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Something old, something new? Votes of confidence, parliamentary dissolution, election timing, and judicial review under the Dissolution and Calling of Parliament Act 2022

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ABSTRACT

Westminster ratified the Dissolution and Calling of Parliament Act in 2022. It provides that: (a) PMs' ability to dissolve parliament through the monarch is restored. (b) Writs for general elections are bestowed upon the executive. (c) Some applications of the royal prerogative are non-justiciable. This article presents a critical summary of the history and content of the act, and it discusses its implications. (1) The repeal of the Fixed-term Parliaments Act re-introduces flexibility vis-à-vis election timing. (2) The DCPA implies a transfer of dissolution authority from parliament back to governments. (3) The elimination of statutory confidence motions implies a return to the convention-based confidence procedure. This article argues that the bill rekindles cabinet supremacy. (i) Elections can be more easily strategically scheduled to the ruling party's advantage. (ii) PMs can substantiate the employment of confidence votes with the threat of dissolution again. (iii) Leaders might capitalise on the absence of judicial review to further their agenda or elude the test of confidence. Altogether, the bill reshapes the relationship between the government and the legislature by deepening executive dominance to pre-FTPA levels and perhaps even higher, given the non-justiciability clause, at least as long as elections produce single-party majority cabinets.

KEYWORDS

Dissolution and Calling of Parliaments Act 2022; Fixed-term Parliaments Act 2011; agenda-setting powers; votes of confidence; parliamentary dissolution; election timing; judicial review; royal prerogative

Introduction

> Under the fixed-term act, the prime minister couldn't threaten his or her own party with an election. Nor could they pressure MPs into votes based on the prospect of going to the country (Minister of State Chloe Smith).[1]

On 24 March 2022, the House of Commons and the House of Lords were notified that the Dissolution and Calling of Parliament Act 2022 (DCPA) had received royal assent.[2] The document, introduced in May 2021, explicitly repeals its predecessor, the Fixed-term Parliaments Act 2011 (FTPA).[3] The Joint Committee on the Fixed-term Parliaments

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[1]As quoted in Payne (2020); S. Payne, 'Johnson Introduces Bill to Scrap Fixed-term Parliaments: Legislation Would Restore Right of Prime Minister to Call Election Whenever Desired', *Financial Times*, (2020).

[2]Dissolution and Calling of Parliament Act 2022 (2022 c. 11).

[3]Fixed-term Parliaments Act 2011 (2011 c. 14).

Act, appointed in November 2020, maintained in a report that the FTPA had fulfilled its 'immediate political purpose' of holding the David Cameron-Nick Clegg Conservative-Liberal Democrat coalition together until the completion of the parliamentary term inaugurated by the 2010 general election.[4]

Ever since its ratification, the Fixed-term Parliament Act has not been free of criticism. Primarily, the bill has been placed under scrutiny for its supermajority requirement for self-dissolution of the legislature (two-thirds) for the reason that it posed a risk of leading to parliamentary deadlock. Indeed, by transferring dissolution authority to the House of Commons, the FTPA has made it harder for executives to pass their policies due to the dwindled possibility of using dissolution as a threat, especially in conjunction with votes that raise the question of confidence.[5] Additionally, commentators on the FTPA have questioned the establishment of statutory confidence motions that, if carried, would trigger a dissolution with a 14-day 'waiting' window prescribed in the event of confidence withdrawal, during which parliament had the faculty to reverse its decision. Such motions could incentivise threats on the part of government backbenchers or misuse on the part of the incumbent itself.[6]

The Dissolution and Calling of Parliament Act 2022 introduces new regulations that take the place of the Fixed-term Parliaments Act. The provisions predominantly pertain to the restoration of the ability of the prime minister to request a parliamentary dissolution via the exercise of the royal prerogative. Moreover, writs for general elections are bestowed upon the executive. Finally, a non-justiciability clause (also referred to as 'ouster' clause) is introduced that ensures that applications of the royal prerogative, at least within the realm of parliamentary dissolutions, cannot be questioned by a court or tribunal.

The passage of the Fixed-term Parliaments Act, deemed controversial 'both for its substance and the processes used in its introduction', has inspired a vibrant debate on its institutional and behavioural consequences.[7] This is unsurprising, given that, as I illustrate in the next section, the act revolutionised various aspects of the mostly convention-based British system. Considering the tremendous scholarly and mediatic interest in the FTPA, I ask two questions in light of its revocation and replacement with the Dissolution and Calling of Parliament Act 2022: (1) *How did we get here?* And, more importantly, (2) *what are the implications of the DCPA for the status quo created by the Fixed-term Parliaments Act?*

In this article, I contribute to this copious literature in two ways: I present a critical summary of the history and content of the Dissolution and Calling of Parliament Act, and

[4]Joint Committee on the Fixed-term Parliaments Act, 'Report', UK Parliament, (2021): 15.

[5]A. Blick, 'Constitutional Implications of the Fixed-term Parliaments Act 2011', *Parliamentary Affairs* 69, (2016), pp. 19–35; P. Norton, 'The Fixed-term Parliaments Act and Votes of Confidence', *Parliamentary Affairs* 69, (2016), pp. 3–18.

[6]R. Youngs and N. Thomas-Symonds, 'The Problem of the 'Lame Duck' Government: A Critique of the Fixed-term Parliaments Act', *Parliamentary Affairs* 66, (2013), pp. 540–56; J. Strong, 'Confidence and Caretakers: Some Less-obvious Implications of the Fixed-term Parliaments Act', *The Political Quarterly* 89, (2018), pp. 466–73.

[7]Blick, 'Constitutional Implications'; Youngs and Thomas-Symonds, 'The Problem of the 'Lame Duck' Government'; Blick, 'Constitutional Implications'; Norton, 'The Fixed-term Parliaments Act'; P. Schleiter and V. Belu, 'The Decline of Majoritarianism in the UK and the Fixed-term Parliaments Act', *Parliamentary Affairs* 69, (2016), pp. 36–52; P. Schleiter and S. Issar, 'Constitutional Rules and Patterns of Government Termination: The Case of the UK Fixed-term Parliaments Act', *Government and Opposition* 51, (2016), pp. 605–31; R. Craig, 'Restoring Confidence: Replacing the Fixed-term Parliaments Act 2011', *The Modern Law Review* 81, (2018), pp. 480–508; Strong, 'Confidence and Caretakers'; P. Schleiter and G. Evans, 'The Changing Confidence Relationship Between the UK Executive and Parliament in Comparative Context', *Parliamentary Affairs* 74, (2021), pp. 121–37.

I discuss its ramifications in the context of UK politics. I raise a number of key points. First, the repeal of the Fixed-term Parliaments Act re-introduces flexibility with respect to election timing. Furthermore, the DCPA implies a de jure transfer of dissolution authority from the legislature back to the government. As a result, parliament does not play an active role in the matter of its own dismissal anymore because it no longer enjoys the explicit right to self-dissolve, and no legal consequences for votes of confidence are delineated in the new bill. In addition, the elimination of statutory confidence motions implies a return to the vote of confidence procedure being managed by constitutional convention, which has always been the case since its origins in the eighteenth century and until 2011.

It has been argued that the FTPA increased the bargaining power of the House of Commons vis-à-vis that of the executive.[8] I contend that cabinet supremacy, or what Bagehot normatively described as the 'efficient secret', potentially embodied in the Commons' rejection of the amendment proposed by the peers to retain a saying in terms of endorsing dissolutions, is rekindled by the DCPA in at least three meaningful ways. First, returning discretion over the dismissal of parliament to the government implies that elections can be now more easily strategically timed to the advantage of the ruling party, reinstating a potential 'element of surprise' and enabling the incumbent to catch the opposition off guard.[9] Second, the act allows prime ministers to substantiate the employment of votes of confidence with the threat of dissolution again. Third, the non-justiciability clause could conceivably engender augmented executive agenda-setting powers: leaders might seek to capitalise on the absence of judicial review to further their political programme or elude the test of confidence by leveraging mechanisms such as parliamentary dissolution.

Altogether, these provisions reshape the relationship between the cabinet and the legislature in the United Kingdom by deepening executive dominance to pre-FTPA levels and possibly even higher if we take into account the presence of the ouster clause. I am also cautious, however, in pointing out that the electoral and legislative advantages British governments and prime ministers can derive from these prerogatives could be diluted if elections do not produce single-party majority cabinets.

The article proceeds as follows: first, I present an outline of the provisions contained in the Fixed-term Parliaments Act. Next, the history of the Dissolution and Calling of Parliament Act and an overview of its content are discussed and contextualised. Finally, I consider several implications of the new document for domestic politics in Britain and compare these with the status quo created by the FTPA.

Background: the Fixed-term Parliaments Act 2011

The British Parliament reviewed the Fixed-term Parliaments Act 2011 between July 2010 and September 2011. The bill, sponsored by Deputy PM Nick Clegg, sets out a number of provisions that regulate election timing and, thus, the dismissal of the legislature. This was the first piece of legislation dealing with the subject of dissolution and the duration of parliament since the 1715 Septennial Act, later amended with the Parliament Acts 1911 and 1949.[10]

[8]Schleiter and Evans, 'The Changing Confidence Relationship'.
[9]A. Smith, *Election Timing*, (Cambridge, 2004); C.T. McClean, 'The Element of Surprise: Election Timing and Opposition Preparedness', *Comparative Political Studies* 54, (2021), pp. 1984–2018.
[10]Septennial Act 1715 (1715 c. 38); Parliament Act 1911 (1911 c. 13); Parliament Act 1949 (1949 c. 103).

Section 1 of the FTPA regulated the time between elections. The Septennial Act provided that the constitutional mandate of the legislature would automatically expire seven years after the opening of parliament following a dissolution and legislative election.[11] The term was subsequently reduced to five years with the 1911 revision. To be clear, the actual timing of elections was not fixed: the Septennial Act and the Parliament Acts concerned the lifespan of the legislature, not the period between elections. Until 2011, the exercise of the royal prerogative on the part of the monarch was necessary to dissolve parliament at the request of the head of government.[12] Of all the dissolutions between the passage of the first Parliament Act in 1911 and the FTPA in 2011, 75% occurred at least six months before the 5-year mark, 78% when excluding the exceptionally long Second World War legislature (see Figure 1).[13]

What changed with the introduction of the FTPA was that the document regulated the length of the spell between legislative elections *as well as* the overall duration of parliament. According to the FTPA provisions, a parliamentary election would occur 'the first Thursday in May in the fifth calendar year following that in which the polling day for the previous parliamentary general election fell'.[14] As per the bill, the subsequent election took place on Thursday, 7 May 2015. The remaining general elections falling under the FTPA (2017 and 2019) resulted from premature termination, a point expanded on later.

Section 2 of the Fixed-term Parliaments Act dealt with the matter of early legislative elections. Before 2011, the prime minister had enjoyed de facto unilateral authority vis-à-vis the calling of elections. After the 1950 election, the principles laid out by Sir Alan Lascelles served as constitutional convention concerning the limits to the sovereign's discretion over dissolutions. The principles state that the monarch may refuse a dissolution request from the head of government only if: (1) the existing parliament is still 'vital, viable, and capable of doing its job'; (2) A general election would be 'detrimental to the national economy'; (3) Another prime minister can be appointed that is supported by the majority in the House of Commons.[15] In practice, in Britain, there have been no instances of refusal in recent times.[16] Rather, prime ministers have relied on parliamentary dissolutions in the aftermath of confidence withdrawal or to increase the

[11]In the United Kingdom, the sequence of events leading up to the opening of parliament is usually the following: a general election is announced; parliament is prorogued, i.e., the session is discontinued, but the legislature is not dissolved (this step has been at times skipped); the monarch issues a proclamation that formally dissolves parliament; the election takes, and the newly elected Commons convene (see White et al. 2015); I. White, O. Gay and R. Kelly, 'Election Timetables', House of Commons Library, (2015), Research Paper 15/11.

[12]A custom described by Walter Bagehot in these terms: 'The sovereign has, under a constitutional monarchy such as ours, three rights – the right to be consulted, the right to encourage, the right to warn. And a king of great sense and sagacity would want no others […]. He would say to his minister, "The responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best shall have my full and effectual support […]"' (2001: 60); W. Bagehot, *The English Constitution* (Cambridge, 2001).

[13]Data from White et al. (2015); White et al., 'Election Timetables'; Parliament duration is measured as the difference in years between the date of the first sitting of the incoming legislature after a general election takes place and the date of the formal dissolution of the same parliament.

[14]FTPA 2011: 1(3).

[15]Lascelles (1950), as quoted in Heasman (1960): 95; The principles originated as part of the debate surrounding King George VI's reaction to the meagre Labour majority that emerged from the election. For further discussion on Lascelles' principles, see Bogdanor (1991; 1995); D.J. Heasman, 'The Monarch, the Prime Minister, and the Dissolution of Parliament', *Parliamentary Affairs* 14, (1960), pp. 94–107; V. Bogdanor, 'The Constitutional Monarchy in the United Kingdom', *Res Publica* 33, (1991), pp. 7–23; V. Bogdanor, *The Monarchy and the Constitution* (Oxford, 1995).

[16]There are cases of refusal in Commonwealth countries in the twentieth century (for example, Canada; South Africa). Twomey (2018) reviews a number of examples of recent constitutional crises related to dissolution in Westminster

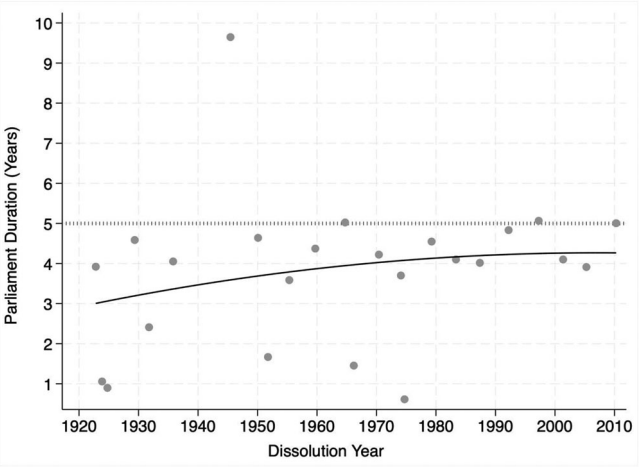

Figure 1. Dissolution timing in the United Kingdom (1918–2010).

odds of securing a larger majority of seats. Alternatively, the threat of dissolution has been used to extract policy concessions. This threat can be particularly effective when combined with the invocation of the vote of confidence procedure.[17] For instance, PM Edward Heath raised the question of confidence in 1972 in relation to the European Communities Act, warning parliament that a dissolution would have followed in case of a negative outcome:

> Therefore, if this House will not agree to the Second Reading of the Bill tonight […], my colleagues and I are unanimous that in these circumstances this Parliament cannot sensibly continue.[18]

The Fixed-term Parliaments Act 2011 brought in clear and explicit rules governing the possibility of early elections. Based on the bill, untimely elections could be called by the House of Commons with the motion 'That there shall be an early parliamentary general election',[19] requiring a majority of two-thirds in the lower house. The act directly contemplated the right of self-dissolution, a mode of dissolution that is not uncommon, adopted, for example, in Austria and Israel. Not atypical is also the supermajority requirement. For instance, the Czech Republic and Lithuania require three-fifths, Poland requires two-thirds. This is the means through which anticipated elections were achieved in April 2017, under the premiership of Theresa May, and in October 2019, in which case the FTPA was overridden by primary legislation under the premiership of Boris Johnson.[20] Additionally, a general election would follow the loss of parliamentary confidence via a successful motion of no-confidence ('That this House has no

systems. On the same subject, see Jennings (1969); A. Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge, 2018); I. Jennings, *Cabinet Government*, 3rd Edition (Cambridge, 1969).

[17]M. Becher and F.J. Christiansen, 'Dissolution Threats and Legislative Bargaining', *American Journal of Political Science* 59, (2015), pp. 641–55; M. Becher, 'Dissolution Power, Confidence Votes, and Policymaking in Parliamentary Democracies', *Journal of Theoretical Politics* 31, (2019), pp. 183–208.

[18]HC Deb 17 February 1972 vol. 831 cc629-761.

[19]FPTA 2011: 2(2).

[20]The Early Parliamentary General Election Act 2019, adopted on 31 October 2019 and repealed with the DCPA; Early Parliamentary General Election Act 2019 (2019 c. 29).

confidence in Her Majesty's Government').[21] Such an outcome could be reversed if the House of Commons reaffirmed its confidence, expressing 'That this House has confidence in Her Majesty's Government',[22] in a new vote within fourteen days of the confidence withdrawal.

Since 1900, two dissolutions have resulted from loss of confidence, in 1924 (defeat of the Ramsay MacDonald ministry on 8 October) and 1979 (defeat of the James Callaghan ministry on 28 March). Nonetheless, the FTPA was the first direct attempt at providing a legal framework concerning the wording, functioning, and consequences of confidence votes, whose use was previously based on constitutional convention.[23] Once again, this type of dissolution, following the refusal of parliamentary confidence, is not uncommon. In different countries (for example, Germany), constitutions prescribe dismissal of the legislature in the aftermath of loss of confidence. The implication is that the Fixed-term Parliaments Act de jure transferred dissolution authority to the Commons. This is because even in the presence of a PM request for dissolution, the outcome was ultimately decided by parliament. This was patent in the case of a direct self-dissolution ('That there shall be an early parliamentary general election)',[24] but it was also implicit in votes of confidence. Whether a confidence motion was submitted by the opposition or (potentially) initiated by the cabinet, the legislature determined the outcome of the motion in the knowledge and awareness that a negative vote would have implied dissolution (unless reversed). Practically, the only case where this could have applied is the no-confidence motion moved by Labour leader Jeremy Corbyn in January 2019. However, no dissolution occurred since the government led by PM May prevailed (16 January 2019).

The loss of the prerogative to dismiss parliament is why Youngs and Thomas-Symonds suggest that, under the FTPA, the executive might have wanted to 'engineer' a no-confidence motion against itself to circumvent the lack of dismissal authority.[25] This proposition is not entirely outlandish if we consider the German cases of 1972, 1982, and 2005, where the chancellor arguably facilitated a confidence vote to be rejected by the Bundestag to achieve early elections.[26] In the British case, this option turned out unnecessary: as I anticipated, both May and Johnson were able to secure a dissolution without resorting to votes of confidence. It was nevertheless a more feasible option, at least in principle, because confidence motions necessitate a simple majority to be carried (or rejected), as opposed to the two-thirds requirement for self-dissolution.

The shift from unilateral dissolution powers enjoyed by the prime minister to such prerogative being exclusively delegated to parliament represented, in effect, a reduction in executive dominance, or as described in the 2015 Conservative Party manifesto, 'an unprecedented transfer of Executive power'.[27] The implication was the enhancement of the bargaining power of the legislature and, as a corollary, a diminished degree of influence of the cabinet.[28] Finally, the Fixed-term Parliaments Act established that the

[21]FTPA 2011: 2(4).
[22]FTPA 2011: 2(5).
[23]Norton, 'The Fixed-term Parliaments Act'.
[24]FPTA 2011: 2(2).
[25]Youngs and Thomas-Symonds, 'The Problem of the 'Lame Duck' Government'.
[26]H. Döring and C. Hönnige, 'Vote of Confidence Procedure and *Gesetzgebungsnotstand*: Two Toothless Tigers of Governmental Agenda Control', *German Politics* 15, (2006), pp. 1–26.
[27]Conservative Party, Conservative Party Manifesto, (2015): 49.
[28]Schleiter and Evans, 'The Changing Confidence Relationship'.

House of Commons would be formally dismissed the day before the polling day for the new legislative election, leaving the monarch's power to prorogue parliament unaffected ('This Act does not affect Her Majesty's power to prorogue Parliament').[29] This last point is important, as we shall see momentarily. In the next section, I discuss the history of the DCPA and present an overview of the regulations introduced with the new act.

The Dissolution and Calling of Parliament Act 2022: history and overview

Section 7 of the Fixed-term Parliaments Act established that the prime minister would make arrangements 'no earlier than 1 June 2020 and no later than 30 November 2020'[30] for a committee to review the operation of the FTPA and, if necessary, put forward recommendations for its repeal or amendment. In their 2019 manifesto, the Conservatives had pledged to 'get rid of the Fixed Term Parliaments Act' for 'it has led to paralysis at a time the country needed decisive action'.[31] In the same vein, the Labour Party manifesto stated: 'A Labour government will repeal the Fixed-term Parliaments Act 2011, which has stifled democracy and propped up weak governments'.[32] In February 2020, Lord Mancroft (House of Lords) introduced a private member's bill, the Fixed-term Parliaments Act 2011 (Repeal) Bill, aimed at restoring the prime minister's power to dissolve parliament. The proposal never made it past the first reading in the upper house.

A report produced by a joint parliamentary committee evaluating the FTPA was published in March 2021.[33] Two main conclusions emerged from the committee's evaluation. First, the Fixed-term Parliaments Act had fulfilled its 'immediate political purpose'.[34] That is, to enable the formation of the Cameron-Clegg coalition with the assurance that the cabinet would last the full constitutional term. In reality, what this meant was avoiding the intra-coalition pressure of confidence votes or other procedural devices associated with the threat of dissolution, as well as evading the scenario of non-mutually beneficial strategic election timing.[35]

The other, and perhaps more relevant, conclusion was that 'the Act is flawed in several respects'.[36] Specifically, the joint committee raised four points. First, it is maintained that the supermajority required to call early elections posed the risk of resulting in parliamentary deadlock, a concern analogous to those previously expressed by the scholarly literature.[37] Additionally, the report pointed to the 'lack of credibility' of the FTPA, given that PM Johnson was able to bypass its stipulations with ad hoc primary legislation after three

[29]FTPA 2011: 6(1).
[30]FTPA 2011: 7(6).
[31]Conservative Party, Conservative Party Manifesto, (2019): 48.
[32]Labour Party, Labour Party Manifesto, (2019): 82.
[33]Six members of the House of Lords (two Conservative, two Labour, one LibDem, one crossbencher) and fourteen members of the House of Commons (nine Conservative, four Labour, one SNP).
[34]Joint Committee FTPA 2021: 15.
[35]W.B. Heller, 'Making Policy Stick: Why the Government Gets What It Wants in Multiparty Parliaments', *American Journal of Political Science* 45, (2001), pp. 780–98; J.D. Huber and N. McCarty, 'Cabinet Decision Rules and Political Uncertainty in Parliamentary Bargaining', *American Political Science Review* 95, (2001), pp. 345–60; A. Lupia and K. Strøm, 'Coalition Termination and the Strategic Timing of Parliamentary Elections', *American Political Science Review* 89, (1995), pp. 648–65; Smith, *Election Timing*.
[36]Joint Committee on the FTPA 2021: 3.
[37]Blick, 'Constitutional Implications'; Norton, 'The Fixed-term Parliaments Act'.

failed attempts to secure the two-thirds majority. In this case, the 'trick' was legally achieved by having parliament resolve that:

> An early parliamentary general election is to take place on 12 December 2019 in consequence of the passing of this Act; That day is to be treated as a polling day appointed under section 2(7) of the Fixed-term Parliaments Act 2011; This early parliamentary general election is to be treated as taking place in accordance with section 2 of that Act […].[38]

In essence, the phrasing made it so that the passage of the Early Parliamentary General Election Act, requiring a simple majority, would have been constitutionally equivalent to enacting the self-dissolution provision contemplated in the FTPA that would have otherwise presented a supermajority requirement.

The second point pertains to the creation of statutory no-confidence motions. The Fixed-term Parliaments Act spelt out a specific wording for these motions ('That this House has no confidence in Her Majesty's Government').[39] In the past, confidence motions of any type have been based on convention, where the form of the motion is determined by the timing, the speakers, and the terms employed in the statement that is put forward.[40] Indeed, confidence/no-confidence motions predating the FTPA had been variegated in their nature. For instance, the March 1972 motion tabled by the opposition read: 'That this House condemns the action of Her Majesty's Government […]'.[41] More ambiguously, on two occasions (March 1976 and July 1977), an adjournment motion ('That this House do now adjourn') was treated as a government-initiated vote of confidence. Researchers have indicated that the Fixed-term Parliaments Act effectively created two types of confidence motions: legally binding and convention-based.[42] From the committee's report, though, we learn that the statutory wording for no-confidence motions prescribed by the FTPA entitled the cabinet to refuse to put motions with terms other than the statement introduced in the act to the House, even when tabled by the opposition leader. For example, the motion presented by Corbyn in December 2018, calling MPs to manifest 'no confidence in the prime minister due to her failure to allow the House of Commons to have a meaningful vote straightaway' on the Brexit deal, might have otherwise fallen under the umbrella of no-confidence motions.[43] Speaker John Bercow, however, confirmed that the government was under no obligation to allow time for the motion to be debated, which it did not.[44]

Third (and related to the prior point on parliamentary deadlock), it is asserted that incumbents found it at times more challenging to 'get their business through Parliament'.[45] The report elaborates on this point by contending that under the FTPA, executives relinquished the prerogative to raise the question of confidence due to the lack of

[38]Early Parliamentary General Election Act 2019: 1(1-3).
[39]FTPA 2011: 2(4).
[40]Norton, 'The Fixed-term Parliaments Act'; R. Kelly, 'Confidence Motions', House of Commons Library, (2019), Briefing Paper Number 02873.
[41]HC Deb 06 March 1972 vol. 832 cc1041-170.
[42]Blick, 'Constitutional Implications'; Schleiter and Evans, 'The Changing Confidence Relationship'.
[43]As quoted in Thompson (2018); L. Thompson, 'Q+A: How to Understand Corbyn's Confusing No-confidence Vote Against Theresa May', *The Conversation*, (2018).
[44]In general, the allotment of a day for a no-confidence debate on the part of the government is based on convention. See May (2019: Paragraph 18.33); T.E. May, *Erskine May: Parliamentary Practice 25th Edition* (London, 2019).
[45]Joint Committee on the FTPA 2021: 3.

advantages linked to the threat of a general election in case of a negative outcome. Votes of confidence initiated by the executive have traditionally been considered a far-reaching power granted to cabinets to contrast the legislature.[46] They are associated with the ability to influence legislative outcomes.[47] This is because the vote of confidence procedure forces backbenchers to support bills that they might see as unfavourable to their constituents in view of the fact that the alternative, i.e. rejecting the bill, would lead to no policy and no government.[48] This might explain, for instance, why the Brexit agreement was never made an explicit issue of confidence despite it being voted down several times.[49] Conversely, before 2011, prime ministers had managed to reverse a defeat with confidence votes. This was the case, for example, for John Major in 1993, whose proposal related to the Maastricht Treaty Social Chapter had been rejected on 22 July, but it was carried the following day with the motion 'That this House has confidence in the policy of Her Majesty's Government on the adoption of the Protocol on Social Policy', in conjunction with the threat of dismissal:

> At the conclusion of this debate, either the Government will have won the vote of confidence and we can proceed with our policy […] or we shall have lost and I shall seek a dissolution of Parliament.[50]

The aforementioned example of Heath in 1972 also applies.

The last point concerned the 14-day window granted to the House of Commons to rethink the decision to retract parliamentary confidence. The reason for such an argument is that what could be legally done by the ousted cabinet in this period is unclear. The committee went as far as speculating that it was possible that 'future defeated government would seek to wait out the time and force an election, even though an alternative administration could otherwise be formed, adding to political uncertainty'.[51] This last consideration is not dissimilar from what Youngs and Thomas-Symonds called 'the problem of the lame duck government'.[52] Strong indicates that rebel MPs might have exploited these 14 days to extract policy concessions from the government by leveraging the possibility of reaffirming parliamentary confidence contemplated in the FTPA, which would have allowed the cabinet to stay in office.[53]

The point concerning the lack of clarity regarding what can be done by the government during this 14-day spell is, arguably, less relevant because it is not an issue that arises exclusively in connection with the Fixed-term Parliaments Act. It is true that constitutions seldom regulate the powers of the executive in inter-government periods, and,

[46]M. Laver, 'Legislatures and Parliaments in Comparative Context', in D.A. Wittman and B.R. Weingast (eds), *The Oxford Handbook of Political Economy* (Oxford, 2006), pp. 121–40.
[47]J.D. Huber, 'The Vote of Confidence in Parliamentary Democracies', *American Political Science Review* 90, (1996), pp. 269–82; D. Diermeier and T.J. Feddersen, 'Cohesion in Legislatures and the Vote of Confidence Procedure', *American Political Science Review* 92, (1998), pp. 611–21.
[48]J.A. Cheibub and B.E. Rasch, 'Constitutional Parliamentarism in Europe, 1800–2019', *West European Politics* 45, (2022), pp. 470–501.
[49]Though, when the motion under the European Union (Withdrawal) Act 2018 to approve the Brexit withdrawal agreement was rejected on 15 January 2019, PM May explicitly offered the opposition the opportunity to table a no-confidence motion to be debated the following day.
[50]HC Deb 23 July 1993 vol. 229 cc625-724.
[51]Joint Committee on the FTPA 2021: 3.
[52]Youngs and Thomas-Symonds, 'The Problem of the 'Lame Duck' Government'.
[53]Strong, 'Confidence and Caretakers'.

in the case of Britain, they are primarily based on constitutional convention.[54] A transition from plenitude of power to caretaking capacity happens anytime (1) the government resigns or loses a vote of confidence of any kind and (2) when the legislature stands dissolved. These events can take place with or without the FTPA, where circumstances of uncertainty surface with respect to what the government can and cannot do or should and should not do. For instance, following the successful no-confidence motion in the Callaghan ministry on 28 March 1979, 37 days elapsed before Thatcher was appointed on 4 May. Similarly, more recently, when Theresa May resigned on 7 June 2019, 27 days went by before Johnson was appointed. That is not to say that the point raised in the report is not valid, but it does stand out in the context of the only document that provided a legal framework vis-à-vis the functioning of confidence motions in the United Kingdom.

On 12 May 2021, the Dissolution and Calling of Parliament Bill, sponsored by Minister for the Cabinet Office Michael Gove, was introduced in the House of Commons. After a back and forth with the House of Lords, the proposal received royal assent in March 2022. Table 1 presents the timeline of the DCPA:[55]

Section 1 of the DCPA explicitly repeals the Fixed-term Parliaments Act 2011. The other parts of the document contain a number of provisions that replace those of the FTPA. First, the revival of unilateral authority over the dissolution of parliament on the part of the head of government by means of the royal prerogative:

> The powers relating to the dissolution of Parliament and the calling of a new Parliament that were exercisable by virtue of Her Majesty's prerogative immediately before the commencement of the Fixed-term Parliaments Act 2011 are exercisable again, as if the Fixed-term Parliaments Act 2011 had never been enacted.[56]

The act specifies the bestowal of writs for general elections upon the executive in accordance with the Representation of the People Act 1983. This speaks directly to the tension emphasised by Vernon Bogdanor due to the fact that the FTPA created a fracture between the principle of parliamentary government, providing that the legislature chooses the executive, and the principle of democratic government, providing that the people choose the government that is, in turn, accountable to the electorate. The two principles coincide under single-party majority cabinets.[57]

Section 3 introduces the heavily discussed ouster clause. Essentially, this is a legal restriction to the courts' ability to enquire into the lawfulness of a decision.[58] The section stipulates that a court or tribunal may not question the exercise of dissolution powers, any decision relating to those powers, or the limits of those powers. In other words, the DCPA ensures the non-justiciability of applications of the royal prerogative,

[54]Vague references to the actions of the government during caretaking spells are included in the Cabinet Manual. For a discussion on caretaker conventions in Westminster systems, see Menzies and Tiernan. On the same subject, see Schleiter and Belu; J. Menzies and A. Tiernan, 'Caretaker Conventions', in B. Galligan and S. Brenton (eds), *Constitutional Conventions in Westminster Systems: Controversies, Changes and Challenges* (Cambridge, 2015), pp. 91–115; P. Schleiter and V. Belu, 'Avoiding Another 'Squatter in Downing Street' Controversy: The Need to Improve the Caretaker Conventions before the 2015 General Election', *The Political Quarterly* 85, (2014), pp. 454–61.

[55]R. Kelly, 'Dissolution and Calling of Parliament Act: Progress Through Parliament', House of Commons Library, (2022), Research Briefing Number 9308.

[56]DCPA 2022: 2(1).

[57]V. Bogdanor, 'Written Evidence Submitted by Vernon Bogdanor', UK Parliament, (2020).

[58]P. Leyland and G. Anthony, *Textbook on Administrative Law*, 7th Edition (Oxford, 2013).

Table 1. Timeline of the Dissolution and Calling of Parliament Act 2022.

Date	Stage
12 May 2021	First reading (Commons)
6 July 2021	Second reading (Commons)
13 September 2021	Committee stage (Commons)
13 September 2021	Third reading (Commons)
14 September 2021	First reading (Lords)
30 November 2021	Second reading (Lords)
25 January 2022	Committee stage (Lords)
9 February 2022	Report stage (Lords)
24 February 2022	Third reading (Lords)
14 March 2022	Lords' amendments considered (Commons)
22 March 2022	Commons amendments considered (Lords)
24 March 2022	Royal assent

at least in the case of dissolutions. The introduction of the clause follows the 2019 controversy pertaining to the prorogation of parliament on the advice of PM Johnson, which was ruled unlawful and quashed by the Supreme Court of the United Kingdom. The 2021 report of the joint committee includes an account of the debate surrounding the ouster clause. The government's proposals scrutinised in the report justified the provision as a way of preventing 'the courts from exercising oversight over decisions to do with both dissolution and the calling of Parliaments'.[59] Similarly, the stance of the majority of the committee on the issue is clarified:

> Parliament should be able to designate certain matters as ones which are to be resolved in the political rather than the judicial sphere, and Parliament should accordingly be able to restrict, and in rare cases, entirely to exclude, the jurisdiction of the courts. This position is not inherently incompatible with the rule of law, even if ousting the courts' jurisdiction will often be at tension with it so that a complete ouster will rarely be appropriate. In this case, when the power in question is to enable the electorate to determine who should hold power, they consider the ouster is acceptable.[60]

Section 4 concerns the automatic dissolution of parliament after five years. That is, if the legislature has not been dismissed earlier, 'a Parliament dissolves at the beginning of the day that is the fifth anniversary of the day on which it first met'.[61] Finally, much like its precursors, the Dissolution and Calling of Parliament Act leaves prorogation powers untouched. The following section discusses the implications of the Dissolution and Calling of Parliament Act for UK politics, and it compares these with the status quo created by the Fixed-term Parliaments Act.

DCPA vs FTPA: implications

The Dissolution and Calling of Parliament Act 2022 is the new reality in Britain. The bill has a number of implications for British domestic politics. The first implication is a very practical one. This article pointed out how, under the Parliament Act, election timing was not fixed. Conversely, the FTPA introduced clear-cut boundaries as to when general elections should take place. The repeal of the Fixed-term Parliaments Act re-introduces flexibility. This stems from the fact that the DCPA creates a timeline for automatic

[59]Joint Committee on the FTPA 2021: 29.
[60]Joint Committee on the FTPA 2021: 44.
[61]DCPA 2022: 4.

parliamentary dissolution after five years, but it does not impose any restrictions with respect to the period between elections.

One of the most significant implications of the DCPA is the return to the exercise of the royal prerogative to dissolve parliament, which de facto confers unilateral dismissal powers to the prime minister. This is the case for several reasons. First, the provisions included in the Dissolution and Calling of Parliament Act imply an outright transfer of dissolution authority acquired by parliament in 2011 back to the executive. As a result, the legislature no longer plays an active role in the matter of parliament dismissal and election timing. That is because, on the one hand, the Commons does not enjoy the explicit right to self-dissolve by simply advancing a motion anymore (regardless of the supermajority requirement). On the other hand, the DCPA does not delineate any legal consequences for votes of confidence. This means that, should a no-confidence motion be carried, or a confidence vote initiated by the government rejected, dissolution does not necessarily follow. A general election did follow in the last two instances of confidence withdrawal (MacDonald in 1924 and Callaghan in 1979). However, there are precedents where it did not. For example, MacDonald's predecessor, PM Stanley Baldwin, lost a vote of confidence that did not lead to a parliamentary dissolution. On this point, the lack of explicit regulation concerning the ramifications of confidence votes and the elimination of statutory confidence motions imply a return to these votes being managed predominantly by constitutional convention. This places the United Kingdom back on par with other constitutional monarchies (for example, Luxembourg; the Netherlands), where the vote confidence procedure is not codified.[62]

The current scenario vis-à-vis dissolution of the legislature was not the only nor the obvious outcome. In fact, the Lords did try to insert an amendment to the Dissolution and Calling of Parliaments Act in February 2022 that would have allowed the House of Commons to retain a saying with respect to its premature dismissal.[63] As per the amendment, the Commons would have enjoyed the prerogative to endorse a dissolution by resolving 'That this present Parliament be dissolved'. Later, in March 2022, the lower house communicated that 'the Commons do not consider it appropriate that the dissolution of Parliament should be subject to a vote in the Commons',[64] scrapping the amendment proposed by the peers with 292 ayes out of 509 voting members (57%). Why the (only) elected chamber would acquiesce to this self-imposed constraint by declining the possibility of more power and surrendering discretion over its discharge is perhaps up for discussion. I will limit myself to calling attention to the role tradition plays in the UK context and how British parliamentarism consolidated. In the mid-nineteenth century, Walter Bagehot wrote:

> The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion of the executive and legislative powers. […] the goodness of our constitution consists in the entire separation of the legislative and executive authorities, but in truth its merit consists in their singular approximation. The connecting link is *the cabinet* […]. The cabinet, in a word, is a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation.[65]

[62]J.D. Huber, *Rationalizing Parliament: Legislative Institutions and Party Politics in France* (Cambridge, 1996).
[63]A solution welcomed by scholars such as Craig (2018); Craig, 'Restoring Confidence'.
[64]Votes and Proceedings – Monday 14 March 2022, UK Parliament.
[65]Bagehot, *The English Constitution*: 9–10.

The DCPA, I argue, rekindles cabinet supremacy in at least three ways. First, it fully reinstates flexible election timing as one of the agenda powers that are part of the executive's toolkit. Returning discretion over parliamentary dissolutions to the government implies that elections can be more easily strategically timed to the advantage of the ruling party. This phenomenon is described by Strøm and Swindle in their influential study on strategic dissolutions: 'It appears that the employment of this mechanism can be more plausibly understood as a strategy employed by self-interested or partisan prime ministers'.[66]

Strictly speaking, the Fixed-term Parliaments Act did not prevent the executive from calling elections opportunistically: it made it more burdensome. Both May in 2017 and Johnson in 2019 were, in fact, successful in securing early parliamentary elections. However, while prime ministers before 2011 could just announce a snap election and proceed to submit a request for dissolution to the monarch without the involvement of the Commons, the FTPA prescribed two definite channels for achieving a premature election (self-dissolution or confidence withdrawal), both necessitating a vote in the legislature. This means that even in the more straightforward scenarios that required a simple majority (engineered no-confidence motion or primary legislation that bypasses the FTPA), the head of government would have still needed to rely on the support of most backbenchers at the very least, assuming that the opposition does not endorse an early election. One can clearly see how this condition was designed for coalition governance. With less than 50% of seats, had PM Cameron wanted to dissolve parliament at any point after the 2010 election, he would not have been able to do so without the approval of the Liberal Democrats or the opposition. Analogously, Johnson failed to achieve an early election thrice in 2019 under the stipulations of the Fixed-term Parliaments Act before the passage of the Early Parliamentary General Election Act 2019.[67] Because of this, the FTPA also removed the 'element of surprise' that British PMs had previously relied on when requesting a sudden dissolution, giving incumbents the advantage of exploiting the unpreparedness of the opposition for electoral purposes.[68] By eliminating the dissolution hurdles imposed by Fixed-term Parliaments Act, the DCPA reinstates the surprise factor.

Next, the reintroduction of dissolution authority as agenda power reinvigorates another agenda power: the vote of confidence procedure. The Dissolution and Calling of Parliament Act 2022 allows prime ministers to substantiate the employment of votes of confidence with the threat of dissolution again. It is hardly a coincidence that all votes of confidence initiated by the government since the Second World War in Britain have been successful.[69] Furthermore, cabinet turnover since 1945 has sprung from elections, technical replacements, or intra-party leadership contests but never from conflict between the executive and the legislature other than in the Callaghan case.[70] The threat of dissolution combined with a confidence vote can be effective

[66]Strøm and Swindle (2002): 588; K. Strøm and S.M. Swindle, 'Strategic Parliamentary Dissolution', *American Political Science Review* 96, (2002), pp. 575–91.
[67]The 2019 Johnson ministry was not a coalition cabinet but a minority government with a confidence-and-supply agreement with the Democratic Unionist Party.
[68]Smith, *Election Timing*; McClean, 'The Element of Surprise'.
[69]Kelly, 'Confidence Motions'.
[70]Schleiter and Issar, 'Constitutional Rules'.

because such a threat pressures backbenchers into supporting the PM by jeopardizing legislators' seats.

To see why linking the vote of confidence procedure with dissolution threats was impractical under the FTPA, we need to distinguish between two types of votes of confidence that the cabinet can initiate. The first type is the *simple* motion of confidence, i.e. a clear and direct statement that unequivocally asks if parliament has confidence in the government of the day. The second type is the *conjunct* motion of confidence, i.e. an issue of confidence attached to a substantive bill (as in the cases of Heath and Major mentioned earlier). With the provisions of the Fixed-term Parliaments Act, the executive could have tabled a joint motion of confidence whose rejection would have implied cabinet resignation by convention, but the prime minister would not have had the authority to request a dissolution in the event of failure. Plus, under the FTPA, the rejection of a conjunct motion of confidence would not have automatically led to the dismissal of the legislature. The introduction of statutory wording means that only 'That this House has no confidence in Her Majesty's Government',[71] a no-confidence motion, would have triggered a dissolution or, if anything, kicked off the 14-day waiting window. Whether the rejection of a simple motion of confidence tabled by the government in the form prescribed by the Fixed-term Parliaments Act ('That this House has confidence in Her Majesty's Government'),[72] would have been sufficient to trigger a dissolution is unclear, as the mechanism has never been tested. I am not aware of any votes of confidence put forward by the executive between 2011 and 2021.

The last implication I discuss pertains to the introduction of the non-justiciability clause. Under the FTPA, the prime minister was stripped of the faculty to rely on the royal prerogative for dissolutions. Indeed, the word 'dissolve' was omitted from the Crown Act 1707.[73] The bill, however, explicitly left the monarch's powers to prorogue parliament untouched. Between August and September 2019, Boris Johnson inquired about and submitted a request for prorogation to the late Queen Elizabeth II to last until the state opening of parliament on 14 October 2019. Such a move was criticised as an attempt to obstruct parliament's work on Brexit, whose deadline was 31 October. There are several instances of controversial prorogations in Westminster systems.[74] For example, in 2008, Canadian PM Stephen Harper sought prorogation to avoid a no-confidence motion.[75] Eventually, the prorogation requested by Johnson was declared unlawful and quashed by the UK Supreme Court with the landmark *Miller II* verdict. The line of defence of the government in the Miller/Cherry case that prorogation is a parliamentary proceeding that cannot be impugned in a court as per the 1689 Bill of Rights was rejected.[76] The interference of the judicial branch with the

[71]FTPA 2011: 2(4).
[72]FTPA 2011: 2(5).
[73]Crown Act 1707 (1707 c. 41); Later reintroduced with the Dissolution and Calling of Parliament Act.
[74]Cowie reviews a number of examples of controversial prorogations in Westminster systems. For further discussion on the subject of prorogation and the 2019 controversy, see also Fleming and Schleiter; G. Cowie, 'Prorogation of Parliament', House of Commons Library, (2019), Briefing Paper Number 8589; T.G. Fleming and P. Schleiter, 'Prorogation: Comparative Context and Scope for Reform', *Parliamentary Affairs* 74, (2021), pp. 964–78.
[75]Cowie, 'Prorogation of Parliament'.
[76][2019] UKSC 41.

business conducted by the executive, arguably, prompted the introduction of the ouster clause in the DCPA.

I ask: *What does the clause mean for the prime minister's ability to exercise dissolution authority in an unrestrained fashion?* In other words, to what extent is the Dissolution and Calling of Parliament Act compatible with the rule of law? The joint committee clearly states that the document does not create a new statutory power but restores the royal prerogative. Technically, this implies that the head of government cannot simply 'declare' a dissolution. Instead, they must submit a request to the monarch for parliament to be dismissed. As evident from the report, a debate took place as to whether the PM 'advises' or 'requests' a dissolution. The committee maintained that:

> We consider that it is important there is some check on executive power. Under a prerogative system, that safeguard comes from the Monarch: it is understood that dissolutions are 'requested,' not 'advised' by Prime Ministers and may, in exceptional cases, be refused. Any exercise of the Monarch's veto will be extremely rare, and would come with a very serious risk of constitutional crisis. It is instead intended that the mere existence of the reserve power puts pressure on political actors to exercise greater restraint and to keep the Monarch above party politics. The Government should make it clear that this is its intention in reviving a prerogative system. It should avoid referring to 'advice' in this context, given that such language wrongly implies the Monarch is bound to follow it.[77]

In essence, the FTPA committee asserted that the possibility of vetoing dissolutions on the part of the sovereign is sufficient to make up for the exclusion of judicial review. The report adds that: 'the powers of the Prime Minister to fix the time of an election should not be unlimited'.[78]

The degree to which the head of state would get involved in potential cases of executive overreach is uncertain. As I mentioned earlier, there have been no instances of refusals in Britain in recent times. According to Anne Twomey, setting aside Lascelles' principles, there are three circumstances where the sovereign could credibly reject a request for dissolution. The first case is if a legislative election has occurred very recently and the possibility of installing a new government exists. This way, a prime minister who has been defeated is prevented from keeping on having new elections until a parliamentary majority is achieved. The second case is if the cabinet runs out of supply during the course of the election period. Finally, the monarch might refuse a dissolution if there has been a shift of majority and a new executive can be formed, especially in the presence of some kind of emergency (for example, pandemics, wars, or economic crises) where a parliamentary election might be deleterious.[79]

The ouster clause covers 'revived prerogative powers'.[80] The literal sense would be that non-justiciability only applies to dissolutions and not to prorogation. It is unclear at this stage the extent to which any application of the royal prerogative, including prorogation, would be shielded from judicial scrutiny by the ouster clause. Granted that the figure of the monarch remains non-politicised, i.e. they persist in their unwillingness to get involved in political disputes, the clause has the potential to compromise the equilibrium between executive, legislative, and judicial power. Unaccountable to the courts, prime ministers acquire the potential to 'hold parliament hostage' with the threat of whimsical

[77]Joint Committee on the FTPA 2021: 4.
[78]Joint Committee on the FTPA 2021: 39.
[79]Oral evidence – Thursday 21 January 2021, UK Parliament.
[80]DCPA 2022: 3.

dismissals or, conceivably, prorogation. The result is augmented agenda-setting powers as executives might seek to curtail the parliamentary debate on a bill or cut the odds of the rejection of cabinet proposals by leveraging the prerogative to dissolve parliament altogether or discontinue its session at will. In a way, this is reminiscent of procedures such as the package vote or the guillotine in France that allow the government to outflank the legislature.[81]

Alternatively, as in the 2008 Canadian case, leaders might try to use these prerogatives to elude the test of confidence. Indeed, even when unsuccessful, no-confidence motions have been shown to bring electoral benefits to the opposition.[82] A constitutional crisis of this nature occurred in Pakistan in April 2022 when PM Imran Khan responded to the announcement of a no-confidence motion by seeking a dissolution of the National Assembly. In this case, the crisis was resolved with the intervention of the Supreme Court, which allowed the motion to go through, overturning the dissolution.

Opinions on whether the non-justiciability clause is at odds with the notion of limited government and upholding of the rule of law are mixed. As I anticipated, the Joint Committee on the FTPA saw the provision as a trade-off: 'When the power in question is to enable the electorate to determine who should hold power, […] the ouster is acceptable'.[83] Reading between the lines, this seems to insinuate that electors should be the ultimate judges of the actions of executives, rewarding or punishing them as they see fit. Several jurists have spoken against the provision. Law Professor John McGarry maintained that 'such clauses put the relationship between the judiciary, the executive and the legislature under unnecessary strain and are contrary to the rule of law'.[84] Law Professor Gavin Phillipson argued that 'the ouster clause is a needless and naked attack on the rule of law'. He concluded that:

> The trouble with this extraordinary ouster is that the way it goes about responding directly to recent judicial decisions makes courts more, not less likely to read it down so as to allow judicial review after all.[85]

Former Clerk of the House of Commons Malcolm Jack asserts that: 'the courts will themselves interpret clause 3 of the draft Bill. They will not be stopped doing that'.[86]

Altogether, the unilateral ability to time elections strategically conferred to the government, the restored capacity of corroborating the use of executive-initiated confidence votes with the threat of dissolution, and the potential consequences of the non-justiciability clause re-shape the relationship between the cabinet and the legislature in the United Kingdom. They do so, as evidenced by the considerations listed thus far, by deepening executive dominance to the degree of the pre-FTPA status quo and perhaps even higher, at least nominally. The main difference between the new bill and the earlier Parliament Act dwells, in fact, in the creation of legal barriers for the courts to question the actions of the executive. I add that the content of the Dissolution and Calling of Parliament Act, including the ouster clause, was approved by 85% of the members present on

[81]Huber, *Rationalizing Parliament*.
[82]L.K. Williams, 'Unsuccessful Success? Failed No-confidence Motions, Competence Signals, and Electoral Support', *Comparative Political Studies* 44, (2011), pp. 1474–99.
[83]Joint Committee on the FTPA 2021: 44.
[84]McGarry (2021), as quoted in Joint Committee on the FTPA 2021: 42.
[85]G. Phillipson, 'Written Evidence Submitted by Professor Gavin Phillipson', UK Parliament, (2021).
[86]Oral evidence – Thursday 17 December 2020, UK Parliament.

14 September 2021 (third reading). Of course, we have yet to observe leaders, cabinet members, legislators, and judges operating in the environment created by the act.

I conclude with a note of caution. Schleiter and Belu recognised a 'decline in majoritarianism' in the UK.[87] This is visible in increasingly more fragmented legislatures and governments struggling to rack up and retain a majority of seats. At least since 2010, all PMs (but not all cabinets) in office have needed either a coalition agreement or a confidence-and-supply agreement at some point to survive. The employment of mechanisms such as the confidence procedure and parliamentary dissolutions becomes more complex and onerous under non-single-party executives.[88] As a result, the electoral and legislative advantages British governments and prime ministers can derive from these prerogatives could be diluted if elections do not produce single-party majority cabinets.

Conclusion

It has been argued that the FTPA has served its immediate purpose of holding the Cameron-Clegg coalition together. The bill has been placed under scrutiny for the supermajority required for self-dissolution as it poses the risk of resulting in parliamentary gridlock and the loss of dissolution powers enjoyed by the PM, which has made it harder for cabinets to pass their policies. In addition, the 14-day window granted to the legislature to rethink the decision of withdrawing confidence has been questioned for the incentives it creates for backbenchers and governments and it adds to political uncertainty.

On 24 March 2022, the Dissolution and Calling of Parliament Act 2022 received royal assent. The bill repeals the Fixed-term Parliaments Act and introduces a series of provisions that take its place: (1) The ability of the prime minister to request a dissolution via the exercise of the royal prerogative on the part of the monarch is restored. (2) Writs for general elections are bestowed upon the executive. (3) An ouster clause is introduced that ensures the non-justiciability of the exercise of the royal prerogative, at least in the case of dissolutions.

This article contributes to a large body of literature on the consequences of the Fixed-term Parliaments Act by presenting a critical summary of the history and the content of its newly ratified successor, the Dissolution and Calling of Parliament Act, and discussing its implications for UK politics. Specifically, the following points are raised: (1) the repeal of the Fixed-term Parliaments Act re-introduces flexibility vis-à-vis election timing. (2) The DCPA implies a transfer of dissolution authority from parliament back to the government. As a result, the legislature does not play an active role in the matter of its own dismissal anymore because it no longer enjoys the explicit right to self-dissolve, and no legal consequences for confidence votes are delineated in the new document. (3) The elimination of statutory confidence motions implies a return to the confidence procedure being managed by constitutional convention. I argued that the Dissolution and Calling of Parliament Act rekindles cabinet supremacy in at least three ways. First, returning discretion over the dismissal of parliament to the government implies that elections can now be more easily strategically timed to the ruling party's advantage, reinstating the 'element of

[87]Schleiter and Belu, 'The Decline of Majoritarianism'.
[88]Heller, 'Making Policy Stick'; Strøm and Swindle, 'Strategic Parliamentary Dissolution'.

surprise'. Second, the act allows prime ministers to substantiate the employment of confidence votes with the threat of dissolution again. Third, leaders might seek to capitalise on the absence of judicial review to further their political agenda or elude the test of confidence. I conclude that, overall, the act re-shapes the relationship between the cabinet and the legislature in the United Kingdom by deepening executive dominance to the levels of the pre-FTPA status quo and perhaps even higher, given the introduction of the ouster clause, at least as long as elections return single-party majority cabinets. It is hoped that this article will be a part of and stimulate a long line of scholarly contributions that debate the ramifications of this bill that so markedly changes the political process in Britain.

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