"The Fixed-term Parliaments Act of 2011: a model for reform of Greek parliamentarism?"[1]

> *In Parliament a Cabinet which can command a steadfast, even though not a very large majority, finds little check upon its powers.*
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> A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th edition, London, McMillan, 1915, p. lxxiii.

Introduction

Since Dicey made this remark little has changed, given that the power of the Cabinet or, to put it in more actual terms, of the Prime Minister has only grown more during the last decades. Above all, the current and constant (ab)use of the power of dissolution bears evidence to this fact. But what if this particular use of the power were not only a direct symptom of the above phenomenon but also one of its main causes? This would undoubtedly explain why reforms are needed in order to deal with the current distortions. Yet counterbalancing this "functionally autonomous" power, whose exercise is determined rather by the existing political context and interests than by reference to constitutional theories[2], still seems an impossible task; especially in so far as extra-legal constraints succeed in limiting it more effectively than any legal rule, as Laski cleverly remarks[3]. Despite the obvious difficulties, the aim of this article will be to argue in favour of a solution that could put a halt to the excessive and abusive use of the power of dissolution by modern Prime Ministers.

[1] I would like to thank P. Makri for reading the draft of this article and suggesting useful corrections.
[2] P. Lauvaux, *La dissolution des assemblées parlementaires*, préface d'André Mathiot, Paris, Économica, 1983, p. 402.
[3] H. Laski, *The Position of Parties and the Right of Dissolution*, Westminster, The Fabian Society, 1924, p. 15.

According to Markesinis, the act of dissolution is "the lawful act of the Executive to put an abrupt end to the life of Parliament"[4] (*i.e.* in most cases the lower house). Therefore, when the term dissolution is used in the present article it should always be understood as a premature dissolution. The Fixed-term Parliaments Act of 2011 [hereafter FTPA] is a statute passed by the UK Parliament that came into force on September 15, 2011 in order to "make provision about the dissolution of Parliament and the determination of polling days for parliamentary general elections…"[5]. It is fairly treated as a "serene revolution of English parliamentarism" as it attempts to provide written rules that limit the use of the power of dissolution, which was until now governed by (unwritten) constitutional conventions[6].

Regarding the origins of the notion, it should be noted that the British Parliament began convening at regular periods in the 17th century and it was the Septennial Act of 1716 that gave it a maximum term of years. From that point on we can speak of its dissolution, since a (premature) dissolution is not conceivable without a fixed term[7]. Classical constitutional theory suggests that there exists an organic link between dissolution and parliamentarism[8]. However, to see matters clear dissolution is not a *conditio sine qua non* of a parliamentary system. This is proven without doubt by the absence of any relative provision in the Norwegian Constitution of 1814 that is still in force or the feeble recourse to the practice of dissolution in other countries such as New Zealand and Sweden. As Lauvaux notes in this respect, though not an essential feature, dissolution proves itself useful to the functioning of democracy[9].

According to the orthodox view, dissolution is a "means for solving conflicts between the Executive and the Legislative, while paying tribute to the supreme powers of

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[4] B. Markesinis, *The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, Cambridge, Cambridge University Press, 1972, p. 7.

[5] Preamble to the Fixed-term Parliaments Act, available at http://www.legislation.gov.uk/ukpga/2011/14/pdfs/ukpga_20110014_en.pdf.

[6] D. Reignier, « Le *Fixed-term Parliaments Act* de 2011: La révolution à l'anglaise », *RDFC*, n° 91, 2012-2013, p. 615.

[7] B. Markesinis, *The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, *op. cit.*, p. 4.

[8] P. Lauvaux, *La dissolution des assemblées parlementaires*, *op. cit.*, p. 1.

[9] *Ibidem*, p. 477.

the electorate"[10]. This view is heavily influenced by the conception of dualist parliamentarism that prevailed in Great Britain during the 18th and most of the 19th century. Nevertheless, starting from the 19th century the practice of dissolution liberated itself from the monarchical elements of the past and during the 20th century it became an "effective party weapon"[11]. In this context, Leruez distinguishes four different types of dissolution. Originally the prevailing type was that of parliamentary dissolution as a result of the conflict between the legislative and executive power. Subsequently, it was enriched by dissolution-vote of confidence in case of supersession of the Prime Minister by a new one, as well as dissolution-referendum when a matter of great national interest arose. Last but not least, since 1945 the so called *tactical anticipated dissolution*[12], in which we are mainly interested here, has gained momentum and has overshadowed all the above mentioned types.

Nowadays, party politics is in all reason considered by Markesinis to be the "most important single cause for dissolution"[13]. This is also true with respect to the Greek parliamentary system, where dissolution is currently, according to Dimitropoulos, a "means of party competition" and an effective "weapon in the hands of the Government"[14]. Furthermore, the power to dissolve Parliament, due to the way it is exercised, not only has become a source of political instability[15] but it has also contributed to the creation of an institutional unbalance. For reasons explained below, it has led to a great concentration of power in the hands of the Prime Minister who exercises an almost (legally) unlimited power in this domain. It is therefore urgent to devise new checks in order to limit the power of the Prime Minister and ultimately strengthen the role of Parliament and protect the rights of the opposition[16].

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[10] B. Markesinis, *The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, *op. cit.*, 1972, p. 5.
[11] *Ibidem*, p. 6.
[12] J. Leruez, *Gouvernement et politique en Grande-Bretagne*, Paris, Presses de la Fondation nationale des sciences politiques & Dalloz, 1989, p. 132-133.
[13] *Ibidem*, p. 40.
[14] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), Athens-Komotini, Sakkoulas, 1992, p. 248-249.
[15] D. Reignier, « Le *Fixed-term Parliaments Act* de 2011: La révolution à l'anglaise », *op. cit.* , p. 616.
[16] B. Markesinis, The *Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience, op. cit.*, p. 121.

Our thesis is that the recently adopted FTPA moves in the right direction and attempts to deal effectively with the problems arising from the partisan use of dissolution within a monist parliamentarian system. Based on the hypothesis that the Greek and British parliamentary systems face the same problems in this respect, we believe that this constitutional innovation should be thoroughly examined by Greek scholarship and eventually adopted in view of the upcoming (?) constitutional reform. The first part of this article treats the current use of dissolution as a pathology of the prime ministerial system that has prevailed in both the United Kingdom and Greece. The next part presents the major innovations and scope of the FTPA. Finally, the third part constitutes a critical evaluation of the solutions proposed by the FTPA as well as of several other plausible suggestions.

A. The current use of the power of dissolution viewed as a pathology of the prime ministerial system

a) United Kingdom

Dissolution of Parliament has been traditionally considered a royal prerogative subject to limitations deriving from certain constitutional conventions. In fact, the Queen cannot dissolve unless she has sought advice. As Phillips and Jackson put it, "although in law the Queen may dissolve Parliament when she likes, her conduct would be unconstitutional (*i.e.* contrary to convention) if she did so without or against the advice of her ministers"[17].

Lauvaux explains that when a government enjoying a stable majority within Parliament takes the initiative to dissolve, the Head of State is deprived of any effective power concerning the exercise of his prerogative. In the UK in particular, the Royal Assent remains a formal requisite but it is the Prime Minister, as the majority leader, that

[17] O. Hood Phillips & Jackson, *Constitutional and Administrative Law*, 8th edition, London, Sweet & Maxwell, 2001, p. 161.

dissolves in the name of the Queen[18]. In this case, it comes to a sort of "self-dissolution in disguise" (*autodissolution déguisée, verschleierte Selbstauflösung*) that tends to renew and reinforce the link between the majority in Parliament and the Government[19].

If we study further the actual practice of dissolution we discover that since 1918, with the exception of the 1974 dissolution, and until 2001, the Cabinet has never been consulted in its entirety before the decision. It seems that the principle may be discussed with some of its members but the details are left to be determined by the Prime Minister himself, relying on the advice from a circle of close aides[20]. To put it differently, the Prime Minister stands alone on the decision and "makes his or her choice independently of parliament, government, and often even [his] closest colleagues in the Cabinet"[21].

There is therefore no doubt that there is a discretionary power of the Prime Minister to choose the date of elections. However, the nature of the power still rests unclear. According to G. Marshall, it is difficult to determine whether there is a convention that the Prime Minister solely decides on the issue as it lacks the combination of consistent historical precedents and a convincing *raison d'être*, although most recent Prime Ministers seem to unequivocally claim for themselves this power[22].

The origins of the modern view that the decision about the dissolution rests solely on the Prime Minister can be traced back in the period after the First World War and especially back to the dissolution of 1923 by Baldwin[23]. Sir Ivor Jennings, for his part, ascertains that the year 1916 is the crucial moment when the prime minister theory arose, with Lord Haldane affirming that "the only minister who can properly give advice as to a dissolution of Parliament is the Prime Minister" and Bonar Law later suggesting that "what advice on this matter should be given to the Sovereign is a question not for the Cabinet but for the Prime Minister"[24].

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[18] P. Lauvaux, *La dissolution des assemblées parlementaires*, *op. cit.*, p. 473-474.
[19] *Ibidem,* p. 475.
[20] O. Hood Phillips & Jackson, *Constitutional and Administrative Law*, *op. cit.*, p. 343.
[21] R. Hazell, *Fixed Term Parliaments*, The Constitution Unit, University College London, August 2010, p. 6, also available at http://www.ucl.ac.uk/public-policy/UCL_expertise/Constitution_Unit/150.pdf [November 5th, 2013].
[22] G. Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability*, Oxford, Clarendon Press, 1984, p. 45.
[23] *Ibidem*, p. 47.
[24] I. Jennings, *Cabinet Government*, 3rd edition, Cambridge, Cambridge University Press, 1959, p. 417-418.

However it may be, the current practice corresponds to the words of Balfour: "I think that whatever happens, the responsibility of a dissolution must rest with the Prime Minister. It always does so rest in fact..."[25]. This affirmation gains further importance if we take into consideration a long held debate over the true nature of the British political system. Back in the 1960s the idea was for the first time expressed according to which instead of speaking of *cabinet government* in order to describe the British system it would be more correct to speak of *prime ministerial government* or even of *presidential government*[26]. The presidential analogy became a commonplace during the 1980s when M. Thatcher was Prime Minister, which led to government –and more broadly Britain- becoming synonymous to her persona[27]. It seems nowadays evident that the Prime Minister is considered the actual chief of the Executive and frequently described as an *elected monarch*[28].

In this context, the power of dissolution stands not only for a typical example of this evolution but constitutes one of the main factors explaining the predominance of the Prime Minister over his own party as well as the opposition. The power of dissolution is a twofold arm in the hands of the Prime Minister since he has the opportunity to choose the most advantageous date for elections. Thus, not only he enhances his stature within the Government but he also succeeds in rallying the ranks of party waverers should a dissolution be suspected to be imminent[29]. As David Howarth, Liberal-Democrat Member of Parliament, argued while presenting the *Fixed Term Parliaments Bill 2007-2008*, the main problems of the current arrangement are: the unfair advantage of the governing party in choosing the election date adding to the government's power over the backbenchers and finally the "macho style of politics" and "game of political chicken" when parties try to show they do not fear general elections[30]. Let us examine the first two

[25] Cited in *ibidem*, p. 419.
[26] For a brief overview of the debate see M. Foley, *The Rise of the British Presidency*, Manchester-New York, Manchester University Press, 1993, p. 8-15.
[27] *Ibidem*, p. 2.
[28] P. Lauvaux, *Les grandes démocraties contemporaines*, 3e édition entièrement refondue, Paris, PUF/Droit, coll. Droit fondamental, 2004, p. 525.
[29] S. de Smith-R. Brazier, *Constitutional and Administrative Law*, 8th edition, London-New York, Penguin Books, 1998, p. 229.
[30] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 24.

elements separately, leaving aside the third one, as it does not fall within the scope of the present article.

First of all, the threat of dissolution can prove a powerful weapon in order to compel recalcitrant supporters in the Commons to conform[31]. It is natural that by being able to determine the exact date of elections the Prime Minister and leader of his party is in position to enforce party discipline within the House more easily[32].

Secondly, when deciding to dissolve Parliament the Prime Minister aims certainly at keeping his party in power and eventually reinforcing his majority. It is therefore obvious that he will choose the date that serves better the interests of his own party[33]. Following a revival in economic policy or taking advantage of rising government popularity[34] the Prime Minister can ponder on a dissolution aided of course by the study of opinion polls. It is the art of finding the ideal period for organizing an election, anticipating it even more than a year. The true master of this novel tactical use of dissolution has been no other than M. Thatcher who succeeded in two elections, namely in 1983 and in 1987[35]. This alarming success is what probably motivated the Labour party to argue through its spokesman that "the current system, which allows the Prime Minister to call an election at the most advantageous time to the party in office, gives the government of the day too much power"[36]. We need hardly point out the fact that if the governing party absolutely controls the date of elections, this constitutes, given the short electoral period, a "formidable handicap for the opposition" and an obstacle to democracy since all parties do not have an equal position when the electoral period starts[37].

[31] A. Bradley-K. Ewing, *Constitutional and Administrative Law*, 14th edition, Harlow-London-New York..., 2007, p. 188.
[32] S. de Smith-R. Brazier, *Constitutional and Administrative Law*, *op. cit.*, p. 229.
[33] P. Lauvaux, *Les grandes démocraties contemporaines*, *op. cit.*, p. 563.
[34] A. Bradley-K. Ewing, *Constitutional and Administrative Law*, *op. cit.*, p. 188.
[35] J. Leruez, *Gouvernement et politique en Grande-Bretagne*, *op. cit.*, p. 134.
[36] Section 2 of the *Report of the Labour Party on Electoral Systems* led by Professor R. Plant (1993) proposing a fixed four year parliamentary term, cited by R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 22.
[37] J. Leruez, *Gouvernement et politique en Grande-Bretagne*, *op. cit.*, p. 134.

b) Greece

The Constitution of 1975, as amended in 1986, prescribes four different ways of dissolution. Firstly, "the President of the Republic may dissolve the Parliament when two Governments have resigned or have been voted down by Parliament and its composition fails to guarantee governmental stability"[38]. This is the so called presidential dissolution that has never been put into practice so far. Secondly, Parliament is dissolved should it fail to produce the qualified majority needed in order to elect the new President of the Republic[39]. This is the so called automatic or obligatory dissolution[40]. Thirdly, Parliament is dissolved if a government cannot be formed after the elections[41] or if it later resigns or a motion of no confidence is passed[42]. Last but not least, there is also the possibility of dissolution on the proposal of the Government, which is by far the most interesting case as it involves political speculation and has been repeatedly practiced by all governing parties since 1975.

More specifically, the second paragraph of article 41 of the Constitution determines the conditions under which the Government can ask from the President of the Republic to dissolve Parliament. First of all there has to be a proposal of the Cabinet, provided it enjoys the support of the majority of the Members of Parliament. Secondly, the proposal must aim at renewing the popular mandate "in view of dealing with a national issue of exceptional importance". Finally, the presidential decree issuing the dissolution must be countersigned by the Cabinet.

All constitutional law scholars agree that the President of the Republic is bound to issue the decree if all formal conditions have been met without being able to control the judgment of the Government. This was in any case the clear intention of the framers of the said article during the revision of 1986[43]. Noteworthy is the fact that there is no

[38] Art. 41, par. 1 of the Constitution (English translation available at http://www.hellenicparliament.gr /UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf).
[39] Art. 32, par. 4.
[40] D. Tsatsos, *Constitutional law*, *Vol. II: Organisation and Function of the Republic* (in Greek), 2nd ed., Athens-Komotini, Sakkoulas, 1993, p. 240.
[41] Art. 37, par. 2, 3 and 4.
[42] Art. 38, par. 1.
[43] *C.f.* opening statement of the constitutional revision of 1986, cited by A. Raikos, *Constitutional Law*, *Vol. I : Introduction-Organisation of Powers* (in Greek), 2nd ed., Athens-Komotini, Sakkoulas, 2002, p.753.

possibility of judicial control either[44]. It follows that governmental dissolution as prescribed by the Constitution has two main characteristics: it involves a great deal of discretionary power from the side of the Government but the request for dissolution needs also legal justification[45].

Nevertheless, the form of the preceding article need not hide its constitutional and political substance. It is in fact the Prime Minister's prerogative, as absolute master of his Cabinet[46], to freely decide when to call elections. Subsequently, it is argued -correctly in our opinion- that there is a constitutional convention according to which the Prime Minister can provoke at any moment the dissolution of Parliament with a presidential decree[47]. Since there is no way of controlling if there actually exists "a national issue of exceptional importance" and how it should be dealt with, it is inevitable that the invocation of such an issue will be in most cases abusive, pretextual or "loose"; hence highly political[48]. A pretextual invocation of article 41, paragraph 2 plainly offers the tactical advantage of choosing the time of elections which will be moreover conducted by the government in place. It becomes thus a constitutional weapon of great importance as the element of surprise vis-à-vis political adversaries is inherent to it[49]. Venizelos was actually right in predicting that Prime Ministers will prefer maintaining their office and conducting the elections than offering the resignation of their Cabinet following the appointment of a transitional one according to articles 38, paragraph 1 and 37, paragraph 3, section d[50].

If we further examine the power of dissolution as an institutional practice we come up with a "functional distortion" that exists from the very start and has turned the orthodoxy of dissolution as referendum upside down, since the exception has become the

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[44] D. Tsatsos, *Constitutional law*, *Vol. II: Organisation and Function of the Republic* (in Greek)*, op. cit.*, p. 46; A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 32.
[45] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 234.
[46] Article 37 of the Constitution prescribes that members of the Cabinet are appointed and dismissed by the President of the Republic *on the recommendation* of the Prime Minister. The appointment and dismissal of ministers is therefore considered in all reason to be a prerogative of the Prime Minister.
[47] A. Pantelis, *Constitutional Law Manual* (in Greek), 2nd ed., Athens, Livanis, 2007, p. 366.
[48] E. Venizelos, *Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek)*,* Thessaloniki, Paratiritis, 1987, p. 135.
[49] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 249.
[50] E. Venizelos, *Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek), *op. cit.*, p. 152.

rule[51]. Starting with the elections of 1977, formally declared in order to deal with the issue of Cyprus, the Greek-Turkish relations and the upcoming accession of the country to the E.E.C., the opposition party denounced the dissolution as "unexpected and politically unacceptable"[52]. Especially during the last decade, not only the use of article 41, paragraph 2 has served as a mere pretext but we have witnessed a repeated use of the power of dissolution based on pure political speculation. Instead of dissolving Parliament a few months before the end of its term or in the midst of a major constitutional or political crisis, recent Prime Ministers seem eager to resort to this "nuclear option" merely after consulting the opinion polls. Those favouring the orthodox view of dissolution, point to the fact that a pretextual recourse to dissolution offends the principle of popular sovereignty no matter when it is decided (*i.e.* near the end of the term or not)[53]. Still, it seems in our opinion far more serious when elections are declared merely two years after the previous ones without any major event justifying them and rendering them indispensable. As Lauvaux points out, while a careful, though regular, use of of the power of dissolution contributes effectively to the smooth functioning of democratic institutions, "repeated use is a sign of a deficient functioning"[54].

In sum, the practice of dissolution in Greece can be rightly characterized as a pathology of the prime ministerial system for the same reasons as in the UK. It leads to a too great concentration of powers in the hands of the Government, namely the Prime Minister, that have been furthermore exercised so far in no prudent way. The Greek Parliament holds session under the continuous threat of imminent elections and as a consequence party discipline is usually easily enforced. What is even worse is the fact that the aforementioned power of the Prime Minister, reflecting institutional arrangements that belong now to the past[55], is not in accordance with his actual role in a politically moving environment that has seriously (and definitely ?) undermined the traditionally Greek version of majoritarian parliamentarism that has prevailed since 1975.

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[51] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 236-237.
[52] E. Venizelos, *Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek), *op. cit.*, p. 128.
[53] A. Raikos, *Constitutional Law*, *Vol. I: Introduction-Organisation of Powers* (in Greek), *op. cit.*, p. 760.
[54] P. Lauvaux, *La dissolution des assemblées parlementaires*, *op. cit.*, p. 479.
[55] For a brief overview of the prime ministerial thesis and its effects on the political system, see N. Alivizatos, *The Constitution and its Enemies in Modern Greek History: 1800-2010* (in Greek), 2nd ed., Athens, Polis, coll. Historia, p. 529 ff. and especially p. 536-537.

Especially this last objection will be thoroughly taken into consideration and weighed in the last part of this article.

B. The Fixed-term Parliaments Act as a response to the abuses of the power of dissolution

Until the passage of the FTPA, the legislation governing the maximum term of the British Parliament was the Septennial Act of 1714 as amended by the Parliament Act of 1911 which set the maximum term at five years. Bradley and Ewing remark that "in practice, apart from the two world wars, when the life of Parliament was extended annually to avoid the holding of a general election during wartime, all modern Parliaments have been dissolved by the Queen, rather than expiring by lapse of time"[56]. Evidently, since the law did not require the election of a new Parliament in prescribed intervals, the Executive could absolutely control its fate and put an end to its life at his will[57].

This arbitrary power has been the source of several drawbacks that have been pointed out above. To mention briefly the most important ones, fixed terms would establish electoral fairness by eliminating the tactical advantage of the governing party. Similarly, the power of the Prime Minister to control his ministers and backbenchers through the threat of elections would be weakened. Fixed terms would also lead to more effective government planning by reducing short-termism which is especially important when there is a coalition government or one with a narrow majority. Finally, it would contribute to better electoral administration[58].

In this context, the FTPA of 2011 was a key element of the 2010 Coalition Agreement between the Conservatives and the Liberal-Democrats. Shortly after the coalition government was formed in May 2010, the Bill was introduced. After a long held debate and many criticisms the Act received Royal Assent on September 15, 2011 and came into force that same day. Section 1 fixes the term of Parliament at five years and

[56] A. Bradley-K. Ewing, *Constitutional and Administrative Law*, *op. cit.*, p. 187.
[57] *Ibidem*, p. 188.
[58] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 10-11.

sets the first Thursday of May as the polling day. Section 2 confers to the House of Commons the power of self-dissolution[59] providing for early general elections in two cases. According to subsections 1 and 2, an early parliamentary general election is to take place if a motion is passed by at least two-thirds of the whole House (including vacant seats) or without division; according to subsections 3 and 4, the same result is achieved if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days by means of a confidence motion. Section 3 regulates certain technicalities of dissolution, whereas sections 4 and 5 deal with the Scottish and Welsh elections. Finally, sections 6 and 7 contain supplementary and final provisions.

The most interesting provision of the Act is undoubtedly that of Section 2, subsection 1 (b) that requires the vote of at least two-thirds of the whole House in order to have early elections. The original model for the two-thirds threshold is the devolution legislation of 1998 treating the powers of the Scottish Parliament[60]. It should also be noted that in the vast majority of the German *Länder* (*i.e.* twelve out of sixteen) a similar rule is applied[61]. Originally, the proposed threshold was limited to fifty-five percent of the total number of Members of Parliament, but it was soon made clear that it could not effectively restrict the power of the Prime Minister to call elections. As a result, Nick Clegg, leader of the Liberal-Democrats, suggested, on 5 July 2010, setting the threshold higher up to two-thirds (434 out of 650 Members of Parliament) following the example of the Scottish Parliament. "These changes", he believed, "will make it impossible for any government to force a dissolution for their own purposes"[62].

The obvious end of this provision is then to apply strict conditions for the dissolution of Parliament. Following the classification of dissolution mechanisms established by Hazell, there are countries such as Norway where parliament terms are completely fixed. In countries such as Germany, Sweden and South Africa terms are

[59] A. Le Divellec, « Un tournant de la culture constitutionnelle britannique : le *Fixed-Term Parliaments Act 2011* et l'amorce inédite de rationalisation du système parlementaire de gouvernement au Royaume-Uni », *Jus Politicum*, n° 7, 2012, p. 4.
[60] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 27.
[61] A. Le Divellec, « Un tournant de la culture constitutionnelle britannique : le *Fixed-Term Parliaments Act 2011* et l'amorce inédite de rationalisation du système parlementaire de gouvernement au Royaume-Uni », *op. cit.,* p. 5.
[62] Cited by D. Reignier, « Le *Fixed-term Parliaments Act* de 2011 : La révolution à l'anglaise », *op. cit.*, p. 623.

semi-fixed meaning that mechanisms are put into place in order to avoid dissolution before the scheduled election date. In countries such as France and Italy -we could also add Greece- terms are only nominally fixed, since "safety valves [are] being used in practice to undermine fixed terms". Finally, in countries such as Ireland, Australia and New Zealand, terms are completely flexible[63]. Consequently, the obvious aim of the FTPA is to move the UK from the last category to the second, the one with semi-fixed terms. This involves abandoning a long held tradition that is still strong among countries who have adopted the Westminster system.

It is common ground that the underlying, yet avowed, goal of the Act, which also constitutes its most significant innovation, is to suppress almost completely the power of the Prime Minister to determine arbitrarily the date of elections[64]. The newly established power of self-dissolution of the House is indeed considered to be the antidote to the tactical use of the power of dissolution that makes it easier for the governing party to maintain itself in power[65]. Nick Clegg, Deputy Prime Minister, after describing before the House the Act as a "major constitutional innovation", explicitly states its basic goal: "It is simply not right that general elections can be called according to a Prime Minister's whims, so this Prime Minister will be the first Prime Minister to give up that right."[66]

The difficult part was to devise a mechanism that could not be easily circumvented but would neither turn out to be too rigid[67]. Lord Frazer of Carmyllie described in the House of Lords in 1999 the dilemma as to how stringent the conditions ought to be as follows:

> If there is to be a fixed period, the only real issue is the circumstances in which earlier dissolution is permissible. If the circumstances allowing for that are too restrictively stated, it is not difficult to envisage a wide variety of occasions when it would not be for the good of the country to require a Parliament and government to continue without seeking a fresh mandate from the electorate. If conditions for early dissolution are too loosely framed, the change proposed would in effect be purely cosmetic.[68]

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[63] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 21.
[64] A. Le Divellec, « Un tournant de la culture constitutionnelle britannique : le *Fixed-Term Parliaments Act 2011* et l'amorce inédite de rationalisation du système parlementaire de gouvernement au Royaume-Uni », *Jus Politicum, op. cit.*, p. 1-2.
[65] D. Reignier, « Le *Fixed-term Parliaments Act* de 2011 : La révolution à l'anglaise », *op. cit.*, p. 617-618.
[66] Cited by *ibidem*, p. 619.
[67] *Id*.
[68] Cited by R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p.25.

The (successful?) establishment of such a balance is the point that will be discussed in the last part.

C. A critical evaluation of the FTPA and other similar proposals for restricting the power of dissolution

It is our belief that the passage of the FTPA is a major step in dealing with the abuses of the prime ministerial system with respect to the power of dissolution. For that reason we are convinced that it could form the basis for reform of Greek parliamentarism which could end up in adopting similar measures. We must therefore tackle the objections that have been formulated against the Act by rephrasing them in the Greek context.

The Act has indeed been globally criticized for its insistence in regulating in detail procedures that lie in the heart of British parliamentarism and have been governed so far by unwritten conventions[69]. As for the rules regarding the motion of no confidence, it has been argued in particular that they lead to loss of flexibility and reduced accountability, because they limit the government's capacity for testing electoral opinion on a major political issue; as a result there will be lame-duck governments that cannot be overthrown although politically impotent[70].

Nevertheless, the most important –for our own purposes- line of criticism concerns the effectiveness[71] of the rule requiring a two-thirds vote by the House in order to have early elections. Notably, it has been pointed out by A. Le Divellec that the framers of the Act seem to forget that legal rules have intrinsic limits and often prove unable to regulate political phenomena, if not determine them in their entirety. Even a perfectly engineered Constitution contains uncertainties and grey zones that create gaps or even overt contradictions between legal norms and political reality. Therein lies the

[69] A. Le Divellec, « Un tournant de la culture constitutionnelle britannique : le *Fixed-Term Parliaments Act 2011* et l'amorce inédite de rationalisation du système parlementaire de gouvernement au Royaume-Uni », *op. cit.,* p. 10.
[70] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 11.
[71] *Id*.

risk that the provisions of the FTPA will be "instrumentalized, manipulated, or worse, diverted from its initial goals"[72].

In fact the whole ineffectiveness argument can be broken up into three propositions that will be examined distinctly: a) the Act will not prevent further dissolutions, b) because it will be circumvented as has happened in other countries and c) as a result, the Prime Minister's predominance, as leader of the majority, will not be weakened at all.

We must admit that the first proposition expresses an undeniable truth, namely that "the political environment determines the way dissolution functions more than the texts themselves"[73]. This happens because dissolution is closely connected to the political structures that shape the relations between the Legislative and the Executive or especially the governing party and the opposition. It is well known that the actual behaviour of parties depends not only on the legal rules providing incentives and disincentives but also on the political context[74]. Therefore it is expected in advance that the Act will not absolutely prevent any dissolution.

If the true goal of the Act and of every similar measure were to eliminate altogether recourse to early elections, then the example of Norway, where no way of dissolution is provided, or at least the example of Sweden[75], where dissolution has become totally atrophied[76] should have been followed. However, as has already been mentioned, the purpose of such a measure is above all to protect the parliamentary minority from having its rights curtailed by the majority[77], to avoid furthermore that the party in office maintains continually itself in power, and more globally to guarantee the

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[72] A. Le Divellec, « Un tournant de la culture constitutionnelle britannique : le *Fixed-Term Parliaments Act 2011* et l'amorce inédite de rationalisation du système parlementaire de gouvernement au Royaume-Uni », *op. cit.*, p. 7.
[73] B. Markesinis, *The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, *op. cit.*, p. 53.
[74] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 31.
[75] In Sweden, according to article 3 of Chapter 3 of the Instrument of Government actually in force, "ordinary elections to the *Riksdag* are held every four years". If the Government decides, according to article 11 of Chapter 3, that an extraordinary election is to be held between ordinary elections, then the newly elected Parliament will only serve the remainder of the term. The same is prescribed by sections 2 and 3 of the Scotland Act of 1998. Obviously, this system offers strong disincentives for dissolution in general, both to the party in office and to the opposition.
[76] B. Markesinis, *The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, *op. cit.*, p. 239.
[77] *Ibidem*, p. 240.

smooth functioning of the system and the genuine expression of the will of the electorate[78]. All these can be achieved simply by targeting the abusive use of the power and not the power itself. If we were to abolish dissolution altogether, it would be a too strong medicine.

Especially in the Greek context, where the notion of popular mandate is a constant of political and constitutional thought, it is highly unlikely that a similar drastic solution would ever be adopted. Moreover, the existing traditions and trends cannot be ignored in favour of completely novel solutions that have functioned in different contexts. The transition from the majoritarian version of parliamentarism that is still present in Greece to the consensual version observed in Scandinavian countries is hardly predicted to happen in the immediate future. Additionally, political stability and maturity cannot be compelled by legal rules, yet their lack might prove disastrous. In fact, the adoption of the Swedish system might have a reverse effect: instead of preventing dissolutions it might accelerate the rhythm of elections and lead to excessive short-termism. For instance, a Prime Minister losing his popularity would be tempted to ask for a dissolution near the end of the Parliament's term so that the opposition would win a pyrrhic victory. In the meantime, he would have the opportunity to reorganize his party and concentrate on the imminent ordinary elections.

For the above reasons the Swedish provision seems currently incompatible with the features of the Greek constitutional scheme and hence should be abandoned -for now at least. As Dimitropoulos argues, despite its practical distortion and imperfections, the power of dissolution conferred by article 41, paragraph 2 can prove itself valuable and needs to be maintained, since its abolishment would cause even more problems[79]. Consequently, we need to compromise with the fact that there will be dissolutions in the future, but hopefully few of them based on pure partisan speculation.

The second idea inherent to the ineffectiveness argument is that, whatever the Act may prescribe, rules can be circumvented, as the example of other countries has repeatedly shown. In particular, the examples usually evoked are those of Canada and

[78] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 286.
[79] *Id*.

Germany[80]. Let us then examine them further before reaching our conclusion about the truth of this proposition.

In 2008 the Canadian Prime Minister requested a dissolution although a year before legislation had been passed to introduce fixed terms. The Governor General exercising her prerogative powers granted the dissolution, because the Government had become a minority (lame-duck) government and therefore very dysfunctional. As for Germany, the typical cases mentioned are dissolution by Kohl in 1982 and by Schröder in 2005. In both cases, the Chancellor manipulated the confidence vote by persuading his party to vote against him and then requested a dissolution according to article 68 of the *Grundgesetz*. However, in both cases all the main parties agreed on holding an early election[81]. In 1982, Kohl had just been appointed Chancellor after a constructive vote of no confidence had taken place and wanted to gain a stronger majority through a popular vote, whereas Schröder had faced many defeats in the regional level as well as party splits.

These examples are first of all cases where dissolution functions politically as an effective safety-valve and is in this context completely justified. They also prove that a government enjoying the support of the majority of the House will ultimately have its way. However, this fact should not prevent us from attempting to channel this power into prescribed tracts or from at least limiting its abuses. It is very instructive to stress what Lord Sewel has said on the occasion of the Scotland Bill, while arguing about the possibility that the high threshold prescribed can be circumvented as has happened in other countries:

> I accept that one cannot guarantee in all circumstances that the way in which something is intended to happen will really happen. We can try to make it that little bit more difficult. That is what these provisions seek to do.[82]

Those in favour of drastic solutions seem to regard this particular prerogative power of the Prime Minister as a monarchical vestige that if maintained and adapted to

[80] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p.11. See also D. Reignier, « Le *Fixed-term Parliaments Act* de 2011: La révolution à l'anglaise », *op. cit.,* p. 630.
[81] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 20.
[82] Cited by *ibidem*, p. 27.

the logic of parliamentarism is nothing but an "unjustified privilege"[83] that constantly undermines the political stability of the country. Nevertheless, this views the power of dissolution out of its political context. Normally, there is an organic bond between the majority of the House and its leader which cannot easily be broken. As long as the Prime Minister commands the support of his own party and thus controls the majority of the House, his power in this respect can hardly be restricted by legal rules. It derives directly from the essence of parliamentarism. As Hazell explains:

> It is difficult to devise a set of rules robust enough to withstand the wishes of a parliamentary majority. But that does not undermine the case for trying to construct a set of rules in the first place. Rules in politics are occasionally circumvented; but if they succeed in creating a new norm, obeyed by most of the parties most of the time, that can be a net gain.[84]

In the Greek context, what can be achieved is simply limiting the constant (and abusive) recourse to article 41, paragraph 2. If indeed a qualified majority of the House were needed in order that a motion for dissolution is passed, this would establish an additional check to the power of the Prime Minister. The initiative could still belong to him, but the decision would have to be taken in common with the opposition leader(s). This provision does not of course exclude the possibility that dissolution will occur frequently, but that it will no more be the expression of the will of one person guided by his closest counselors. In any case, without a significant change in our political culture, we should not expect that a legal provision could single-handedly determine the behaviour of political actors.

On the other hand, as a principle, if the governing party controls the absolute majority of the Parliament, it can still by all means provoke early elections without anyone being able to put any real limits to that power[85]. Indeed, if the Cabinet resigns, according to article 38, paragraphs 1 and 2 of the Constitution, the President of the Republic entrusts "the President of the Supreme Administrative Court or of the Supreme

[83] A. Le Divellec, « Un tournant de la culture constitutionnelle britannique : le *Fixed-Term Parliaments Act 2011* et l'amorce inédite de rationalisation du système parlementaire de gouvernement au Royaume-Uni », *op. cit.*, p. 5.
[84] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 32.
[85] E. Venizelos, *Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek), *op. cit.*, p. 154.

Civil and Criminal Court or of the Court of Audit to form a Cabinet as widely accepted as possible to carry out elections and dissolves Parliament". It follows that if the Cabinet offers its resignation, elections are conducted by a transitional Government. This however should not be treated lightly. It means that choosing to provoke the dissolution of Parliament through article 38 and not through article 41 as usual, would not only enhance political and constitutional transparency, but what is more important, it would also put the existing Government out of office. Therefore it might provide a strong political disincentive[86] against purely pretextual dissolutions. Correspondingly, it is not unlikely that if recourse to article 41, paragraph 2 is not readily available, then the frequency of dissolutions will be limited.

It should be noted that the above remarks are based on the assumption that the governing party controls the absolute majority of the Members of Parliament. In that case, it is undoubtedly true that the interests of the majority of the House and the Prime Minister usually coincide; hence a tactical use of dissolution is more or less unavoidable. On the basis of this truthful statement serious doubts are raised whether the power of the Prime Minister will be actually weakened by measures such as the FTPA; in other words, this is what makes D. Reignier wonder if the desired strengthening of Parliament through the FTPA is not in reality a "constitutional *trompe-l'œil*"[87].

We have tried to show that even in this case there is reason to believe, in the Greek context, that a measure such as the FTPA might prevent the constant use of article 41, paragraph 2 of the Constitution and eventually reduce the frequency of dissolutions. However, the practical importance of this piece of legislation mainly emerges in the two following scenarios: whenever there is cabinet/party dissension or there is a coalition government[88].

In these two cases, the organic bond between the Prime Minister and the majority of the House does not exist and new arrangements are needed in order to limit an unjustified excess of power in the hands of the Prime Minister. Noteworthy is the fact that, while a hung Parliament has rarely been the case lately in the UK as well as in Greece, recent political developments have completely transformed the Greek electoral

[86] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 286.
[87] D. Reignier, « Le *Fixed-term Parliaments Act* de 2011 : La révolution à l'anglaise », *op. cit.*, p. 630-631.
[88] G. Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability*, *op. cit.*, p. 46.

landscape seriously undermining the two-party system. This profound change requires the revision of the rules governing dissolution, as has recently happened in the UK. Needless to remind that the FTPA is the product of a coalition government -the first since the Second World War.

Regarding the case of cabinet/party dissension, it is widely admitted in the UK that the Queen could refuse dissolution if the Prime Minister were placed in a minority within his own Cabinet or party and requested a dissolution in order to forestall the prospect of his imminent supersession[89]. This refusal would be even more justified should the rebels were prepared to form a coalition government with the opposition. The reason is that, as Smith and Brazier explain, "*a fortiori*, a Prime Minister who has actually been repudiated by his own parliamentary party in favour of one of his colleagues can claim no constitutional right at all to demand a dissolution"[90].

The same reasoning also applies to Greece. According to Venizelos, if the Government has lost the support of the majority of the House, but, before a vote of no confidence takes place, the Prime Minister asks for a dissolution, then the President of the Republic must refuse it until the result of the vote is known[91]. Equally, Dimitropoulos argues that it would violate the spirit of the Constitution, if, based on a strict textual interpretation, we would accept that a government that has practically lost the confidence of the House could provoke a dissolution[92]. Nevertheless, correct as this analysis may be in theory, it remains to be seen if the President of the Republic would indeed refuse dissolution on these terms. Let us not forget that his powers of control in this realm are clearly circumscribed by the Constitution[93] and the proposed intervention would very likely be treated by the Government as an interference in its own sphere of competence. He might therefore hesitate stepping out of his usual ceremonial role and taking action

[89] See however the more nuanced position of B. Markesinis who states that : "Hence it seems to me that the Crown might be entitled to refuse a dissolution to a Government which is under censure, but it is not always its clear duty to do so." (*The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, *op. cit.*, p. 96).
[90] S. de Smith-R. Brazier, *Constitutional and Administrative Law*, *op. cit.*, p. 125.
[91] E. Venizelos, *Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek), *op. cit.*, p. 144-145.
[92] A. Dimitropoulos, *The Dissolution of Parliament* (in Greek), *op. cit.*, p. 281.
[93] The President of the Republic can refuse dissolution if, according to article 41 paragraph 2, the issue in question has again been invoked, if the decree is not countersigned by the Cabinet and does not contain the required provisions prescribed by paragraph 3 and finally if, according to paragraph 4, a year has not passed after a previous dissolution.

which could eventually render him vulnerable to political criticism. Moreover, it is not always clear whether the Government has lost the support of the majority or not and thus the Prime Minister can always act in advance of future events. In this case, there lies the danger that the fate of Parliament will be determined by a Prime Minister who is only nominally leader of the majority.

This becomes even more evident whenever the party that has won the elections does not control the majority of the House and a coalition government is formed. Markesinis argues that the Queen should refuse dissolution if another government can be formed; in other terms, if a "working majority" can be discovered without having recourse to elections[94]. However, in the Greek context, it is highly unlikely that a request for dissolution from the Prime Minister would not be accepted by the President of the Republic. As a result, the Prime Minister, who is usually absolute master of his Cabinet, can always threaten his allies with imminent elections or even actually ask for a dissolution according to article 41, paragraph 2 in case of serious political disagreement and government dysfunction. Through this tactical move he avoids triggering the procedure prescribed by article 38, paragraph 1 that might lead to the formation of another government, unless of course one of the coalition parties reacts faster and pulls its support from the Government[95] beforehand; in which case we fall back to the previous scenario regarding the refusal of the President of the Republic.

This analysis shows that the power of dissolution allows the Prime Minister to be ahead of political developments and control not only his ministers and backbenchers through the threat of elections but also his government allies. The conditions for dissolution set by the FTPA target precisely the above described power of the Prime Minister to control the fate of Parliament. By doing so, they attempt to strike a balance between the Chief of the Executive and the Legislature and consequently bridge the gap between the powers conferred by the Constitution and the actual political reality.

Accordingly, we hope that he have proven so far that the FTPA is not inefficient in dealing with the problem of the abuse of the power of dissolution. Long before its

[94] B. Markesinis, *The Theory and Practice of Dissolution of Parliament: a comparative study with special reference to the United Kingdom and Greek experience*, *op. cit.*, p. 88.
[95] E. Venizelos calls this a "party-dominated dissolution" [*Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek), *op. cit.*, p. 153].

passage voices had been heard that considered it a wise solution if "dissolution could be demanded by a large number of M.P.s, say 45%"[96]. Other ways that could restrict the power of dissolution could be the requirement that a minimum of Members of Parliament sign a motion as in Sweden, Spain and Italy or the requirement that the motion be also signed by the opposition leader or the leaders of the three largest parties in parliament[97]. Having these propositions in mind, the higher threshold of two-thirds guarantees most effectively in our opinion that dissolution will be decided in common with the main opposition parties.

We have previously explained why we consider these solutions more realistically enforceable than the adoption of the Swedish model. This country seem to function having consensus as a prerequisite, whereas in Greece party consensus is what we search for. To sum up, we find this model incompatible with the current features and, more globally, with the essence of Greek parliamentarism which is deeply "tainted" with party competition and centered around the notion of popular mandate. Having said that it might not be a bad solution if dissolution were limited or prohibited not only at the beginning of the parliamentary term, as article 41, paragraph 4 of the Greek Constitution prescribes, but also near its end[98] (*e.g.* the last six months).

Venizelos further adds that the power of self-dissolution conferred to Parliament might be incompatible with the spirit of articles 37, 38 and 41. He suggests alternatively that it could be required informally that a special session of Parliament be held in order to discuss these issues[99]. Equally, in case of invocation of article 41, paragraph 2 it would be the responsibility of the President of the Republic to initiate a public debate on the proper use of the power[100]. These suggestions serve as a reminder of the fact that we need not necessarily wait for a constitutional revision in order to implement the spirit of these measures. The goal of protecting the parliamentary minority from the majority and of limiting the prime ministerial powers could also be achieved through informal arrangements that would lead to the creation of constitutional conventions.

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[96] *Ibidem*, p. 241.
[97] R. Hazell, *Fixed Term Parliaments*, *op. cit.*, p. 27.
[98] *Ibidem*, p. 30.
[99] E. Venizelos, *Parliemantarism and its Function according to the Constitution of 1975/1986: the revision of 1986, government formation and dissolution of Parliament* (in Greek), *op. cit.*, p. 153.
[100] *Ibidem*, p. 156.

Conclusion

The passage of the FTPA shows the willingness to deal with the problem of tactical dissolutions as well as a wide tendency of British constitutionalism to become more rationalized by abandoning its traditional flexibility and elasticity in favour of written rules. The solution it offers regarding the problem of tactical dissolutions is judged by the present article as quite satisfactory, since especially the Act does not neglect to treat them as a symptom of a more global evolution: the rise and omnipotence of the prime ministerial system. The avowed goal is to reduce the powers of the Prime Minister by strengthening the role of Parliament and consequently the role of the opposition. It tries, in other words, to devise new checks over the executive power and redefine the principle of separation of powers by redressing the balance not only between the Executive and the Legislative but also between the parliamentary majority and minority.

Furthermore, we consider it a very important piece of legislation, because it does not apply monolithically to the British context; it can also be used as a legal transplant in other systems that face similar problems. The Greek system is equally –perhaps even more- vulnerable to abusive tactical dissolutions as a result of the predominance of the Prime Minister. Reforms are therefore needed in order to put an end to an otherwise unlimited power of the Prime Minister to end the life of Parliament at his will. A qualified majority of the Members of Parliament has to be required so that the decision will be taken in cooperation with the main opposition parties. In case a revision of the Constitution is not imminent, political parties –with the encouragement of the President of the Republic- could at least agree that the issue will be discussed in Parliament before dissolution is requested. The consensual logic that has recently prevailed in view of the election of the President of the Republic can be a true source of inspiration[101].

Finally, the present article intends to make a more general statement about the scope and end of comparative analysis in constitutional law. Classical constitutional

[101] According to article 32, paragraph 4, if a candidate for the Presidency does not receive a two-thirds majority of the total number of Members of Parliament after three consecutive ballots, then Parliament is dissolved. In the last decade, the two major parties have three times agreed on supporting the same person – the governing party proposing a candidate coming from the opposition party- and thus dissolution has been prevented.

thought in Greece has traditionally turned to the French and German systems –and scholarship- as models for constitutional engineering. By doing so it has neglected to take into consideration the British system which can nevertheless provide us with valuable insights regarding the actual functioning of our parliamentary democracy. Because although nominally a rationalized parliamentary system such as Germany, Greece has in practice followed the Westminster model. The electoral law in force, the absence of a Constitutional Court and the unicameral system adopted offer arguments in favour of this view. Consequently, it is perhaps time to redirect our focus and mark a change in our perspective by looking beyond the Channel, where the cradle of parliamentarism lies. This will allow us to follow the modern trends of parliamentary government and better understand the dynamic between the different organs as well as the real functioning of our own institutions. Thus, by reconceptualizing the existing relations we will be hopefully in position to find the right remedies for current dysfunctions without repeating the error of adopting provisions that prove to be empty words incompatible with the logic and architecture of our system, hence unenforceable.

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