reform. This call is intended to act as a warning against both

simple arguments and campaigning zeal. This is, however, not a conservative caution that points to the benefits of the status quo and questions our ability to theorize about reform; but rather a caution that points to a need for theory given the difficulties in relying on empirical evidence and intuition. The third section then sketches the standard argument for fixed-term parliaments in relation to incumbency bias and offers a response to that argument that operates in the same currency. The fourth section then outlines a rather more novel argument for variable-term elections; based on an understanding of the positive benefits of opposition.

Constitutional Caution

This note of caution comes in two parts. First, a reminder that constitutional arrangements should be considered as a whole rather than piecemeal. The implications of one piece of constitutional architecture may depend in important ways on other, seemingly quite distinct, aspects of the overall structure. Interactions between constitutional provisions are both complex and potentially important, and viewing each detail in isolation can be misleading: just as two seemingly similar constitutions may produce quite different outcomes, so similar overall effects may be produced by constitutions that differ in almost every detail (for discussion of piecemeal constitutional reform in the UK see Bogdanor (2005)). One implication is that international comparisons of constitutional performance and reforms are inherently difficult to interpret. Just because two constitutions share a particular feature (or features), it does not follow that that feature under study plays the same role in each case, or that it operates via the same channel or mechanism.

The second cautionary remark is that even when thinking about a specific constitutional element, it is rarely the case that there is a single argument that should clearly dispose us towards (or against) that element. It may seem obvious that a specific element of a constitution has effect X, and that effect X is good (or bad). But closer inspection will almost always reveal further effects that may, taken together, be more significant, even if less obvious; or complications in the normative realm. In these matters, as elsewhere, first thought are not always the best thoughts.

It might be thought that caution in the matter of constitutional analysis would cast constitutional reform in a conservative light: arguing that we should be deeply concerned about unintended/unexpected consequences, emphasize the evolutionary nature of constitutional

development, and place considerable normative weight on the status quo. However, I would resist this thought. Rather, I would point to the (radically non-conservative) idea that constitutional reform must be considered largely in theoretical terms. This is not to say that theory will give easy or unambiguous answers, or to deny that the issue of whether a particular constitutional reform will produce this or that effect is ultimately an empirical one. Rather, the point here is that that empirical methods based on evidence from other countries are also very unlikely to yield clear or unambiguous answers, or indeed any answers that do not have to be interpreted through a theoretical lens; and experimentation is likely to be both impracticable and dangerous. Only by developing relatively rich theoretical understandings of the various arguments for and against particular constitutional arrangements, and by considering the various interactions between specific constitutional elements, are we likely to be able to reach a reasonable view on the most appropriate constitutional reform (if any).

Having sounded these two notes of caution, I will, in what follows, largely ignore the first in order to focus on the second. That is, I will not take the interaction between the constitutional choice between fixed- and variable-term parliaments and other aspects of the constitution as my subject, but will consider some further and, perhaps, less obvious aspects of the choice between variable- and fixed-terms.

The standard argument and a response

Perhaps the most apparent ‘fact’ about a system that places some discretion over the decision on the date of a general election in the hands of the incumbent government is that it provides (or increases) an advantage to incumbency. On the assumption that the incumbent government is motivated at least in part by the desire to win the next election, we can expect the choice of the election date to be such as to maximize the probability of such a victory. And this seems difficult to justify from a constitutional perspective. If we should design our constitution so as to ensure, as far as possible, that parliaments and governments represent and act on the true interests of the electorate, we should be sceptical of any constitutional provision that seems to imply an unnecessary bias in the electoral system. At first sight, it seems clear that a fixed election date

reduces the bias by removing an asymmetry between government and opposition and replacing discretion with a rule.

This is a reasonable, if brief, summary of the standard argument for fixed-term parliaments. The argument can be formalised and investigated empirically (Kayser 2005; Lesmono et al. 2003; Smith 2004). More critically, it might be pointed out that voters may punish governments which are perceived as ‘surfing’ (Ito and Park 1988; Blais et al. 2004). However, my first point, developed in the remainder of this section, is that, even in theory, the argument is not as strong as it might appear. The basic issue at stake here can be reached by asking the basic question ‘compared to what?’ When thinking about the alternative to governmental discretion it is easy to assume that there is only one alternative, namely fixed terms, and that any argument against governmental discretion must be an argument in favour of fixed terms. But neither of these claims is true. For illustrative concreteness, let me construct a third possibility: imagine that immediately after each general election an official is charged with choosing the date of the next election by a method that involves some randomization (perhaps the rolling of a fair die to select between six dates which imply durations of parliament that range from 36 months to 60 months). The outcome of this process is kept secret, but the official is further charged with announcing the election a fixed period (say, 12 weeks) before the due election date. In this way the election date may be seen, at least to some extent, as a surprise to all participants. Now, of course, there are practical difficulties with such a scheme, but these do not concern me since it is no part of my argument to support this scheme or anything like it. I sketch this scheme only to point to the possibility of alternatives to the two presumed candidates, and alternatives which may have very different properties.

Now, reconsider the standard argument, and for a moment accept the basic claim that granting the government some discretion over the choice of the election date does generate (or reinforce) incumbency bias. Our question is, ‘compared to what?’ The answer seems clear when compared with the system of surprise elections. Under that system, if we believe that the Prime Minister has no way of knowing the date of the election until it is announced then she has no way of artificially ensuring that the date operates to the advantage of the incumbent party. Note that ‘artificially’ was a key word in the last sentence, because of course the government still has ways of trying to ensure that the election favours the incumbent regardless of the date of that election – but these are ways

that we generally approve of when considering constitutional design, ways that require that the government generally operates in the public interest and so maximizes its support. It is the ‘artificiality’ of the idea of opportunistically ‘surfing’ waves of popular support that supports the view that this element of incumbency bias is inappropriate. So, it certainly seems to be the case that a system of surprise election dates (perhaps with some minimum term and some maximum term) offers less of an incumbency bias than the system of government discretion, and without reversing the bias to favour the challenger.

But this does not imply that *any* alternative to governmental discretion will share this feature. Indeed, a few moments thought should be sufficient to convince us that if both incumbent and challenger know the date of the next election with certainty and far in advance, in the sense guaranteed by a system of fixed-term elections, this will in itself imply a bias in favour of the incumbent relative to the case of the surprise election. With the date fixed, the government can aim its policies at achieving maximum electability at that date; while the challenger can do little but hope for adverse events in the election period. Political-economic cycles and the related cycles in government popularity, may be used to the advantage of the incumbent under either a government discretion system or a fixed-term system (Franzese and Jusko 2006). In one case the government might ride the waves, while in the other case, they might manipulate the policies that create the waves, but there is no clear presumption in favour of one over the other. If incumbency bias is the problem, fixed-term elections may not be the answer.

So, when making the comparison between government discretion and fixed-terms, we should recognize that both are likely to induce an incumbency bias. This then brings two further points into play; one relating to rules versus discretion, the other relating to the impact on some measure of the public interest. On the first point, the advocates of fixed-term elections might argue that if both systems (ignoring any interactions with other aspects of the constitution) involve incumbency bias, we should adopt that which limits political discretion by imposing a rule. While this is not the place to review an enormous literature on rules vs. discretion (largely deriving from Kydland and Prescott (1977)), it is perhaps appropriate to recall that both rules and discretion are supposed to be means to the end of good government, rather than ends in themselves. While it may be that restricting the discretionary power of the government has appeal in at least some cases, it can be no

guarantee of better government – if it were we could always advance the public interest by restricting governmental power in substantive domains. The public interest argument must sometimes point in the direction of discretion; why else would we have government at all rather than some fully rule-governed process that could be automated?

This leads us to the second point – which of the two systems under discussion is likely to have the best impact on political outcomes overall? This is a matter that would require detailed analysis, starting from a clear and explicit understanding of what we mean by the public interest and including discussion of the distinction between the duration of parliaments and duration of governments, and empirical analysis of the causes of the government durability (King et al. 1990; Grofman and Van Roozendaal 1997; Lupia and Strøm 1995). I do not presume to know the outcome of such analysis, but I would claim that the relevant analysis will depend upon a good deal of theory (both normative and positive) rather than be entirely empirical in its nature. And it is not implausible to believe that the manipulation of policies to fit with a fixed election date can be more damaging to the overall public interest than the manipulation of an election date to fit with policies; and this thought would tend to support governmental discretion over fixed-term elections.

A more novel argument

So far I have dealt with the standard argument on its own terms; but in this section I want to depart from the debate on incumbency bias and offer a rather different line of argument in support of governmental discretion (or surprise elections) over fixed-term parliaments, at least in the context of the UK. This argument takes seriously the idea that a general election not only selects a government but also elects an opposition, and that encouragement of effective opposition is an important part of constitutional design.

Focus first on the value of the opposition in the UK's parliamentary systems. The role of the Opposition, with a capital 'O', in this system has several distinctive elements (Potter 1966) (Helms 2004): first, as a check on the power of government in the absence of a clear separation of powers between the executive and the legislature; second as a source of alternative political ideas that are bound by at least some idea of credibility, since the opposition will be bound by some idea that it might be called upon to put its ideas into practice; third as a vehicle for promoting public

deliberation via parliamentary and extra-parliamentary debate. Note that this view of opposition is very different from the understanding of opposition in more presidential, separation-of-powers constitutions with a focus on veto players (Tsebelis 2002).

Now, consider institutional arrangements that might support the opposition in performing these roles in ways that are valuable to the public. These will include providing formal space for the opposition in various parliamentary procedures, entrenching the opposition's role on important committees, perhaps re-thinking the role of the second chamber, and ensuring that the opposition is active at all times. How then to ensure the appropriate degree of activity? Re-consider the distinction between fixed-term and surprise elections in this context. Clearly the main focus of the opposition (small 'o') will be to organize itself to maximize the probability of winning the next election. Under a system of fixed-term elections this imperative may run counter to the provision of continuing, effective Opposition (capital 'O'). It may be that keeping a relatively low profile in the early years of a new government, in order to develop a new strategy, new leaders and to keep its ammunition dry, in order to return to the electoral arena at the appropriate moment to begin the campaign for the next election is the best strategy for an opposition determined to win the next election. And this is certainly what we observe in other political systems, particularly in presidential systems where there is typically no concept of Opposition (with a capital 'O') to the elected president in the sense of a continuing and rival 'president-in-waiting'.

By contrast, the system of surprise elections would provide the opposition with a clear incentive to provide effective and continuing Opposition: to constantly present itself as a credible alternative to the incumbent government. If an election may be called at short notice, the opposition has little alternative but to be election-ready at all times. And by this means we might expect a system of surprise elections to serve as a means of promoting effective Opposition and the wider values associated with it. Note that this is so even where (perhaps especially where) effective Opposition is not in the immediate interests of the parties and politicians who happen to be in opposition. Note also that, in this respect, the system of governmental discretion is a good substitute for a system of surprise elections. Indeed, giving the power to call an election to the incumbent government (rather than some random process) further sharpens the incentive for opposition parties to provide effective

Opposition, since they can be assured that, if they do not, their ineffectiveness will be maximally exploited.

This argument has a number of features of interest, but I would stress the indirect nature of the incentives deployed. In effect we grant one party (the incumbent government) a power, not because we believe that they will use this power directly in the public interest, but rather because we believe that the reaction of others to the fact that they have this power will induce behaviour (in the form of effective Opposition) that we believe will be in the public interest, and which they may not exhibit under relevant alternative arrangements.

Concluding Comments

In sketching these arguments I do not want to claim too much. Recall the earlier notes of caution. Any thorough review of any specific constitutional rule will need to be both wider and deeper than the arguments presented here. One implication is that there can be no presumption that an argument that fits well in the UK context will be appropriate elsewhere. The argument sketched in the previous section relies implicitly on the UK context, but even here there may be many possible ways of institutionalizing effective Opposition, and while discretion over the date of elections may play a role in this regard, that is not to say that fixed-term elections are inconsistent with effective Opposition in more complex constitutional structures.

But neither do I want to claim too little. The debate on constitutional reform is too often focused on the role of government and too seldom focused on the role of opposition. Constitutional debate is too often made up of a parade of familiar lines of argument, and their quantification, with little attempt to identify novel arguments or interestingly novel interactions between existing arguments. The argument for fixed-term elections (and argument over other particular constitutional elements) is too often seen as one that can operate free of other constitutional and institutional arrangements. In all of these areas there is a need to be rather more imaginative in developing relevant arguments. And I do want to suggest that a wide range of interesting arguments for and against particular constitutional arrangements can be accessed by the two step procedure of first asking ‘compared to what?’ to establish the appropriate institutional domain, and then by investigating the relatively subtle and indirect incentive effects that are put in place by alternative institutional arrangements.

Of course, incentive effects are not the only type of effects that are relevant, and incentive effects need to be analyzed in the context of other effects (Brennan and Hamlin 2000), but even in simple cases they can offer surprisingly rich and diverse arguments.

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