SELECT COMMITTEE ON THE CONSTITUTION

INQUIRY INTO THE CONSTITUTIONAL IMPLICATIONS
OF COALITION GOVERNMENT

Oral and written evidence

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WEDNESDAY 27 NOVEMBER 2013

Members present
Baroness Jay of Paddington (chairman)
Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Falkner of Margravine
Lord Hart of Chilton
Lord Irvine of Lairg
Lord Lang of Monkton
Lord Lester of Herne Hill
Lord Lexden
Lord Powell of Bayswater
Baroness Wheatcroft

Examination of Witnesses

Examination of Witness

Rt Hon. Lord Adonis, member of Labour negotiation team after 2010 general election

Q88  The Chairman: Thank you very much for arriving so promptly and for enabling us to proceed with a rather similar conversation, although we want to devote some time, if we can, to what you wrote about the formation of the coalition, as well as general points about its continuation and operation. We heard in the last session, and you were here for some of it, quite a lot of support for the idea of a coalition being a perfectly meaningful way of conducting government. You wrote in your book rather firmly, “As a necessity they can work … but for the two major parties, they are the product of electoral and policy failure”.

Lord Adonis: I obviously agree with what I wrote.

The Chairman: I wonder if you could expand on it.

Lord Adonis: My view is pretty much in agreement with what I heard Lord Strathclyde say. For the two major parties, obviously their objective should be to win an election, in terms of winning the majority of seats. My view is that, having observed this coalition and experienced government myself including, taking up Lord Lester’s point, the fact that all parties are themselves to some extent coalitions and have to interact with other parties, it is better to have the clarity of a single-party government. Certainly the two major parties should make that their objective.
However, what we have demonstrated in the past three and a half years is that it is perfectly possible to make a coalition work. Although that might seem a strange thing to say, given our history, in two senses there were big question marks. First, outside wartime we had not had a coalition since, being realistic about it, 1932. The 1930s are slightly debatable—whether you count it as a coalition going right through to 1939—but there was a meaningful coalition in 1931–32. Thereafter, it was essentially one-party government. We had not had a coalition outside wartime, so there was a question mark as to whether we could make it work effectively. There was also the precedent—and as somebody famously said, the only constitution that the English have is precedent—that, where elections do not yield a majority, minority governments are formed. That was the precedent of 1974, 1929 and 1923–24. There was a general expectation—an expectation I held—that if the election did not lead to a one-party majority, a minority government would be formed.

It is clear now, on the basis of the past three and a half years, that we now have another precedent, which is a coalition that has functioned as a Government effectively for three and a half years. It looks as if it may do so through to the 2015 election. That, too, will be a precedent. I am struck by the fact that, alongside this coalition over the past three and a half years, there has been a certain amount of looking back on periods of single-party government, including that marvellous play at the National Theatre, *This House*. I am young enough not to have been around in the mid-1970s. Some members of the committee, including you, Lord Chairman, have personal memories of this time in government, not least because of your father leading the Government, which is the subject of the play. It is not clear to me that it is advantageous to have a minority government, hand to mouth, living and dying by votes on crucial matters of state, including financial matters, week by week, with no majority, and every vote counting in the House of Commons, with the near dead being brought in by ambulance to vote. When we look back at the 1970s, which I see as a pretty deplorable period in our history in terms of the effectiveness of government, if it is a choice between a minority government or a coalition government—if that is the choice that the politicians have—there is a lot to be said for coalition.

**Q89 The Chairman:** It is interesting to hear you say that, because there are survivors of the 1970s who have given evidence to us, who suggested, in the context of our constitution—as you say, what is the constitution but precedent?—that the democratic legitimacy of a minority government is stronger than that of a coalition.

**Lord Adonis:** The legitimacy of government in the Westminster system depends on the confidence of the House of Commons. The House of Commons can give its confidence to a minority government or to a majority government. I do not think that those distinctions can be made; they are all equally legitimate. Obviously it would be illegitimate if there was any question of seeking to put in place a government contrary to the majority of the House of Commons. Therefore, I was very concerned by the original proposal, which I know the committee was extremely concerned about, for fixed-term Parliaments that would have allowed for zombie governments that did not command the confidence of the House of Commons but, because a super-majority would have been required to bring about an election, could have continued in office. That would have been a damaging development for our constitution, because you could then have had a government in office that did not enjoy the confidence of the House of Commons.

We have had, if you look back over our history as a representative system of government, governments of all forms: we have had what would now be, in category terms, regarded as grand coalitions; we have had coalitions between large parties and small parties; we have had minority governments, some of which have continued in office for a long period of time.
Asquith’s Government in 1910 was a minority government, which in one form or another continued right until 1915, and fought the first phase of the First World War. We have had minority governments, too, and the general experience has been of majority governments. It would be very hard to generalise and say that any one of those is inherently superior. What is clearly the case is that they can all be made to work if they need to be.

The Chairman: One populist mantra is, “Nobody voted for this”. One suggestion from people who have given evidence to us is that there should be, in a potential future coalition situation, a motion that puts the coalition agreement before the House of Commons to do precisely what you have said and create democratic support there.

Lord Adonis: I do not understand the point. Of course, the House of Commons, by giving its confidence to a government, gives its confidence to the programme. If you do not like the coalition agreement, you move a motion of no confidence in the Government, which would be on the basis of their programme. I do not understand that point at all. You could argue that there should have been more time spent negotiating the coalition agreement—how can I put this diplomatically? I am trying to be as non-partisan as I possibly can—so that it was a fuller and more complete document. It was a very short document. The first iteration, the one that came out after the five days, was a pretty skimpy document. The longer version that was published later was a fuller document. The idea that you can produce a whole programme of government over the course of five days, negotiated by people who have had no sleep for the previous five weeks, is dubious. One of the lessons of 2010 is that it might not do any harm to spend a bit longer, if there is a future coalition, putting the programme together. I do not think there is any illegitimacy in the programme for government, whatever you call it, for as long as that government enjoys the confidence of the House of Commons.

Q90 Baroness Falkner of Margravine: Taking you to the formation of government, we are in this curious position whereby the parties indicate, and the constitutional position tends to be, that the party with the largest number of seats gets the first chance at trying to form a new government, yet you have the incumbent Prime Minister remaining in office with a prerogative to resign, who cannot resign, because in these five days or however long it might take he has to remain in office. What would you make of an attempt to formalise a proposal to keep the incumbent Prime Minister in office while negotiations continue?

Lord Adonis: I have to say that I think that side of things worked remarkably well in 2010. We need to pay tribute to Lord O’Donnell and the painstaking work he did before the 2010 election with the Cabinet Manual, essentially seeking to establish a new understanding. The new understanding he sought to establish was that the incumbent Prime Minister should remain in office for the period that it took to negotiate an alternative arrangement, if there was an alternative government that was likely to command the confidence of the House of Commons. The incumbent Prime Minister should remain in office in that period and not immediately resign, which would have been perfectly in accordance with precedent, on the grounds that the incumbent Prime Minister did not believe that he was able to form a government. That would then have obliged the Queen to send immediately for the Leader of the Opposition, before any discussions had taken place.
This was a significant step forward in two ways. The first is that it created an important space for negotiations to take place between the parties that might not have been able to take place otherwise. If Gordon Brown had resigned on the Friday morning, David Cameron would have been sent for. He may then have felt compelled to form a minority government before any conversations had taken place.
The second reason that I believe it is the right thing to do is that what worked extremely well in 2010—it is the dog that did not bark; we do not talk about it because it did not happen, but it could easily have happened—is that the Queen was not drawn into arbitrating between the political parties. I know that Lord O'Donnell was concerned that, unless we reached a situation in extremis where there was no alternative but for the Queen to perform a direct role in the process, it was much better if the party leaders between them, looking to their ability to form a government that could command a majority in the House of Commons, should seek to make those arrangements. Having negotiated between themselves and come to a conclusion as to what arrangement was likely to lead to a government that could command the confidence of the House of Commons, the Queen should then send for the leader who could then form that government.

Although in those five days I saw quite a lot of the Queen's private secretary, who was playing—and it was absolutely right that he should have done so—an important information-gathering role, so that he could advise Her Majesty on what was taking place, the three party leaders served the country well by not putting the monarch in the position of arbitrating between the three political parties. Speaking as an historian, where the monarch has played that role in the past—as to some extent she was obliged to do because the Conservative party did not have arrangements for electing its own leader in the 1950s and 1960s, and famously in 1931—I do not think it did the monarchy much good as an institution rising above party politics.

Baroness Falkner of Margravine: Just to clarify: for whatever reason, by force of personality, circumstance and preparation, it worked the last time. It may not again. Should we think of formalising this situation?

Lord Adonis: It is now the precedent so, in a sense, who knows what might happen? It might be that, in a fit of impetuosity, David Cameron, if he is the incumbent Prime Minister but not the leader of the largest party and therefore unlikely to be able to form a government, does not want to resign, but I doubt it. I imagine he would behave thoroughly responsibly in that situation. It is now the precedent. Does it need to be formalised? I am not quite sure how you would formalise it. Actually, I know how you would: a report by this committee would carry huge weight and would help to formalise it significantly. I am assuming that we would not be talking about legislating for it.

The Chairman: It is creating another precedent.

Lord Adonis: Legislating could be awkward, because it would be very difficult to define the circumstances. On the point that we need to address ourselves to—namely, did it work last time?—it worked at two different levels. The first was that it gave the space for the party leaders to decide between them the shape of the new government, being a government that would be likely to command the confidence of the House of Commons.

The second thing it did was ensure that the Government continued for those five days. There were important things that happened in those five days. I was busy negotiating the opening of English air space because of the ash cloud; all that was happening. I was in the office every day during those five days, as Transport Secretary. More importantly, Alistair Darling was at a meeting of the European Council that weekend, negotiating to avert what could have been the collapse of the euro. He represented the national interest perfectly satisfactorily. He spoke to the shadow Chancellor, so that there was agreement as to what the course should be. We were much better off having a real Government in office that weekend than we would have been if Gordon Brown had resigned on the Friday. What
could have been the eventuality, which could have happened if Gordon Brown had resigned on the Friday, what might have happened, à la Alec Douglas-Home in 1963, is that David Cameron might have said to the Queen, “I am not sure if I can form a government.” The realistic situation on that Friday, depending on what the Liberal Democrats did, is that he might not have been able to form a government. We might have been in a situation where we had several days where we essentially did not have a government. The experience of those five days leads me to think that we should repeat that arrangement next time and keep the incumbent Prime Minister in office, even if it is very unlikely that they are going to form the next government.

**Q91 Lord Lang of Monkton:** Can I move on to the use of the civil service? Do you regret not bringing in the civil service, in some form or another? If the situation arose again, would you wish to do so and, if so, to what extent and on what basis? Do you think the situation should be formalised?

**Lord Adonis:** We did bring in the civil service, because we were the incumbent Government. On a number of matters to do with the negotiations over that weekend, we consulted Sir Gus O’Donnell. I remember having a long meeting in No. 10 on the Saturday morning with the constitutional secretariat of the Cabinet Office, discussing different options for electoral reform, so we did carry on, and we had a perfect right to do so as the incumbent Government.

**Lord Lang of Monkton:** I am sorry; it was the Liberals who did not.

**Lord Adonis:** What happened, because we only had two substantive negotiating sessions with the Lib Dems, is at the first of those Sir Gus O’Donnell appeared at the beginning, wished us well, as I remember, which was very kind of him, and then said, “Would you like to have civil service support?” Danny Alexander, who was leading for the Lib Dems, said immediately, “No.” He did not want any civil servants in the room while we were having these discussions. We would have been perfectly content to have had civil servants in the room. My view is it would have been better—in order to deal with the mechanical business of recording decisions, commissioning further work and so on—but that was the view the Lib Dems took and we respected it.

**Lord Lang of Monkton:** Do you think it should be left to the discretion of the parties on each occasion?

**Lord Adonis:** Yes. I do not think you can impose a formal bureaucracy on what are essentially political discussions.

**Q92 Lord Crickhowell:** Going back to precedent, one of the most exciting documents that we have read during this inquiry is Robert Armstrong’s breathtaking account of the negotiations in 1974 by Ted Heath with the missing leader of the Liberal party, who initially could not be traced. My question is: it has been generally accepted—and certainly Mr Clegg made it a point of principle—that the party with the largest number of votes should have the initiative to form a government. You could have the situation where the sitting Prime Minister can visualise getting a coalition together with minority parties, which is exactly what Ted Heath tried to do in 1974, so the Prime Minister is still there. Do you think there is an obligation that the party with the largest number of seats gets the initiative, or is there not a
role still for the sitting Prime Minister to seek to continue in office? Where do you draw the line there?

Lord Adonis: In the presence of so many constitutional experts I speak very tentatively here, but my understanding of the established constitutional practice is that the sitting Prime Minister does, if he or she so wishes, have the right to meet Parliament. I am not sure how it would be possible to prevent that happening, because the sitting Prime Minister would say to the Queen that they believe they have a prospect of being able to command the confidence of the House of Commons. Since that can only be tested by the House of Commons meeting, I cannot imagine that Her Majesty would wish to intervene between the Prime Minister saying that, even if they were leader of the second-largest party, and the meeting of the House of Commons and the debate on the Loyal Address.

There is an important precedent here. In 1923 Stanley Baldwin was in a situation where he was very likely not to be able to form a government, because Asquith had indicated that he would support Labour, although Labour was the second-largest party in forming a government. Baldwin met Parliament, was defeated on the Address and then Ramsay MacDonald became Prime Minister. My understanding of the constitutional position is, if the sitting Prime Minister so desires, they have a constitutional right to meet Parliament, and the only way that that could be stopped would be if the Queen were, either informally or formally—and it is unthinkable that the Queen would do so formally—to intervene in that process.

The issue is a matter of political wisdom, as I see it. Is it wise for a sitting Prime Minister who does not believe that they stand much chance in being able to command the confidence of the House of Commons to seek to meet Parliament? Gordon Brown was clear in 2010, rightly so, that if there was not going to be support from the Lib Dems, it would not be doing the right thing by the country to create another—how long does it take a Parliament to meet; is it two weeks?—two weeks of uncertainty when it was very unlikely that he was going to be able to continue in office.

Lord Crickhowell: I thought it was important we should have that particular principle and precedent on the record.

Lord Adonis: Where it would be a matter of much finer judgment is in a situation like 1923, when an incumbent Prime Minister continues to lead the largest party, but it looks as if the other two parties might combine against him. There it might be that, for precisely the reason that Baldwin insisted on meeting Parliament in 1923 into January 1924, an incumbent Prime Minister might wish to meet Parliament. He might take the view that, since he is the leader of the largest party, he has the greatest legitimacy when it comes to forming a government and he is going to challenge the other two parties to put him out. There could be a situation, particularly if that sitting Prime Minister was leader of a party—again, as in 1923—that is by some margin the largest party in the House of Commons, where they might take the view that the right thing for the country, taking a national view and leaving aside party politics, is not to resign until the other two parties have demonstrated that they can form a majority government between them.

Q93 Lord Lexden: I indicated a wish to take part before Lord Adonis began to discourse so splendidly on 1923–24 because that was very much in my mind. It is hard not to draw the conclusion that that would serve the country best. The Queen’s Government must be carried on and the resignation of an incumbent Prime Minister should always have that firm principle in view. As to coalitions, I cannot think of an instance when a major party has lost
ground in a general election, and there has been a subsequent coalition with the party that has suffered a reverse entering into a coalition agreement with a smaller party. In your judgment is it likely always to be a severe limiting factor on a coalition that a government that has lost ground in a general election is poorly placed to reach an agreement to continue in office?

**Lord Adonis**: Trading historical precedents with Lord Lexden is a dangerous business. I cannot think of a case, either. The best example I can think of is 1910, when of course Asquith lost significant ground in the election.

**Lord Lexden**: 1910 did not produce a coalition.

**Lord Adonis**: It did produce a coalition in 1915, but it did not produce one immediately. I think you are right on the precedent.

**Baroness Falkner of Margravine**: In Germany we have the example of the FDP, which vacillates in its parliamentary strength but is seen by the CDU as the natural partner. Where it passes the threshold, it forms a government.

**Lord Adonis**: There is an interesting and important constitutional difference between Britain and Germany in this respect. Under the German constitution, the first act of the Bundestag in forming a new government is to elect a Chancellor. My understanding is that that Chancellor must command a majority of the votes in the Bundestag, which is a very different situation from the House of Commons. It is not simply avoiding being defeated on a motion of confidence, and the votes are the votes; a majority of the members of the Bundestag must vote to elect the Chancellor. That is my understanding of how the system works. When people say that Adenauer was elected by one vote, he was not. What happens is that one candidate is put forward; there is a vote; and then, if they fail, another candidate has to come forward. Adenauer was elected by a majority of one in the Bundestag. That is a significant difference from our practice. There is no requirement on a government to have the support of a majority of Members of the House of Commons. They just have to be able to survive on a motion of confidence or the debate on the Address. Of course, they can survive in one of two ways: either by winning a majority or by sufficient abstentions enabling them to command a majority in the vote.

**The Chairman**: I think the question of survival on a majority may come up, because I know Lord Lang has been particularly interested, as we all have, in the impact of the Fixed-term Parliaments Act 2011.

**Lord Adonis**: May I draw one conclusion from that? The conclusion that I draw is of course that it is German practice, since 1949, for there to be a much greater argument behind forming a coalition in Germany than here, when you have a government without a majority, which is the general rule in Germany. Otherwise, unless you have some Machiavellian voting by the smaller parties, the candidate for Chancellor will not have a majority. Even though Merkel is only just short of a majority, unless she has the formal support of another party, she cannot be sure that she will become Chancellor. Indeed, the only way she could become Chancellor—again, this is my understanding of the German situation—is if enough members of other parties were to vote for her to become Chancellor, even if their party is not intending to support her Government. That is a pretty precarious way to launch yourself into power.
Q94 Lord Powell of Bayswater: As a political officer of the British Embassy in Germany many years ago, I think that is an accurate description of the situation. I wanted to lower the tone of the discussion from these constitutional precedents and ask about how you think the Labour party will draft its manifesto in the light of the experience of coalition government over the past three years. Do you think it will deliberately shade its manifesto to make itself more appealing to a potential coalition partner, whether the Liberals or not? How do you think it will go about preparing for coalition negotiations? You are critical in your book of the lack of preparation. How do you see it done next time?

Lord Adonis: I very much hope that the Labour party at the next election, like the last election, will speak out for the public interest as it sees it and frame its manifesto on that basis. The issue of how you prepare for talks with other parties is a different one which is: having set out in your manifesto the policies that you believe are in the national interest, how much account you take of what the other parties say? I do not think you should take much account of their positions in framing your own manifesto. Your manifesto should be your party speaking to the country without fear or favour about what you believe is the national interest.

I believe, though, that it would have been a good thing if we had engaged in a bit more detail with what was in the Lib Dem manifesto before polling day. If we had done so, we might have been able to have got more rapidly into detailed discussions about policy options. One of the lessons I draw from the experience in 2010 is that you should engage and be prepared to engage in what the other parties are saying, in some detail, before polling day, in order to equip yourself to be able to discuss things with them afterwards. I do not believe that you should in any way be affected in what you say to the electorate by what the other parties are saying.

The Chairman: We must turn to this major statutory change in the constitutional framework, which we have discussed with all our witnesses: the impact of the Fixed-term Parliaments Act 2011.

Q95 Lord Lang of Monkton: There is a view that a fixed-term Parliament goes against the grain of the fundamental constitutional principle whereby, subject to a five-year limitation, a government may remain in power so long as it commands a majority in the House of Commons. As to your negotiations with the Liberals, it is not clear what emerged from those discussions. I believe one of the things you discussed was the possibility of a four-year limited-term Parliament. Did you do that because of the circumstances and for the limited purpose of creating stability in an economic crisis or was there an underlying constitutional reason?

Lord Adonis: There are two different issues here. The first is: is there some illegitimacy in a fixed-term Parliament? My view is that there is no illegitimacy in a fixed-term Parliament if Parliament itself enacts legislation for that purpose, provided there can be an early election if a government does not command the confidence of the House of Commons. The arrangement that was reached finally in 2010–11 under the Fixed-term Parliaments Act was that the Parliament would last a fixed term, so there was a significant diminution in the ability of the Prime Minister to exercise the royal prerogative. If there was not a majority in the House of Commons for a government, there was a mechanism for having an immediate election. I think that is a perfectly reasonable position to have reached.

On four years versus five years, we had only one brief discussion on this in the negotiations between Labour and the Lib Dems, and we simply took it for granted that it was four years. I
was very surprised when I saw five years appear in the coalition document. The reason that we assumed it would be four years is that that is the length of time that most Parliaments last for. The reason I was particularly keen on four years is, where Parliaments have lasted five years in the past, it is usually because the government have been very weak and have not dared go anywhere near the voters. Also, from international experience, generally speaking, parliamentary terms are four years. There are some cases of five, but four is the general practice. For all of those reasons, I thought four rather than five was the best option.

Lord Lang of Monkton: Do you think there is an underlying tendency of a fixed-term parliament to create a situation in which coalition government is likely to happen more often than it has in the past? For example, if you have an overall majority in one party, the chances are that it can go the full term without any difficulty and would be unlikely to collapse in mid-term. If there is a coalition, it could collapse in mid-term. Although there are provisions for an election to come ahead of the limitation of the term, there would also be a strong inclination among the various participants, I suspect, to form yet another coalition. I see the possibility of an underlying trend where coalition becomes more common as a result of this legislation.

Lord Adonis: It would depend very much on the views of the leaders of the parties after the election. My reading of it—we are now getting into political territory here, rather than constitutional territory—is that part of the reason that David Cameron was so keen to form a coalition in 2010 was that he was very doubtful of his capacity to win an early second election. My view, again speaking politically, is that he was wise to be very doubtful about his capacity to win an early second election. If he had not been able to win a majority, although he was seven points ahead in the popular vote against a very unpopular incumbent Prime Minister, what realistic chance was there, in six or nine months’ time, of him being able to win a majority and therefore get an even larger lead in the popular vote, against a new and popular leader of the Labour party? That was highly doubtful. My reading of the situation in 2010 is that the reason that he formed a coalition government was entirely political; it was nothing to do with constitutional practice.

At the point of the formation of a government after the next election, those political options will still be completely open. They will be completely open because, if a leader of the largest party wished to form a minority government, they would be within their rights to do so and would not be able to compel the Liberal Democrats, if they were the party holding the balance, to go into government with them. This would be an entirely political judgment, which would not, in any way, as I see it, be affected by the Fixed-term Parliaments Act.

Lord Lang of Monkton: I strongly disagree with what you said about David Cameron’s reasons for going into coalition, but it is an issue we should probably not pursue at the present time.

The Chairman: It is one of those hypothetical questions that we can debate elsewhere, perhaps. Lady Wheatcroft, you have a question.

Q96 Baroness Wheatcroft: Could I keep you in that political territory for a moment? If we had an unpopular leader of a party, as we had in 2010, but nevertheless there was a possibility that a coalition between the Lib Dems and Labour might have resulted, we have talked about everything depending on the legitimacy that the House of Commons gives to a government, but not about the electorate. I wonder whether you think that a continuing
procession of coalitions might hinder the ability of the electorate to get rid of an unpopular government.

Lord Adonis: If they take that view, I very much hope that what they would then do is to put the Labour party in with a majority and we could avoid that eventuality entirely. The truth of the matter is that the electorate will have to make a judgment. The judgment that is crucial in this respect is whether voters want to vote for smaller parties. If what they want is single-party government with a majority, their surest route to securing that is to vote for one of the two major parties. That is a judgment that the voters will make and that we will have to leave to them.

Lord Cullen of Whitekirk: In your book you wrote about what was essential from what you described as a “coalition of substance”. You mentioned leadership of major departments, Cabinet posts, control of economic policy and so on. Does all that presuppose a certain numerical strength in the minority party?

Lord Adonis: No, it simply requires them to hold the balance. The point about it is—we are now into political territory—that the minor party is never so strong as at the moment when it does or does not strike a deal over formatting a government. It does not matter whether it has 40 seats, 80 seats or 120 seats; if it is the difference between a majority and no majority, it holds the whip hand. It is never as strong as at that point. My view is that the Liberal Democrats struck a remarkably weak deal in 2010—a weak deal in terms of policy and a weak deal in terms of ministerial offices. Having failed to get a good deal at the moment the government are formed, it is very difficult to revisit that thereafter. I do not think it is a matter of numerical strength. The critical issue is whether they do or do not hold the balance, with one partial exception. Of course, the larger their number of seats, the larger the number of ministerial positions they can lay claim to. However, the weakness, as I see it—again, I am speaking as a politician here—of the Liberal Democrats in respect of ministerial offices in 2010 was not to do with the number of ministerial offices, but the ministerial offices that they chose. They chose, for reasons I still find extraordinary, a series of weak or irrelevant posts in government. In particular, they chose to put their leader into a position without portfolio, where it was very difficult for him to exercise significant influence within the ongoing management of the Government. That was not to do with the number of ministerial posts they had available; it was to do with the decisions that the leader of the Liberal Democrats took about which posts he wished to occupy.

The Chairman: I do not want this to become a completely political discussion, but I know that Lady Falkner wants to ask about that.

Q97 Baroness Falkner of Margravine: It is the Constitution Unit’s analysis that, with 8% of the seats, the Liberal Democrats have achieved 70% of their policy programme. Perhaps you might say, if you are coming from that perspective, that the policy programme was weak, but it does not seem to me that the evidence supports your argument that that was a weak deal. It was an internal discussion among the Liberal Democrats—as I am sure you are aware—that the choice of portfolio for the leader of the Liberal Democrats was based on a desire to be across government, rather than bogged down as secretary of state in running a department. Of course there are different choices that people make and, given that it had been 70 years since the party had experienced that, perhaps you could see both sides of that argument.
Lord Adonis: I can. I just think it was a mistake. It is telling that, in most continental countries where there are coalitions, the leader of the second-largest party, almost invariably, takes a substantive portfolio. They do so because they understand that government is a matter of significant power centres within the government itself. The significant power centres within the British government are No. 10 and the Treasury. Those are the two most significant power centres. If the Liberal Democrats had wanted to take charge of the second-most important power centre in the Government, they should have wished their leader to become Chancellor of the Exchequer. If you are not going to take the second most significant power centre, you should at least try to make up your mind what the third is. I am speaking very politically here. It is debatable what the third is in our system of government—whether it is the Foreign and Commonwealth Office, the Home Office or possibly a major public service department such as health, because you wish to establish a really significant platform.

I can tell you from my experience of government, without a scintilla of hesitation, that the Cabinet Office is not one of those power centres. It is the department of paperclips; it is not a substantive power centre within our system of government. Nick Clegg has found it very difficult since 2010 to establish it as a power centre, because he is starting off with almost no institutional power and has had to create it whereas, if he had been Foreign Secretary, Chancellor or Home Secretary, he would have started off with a very significant power centre. Being a man of many parts, he might have been able both to exercise the function of that office and perhaps have kept an eye on what was going on elsewhere, as Hans-Dietrich Genscher did for more than a decade as Foreign Minister of Germany, leader of the FDP and Vice-Chancellor.

Lord Lester of Herne Hill: I wanted to return a compliment to you. You have given your retrospective advice to the Liberal Democrats. May I say as a Liberal Democrat that it is my impression—I would like you to comment—that Labour was much worse prepared than the Conservatives for negotiating with the Liberal Democrats and were much less friendly in the process, because they really did not want a coalition? There is a kind of magnetism that goes on in politics, for example right now, as to whether, for example, a Liberal Democrat would rather be in bed with a Tory or with a Labour party person. All of this depends very much on feel and judgment. I think it is important for Labour to think as carefully about these issues as the Conservatives will and do rather better next time, if there were a hung result, at negotiating.

Lord Adonis: I think that was a rhetorical question. I have been listening intently.

Q98 Lord Lexden: Do you think that, even if it is in a very loose form—we return to constitutional matters—certain procedures should be set out in an expanded version of the Cabinet Manual or some code that should be followed between a general election and the kissing of hands of the Prime Minister?

Lord Adonis: That is an important point. Do I believe that there is a case for an updated version of the Cabinet Manual or some equivalent document—and you might recommend what that equivalent document might be? Yes. Do I believe that, learning from the experience of 2010, there is a change that could be made? I do. The change that I believe could be made is to make it explicit that, in the event of negotiations taking place between political parties, a reasonable period of time should be allowed for those negotiations. That should be made explicitly clear. Where we were flying blind in 2010 was that, even though we had the Cabinet Manual, we had Gordon Brown taking a very public-spirited view that he
should not resign, even if it looked as if there was going to be a Conservative-led
government, until that government was likely to be in a position to be formed—despite all of
that—we still felt under massive pressure to get everything done PDQ, because otherwise
the country was going to fall apart.
I remember over that weekend, two days after the election, we were having serious
discussions about whether the markets might collapse on the Monday morning because we
did not have a government to announce on the Monday morning. In fact, the markets—it is
an important historical point—went up on the Monday morning, even though we were still
in a process of negotiation. My view is that, if it was made explicitly clear before, because of
of course part of the role of the Cabinet Manual is to condition—

The Chairman: It has to be made explicitly clear to the media.

Lord Adonis: May I come back to that point in a moment? If it is made explicitly clear in the
Cabinet Manual that there is an expectation that there will be a reasonable period until the
meeting of Parliament, during which negotiations can take place, it would help condition
expectations.
The point about the media is significant. The media did not on the Friday call for Gordon
Brown to resign immediately. Part of the reason they did not was because Gus O’Donnell
had done a very good job before the election in explaining to Nick Robinson and co. why it
was that he was setting out, in the Cabinet Manual, the expectation that a serving Prime
Minister should remain in office while discussions took place.
I do not think you should take an excessive period of time in forming a government. The
two months that it has taken the Germans is quite a long time. For the Belgians, how long
was it? I think it was 18 months. That is a pretty significant betrayal of your national interest
if you cannot put a government together in a reasonable time, but does it have to be done
within five days if there are difficult matters to be negotiated? Having a longer period, the
country would not necessarily fall apart, if expectations were conditioned beforehand.

The Chairman: Thank you very much. Does any member of the committee feel we have
not covered something that they wanted to put to Lord Adonis or not heard his view on
something that was importance to them? No? Lord Adonis, are there points you think we
have failed to raise?

Lord Adonis: I think I have gone round the highways and byways fairly comprehensively.

Q99 The Chairman: I would ask you if you would like to comment on the point that you
probably heard Lord Strathclyde make at the end of his contribution. He felt that, even if we
went back to a majority government after the next election or whenever, we would in a
sense have imposed on our precedent-based constitution some different expectations and
ways of working that might persist. Do you agree?

Lord Adonis: No, I do not. If we have a single-party government, we would go back to
running it in the way that we ran single-party governments in the past. The precedents that
have been created in the past three and a half years are all to do with how you manage
coalitions.

The Chairman: The greater flexibility, for example, about ministerial collective
responsibility and so on, you think would be abandoned?
Lord Adonis: As some members will remember, we have had suspensions of collective responsibility under single-party governments, as in 1975 on Europe.

The Chairman: But explicitly made.

Lord Adonis: I think we would create the precedents as we went along, in the future, as we have done in the past.

The Chairman: Thank you very much. We are grateful to you, Lord Adonis. You have been very helpful. Thank you.
Summary

This evidence is intended to offer a useful discussion to some of the principle points the Select Committee has asked be addressed. It demonstrates that coalitions are now more likely and argues that they should be regarded with similar legitimacy as majority governments. Contrary to some opinion, it can be observed that coalitions can support greater collectivism by requiring Cabinet discussion and mitigating against Prime Ministerial Presidentialism. Nonetheless, the evidence underlines the continued importance of maintaining collective responsibility which can be put under greater strain during a coalition. It recommends that the Ministerial Code is updated to reflect such circumstances. It draws a distinction between manifestos and coalition agreements, the latter being the source of collective responsibility but potentially also incentivising greater Parliamentary independence. While there is little reason for formal changes to future manifestos, parties might well communicate their intentions in the event of a hung parliament. The evidence highlights the importance of the incumbent remaining in office as a ‘caretaker’ during coalition negotiations, adjustments to the exercise of prerogative powers and suggests the Salisbury-Addison convention is outdated.

1. Overview of Response: Likelihood and Legitimacy

1.1. This is a timely investigation into the constitutional implications of coalitions, the results of which could make for better governments in the future by highlighting good, constitutional practice and producing guidelines based on experience and theory.

1.2. Even if the 2010 coalition emerged as something of a novelty and we are perhaps used to single party administrations, it is worth observing that non-majority governments are not historically unusual in Britain. One only has to go back to the latter stages of John Major’s administration before 1997 to see a government without a working majority. In the late 1970’s Jim Callaghan’s administration was maintained by the Lib/Lab pact. Between March and October 1974, Harold Wilson led a minority government. Winston Churchill headed the wartime coalition between 1940-45 before which there had been the National Government (1931-35-40). In the 1920s there were two short periods of Labour minority rule (1924, 1929) and then there had been the great Lloyd George peacetime coalition 1918-22 which had emerged from the coalition in place during the First World War. Nonetheless, it can be observed that historically hung parliaments tend to result in minority government rather than coalition. However, voting trends could see this change.

1.3. While the next election could well see a return to a single party majority government, the longitudinal data suggests that coalitions are likely to become a more regular feature of British politics even without electoral reform. It is noteworthy that if one takes the 1955 general election as a starting point it can be seen that all but 3.9% of votes were cast for the Conservative or Labour parties and other than MPs belonging to those two, just 6 seats were won by the Liberals and 2
by Sinn Féin. Fifty years later in 2005 and a full 32% of the votes cast were for parties or candidates other than the ‘big two’. This has coincided with the rise of an increasingly credible third party, today in the form of the Liberal Democrats but the vote is broader than this encompassing minority parties and independents. Table 1 offers some comprehensive data for each of the 15 general elections between 1955-2010, from which there is undeniably a trend towards a sizable vote for alternative parties and candidates. Indeed by the 2010 election which resulted in coalition, just 65% of the electorate voted for Conservative or Labour candidates. More than this, despite the bias the electoral system has against candidates not supported by one of the main parties, the number of MPs not taking the Conservative or Labour Whip in the Commons has increased tenfold over fifty years making it that bit harder for leading parties to win a majority.

Table 1: Erosion in Electoral Dominance for Conservative and Labour Parties

<table>
<thead>
<tr>
<th>Election</th>
<th>% Vote for neither Cons or Lab</th>
<th>Seats not held by Cons or Lab</th>
<th>% Vote secured by winning party</th>
</tr>
</thead>
<tbody>
<tr>
<td>1955</td>
<td>4%</td>
<td>8 (of 630)</td>
<td>49.7%</td>
</tr>
<tr>
<td>1959</td>
<td>7%</td>
<td>7 (of 630)</td>
<td>49.4%</td>
</tr>
<tr>
<td>1964</td>
<td>12%</td>
<td>9 (of 630)</td>
<td>44.1%</td>
</tr>
<tr>
<td>1966</td>
<td>10%</td>
<td>13 (of 630)</td>
<td>48.0%</td>
</tr>
<tr>
<td>1970</td>
<td>11%</td>
<td>12 (of 630)</td>
<td>46.40%</td>
</tr>
<tr>
<td>1974 (F)</td>
<td>25%</td>
<td>37 (of 635)</td>
<td>37.2%*</td>
</tr>
<tr>
<td>1974 (O)</td>
<td>25%</td>
<td>39 (of 635)</td>
<td>39.2%</td>
</tr>
<tr>
<td>1979</td>
<td>19%</td>
<td>27 (of 635)</td>
<td>43.9%</td>
</tr>
<tr>
<td>1983</td>
<td>30%</td>
<td>44 (of 650)</td>
<td>42.4%</td>
</tr>
<tr>
<td>1987</td>
<td>27%</td>
<td>45 (of 650)</td>
<td>42.2%</td>
</tr>
<tr>
<td>1992</td>
<td>24%</td>
<td>44 (of 651)</td>
<td>41.9%</td>
</tr>
<tr>
<td>1997</td>
<td>26%</td>
<td>76 (of 659)</td>
<td>43.2%</td>
</tr>
<tr>
<td>2001</td>
<td>28%</td>
<td>80 (of 659)</td>
<td>40.7%</td>
</tr>
<tr>
<td>2005</td>
<td>32%</td>
<td>78 (of 646)</td>
<td>35.2%</td>
</tr>
<tr>
<td>2010</td>
<td>35%</td>
<td>86 (of 650)</td>
<td>36.1%**</td>
</tr>
</tbody>
</table>

* Harold Wilson’s Labour party won more seats and formed a minority government but the Conservatives won a marginally higher 37.9% of the vote
** The government was formed by the Conservatives in coalition with the Liberal Democrats who won 23% of the vote making a combined 59%

1.4. It remains to be seen as to whether there is a trend towards a lower percentage of the vote for the ‘winning’ party other than the observation that the days of parties
achieving near half of the votes are long gone. The reduction in the number of marginal seats as is noted by several scholars (Curtis, 2010; Hodgeson et al, 2012) could well mean that the last two elections (where the vote for the leading party was in the mid 30% rather than above 40% as was the case 1979-2001) are not an aberration. Leaving aside the arguments of injustice about the disproportionalit of the first past the post electoral system, it can further be observed that once the vote for the leading party falls much below 40%, the election results are somewhat capricious. Consequently, Tony Blair was able to form a government with a majority of 66 in 2005 on just 35.2% of the vote. Indeed this is the lowest ever share of the vote for a majority party and every principle opposition 1935 - 1979 (inclusive) won a higher percentage of the vote. Compare this to 2010 when David Cameron’s Conservative party achieved a slightly higher 36.1% of votes cast but was 20 seats short of an overall majority.

1.5. The question of legitimacy has been raised in respect of coalitions since the formation of a government comprising two or more parties, post-election, means that the electorate did not consciously vote for that specific combination of personnel or policy. Indeed had they known the outcome in advance, voting intentions might have changed. Furthermore, the Committee’s call for evidence suggests a question of parliamentary legitimacy ‘in that the Government’s right to exercise executive authority stems from the confidence of the House of Commons, which in turn is a recognition of popular acceptance of the governing party’s proposals as contained in its manifesto’. While such arguments are valid, they are perhaps not as strong as they might seem.

1.6. Comparing the experience of the 2005 and 2010 elections, it is difficult to maintain the argument that Tony Blair’s Labour party had a greater electoral mandate from its 35.2% of the vote in 2005 than David Cameron’s Conservatives on 36.1% five years later. And yet few questioned the legitimacy of Blair’s government when two thirds of the electorate had voted for parties other than the one which held office exclusively. While recognizing the limits of the arithmetic, the 2010 coalition represented a combined share of the vote of 59% (and the combined seats in the Commons being 306 plus 57 representing a proportional 58.4% of the House). Consequently, the formation of a coalition meant that Britain had a government which in some form represented more than half of votes cast at a general election for the first time in post-war history. The ‘had I known’ concern naturally weakens this case but the argument is inadequate since the electorate might vote in all sorts of different ways in hindsight (how many might have changed their vote in 2001 had they known about the Iraq war?). Furthermore, the alternative is majority governments on minority votes or minority governments which are unable to pursue their business.

1.7. Parties and manifestos are, of course, recognized in the British constitution. Short and Cranborne money, for instance, is paid directly to parties rather than Members, though is intended to support the constitutional role of loyal opposition. The Salisbury-Addison convention acknowledges the mandate given to a governing party by the electorate voting for policies detailed in a manifesto. However, notwithstanding the argument put in 1.6 above, the case that coalitions have less legitimacy to govern overlooks constitutional convention and practice. The link
between Members of Parliament and their constituencies is so valued that it always emerges as an objection to electoral reform. In Britain we elect candidates to office not parties and it is instructive that Liberal and Conservative parties emerged in the nineteenth century from groups within Parliament while Labour grew out of the Trade Union movement outside Westminster. Members hold the sovereign authority of their constituents for the duration of the parliament and are free to vote against their government, resign the whip or even cross the floor without the need for a by-election. In the Westminster system, a prime minister is able to form a government where he or she can command the confidence of Parliament and this is confirmed by votes of MPs notably in acceptance of the Queen’s speech which details a government's proposed programme. Governments do not need to perpetually command the confidence of the electorate or else we would see many more frequent elections. Indeed the constitutional position of an MP is summed up in the famous address by Burke to his constituents when he told them: ‘Your Representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion’. Consequently, once elected Parliament can agree to the formation of whatever government it sees fit and vote for whatever legislation it decides is right. Members are held to account retrospectively at the ballot box at the next election.

1.8. All governments, it is often said, are coalitions drawn from competing ideological opinion (usually within a single party). The 2010 coalition is in many ways more ideologically comfortable than the divisions between the ‘wets’ and the ‘drys’ in the Thatcher government and more functional in their relationships than the personal tribal splits between the ‘Blairite’s and the ‘Brownites’ of the Blair administration. While there have been some public rows between the parties in the Cameron/Clegg coalition, the more serious disagreements have not been drawn on party lines but rather have been between the Treasury and spending departments (for example the MoD and Social Security) reflecting the tough public spending environment more than coalition.

2. The Constitutional Framework

2.1. To what extent are the UK's existing constitutional conventions and practices unsuitable in the context of a coalition government?

The British constitution is flexible, accommodating and indeed has supported previous coalitions. Needless to say, the electoral system has to a significant degree mitigated against coalitions by frequently delivering majority governments on minority votes. Indeed the last time a party secured more than 50% of votes cast was in 1931 when Stanley Baldwin’s Conservatives secured a 55% share though ironically it was Ramsey MacDonald (whose National Labour had taken just 13 seats and 1.5% of votes) who remained prime minister in the resulting National Government. Here is an example of the constitution supporting not only coalition but factious parliamentary and government composition. Nonetheless, there are perhaps two significant areas where it is somewhat unsuitable in the context of coalitions. The first is the combative nature of Parliament and the second the prerogative powers assumed by the Prime Minister.
2.2. The Westminster system is confrontational in physical organisation and constitutional practice. After an election the party (or parties) which can command the confidence of Parliament forms a government with the remainder of Members taking to the opposition benches. There is a paid Leader of the Opposition whose job it is to legitimately oppose the government and together with a shadow cabinet act as an alternative government. This has the effect of not only being combative but also exaggerating differences between parties. It further facilitates the alternation of single party majority governments in office. It is perhaps somewhat unsuitable for the more consensual and discursive behaviour required to form and maintain coalitions (after all with regular coalitions, in successive elections the combinations of parties in office can alter). Whereas the Westminster system requires parties to identify (and amplify) differences in their programmes, coalition building requires parties to find similarities.

2.3. The British Prime Minister is able to exercise numerous prerogative powers including appointments, declarations of war and signing treaties. Irrespective of traditional criticism of the Royal Prerogative by the Prime Minister (or on occasion other Ministers), such powers exercised independently are counterproductive to the operation of a functioning coalition. This concept is discussed further below.

2.4. Constitutional Merits and Demerits of Coalitions

2010 was the first time in comparable history that a hung parliament has resulted in a coalition and offers a prism through which to view the merits and demerits of alternative scenarios. Previous occasions in the twentieth century, it should be noted, have led to minority rule whereas peacetime coalition arrangements were put in place prior to an election. Despite some fanciful counterfactuals, parliamentary arithmetic meant that any scenario other than David Cameron residing in Downing Street after polling day 2010 was very difficult to engineer. The alternatives then were independent minority government such as that led by Harold Wilson in March 1974; minority rule with the support of the Liberal Democrats by way of a supply and confidence arrangement perhaps comparable to the Lib/Lab pact; or full coalition with Liberal Democrat MPs taking Ministerial posts and shaping government policy.

2.5. Minority governments in the past have been short-lived and while they might be able to make quicker decisions in themselves represent fairly impotent administrations. A supply and confidence arrangement could secure the passage of a limited amount of relatively non-controversial legislation (including a Budget) but would not have offered the stability required given the weak state of the economy and could also have been expected to have been short-lived. Because of the data set out in 1.3 and 1.4 above, the prospect of another general election within say 12 months was no guarantee of achieving a majority in parliament for any single party. Under such circumstances, a coalition offered the best way of securing a stable government with a working majority for a full term in office and able to take decisions confidently, particularly in respect of the economy. Experience has shown some limitations to its ultimate adaptability though these would not appear to have been far reaching. If no overall control is a more likely outcome of elections, parties will have to get more used to working together at Westminster and coalitions can be seen to be a
more desirable way of securing stable government than simply calling more frequent elections. After all, whatever its faults, it is difficult to argue that the 2010 coalition has been afraid to take difficult and unpopular decisions or to be bold.

2.6. Perhaps a point of pedantry but the term ‘hung’ parliament, which according to Stuart Wilks-Heeg (2010) emerged only in the 1970s, is probably derived from a hung jury which of course would be dismissed. After the 2010 poll, ‘balanced’ was being used to describe the make-up of parliament and in the circumstances this seemed appropriate since a coalition was formed.

2.7. Space precludes a full discussion here and so I have limited my evidence. However, one lesson which can be learned from the practices of other parliamentary democracies is that coalitions can produce strong, stable government which can claim democratic legitimacy.

3. **Collective Ministerial Responsibility**

3.1. **Adjusting the Doctrine of Collective Responsibility and Procedures for its Suspension**

The doctrine of collective responsibility whereby all ministers are ‘bound by the collective decision of Cabinet’ is essential for any government to operate with any degree of effectiveness or confidence. After all, if a prime minister cannot command the votes of his own ministers, it is difficult to claim that he commands the confidence of Parliament and it is hard for Parliament to hold ministers to account if they do not speak for the government in a consistent fashion. The concept has been tested during the 2010 coalition as the two parties accommodate differing views within the confines of office. However, it is important not to exaggerate practices here or indeed to overstate their novelty. One only has to recall how Tony Benn would disassociate himself from collective decisions in the Wilson/Callaghan administration of 1974-79 or how there was open disagreement over industrial intervention policy and Europe in the Major government 1990-97 for instance between Peter Lilley and Michael Heseltine. Another example is Clare Short’s public opposition to the Iraq war while still a member of Blair’s Cabinet. Consequently, it is not so much the doctrine which requires adjustment in the modern era than the mechanisms which support it. Here it is worth discussing what might constitute a breach of collective responsibility or where collective responsibility might be suspended.

3.2. It is important to distinguish between genuine breaches or suspensions of collective responsibility and party posturing to demonstrate independence as a political force. In respect of the 2010 coalition, there is a suspicion that there have not necessarily been more disagreements as time has passed but rather that the party leaderships have deliberately let more light shine on the process for political reasons. While there is some potential overlap here (confidentiality is a principle of collective responsibility), it is worth trying to determine areas which are subject to collective responsibility and areas which are not. After all, practically all governments allow Ministers to express independent views on certain issues, usually defined as matters of conscience but can be motivated by maintaining harmony. And government
cannot be expected to hold a single view on an infinite array of subjects. Ministers appearing to disagree in public is not, therefore, necessarily a breach of collective responsibility. The Ministerial Code is also helpful here in connecting collective responsibility to ‘decisions’ made by government and the business of Cabinet and Cabinet Committees which would engage in ‘major issues of public policy because they are of critical importance to the public’ (Ministerial Code, 2010, 2.2). In coalition, there is a more explicit expression of differing views on a range of policy issues and these are detailed in the respective party manifestos. Consequently, it is impractical to expect collective responsibility to be maintained on a wide range of issues which do not ultimately result in Cabinet decisions since such an attempt could be much more farcical than some of the public disagreements to have taken place since 2010. Here the universe of collective responsibility must relate to the narrower programme of government and this is defined by the Coalition Agreement or other decisions which are subsequently brought to Cabinet to be taken collectively by Cabinet Ministers. For this reason, it is all the more essential that decisions made by individual Ministers which bind the government must be discussed collectively in cases of potential controversy.

3.3. One observation about coalitions is that there inevitably needs to be a degree of collectivism which should re-enforce collective responsibility. This contrasts, perhaps, with assessments of Thatcher and Blair administrations which are said to have been rather Presidential (the latter caricatured as ‘sofa government’), precluding collective discussion and decision making. Potentially, therefore, coalitions can support collective government. This is explicitly referred to in the 2012 Coalition Agreement for Stability and Reform which, in re-affirming collective responsibility, requires ‘an appropriate degree of consultation and discussion among Ministers to provide an opportunity to express their views frankly as decisions are reached’.

3.4. Before considering the procedure for suspending collective responsibility, it is worth sketching out and differentiating some potential circumstances. At its most acute, collective responsibility manifests itself within Parliament where there is a vote on a piece of legislation resulting (usually) from a government decision. Alternatively, it exists where there is an issue of collective responsibility relating to some major policy issue debated in the country. When it comes to suspending that collective responsibility, we also need to distinguish between strategic decisions intended to maintain functionality of a government (and therefore emerging from the leadership) and reactive or muddled suspensions in response to what looks like an inevitable parliamentary defeat or party split. In this sense too, one might distinguish between decisions to suspend collectivity made prior to the formation of a government and those which emerge during the course of a Parliament. Panicked reactive suspensions should be discouraged.

3.5. There are precedents for the suspension of collective responsibility, most recently under the (single party) government of Harold Wilson in 1975 when Cabinet Ministers were free to campaign on either side of the referendum on EEC membership and then again in 1977 under Callaghan in that same Parliament in respect of elections to the European Assembly. Before that, it is necessary to go back to the National Government when in 1932 Tariffs were the issue that required an agreement to differ. One might reasonably expect more suspensions from a coalition in order to facilitate a functioning government and the 2010 Coalition
Agreement, written before the formation of the government, explicitly set out areas which might arise during the course of the parliament but where the partners ‘agreed to differ’. These included tuition fees, nuclear power and Trident. Most overtly was the plan to suspend collective responsibility during the referendum campaign on electoral reform, though legislating for that poll and the Alternative Vote system if approved, was a government decision which bound ministers collectively.

3.6. There have been occasions during the 2010 coalition, however, where the suspension of collective responsibility is less constitutionally conducive, putting the convention under severe pressure. When David Cameron was unable or unwilling to deliver sufficient Parliamentary votes to achieve House of Lords reform, Nick Clegg instructed his MPs to vote against boundary changes drafted within the Electoral Registration and Administration Bill. Both of these had been collective policy decisions of government. Clegg’s justification was that the Conservatives had not honoured the agreement on bringing democracy to the Lords. While this is undoubtedly true, no Minister who voted against Lords reform remained in post so it is only on the boundary change vote that collective responsibility was breeched. Instructively, the BBC reported this as ‘Conservatives lose boundary review vote’ when the legislation was one of the government’s as a whole. This reflects reality that coalitions are negotiated between parties but executives are formed by a more exclusive group. While there appears to have been some agreement between the prime minister and the deputy prime minister on this matter of suspending collective responsibility, the episode still involved some Ministers voting against a previously agreed decision of the government and being directed to do so by the leader of the junior coalition partner. The Leader of the House, Andrew Lansley, went so far as to describe it as ‘an abuse of parliamentary process’. It is not the only example. While less of a threat to the stability of the coalition and more about maintaining harmony within the Conservative party, the acquiescence by the Prime Minister to allow Ministers to vote ‘against’ provisions in the Queen’s Speech by way of an amendment regretting ‘that an EU referendum bill was not included’ (HC Deb 15/5/13, c749) is constitutionally more serious. This is because historically the vote on the ‘Gracious Speech’ is considered a confidence motion in the government. For Ministers to, even tacitly, express no confidence in the government of which they are members but retain their seals of office is a curious state of affairs. The Coalition Agreement makes no exception here demanding that ‘in all circumstances, all members of both parties will be expected to support the Government on all matters of confidence’ (5.2) A further instance, the separate responses of the Conservative and Liberal Democrat leaderships to the Leveson Report is at best a constitutional oddity given that the government collectively appointed the Commission. These episodes suggest a need to be clearer about the doctrine of collective responsibility in coalition and the process for setting it aside.

3.7. The fact remains, however, that these discrepancies happened and were allowed to happen without resignations while the government otherwise continued to function. Constitutional purists might well wince, but it means our conceptions of acceptable practice might need to be relaxed to accommodate the political realities of holding together a working coalition. After all, such difficulties did not fatally wound the coalition because they were both just small elements of an overall programme and the government continued to command the confidence of Parliament.
3.8. It appears generally agreed that the decision to suspend collective responsibility rests with the Prime Minister but in coalition (where not part of a coalition agreement) it has to be a decision taken collectively by the government and with the authority of at least the Prime Minister and the leader(s) of the coalition party who it will be assumed here will hold office¹. Collective responsibility cannot be suspended very frequently, impulsively or unilaterally. Decisions to suspend collective responsibility must be made formally by the Prime Minister and his or her deputy, ahead of a vote or campaign and formal notice given to Parliament which should have the opportunity to debate. Indeed, the Coalition Agreement explicitly states that ‘they must be specifically agreed by the Coalition Committee and Cabinet.’ (5.1) Such practice should be formalised and observed.

4. Democratic legitimacy and electoral mandates

4.1. Status of coalition agreements and party manifestos

The Coalition Agreement necessarily becomes an important document in the formation and sustainability of a government in such circumstances and for this reason it is crucial that it is drafted appropriately and there has been some opportunity for the Civil Service to advise. While it has no fundamental force, the Agreement becomes the basis of not only the policy programme – that is what is included and what is excluded – but is also the settlement from which collective responsibility is derived. While there is legitimate criticism that the electorate did not vote for the Coalition Agreement, it would be perverse if party manifestos were not the basis for negotiations and the government’s programme. It should also be noted that there is nothing binding about a manifesto and many governments are accused of contradicting such pledges made at the previous general election. Once again it is in retrospect that voters hold governments to account by choosing to re-elect or dismiss them from office. Furthermore, manifestos as a legislative programme suffer the same weakness as Coalition Agreements in that contexts change during the course of a five year Parliament and there is a need to refresh objectives mid-term.

4.2. It is worth observing that the distinction between manifestos and the Coalition Agreement might be partially responsible for an increased sense of independence of Parliament since it weakens the powers of patronage enjoyed by a Prime Minister. It is perhaps no coincidence that the 2010 Parliament has been the most rebellious since 1945 (Cowley and Stuart, 2013) as government backbenchers can claim they were elected on their party manifestos not the Coalition Agreement against which they are being whipped.

4.3. There is little doubt that the increased prospect of coalition negotiations will incentivise all mainstream parties to consider that possibility in drafting manifestos.

¹ This is indeed an assumption as the leader of the party in coalition does not have to hold a government post. Paddy Ashdown suggested that had he formed a coalition as Lib Dem leader with Labour, he would have remained outside the government. When Labour leader Arthur Henderson resigned from Lloyd George’s Cabinet in 1917 to be replaced by George Barnes, he continued to lead his party for a period while Barnes did not replace him as leader as Lloyd George had expected. Indeed it was William Adamson who took over in October of that year.
As such manifestos will have the dual role of representing a series of pledges to the electorate and act as a document for negotiating a programme of government with another party. The idea, however, that the format should change to highlight pledges open for negotiation and those that are not is rather farcical. The relative Parliamentary strength after an election is a much more powerful indicator of what can and cannot be agreed. Successful parties are rather good at communicating their principle objectives to the electorate during an election campaign and it can be seen that Conservative and Liberal Democrat manifesto priorities featured strongly in the Coalition Agreement. Nonetheless, these will be legitimate questions to be answered by party leaders at election time and it is conceivable that parties will wish to include in their manifestos a statement of their intentions in the event of a hung parliament.

4.4. Previous peacetime occasions in the twentieth century where there has been a coalition followed agreement between parties made prior to the general election (1918, 1931). One might also consider the negotiations between Paddy Ashdown and Tony Blair prior to the 1997 election which might have led to a coalition had the parliamentary arithmetic been different. In part this latter potential pact was as the result of the Liberal Democrats abandoning its strategic position of equidistance (Barber, 2005), something which would appear to have been reinstated in 2010 when Nick Clegg articulated the view that the largest party should have the first opportunity to attempt to form a government. It is an interesting discussion point as to whether Clegg has articulated any sort of constitutional precedent here. First past the post and the consequent Westminster system usually incentivise against pre-election agreements however desirable they might be. One can only speculate that any future pre-election agreement to form a coalition will be accompanied by a pledge to reform the electoral system itself.

4.5. In contrast to say the United States where a new President takes office some months after an election, the British system is rapid with majority governments being formed (often by exhausted politicians) hours after polls close. The five days taken to form the 2010 coalition was, therefore, an anomaly. Nevertheless, the period (much more efficient than the formation of many European coalitions) caused little consternation during an otherwise economically volatile time. Indeed a successful Gilt auction took place during the negotiations. Five days would seem a desirable target and, as 2010 showed, is plausible. However, some future coalitions might take longer to negotiate and time must be given as well as expert facilitation by the Civil Service if parties require. The important point here is that the country must have a government and the incumbent should remain in office while there is space for a successor government to be formed. This happened in 2010 when Gordon Brown remained in office (though not in London). The pressure that appeared to be put on him to resign, however, should not have happened and the idea of continuity should be communicated. There was a suggestion that the Cabinet Office should publish guidance for any ‘caretaker’ government and this might well be helpful (House of Lords, 2011). Notwithstanding the statement by Clegg in 2010 discussed above, constitutionally, the incumbent has the first opportunity to attempt to form a majority (as was the case with Edward Heath in February 1974). Whether or not this is possible, they must remain in office until such a time as they can advise the Queen that they or another leader can form a government.
4.6. The Salisbury–Addison convention which, since 1945 has come to mean that the House of Lords does not defeat the government on second or third reading of legislation pertaining to pledges made in a manifesto, is already under strain. Its modern origins lay in Attlee’s landslide of 1945 and the under-representation of Labour peers in the Lords. However, since 1999 when all but 92 hereditary peers were removed from the Chamber and it can be observed that the House of Lords is actually more representative of votes cast at a general election than is the Commons, the purpose of the convention has waned. Peers would also reasonably question the convention when it comes to minority (or even majority) governments on minority shares of votes. After all, if only a third of the electorate has voted for a party with a particularly controversial manifesto commitment, there would not seem to be the same justification for the practice. In terms of a coalition, the context is further distorted since the settled programme is not contained in a single manifesto but rather in an agreement which the electorate has not directly approved. As such, the convention as is commonly understood is outdated and practice should perhaps revert to the original Salisbury convention of the nineteenth century when the Third Marquess argued that the Lords should intervene on contentious legislation where it believed the view of the Commons and the will of the people did not coincide. That being said, the programme of a coalition government which commands the confidence of the Commons is a legitimate programme and one must continue to accept the primacy of the lower house.

5. The Internal Organisation of the Government in a Coalition

5.1. Prerogative and Practices

The practices of the 2010 coalition government in terms of its organisation are not so much a constitutional blueprint to be followed in future so much as an instructive case study in how parties and politicians are incentivised to work together under such circumstances. Time, papers, memoirs and record in office will tell but on the whole the internal organisation of the 2010 coalition would seem to be at least as functional as recent comparable majority governments. There is more collectivism and discussion in decision making and less power assumed by the prime minister (and one suspects this usually means more due process). The coalition has organised itself with a quad system at the core executive comprising the Prime Minister, Deputy Prime Minister, the Chancellor and the Chief Secretary representing the two most senior members of each party. The Deputy Prime Minister also chairs many of the key Cabinet Committees.

5.2. There is no constitutional status of the office of Deputy Prime Minister in a coalition or any government. Indeed the leader of the minority party might take a different Cabinet post (Heath offered Thorpe the Home Office in 1974; Blair talked to Ashdown about being Foreign Secretary before 1997) or might even remain outside government (see n1). Nonetheless, the leader of the junior coalition partner is pivotal to the successful functioning of government and in a constitutional sense must have some strategic oversight of its programme, key decisions and day-to-day operation. It would be good practice to embed that role within the core executive and future coalitions might find some organised structure useful. Interestingly earlier DPMs in the shape of Willie Whitelaw and John Prescott have helped facilitate
smoother running of single party governments which might similarly be described as coalitions of opinion.

5.3. The exercise of Royal Prerogative powers by the Prime Minister is in many instances not conducive to a functioning coalition. It is inconceivable, to take an extreme example, that a Prime Minister could declare war independently and without agreement of a coalition partner. More routinely, while the Prime Minister retains ultimate power for appointing ministers, it can only be within the framework of what is agreed between the parties. The negotiations leading to a coalition, and informed by the relative strength of the parties, will have included the number of Cabinet and more junior ministers for the respective parties as well as the portfolios they occupy. Such portfolios, it would seem, are open to negotiation at periodic reshuffles though it is notable that none of the Cabinet jobs have changed parties and that Cameron has avoided the sort of routine reshuffle that bedevilled previous administrations. Interestingly, upon the formation of the government in May 2010, newly appointed ministers of both parties were met jointly by the Prime Minister and the Deputy Prime Minister. More tellingly, when Cabinet Minister Chris Huhne resigned in 2012, the announcement of his replacement was made by the Deputy Prime Minister from Whitehall suggesting that having negotiated portfolios, the respective party leaders were responsible for appointments from within their own parties. Nonetheless, the two Liberal Democrats who have left the Cabinet (Huhne and David Laws) each tendered their resignation to the Prime Minister alone as is customary.

5.4. There are historical examples of dysfunctional relationships between ministers in a department, sometimes for ideological reasons and sometimes because of their personality. On a positive note, early on in the coalition, Higher Education Minister David Willets made an interesting statement when he said:

‘We come from different backgrounds and different parties. However, we work together day in, day out and I actually think it improves the quality of decision taking. What you find is that you have to offer evidence; you are challenged and questioned by someone from a different political party… It leads to better, more open, more transparent decision taking and working together is what the British people expect us to do.’

To that extent departments with ministers drawn from different parties might produce better, more thought through, policy. Constitutionally, that ministers are drawn from different parties does not matter where the department is functional. However, relations which become less functional could give rise to issues. One is wary of gaming for instance where say a Prime Minister appoints junior ministers known to be hostile to a junior partner’s Secretary of State in the hope of impeding policy. It can be argued, however, that this is a potential state of affairs not exclusive to a coalition and in a multi-party government there is the natural check on such prerogative powers as described in 5.3.
6. Key Recommendations

6.1. Evidence suggests coalitions are now more likely. As such Parliament and Whitehall should prepare more detailed guidelines and structures likely to facilitate stable and legitimate coalitions in the future.

6.2. The concept of collective responsibility remains essential and the Ministerial Code should be updated to consider coalitions more explicitly. This should cover its maintenance, procedure for suspension and communication in advance to Parliament. Reactive, last minute suspensions should be discouraged.

6.3. The continuity of government by the incumbent during coalition negotiations is important. The Cabinet Office should publish guidance to ‘caretaker governments’ and communicate their importance.

6.4. The Salisbury-Addison convention has become outdated and should be replaced by a more contemporary understanding of the role of the House of Lords in respect of both coalitions and majority governments.

August 2013

References

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Cowley, Philip and Stuart, Mark, “Parliament still remains on course to be the most rebellious since 1945”, Political Insight, 14/5/13
Summary
- This evidence, submitted on a personal basis, draws partly from a project being undertaken by the Centre for Political and Constitutional Studies, King’s College London, into the UK Cabinet Manual, supported by the Nuffield Foundation.

- The constitutional ramifications of coalition government, which might become a more frequent occurrence in future, are great. One impact is upon the principle of collective Cabinet responsibility. Coalition government presents challenges to this traditional method of operation, particularly because of the allowance made for ‘agreements to differ’ between ministers. Such exemptions to collective responsibility should be used only as a last resort, and tightly regulated.

- Lessons can be learned from practices in foreign states and at devolved level in the UK. Parties could indicate their preferred coalition partners in advance of general elections, and their priorities for a coalition negotiation. The use of investiture votes in advance of the appointment of a Prime Minister could help prevent the perception or reality of inappropriate monarchical involvement in party politics around coalition formation.

- A system of English MPs having a specific role in voting on ‘English’ legislation could bring about even more complex considerations surrounding coalitions, if a single party commanded a majority amongst UK MPs but not amongst English MPs.

- The proper relationship between the House of Commons and the House of Lords during a coalition is difficult precisely to discern, as is the status of a coalition agreement as compared with a single party manifesto. Consideration should be given to establishing a committee of both houses to attempt to reach consensus over these issues.

- The Civil Service can play a useful – though constitutionally complicated – role in planning for possible future coalitions and supporting inter-party negotiations following an inconclusive General Election. Officials personally appointed by ministers under the present proposals for an ‘Extended Ministerial Office’ might lack the perceived impartiality required for such tasks. During periods of coalition government, more special advisers should be recruited to handle sensitive party political issues.

- The political parties should, well in advance of the next General Election, seek to reach agreement over the procedures to be followed in the event of a further inconclusive outcome. The Cabinet Manual could form a basis for this discussion.

Introduction
1. The following evidence, though submitted by myself on a personal basis, arises partially from a project being undertaken at the Centre for Political and Constitutional Studies, King’s College London, into the constitutional status of the UK Cabinet Manual, supported by the Nuffield Foundation.

2. This inquiry by the House of Lords Select Committee on the Constitution is both appropriate and timely. The advent of a coalition government in the UK, the first since 1945, has already raised a number of important concerns of a constitutional nature, and is likely to
continue to do so. Furthermore, electoral trends in the UK, with declining overall levels of support for the two main parties, make it a plausible proposition that coalitions, which were a regular feature of UK politics in the first half of the twentieth century, could in coming decades become more common once again.

3. The re-appearance of coalition on the contemporary UK constitutional agenda intersects with another tendency that has developed in the time since the last coalition: the increased codification of government practices, through publicly available documents such as the *Ministerial Code* (first published as *Questions of Procedure for Ministers* in 1992, though existing internally since 1945) and the *Cabinet Manual* (published in its first edition in 2011). These texts and their relevance to coalition merit close consideration.

**Overview: the constitutional framework**

1. To what extent are the UK’s existing constitutional conventions and practices unsuitable in the context of a coalition government?

4. Coalitions should not be regarded as alien to the UK constitution. In earlier eras, when some of the features of the UK constitution considered in this submission – such as the collective responsibility of ministers and the existence of an impartial, permanent Civil Service – were already developing or fully formed, coalitions could be a common occurrence. For instance, at the turn of the nineteenth/twentieth centuries, a Conservative/Liberal Unionist coalition held office. Coalitions of various sorts existed for roughly twenty-one of the thirty years up to 1945. There is no reason to believe these arrangements were an insuperable challenge to the UK constitution, or inherently incompatible with it. However, some of the difficulties discussed in this paper may have come about partly because there had, before 2010, been a period of sixty-five years of single-party government. Consequently there was no first-hand memory amongst politicians, officials or others as to how coalitions could or should operate.

2. What are the constitutional merits and demerits of coalitions compared to other means of forming a government in a hung parliament, such as minority governments or supply and confidence arrangements?

5. No one method should be regarded as inherently better or more desirable than any other. All must conform to the fundamental principle of the need to possess the confidence of the House of Commons, a tenet that has now acquired a degree of statutory acknowledgement through the *Fixed-term Parliaments Act 2011* (see s. 2). Furthermore, the personalities involved will be important alongside the mechanisms devised or chosen.

6. However, it is possible to make certain observations about the qualities of these different approaches to parliaments with no single party majority in the Commons. Coalitions possibly provide more stability through locking the different groups into government around an agreed policy programme. On the other hand, they raise issues about the legitimacy of that agenda, as discussed below, and about how to maintain collective responsibility between ministers. Single party governments without a Commons majority

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may be less secure than coalitions and more likely – even after the passing of the *Fixed-term Parliaments Act* – to lead to earlier general elections. If the single party holding office draws its policies from the manifesto on which it ran in the General Election, it arguably enjoys more democratic legitimacy. However, it could be argued that since the party failed to win the election, its manifesto does not possess a mandate. Collective responsibility may be easier to maintain under single party minority governments.

7. A further distinction between coalition and single party arrangements is that the former may tend to internalise inter-party discussions within government, giving a greater role to Cabinet machinery and the Civil Service in these processes. Under an arrangement where a party is providing support to a government but not participating in it, such discussions will presumably take place more on a party-to-party basis, with the machinery of government less important. Under a single party minority government, it might be possible to involve members of a party outside government in Cabinet committees. Precedent for such an approach could be found in Liberal Democrat participation in the Tony Blair government in constitutional reform issues from 1997 (though in this case, Labour had a large Commons majority).

8. It should also be noted that coalitions are not only a means of handling ‘no overall majority’ scenarios. They can be formed even in circumstances where there exists a single party majority in the House of Commons. For instance, following the General Election of 1895, the Conservatives had a small overall majority but Lord Salisbury chose to continue in coalition with the Liberal Unionists. As well as operating in parliaments both with and without a single party majority, the form of coalitions can vary in other ways. They may include two parties (such as the Conservative/Liberal Unionist coalition and the present government) or more (such as the Second World War arrangement). They may involve whole parties participating, as the present coalition does, but they may also include individuals or factions from within parties (as took place under David Lloyd George from 1916 and Ramsay MacDonald from 1931).

9. It is possible in future that considerations regarding the different options referred to in this question could become more complex. The present coalition is considering means by which English MPs can have a specific role in legislation deemed to be English. If plans along these lines are implemented, complications could arise in circumstances when a majority exists for a single party amongst UK MPs, but that party lacks a majority amongst English MPs. This party could have difficulty in securing its programme in key areas such as health and education. How precisely this tension could be resolved is unclear, but there may be a need for some kind of limited coalition deal, or a supply and confidence arrangement with affect only in certain areas, though whether this approach would be sustainable is open to question. Perhaps the party with a UK majority would opt for a full coalition, even though it did not strictly need it for all types of legislation.

3. What lessons can be learned from the practices of other parliamentary democracies, including the devolved administrations in Scotland and Wales?

10. Many countries other than the UK and the devolved territories within the UK use electoral systems that are more likely than that employed for the UK Parliament to produce parliaments with no overall majority. Consequently, they have had to develop sophisticated means of managing these circumstances. It may be that the UK is entering a period when single party majorities become less common, though it is of course impossible to predict
such a trend with certainty. If such a pattern did develop in the UK, it may be necessary for parties to learn from practices in countries such as Germany, where in advance of an election smaller parties may give a clear indication of their preferred coalition partner, and perhaps even their priorities for a coalition negotiation. Such an approach would give a clearer guide to voters and perhaps enhance the democratic legitimacy of any government formed.

11. A series of significant observations regarding foreign and devolved practices are possible in relation to the role of heads of state. In countries where the head of state is either directly (in France) or indirectly (for instance, Germany) elected it is more acceptable for them to play an active personal role in facilitating government formation. In monarchies, the head of state lacks democratic legitimacy, making such intervention more problematic.

12. The monarch in the UK possesses certain prerogative powers and rights which could in theory be deployed to utilise influence over coalition formation processes, or at least be perceived as having been used in this way. The Cabinet Manual notes, for instance, the possession by the monarch of 'reserve powers to dismiss a Prime Minister or to make a personal choice of successor', though which have not been used since 1834 (para. 2.9). The monarch also has regular access to senior politicians including the Prime Minister. In 1931 George V used his position to wield personal influence on the formation of the National coalition government. Today such a role would probably be more controversial.

13. The Cabinet Manual refers to a ‘convention…that the Sovereign should not be drawn into party politics’ (para. 2.9). At the same time, the Cabinet Manual describes the monarch as being ‘entitled to be informed and consulted, and to advise, encourage and warn ministers’, suggesting that influence of some kind is still permitted (para. 1.5). A possible risk of engagement in party politics emerges immediately following an inconclusive General Election, when the choice of Prime Minister is not immediately clear, and there is potential for discretion being used in the use of the power to appoint the Prime Minister. In such circumstances, the Cabinet Manual states that ‘the Sovereign would not expect to become involved in any negotiations’ between potential coalition partners. But the text does not specifically preclude engagement by the monarch; and refers to ‘responsibilities on those involved in the process to keep the Palace informed’ (para. 2.13). However, one feature of the prerogative which could have been used to deploy royal influence in a Commons with no overall control has now been abolished. Since the passing of the Fixed-term Parliaments Act 2011 dissolutions now take place on a statutory basis, rather than under the prerogative (s. 3). Nonetheless, monarchial activism remains theoretically possible and if coalitions become a more regular feature of UK politics it may prove to be a temptation hard to resist; or at least suspicions may develop that interference is taking place.

14. A way of avoiding any difficulties involving the perception or reality of inappropriate royal engagement in party politics would be for an investiture vote in the Commons to precede the appointment of a Prime Minister. This practice is employed, amongst other places, in the Scottish Parliament for the selection of the First Minister, with a statutory foundation in s.46 of the Scotland Act 1998. The process whereby the monarch appoints a Prime Minister, who is then confirmed by a parliamentary vote, could thereby be reversed. The emphasis would shift to the elected chamber as the instigator of coalition formation, rather than the monarch. Appointing a Prime Minister before subjecting them to Commons approval arguably gives the individual involved an initiative which should be in the gift of elected representatives. A change to this approach might be achieved through the
development of a convention included in the *Cabinet Manual*, or through the standing orders of the Commons, or statute. If the UK at some point in the future adopted a written constitution, the investiture vote procedure for the Prime Minister could form part of it.

**Collective ministerial responsibility**

4. Does the doctrine of collective responsibility require adjustment in the modern era? If so, in what way?

15. As noted above, coalitions have in the past been a regular enough feature of UK politics to suggest that it is possible for them to co-exist with the convention of collective responsibility. However, they certainly present particular challenges to the maintenance of this convention. While all governments, both single party and coalition, can contain divisions and rival factions within them, cleavages are likely to be clearer in a coalition. The present coalition contains two parties that contested the last General Election on different programmes; and – since apparently no attempt has been made to establish an electoral pact – will be fighting each-other on rival manifestos at the next General Election. Consequently, while it is in their interests for the time being to carry on a coherent, effective government, there is at the same time another dynamic – the need to differentiate themselves publicly from each-other.

16. Consequently, the two key features of collective responsibility have become strained. Under this convention, significant decisions are supposed to be subject to collective discussion, either in full Cabinet or a Cabinet Committee; and once a decision is made, all government ministers – within or without the Cabinet – are to defend it when required, and not dissent from it. Violating this outward loyalty requirement is not compatible with continued membership of Cabinet, or the holding of a ministerial post outside Cabinet (see eg: *Cabinet Manual*, paras 4.1-4.4; *Ministerial Code* paras 2.1-2.4). There is a danger – which seems to be manifesting itself – that ministers of either party will seek to publicly indicate policy ideas that have not yet been subject to collective approval; or that they will disavow policies which have been subject to collective approval. Sometimes such action will fall into grey areas and be difficult conclusively to define as a violation of collective responsibility. But one example of a breach seems to be when Liberal Democrats, including the Deputy Prime Minister, Nick Clegg, forced the withdrawal of parts of the government package for changes to the National Health Service, which must have been previously subject to collective discussion. Even if such action is choreographed behind the scenes between the Prime Minister and Deputy Prime Minister, it serves to undermine the public coherence of collective government.

17. These problems have been compounded by the introduction into the 2010 edition of the *Ministerial Code* of a generalised provision for collective responsibility to be suspended. Paragraph 2.1, which introduces the principle of collective responsibility, includes a reference to the possibility that it may be ‘explicitly set aside’. Conceptually, these suspensions can be difficult to disentangle from free votes, but up to 2010, there had been three such agreements to differ: in 1932 over tariff reform (under the National coalition government) in 1975 over the referendum on continued membership of the European Economic Community (under the Labour government of Harold Wilson) and in 1977-8 over direct elections to the European Parliament (under the Labour government of James Callaghan). Each of these suspensions was provided for specifically and not part of a broader allowance for public disagreement as now exists in the *Ministerial Code*. In the case of the first two
suspensions they were clearly, publicly announced, and all three instances they were treated as exceptional. Now there is permanent provision for such opt-outs, and it is not entirely clear since 2010 how many have been applied and to which subjects. Another difference seems to be that in the earlier cases, Cabinet made a decision from which ministers were permitted to dissent. Now, as in the case of the 2011 referendum on electoral reform, it seems possible for Cabinet not to make a decision at all, with its members going their own way, presumably on party lines. This arrangement could be seen as a weakening of Cabinet. Finally, it is not clear that ministers have been issued with comprehensive guidance as to how they should go about expressing their dissent. This position contrasts with earlier arrangements. In 1975, for instance, Harold Wilson placed a clear set of limitations upon ministers engaging in public debate, the gist of which was published. Ministers were under a requirement to ‘avoid personalising, trivialising, or sensationalising the argument’ in a divisive fashion. Whether the conduct of Cabinet members during the 2011 referendum would have complied with these earlier rules is open to question.

18. The possibility of an erosion of the convention of collective responsibility should be taken seriously by this Committee, since, for better or worse, it would amount to a major change to the UK constitution. In a coalition context it might mean in practice that genuine collective decision-making ceased, to be replaced by less formal inter-party negotiations. For many years observers have incorrectly argued that prime-ministerial government was supplanting collective Cabinet government. The real threat to Cabinet may come from an inability for it as a group to reach and stand by decisions. On each occasion Cabinet members choose to release themselves from the constraints of collective responsibility, they may obtain short-term political benefits, but they diminish the institution in which they participate.

5. How, if at all, does the doctrine need to be altered to allow Parliament to hold coalition governments properly to account?

19. Generally Parliament holds ministers to account individually for their policies and the administration of their departments. This position need not alter even if there are difficulties with the convention of collective responsibility. It is over more major issues, particularly those involving a confidence vote, that Parliament holds the government as a whole to account. Even if the Cabinet is experiencing difficulties in retaining its collective coherence, it is still possible for Parliament – and beyond that the electorate – to make judgements about its viability and act accordingly. Indeed, assessments of a government could be derived partly from its perceived unity or otherwise.

6. How does the doctrine interact with the Fixed-term Parliaments Act 2011? In particular, what is the impact of the reduction in potential confidence votes in the House of Commons?

20. The principle that the government of the day must possess the confidence of the Commons will remain. Its viability is not measured by the number of confidence votes that take place. If a coalition government lost this confidence, for instance because one or other of the parties in a coalition pulled out, it would still fall.

7. In what circumstances should the Government be able to suspend collective responsibility? When and how should such a suspension be announced? What should be the consequences of a suspension?
21. Suspensions of collective responsibility should be treated as exceptional. They should not be treated as though they are a permanently available option. If reference must be made to the possibility of an ‘agreement to differ’ in the Ministerial Code, its highly irregular nature should be stressed. If they are treated too lightly, the temptation to use such opt-outs will be strong. There is a real danger that suspensions of collective responsibility could come to be regarded as the easier alternative to difficult policy discussions. In such circumstances, referendums are also likely to become a more frequent occurrence, which in turn raise various other concerns previously considered by this Committee.

22. Consequently, suspensions should only be used when every other possible means of reaching collective agreement has been exhausted. They should be adopted by Cabinet as a whole, so that at least the departure from collective responsibility is in a sense a collective act. They should relate to policy issues of first order importance, over which there are fundamental disagreements. They should be negotiated individually; and announced only at the point that it becomes impossible to avoid any other course of action. Suspensions should be clearly time-limited; and ministers should register their position with the Prime Minister. Ideally, the arrangement should be that Cabinet takes a decision on a particular subject, from which those ministers who cannot support it then dissent, with the fact that they are dissenting publicly announced. If unavoidable, there should be no Cabinet decision on an issue, with ministers free to take positions around it until it is resolved. For the limited period during which suspensions apply, ministers should be bound by clear rules. They should not directly target individuals – particularly fellow ministers – with their comments, and should avoid becoming associated with such activities carried out by others; and they should not respond directly to statements made by fellow-ministers. It may be appropriate to adapt the stipulation of 1932 that ministers could dissent from the majority Cabinet position, but not ‘carry their opposition to the point of conducting a campaign against’ it, though this rule would be difficult to adhere to during a referendum. Ministers should always consider the need not to undermine the integrity of the government; and that there will have to be a successful resumption of full collective responsibility at the end of the opt-out period.

**Democratic legitimacy and electoral mandates**

8. What is the status of coalition agreements, and how do they interact with party manifestos?

23. The status of coalition agreements as a component of the UK constitution is at most in its early stages. However, it is possible that a variety of conventions, influenced by this document and its implementation, as well as future possible agreements, will develop. The present government appears to be of the view that the so-called Salisbury-Addison agreement applies to the coalition agreement. This agreement was first established to allow the programme on which the Labour government of 1945 was elected to pass without substantial resistance from the Lords. At first, then, it applied to the commitments contained in the manifesto of the single party which won the election (though it might be argued that the Liberal Party and its successor the Liberal Democrats were never party to it). Over time governments have come to claim that it applies to their whole legislative programme, not just the contents of their manifesto. In its *House of Lords Reform Draft Bill* paper of 2011, the coalition stated that ‘the House of Lords should pass the legislative programme of the Government which commands the confidence of the House of Commons’ and that ‘whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully
about rejecting a Bill which the Commons has approved’ (para. 8). However, a convention involving the relationship between the two Houses by definition must rest on some degree of consensus. The government alone cannot define it; and the Lords can take its own view on the validity of this claim.

9. How, if at all, should the format of manifestos be changed to reflect the likelihood of hung parliaments? In particular, is there a case for parties specifying in their manifestos which of their commitments are intended to be non-negotiable?

24. It would arguably be useful for the electorate if parties – and possibly in particular smaller parties – were to indicate what were their higher priorities on which they would be less willing to give ground in the event of coalition negotiations, especially if general elections not producing a single overall winner become more regular. Such a practice could help enhance the democratic legitimacy of coalition agreements and perhaps provide a more satisfactory basis for the extended application of Salisbury-Addison. However, parties may be reluctant to give away too much of their bargaining position in advance of negotiations. Moreover, if two parties seeking to form a coalition each have supposedly non-negotiable commitments that directly contradict each-other, then there will be a need for flexibility.

25. It should be noted that coalition negotiations may produce policies that were in none of the manifestos of the parties comprising the government. For instance, neither the Conservative nor the Liberal Democrats were committed to holding a referendum on whether to adopt the Alternative Vote for elections to the House of Commons, which was in fact a commitment in the Labour manifesto in 2010.

26. Furthermore, there are wider limitations on manifestos which apply in the case of coalitions and more generally. Many voters will be unaware of any given commitment which they are supposedly endorsing. Moreover, no government can operate solely on the basis of its manifesto. Such documents cannot give precise details of how a policy will be implemented; and it is not possible to anticipate every development to which a policy response will be necessary.

10. Should the main political parties seek to agree before a general election the processes they will follow in the event of a hung parliament? In particular, should the parties aim to agree on the length of time allowed for inter-party negotiations? If so, what should that length of time be?

27. If there is to be agreement it probably needs to be secured a substantial period before the likely date of the next general election, and be made publicly. One means of proceeding would be through the parties publicly confirming whether the arrangements provided for in the Cabinet Manual are in their view satisfactory, and if they are not, the ways in which they believe they should be altered or enhanced. There is no reason to suppose that the length of time negotiations took in May 2010 was a problem. It is better to establish a viable agreement than to rush into an arrangement that could create more instability in the long run.

11. What is the proper role for the civil service in the inter-party negotiations following a general election resulting in a hung parliament?

28. The Cabinet Manual stipulates that if the leaders of the parties taking part in coalition
negotiations request Civil Service assistance, it is to be arranged by the Cabinet Secretary, provided the Prime Minister approves. Any such support must be given on a basis of parity to all the parties taking part in negotiations, including the governing party (para. 2.14).

29. In May 2010, while the Civil Service did provide this support, it was seemingly only of a limited nature. But the practice does raise difficult questions involving to whom civil servants are accountable when assisting negotiations in this way, and how. Normally, officials answer to ministers who in turn are responsible to Parliament, but it is not immediately apparent how this principle would apply in this case. Another question is whether Freedom of Information requests are applicable to coalition negotiations, particularly when civil servants are involved.

30. Further observations regarding the role of civil servants in a coalition are possible. It seems clear that special advisers, given their close personal links to ministers and association with parties of government, have an important role to play in ensuring the smooth functioning of coalitions. Ideally, the present government probably would have employed more special advisers than it has, but it has felt politically restrained in doing so. This lack of partisan support, including at No.10, may have contributed to present frustrations amongst ministers regarding the Civil Service, and encouraged the present plans to allow for a greater ministerial discretion in choosing key officials through the creation of an Extended Ministerial Office. Such a fundamental change does not seem to have been given sufficient consideration, and a better option might be simply to appoint more special advisers.

31. The proposal to introduce greater ministerial patronage to the Civil Service could raise difficulties in a future coalition negotiation. The ability of officials to support coalition negotiations rests on their being impartial and being seen as such. Any official who was perceived as closely associated with a particular minister who brought about their appointment might be regarded with suspicion by figures from other political parties, and therefore not deemed an appropriate person to help facilitate coalition formation.

32. A final Civil Service issue deserving consideration is that of pre-election contacts. The Prime Minister authorises contacts with opposition parties at some point in advance of a General Election (see Cabinet Manual, para. 2.21). This practice enables both officials and opposition leaders to prepare for a possible change of government. However, the position regarding coalitions is more complex. For instance, can one party in a coalition government hold discussions with civil servants covering the eventuality of it forming a single-party government after the next General Election? Or can the Civil Service involve itself in discussions involving the possibility of a different coalition between a party which is presently part of a government, and another party presently in opposition? Once again, the usefulness of civil servants perceived as too close to particular government ministers who secured their appointment would be limited in such activities.

12. How does the role of the House of Lords change when there is a coalition government?

33. Precise prescriptions are difficult in this area. The House of Lords may wish to balance competing considerations. The key issue is the democratic legitimacy associated with the Commons, the basis for its primacy over the Lords. As discussed elsewhere in this submission, particular policies of a coalition may not have the democratic mandate that is arguably conferred by their inclusion in the manifesto of a winning party. But at the same time the coalition as a whole may comprise parties which received combined support from
voters greater than that of a single party government, and in this sense greater democratic legitimacy. Ultimately it is a matter for the House of Lords to determine how it should behave and interpret the conventions governing its relationship with the House of Commons.

13. How (if at all) does the Salisbury–Addison convention apply in a hung parliament? How does the convention interact with manifestos and coalition agreements in these circumstances?

34. As discussed above, the present government has promoted the view that the House of Lords should not obstruct a government programme, even if its contents did not appear in a manifesto. If this argument is accepted, then the coalition agreement can be regarded as subject to Salisbury-Addison. If coalitions appear to become a more regular feature of UK politics, there could well be a need for the convening of a Joint Committee of both houses, which revisits the work of the Joint Committee on Conventions of 2006, and seeks to reach a consensus on these issues.

The internal organisation of the government in a coalition

14. What constitutional principles should govern the royal prerogative of appointing ministers, and the allocation of ministerial portfolios, under a coalition?

35. A feature of constitutional conventions is that they can change; and it is held that a strength of the UK constitution, of which conventions are an important component, is that it is able to adjust to shifting circumstances. Consequently, if we are entering (or returning) to a period when coalition governments are a regular occurrence, we can reasonably expect conventions to develop to accommodate this new reality. The present coalition has set what may prove to be an important precedent in setting out in a published document, the Coalition Agreement for Stability and Reform, the formula for dividing posts between the two parties; and stating that no decision can be made regarding appointments of Liberal Democrat ministers without ‘full consultation’ with the Deputy Prime Minister (para. 1.4). Each given coalition will probably want to determine precisely how it operates, but this idea could serve as a model for the future.

15. What is the constitutional status of the office of Deputy Prime Minister in a coalition? In particular, what formal and/or informal control should the Deputy Prime Minister exercise over those royal prerogatives conventionally exercised by the Prime Minister alone?

36. The post of Deputy Prime Minister has an uncertain constitutional existence. The precise functions that should be attached to it are unclear; and there is no absolute requirement that it should even exist. However, it is likely that, within a coalition, the leader of the party that is not allotted the premiership (or, in a multi-party coalition, the leader of the largest party not allotted the premiership) may well be given a special post with some kind of coordinating role, whether or not they are specifically labelled ‘Deputy Prime Minister’. In the Second World War, the Labour leader Clement Attlee – who had already been performing a coordinating function in the Winston Churchill coalition since 1940, with the post of Lord Privy Seal – became the first official holder of the Deputy Prime Minister title. Nick Clegg occupies the same post, for similar reasons, now. It should be noted that there is no absolute reason that the largest party in a coalition should provide the Prime Minister and a smaller party the Deputy Prime Minister or equivalent. In the David Lloyd
George coalition created in 1916, this position was reversed, with Lloyd George holding the premiership despite leading a group of MPs smaller than the Conservatives, the leader of which, Andrew Bonar Law, initially performed a ‘Deputy Prime Minister’-type function, though without this specific title. In all circumstances, it is not only structures and job titles but the relationship between party leaders in a coalition that is important. This aspect of the present coalition seems to have been a success, notwithstanding other difficulties noted in this submission, with David Cameron and Nick Clegg operating together well.

16. What special considerations should be given to the cabinet committee system under a coalition?

37. In contemporary circumstances, any exercise of collective government, either in a coalition or single-party arrangement, will inevitably depend heavily upon Cabinet committees, with only the most important or contentious issues being considered in depth at full Cabinet. Cabinet committees should be used in a coalition to ensure as far as possible that all intra-governmental, party divisions (alongside other discussions) are internally resolved, avoiding the use of opt-outs from collective responsibility. The present approach, whereby each Cabinet committee has a chair from one party and a deputy chair from the other, seems appropriate. But whatever structures and mechanisms are deployed, they must be accompanied by the will amongst ministers to make a success of collective government. Whether this will exists is questionable.

38. The current government also established at the outset a Coalition Committee, with the Prime Minister and Deputy Prime Minister as co-chairs. The two coalition parties are represented in equal numbers on this Committee, which is responsible for oversight of the functioning of the coalition as a whole. It seemingly meets weekly, or more often as necessary. The chair or deputy chair of a Cabinet committee can refer disputes to the Coalition Committee.

39. In some ways the Coalition Committee seems to assume functions that might more traditionally be performed by the full Cabinet, such as overall strategy and handling major disagreements. It might be advisable for the Select Committee on the Constitution to probe how the Coalition Committee has worked in practice and its relationship with the full Cabinet. An interesting question is whether a Cabinet committee with equal numbers from both parties can take contentious decisions accepted as legitimate by the party with larger parliamentary representation and popular support.

17. What constitutional issues arise when there are ministers from different parties within an individual department?

40. If it is possible for two or more parties to work together in a coalition within the framework of collective Cabinet responsibility, then ministers of different parties should be able to occupy the same department. Indeed, the deliberate use of this practice across the board by the present coalition is to be welcomed, as a way of encouraging effective collaboration, and presenting unified proposals to Cabinet. Once again, personality will be important. The ministers must be able to work together.

10 August 2013
WEDNESDAY 6 NOVEMBER 2013

10.30 am

Witnesses: Rt Hon. Paul Burstow MP, Rt Hon. Cheryl Gillan MP and Tim Loughton MP

Members present

Baroness Jay of Paddington (Chairman)
Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Falkner of Margravine
Lord Hart of Chilton
Lord Irvine of Lairg
Lord Lester of Herne Hill
Lord Lexden
Lord Powell of Bayswater
Baroness Wheatcroft

Examination of Witnesses

Rt Hon. Paul Burstow MP, Minister for Care Services, 2010–12, Rt Hon. Mrs Cheryl Gillan MP, Secretary of State for Wales, 2010–12, and Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, 2010–12

Q58 The Chairman: Good morning, and thank you, all three of you, for coming. This is going to be a very valuable perspective because the committee has heard considerable theoretical, and what I might describe as academic, evidence from people about the operation of the coalition and coalition governments. As you will observe, looking around the table, several people here have either sat on or assisted governments of one party. Of course, Mrs Gillan was also in a one-party government so she is familiar with both. We thought it would be helpful to have a view from a parliamentary and political perspective of what all this is about, from the internal workings of individual departments to collective responsibility, et cetera. I might as well start off with a basic question, which I put to all three of you. Perhaps you, Paul Burstow, would start. Did you find any anomalies, from a constitutional point of view, in serving in a coalition Government of which you had not expected and might have thought would be different in a one-party government?
Paul Burstow MP: My first response is that for most, if not all, Liberal Democrat members of the Government there was no expectation that we would be ministers in the first place. Our preoccupation in the early days was to make sure that we were well supported and inducted into the job, and able to do it. Worrying about constitutional matters was perhaps not to the fore. Having said that, pretty much from the day that I arrived in the Department of Health, I was clear that things would work only if there was a symmetrical relationship between the two coalition partners, in departments and across the Government. In that sense, I was very well supported by the permanent secretary. The Secretary of State at the time was also very supportive of the idea that that should be how it worked, but that inevitably created a great deal more work for me as a minister because it meant that I had to be right across the department and not just my individual brief.

The Chairman: In a way, that is a familiar situation for a minister from this House. If you are a department’s single minister—for example, when I was a minister in the Department of Health, there were five ministers from the Commons—you have dispatch box responsibility in this House for the whole of its policy. It was quite tricky, as you say.

Paul Burstow MP: I am full of admiration for people like Baroness Northover, who was my colleague in the Department of Health at the time and was having to cover many bases while she was doing the job here.

Mrs Cheryl Gillan MP: I think I am slightly different because of the department for which I had the privilege to serve as Secretary of State. Dealing with a devolved administration, which I think you will get on to in later questioning, as well as being a very small department and having to cover the whole gambit of government policy meant that it was rather difficult. I did not have a Liberal Democrat minister in my department, other than having a very able spokesman in the Lords, so I did not really face that immediate issue of having a minister from the other coalition party permanently in my department. However, I thought it was particularly difficult for the civil service, as it had to get used to a modus vivendi between ministers and between departments when not everybody was necessarily singing from the same hymn sheet, despite the coalition agreement.

Tim Loughton MP: It was interesting to hear Paul’s point about experience and, perhaps, surprise among our Liberal Democrat partners. In the Department for Education, we had an advantage in that three of the ministers—the Secretary of State, Michael Gove, the then Schools Minister, Nick Gibb, and myself—had all been in those roles in opposition. In my case that was for seven years and in Nick Gibb’s for five years, or whatever, so there was a fairly seamless transition. That was a huge advantage to us. You can hit the ground running and start to tell the civil servants what you would like them to do rather than receive instructions from them. We had Sarah Teather as the Minister of State who was working with me. She had the added challenge, as Paul said, of all of a sudden having to revert to ministerial mode and learning how to become a minister, as we had to. She also had to take on a new brief, having not shadowed it, and to be the sort of insider for the Liberal Democrats in a department where she was in a minority of one. That, I think, was a challenge for Liberal Democrats, particularly where there are areas of contentious policy and fault lines can emerge outside the coalition, yet you are the one minister who is also looking out for the other side. I have to say that Sarah Teather carried it off extremely well as our Liberal Democrat partner and, in our department, I cannot ever remember a case where just the Conservative ministerial team would have meetings. She and the Liberal Democrat support team were always part of that.
The Chairman: There was an information-sharing arrangement.

Tim Loughton MP: As far as I knew—I was not privy to all the meetings—she and I, and others, were treated equally and were always at that top table. That was very important in making it an effective team, rather than two parts of a team.

Q59 The Chairman: Cheryl Gillan spoke about a modus vivendi. What happens when you move off the brief? There was a coalition agreement; there was the subsequent policy agreement. What happens when you go beyond that in creating policy within a department with two sets of ministers?

Mrs Cheryl Gillan MP: I did not really have two sets of ministers but I would never have meetings which excluded any member of the Liberal Democrats. In fact, I used to meet Liberal Democrat MPs regularly who were not in government—and Conservative MPs and even Labour MPs and peers, if they wished to meet—so there was always an opportunity for other people to feed in. When I tried to do something that was not under the coalition agreement it would fall under the auspices of the Deputy Prime Minister, who is responsible for constitutional matters. So I had the added hoop of having to get past the Deputy Prime Minister, who did not always stick to the coalition lines when it came to Wales. That was quite tricky.

For example, in opposition I had pulled together ministers shadowing each department to focus specifically on the issues concerning Northern Ireland, Scotland and Wales. In government I thought that having a junior minister from each of those departments together would mean that we had a much better co-ordinated approach to devolution, where we would share experiences and where, within each department, that aspect of life in the United Kingdom—of what was going on in the devolved administrations—would not get overlooked. I think the Deputy Prime Minister allowed that meeting to take place once. He chaired the first meeting; the second he handed to Danny Alexander and then he allowed it to wither away. There were double hoops for those areas that were not in the coalition agreement and it was not always possible to try innovative things.

The Chairman: Paul Burstow, perhaps I could ask you about one particularly contentious Act, as it now is, that was not in the coalition agreement but which must have been handled within the Department of Health bipartisan-ly, as it were. The Health and Social Care Act 2012 was not in the coalition agreement, so how was the policy developed on that?

Paul Burstow MP: It was not in the three-page coalition agreement that was published initially but it was set out, in some detail, in the more detailed policy statement. The one departure from the policy document published by the coalition around the white paper in the legislation that followed was about the proposal in my party’s manifesto to have directly elected health boards. We departed from that. It was one of the few occasions when the coalition committee met. It took a decision on that, which led to a retuning of the legislation to establish what are now called health and well-being boards. Internally, presented with the product of the discussions that took place on the policy statement, you can track through from the white paper and to the legislation. That did not change the nature of the handling which we subsequently had experience of during the first 18 months or two years. However, in terms of it not being part of the agreement, I think it was very clearly part of what we set about.

In that sense, going back to Cheryl’s answer about where policy departed from the coalition agreement or had not been conceived of as part of it, my experience in the Department of
Health was that there was flexibility and the ability to share information, so that we were sighted as to what was going on, and initiate the formulation of policy. It is critical for both sides of a coalition to be able to do that, so that you can take forward ideas within the Government.

**Q60 Lord Lester of Herne Hill:** I am a Liberal Democrat backbencher, so my questions are informed by my experience. One problem is how to have a system which is not so bureaucratic as to slow up government decision-taking but, on the other hand, which fully involves the junior and senior partners in a coalition. It is my impression that, especially in a department where there is no junior-partner minister, the role of special advisers is much more important in this coalition because when decisions are taken they are a way of providing information, and perhaps influence, across the two parties. From your perspective, do you find that correct—about the role of the special adviser in providing oil to the machine—or not?

**Mrs Cheryl Gillan MP:** I had only one special adviser.

**Lord Lester of Herne Hill:** Sorry, I did not mean your special adviser. I meant special advisers—

**The Chairman:** As a group.

**Lord Lester of Herne Hill:** Yes, as a group. In other words, because you did not have a Liberal Democrat minister or Liberal Democrat special adviser, my impression is that to find out what was going on in Welsh policy and how it affected the coalition, there would be a special adviser in, say, Nick Clegg’s office providing some cohesion. I am not putting it very well.

**Mrs Cheryl Gillan MP:** I know what you are getting at, but I cannot honestly say from my own experience that that is either what happened or whether it would assist. Special advisers have their own network and I am not sure how regular the meetings were. At one stage, my special adviser was particularly exercised because we were not having regular meetings across the board. A lot of the special advisers were quite heavily focused in their departments and, in the early days, were getting used to the new way of operating. I think that a special adviser has an important role to play in being the eyes and ears of a minister, particularly in a small department like my own, but from my experience I cannot say that there was that much added to the picture for me and my department by that network. I cannot speak for others.

**Paul Burstow MP:** To answer the question from a Department of Health perspective and from the junior partner’s perspective, it is important for both sides of the coalition in each department to have timely access to special adviser support. I think the same could be said in the case of the BIS department, where the junior ministers are Conservative. One thing that was not done as well as it might have been in the early stages of the coalition, because the focus was on policy rather than process, was to put in place a symmetrical arrangement for special adviser support. This meant that in some government departments, where there was a desire to get on with implementation, there was not that support at an early stage for having a legitimate debate and co-decision on some of these things. Because ministers did not have that support, they were having to do a lot more of that heavy lifting or find workarounds.
I will give an example in my case. For us to have a view across the department, which Andrew Lansley was keen for us to have, it meant coping with every single submission that was going out of the department. My private office was slightly reconfigured so that one of its members—operating not in a political way but as a civil servant—was helping to manage that workload. Without that, it would have been even more difficult to manage that part of my role.

Tim Loughton MP: Paul’s point on the symmetrical side is important. We had a slightly strange position in the Department for Education. We had two special advisers and two policy advisers. As somebody who had been critical of special advisers in opposition, I came to appreciate how important and essential a resource they are, although I might have taken issue with particular special advisers within our department who had been high profile and terribly partisan. In the Department for Education, I think we now have double the number of special advisers. The problem was that I did not really have a special adviser; the special advisers worked almost exclusively for the Secretary of State. The policy adviser on our side of the department, which was the children’s social care side rather than education, was a former Liberal Democrat councillor. She was exceedingly good at her brief but she was, obviously, predominantly working with Sarah Teather. I have no reason to think that she did not get as much access to the Secretary of State as the others, but it was really important to have a special adviser who could cover that whole department and then inform the Liberal Democrat side so that they felt that they had an equal look-in. I am not sure that that was the case but it has now been corrected. There was a special adviser appointed with David Laws, who you have heard evidence from, working to his brief on the education side of the department.

Mrs Cheryl Gillan MP: There has been a change in the role of the special adviser from when I was last in government, in the Major Government. The significance and role of the special adviser today, in a coalition government, has even moved on from that during the last Labour Government. They have become much more important in the managing and smooth running of a department, and in policy formation and communications. I am sure that some members of the committee will remember the old days of the Department for Education. When I was in there, our special advisers were like children: seen but not heard, until you were in a ministerial conclave. Of course, that is not the case now and, from the perspective of the minister within any department, the management of that role therefore has to be much more active than it used to be.

The Chairman: I think we will come on to the civil service. I know that Lord Powell wants to talk about it.

Q61 Lord Crickhowell: I want to pursue with Cheryl the question of obtaining and sharing information in her former department. I am thinking particularly of departments with importance for Wales, such as industry or energy, where there were Liberal Democrat secretaries of state. In my day, when I was doing her job as Secretary of State in a rather different world, I served on most of the cabinet committees that dealt with such matters. I used to be pretty well briefed in preparation for cabinet committees. How well briefed did she find herself in dealing with those departments which might have been of considerable importance to her but with which she had no direct political connection?
Mrs Cheryl Gillan MP: That is where one of the problems arises because in the initial stages, the cabinet sub-committees were carved up. I sat on two of them, one being the PBL committee which looked at future legislation, and the other being the home affairs and constitutional committee. If I wanted to know what was going on in other departments, I would be reliant on not only my civil servants but my special adviser. I had a slight advantage in so far as I had been around for rather a long time. I had been a shadow in the Department of Trade and Industry; in fact, I am even married to a former senior civil servant in that department. I did not feel that I was particularly isolated although, as I said in an earlier response, I wanted to make sure that policy was co-ordinated for the devolved administrations across all areas of government. I was open to suggestions other than those of my cross-departmental committee, because it is important for the devolved administrations that those secretaries of state are well plugged in to other departments, particularly as you are having to face up to other administrations—the Welsh Assembly, the Scottish Parliament or the Northern Ireland Assembly—which are dealing with those issues for which there are implications both in legislation coming through from here or in problems that might occur, for example, on and across the Welsh border.

For the nearly two and a half years that I was there, it was not a perfect system and there are huge ways in which we could improve it. However, I would also say that there is room in our constitution for more intergovernmental operations. I have my own theories about the fora in which Assembly Members and MPs should meet, and in which MSPs and MPs should meet, as well as with members of the House of Lords. We are operating constitutionally within too many tramlines and not allowing what I would consider to be better communications—those communications which could be improved and developed within our constitutional arrangements as they stand.

Q62 Lord Crickhowell: This Committee has to try to make recommendations about future coalition governments, should they occur. That is one suggestion but I think you were implying that you might have some other practical suggestions, which you would like to see recommended by the committee, about improved arrangements for coalition. I wonder whether you could add to what you just said.

Mrs Cheryl Gillan MP: With apologies to my colleagues, I always thought that the Welsh and Scottish Grand Committees could be much better used. I hope that your committee will have time to explore that area of our existing constitutional architecture. For example, there could be joint meetings between MPs in Wales and AMs in Wales under the auspices of something like the Welsh Grand Committee, and likewise in Scotland. Devolution is here to stay and we have to make it work a lot better. We have to think of innovative ways that will not turn us, heaven forbid, into some federal set of states within the United Kingdom, which is not what I want. There should be something which improves communications and the exchange of information, above and beyond what I call the dispute-settling arrangements that exist.

Tim Loughton MP: May I come in on that?

The Chairman: Please do.

Tim Loughton MP: Interdepartmental working and the business of joined-up government—a line entirely without foundation in government process, as I found—was deeply frustrating. It could have helped in coalition as well. I have two instances. When Sarah Teather and I were trying to develop within education a policy around early intervention—an important
area of government policy which transcends the Department for Education—we tried, through civil servants and the department, to link up meetings and get a forum together. It proved impossible, so what happened one night is that Sarah Teather and I used our mobile phones to ring colleagues in the Home Office, Justice and Health and arranged to have supper in the Adjournment restaurant. We sat around the table, both sides being there, and decided what our policy was. Then we went back to our departments the following day and said what we were going to do, to which there was outrage from all the civil servants, who said, “This is not the way we do it”, but we did it. It was ridiculous that it took us having to organise that meeting.

I was responsible for youth policy, a subject on which the Department for Education is, regrettfully, no longer the lead. On a subject like that which, again, transcends all departments, there is no real forum where you can bring those departments together. The previous Labour government tried to do it with green issues. I was on the Environmental Audit Select Committee; every department nominated a minister who was the green lead for that department. The trouble was that it usually ended up with a senior civil servant going in place of the minister, so it did not work. I set up the youth action group, where we had nine departments represented and six outside youth organisations, led by the Prince’s Trust. We would meet regularly and the organisations would bring problems to us, which we would try to solve and, where there were overlapping issues, nominate certain departments to go away and solve them. I never had fewer than five ministers attending in person, along with their officials. That made all the difference because the ministers and officials were on the case, and it transcended the coalition. We had Lib Dem and Conservative ministers, and it worked well.

The Chairman: Do you think that was easier because of the coalition?

Tim Loughton MP: Perhaps it made it slightly easier because one would not want not to turn up, in case they were all Lib Dems there and we became named and shamed. There was an element of not wanting to be outdone.

The Chairman: That is what I wondered.

Paul Burstow MP: There are some general machinery of government points which any ministers who have had a taste of government and then come out and reflect on it would probably comment on. My experience over the two and a half years was that some inter-departmental and inter-ministerial approaches worked very well. There was very good cross-governmental work led by the Home Office on developing the action plans on troubled families.

Tim Loughton MP: That was a Department of Education lead.

Paul Burstow MP: There were two programmes—the gangs programme and that on troubled families—which came together increasingly in the conversations. I was struck by some of the evidence that the committee has already had, where the survey of civil servants suggested that their impression was that there was a reboot of cabinet government, and of cabinet committee government. Those meetings were very productive and interesting on the occasions when I attended, in the sense that the debates were both within the parties—between ministers—and between the parties. That was a healthy part of how the coalition worked in those first two years.
The Chairman: Lord Powell, did you want to pursue any civil service questions?

Q63 Lord Powell of Bayswater: To start with, there was Mrs Gillan’s original remark about civil servants perhaps finding it more stressful with the coalition. I ask because this does not really coincide with what we have been told so far, particularly by our academic witnesses who said that civil servants were virtually in paradise with the coalition because it was so wonderful. They do not seem to have raised any objections. I point out that we have not heard from them formally and that there may be more considered views, but why did you feel it was so stressful for them?

Mrs Cheryl Gillan MP: I can only speak from personal experience. I felt that the civil servants who I came into contact with were busy working out how they were going to manage certain elements of the coalition. It was challenging. I think it remains challenging in some ways for officials because there are issues between the two parties, which do not always come into the public domain and are behind the scenes. It depends on the permanent secretary and on the private offices to make sure that there is a modus vivendi, which from my observations was difficult in the early stages.

Lord Powell of Bayswater: Even in a single-party government there are considerable differences between departments and civil servants get used to managing them. I am a bit surprised that you feel this is such a big issue. Another aspect of the civil service that we have heard about is how in the coalition negotiations it was decided not to take up the offer of civil service support. We talked to David Laws about that last week. With hindsight, do any of you feel that it would have been better to draw on civil service support at that stage? More importantly, assuming that the same situation arises after the next election, with two parties negotiating a coalition, would it be a good idea to have civil service support if only to be able to record accurately and in detail exactly what has been agreed and said? It seems strange to exclude them when, in a way, forming a coalition is a process of government.

Mrs Cheryl Gillan MP: I am old-fashioned; I think it is important to have the civil service at all stages of government, not least because officials dealing with policy areas and with many years’ experience will know what the practical difficulties are. If you exclude them, you may find yourself with elements of a programme for government that have some obvious problems attached to them, solving which will take up a lot of time. I would have thought it would have been useful to have civil service input, even to the point of them just sitting there and observing the negotiating process. It was obvious that that was not what took place. However, I think next time it will be different. A coalition government is hardly in our living memory, is it? It is a peculiar and special thing that has happened. I really am not working towards a coalition government for next time, because they have lots of problems, but if there was one the civil service now has much more experience on which to draw—as do the politicians. The Liberal Democrats said that they never expected to be in government, but most of the politicians who are at the top of our parties did not have ministerial experience.

Tim Loughton MP: May I add that there was scepticism toward civil servants as well? If you think of the people on both sides who were part of that negotiation, virtually none, if any, had been in government before and therefore had not had civil servants working for them. Having been in opposition on our side for 13 years, one was suspicious about the civil service being able to move from serving one political master to serving a completely different one. That fear was exacerbated by the alleged politicisation of the civil service.
under various previous ministers. On becoming a minister, I saw the professionalism of the civil service and its ability to go one minute from serving one political master, and going full-pelt on a project, to serving a completely different minister and dismantling that same project. That is literally what happened in some of the things that I did. I never doubted their ability or dedication in doing a 180-degree turn, professionally and impartially.

Lord Powell of Bayswater: The fear of bias in the civil service was also a feature in 1997. It seems to be the result of a long period out of government.

Tim Loughton MP: It will not necessarily be so next time, if there is a Liberal Democrat–Conservative negotiation again.

Paul Burstow MP: I do not know that the time away from government is entirely relevant to this. Yes, you need to have advice on tap on costings and the practicability and implementability of policy. It was there just outside the room. The question is what takes place in the room—and in that room is where the space needs to be. Is it not the Heisenberg principle by which something is changed by the process of observation? Having civil servants observe the process may have changed the nature of the process. The fact that there was that ability to have an honest conversation about where the give-and-take might be, and what the compromise could be, meant that it was more likely to happen. They were in a space where people were talking politician to politician but with the ability to go outside the room and have a conversation to test the veracity of the policy, and whether it would be deliverable.

The Chairman: Do you think that perspective would continue?

Paul Burstow MP: My advice would be yes, it should. In forming a coalition, at whatever level of government, it has to be about forming a practicable business relationship. That has to be between the main actors.

Lord Powell of Bayswater: But does all this discussion not go on in cabinet committees, where civil servants are present?

Paul Burstow MP: That is once you have secured the confidence of the House and a working arrangement. If you have secured a policy programme that you are attempting to implement then the nature of the conversation has changed. It is then entirely right. I agree with Tim about the support given and the effort made, during what was a long general election period, by the civil service to prepare themselves for the possibility of a different administration.

Q64 Lord Powell of Bayswater: Would it be different next time, if there is a next time? Do you not think that after five years of coalition government, if it were the same two parties, you would find it more useful to have civil servants engaged from the beginning? There is otherwise a risk of handing over processes of government to special advisers.

Paul Burstow MP: It depends on the combination of parties engaged in those talks and who is sitting round the table. The key actors have to be sitting round the table. I think that David Laws will have set out his involvement in that process when he spoke to you last week. The lesson which I draw from that and from our experience in Scotland, and which I drew from
the experience in New Zealand when I was chief whip, was that you needed a process enabling trust to be built between the key actors.

Baroness Falkner of Margravine: Mr Burstow made this point earlier but I wanted to come in to seek clarification from you, Mrs Gillan, when you said that you believed it was important to involve the civil service from the outset in government. That is perfectly fair and legitimate but we were talking about the formation of government. There had not yet been a government formed and what we were trying to get at, as a committee, was whether you felt that the involvement should be from the beginning. I think that we are now content with the fullness of Mr Burstow’s answer and do not need to labour that point any longer.

The Chairman: I should have asked you to come in earlier.

Lord Lester of Herne Hill: This is not the question I am coming to but I wanted to say for the record that in my experience as a special adviser, in the Wilson Government in 1974, there was great obstruction by the civil service. I am sure that it no longer is so, but I had to be sent away home by Roy Jenkins to write the white paper because of the total obstruction on women’s rights.

My question is less controversial. Do you think one lesson we might think about is that of the training of special advisers? They have no proper training as special advisers at the moment, at least on the Liberal Democrat side. Would it not be sensible to train all special advisers, from whichever party they come, in some common way so that when they come in—they are often quite wet behind the ears—there is at least some common understanding of what their role should be?

The Chairman: You mean that it would be more effective if they replaced the civil service.

Q65 Lord Lester of Herne Hill: No, it is not that. I am very sceptical about special advisers, as a former one myself. All I am saying is that if you need them, as you probably do, it seems that they need to be more professional in how they are trained when they come into this strange new world.

Mrs Cheryl Gillan MP: It depends where the special adviser comes from and on what their experience and CV is. Richard Hazlewood, who was my special adviser, was superb. He had worked in the Welsh Assembly for the Conservative group as a press officer. He was a trained journalist and always behaved in a professional manner. I like to think that he was Gillan-trained. If I had been allowed a second special adviser it would probably have been my research assistant, who had been working on the brief for several years in my office. I think that special advisers need training of some sort, even if it is just about the process of government. In the same way, ministers need training; you cannot just come off the backbenches with no experience and expect to walk in and know everything about being a minister—quite the reverse. So I agree with that but it needs to be tailored to the individuals concerned, depending on their experience. A lot of special advisers and policy advisers have unique, often academic, knowledge of the subject matter of the department, so training is needed more on the rules and regulations and that sort of thing.

The Chairman: Is it not your experience that quite a few ministers have been special advisers in their past? That has certainly been my experience.

Mrs Cheryl Gillan MP: I believe that is so.
Baroness Falkner of Margravine: I want to take you to the process of policy formation within departments under a coalition, where you have a secretary of state from one party and a junior minister from another. Under the current system, there is no capability for the junior minister to commission civil service advice on areas outside his or her remit. We heard from one of our witnesses that Whitehall had considered a protocol whereby a junior minister could have commissioned a briefing for his or her eyes only on an area of policy other than his or her direct area of policy. Apparently, that was in effect abandoned. Forgive me, Mr Loughton: I know that you have not served under a Lib Dem secretary of state, but if you were serving under a different secretary of state what would your view be as to the ability to commission civil service briefings on areas for your eyes only?

Tim Loughton MP: It rarely happened and I never felt any problem if I wanted something on an issue that was more to do with education than children’s social care. The problem we had in the Department for Education was that it was split into two parts. There is the education side, which has been dominant, and the children’s social care side, which is less contentious politically. I would occasionally ask civil servants to provide research. I would assume that the Secretary of State would hear about it and see it, if he took an interest in it, but I never felt constrained in that respect. I do not think that Sarah Teather had any problem with that either. Why our team worked particularly well, on the face of it, was that the Liberal Democrat partner was always at the top table and the Secretary of State was particularly aware of the sensitivities of certain aspects of education policy—exams, the curriculum and free schools—which have been contentious. He probably appeared more in front of groups of Liberal Democrat MPs than groups of Conservative MPs, to give them every opportunity to question what was going on. I do not think that was an issue within our department. We always felt that we could have whatever resource we required.

Baroness Falkner of Margravine: Even if you had not had as forthcoming a secretary of state? I am trying to move you from your experience to the theory. In theory, would you find that there might be situations where it was useful to commission briefings?

Tim Loughton MP: Yes, I would, but it needs to be transparent. One does not want to be doing this behind the back of one’s ministerial team. If you are going to be such a team then you need to have regular ministerial meetings where everything is on the table so that we all know what each other is doing, rather than reading about it in the press.

Paul Burstow MP: That last point is key: if a minister is able to commission policy work that is not then immediately sighted to the secretary of state in the department, it has to be the case that that cannot be publicised. It only becomes something that can be publicised at the point where there has been a collective decision, when it becomes the government’s policy and can then be communicated. It is about having that line clearly drawn. While I did not encounter difficulty in being able to commission work, the ability to have a policy initiative and a free flow of information are two things which good relationships have in most cases allowed to happen. Having clarity, whether in the Cabinet Manual or wherever, as part of the modus operandi of a coalition government is very important because the underlying principle of a coalition administration is that it has co-decision-making. Securing the confidence of the House comes from two parties working together, and that necessitates a different way of working.
Q67 The Chairman: Can we turn to something that has been an obvious constitutional change, which is the Fixed-term Parliaments Act 2011? Lord Lexden.

Lord Lexden: Has your experience left you with the conviction that fixed-term Parliaments are the right basis on which to operate a coalition administration, since it gives certainty and allows for planning, but above all because it gives both sides absolute confidence that there is a span of years in which to conduct the business? I wonder what conclusions you have reached in the light of your ministerial experiences.

Paul Burstow MP: Perhaps I can bring one other experience to that question, which is that before my time in the House of Commons I ran the Liberal Democrats’ local government department for a time. One of the things that we had to do from time to time was to give advice to Liberal Democrat groups on local authorities when the council became hung after an election—or balanced, as we preferred to call it. In those circumstances, the dynamic of the relationship and the formation of coalitions and other forms of agreement at a local level were at least in part contingent on the certainty that the council would continue to be there for a fixed term. So for me it is a logical extension of the principle already applied in local government whereby coalition formation takes place routinely, for it to be, if you like, a context in which a relationship of confidence and trust can be built with some certainty that one side cannot pull the plug on the other.

Tim Loughton MP: It has to be a stabilising influence. If we did not have a five-year fixed term, the capacity for probably—but not necessarily—the junior partner to throw toys out of the pram and play brinkmanship would be greater, on the basis that it is going to bring the government down. Under the fixed term, you know that the government are still going to be there, so you can only push it so far.

Mrs Cheryl Gillan MP: I think the five-year term was the scaffolding for the coalition-building, and it is certainly designed to avoid the government failing beforehand. In that way, it underpins the coalition better. Whether a five-year fixed term is a good thing or not is another question, but in this case it has prevented, as Tim said, toys being thrown out of the pram. I also think that the agreement to go for a five-year fixed term consolidated the reasons why the two parties came together, which were to solve an inherited economic crisis, in their views. That was, possibly in this instance, a good thing.

Q68 Lord Crickhowell: That leads quite neatly to the question of collective responsibility. For a particular reason we all know Mrs Gillan would have found the issue quite difficult even in a single-party government, but she would have been faced with the fact that if she wished to part company on the issue that concerned her constituency, apparently she would have had to resign. We have had situations in this administration that have been very surprising to those of us who served in single-party governments. We have had powerful evidence from academics, supported by political witnesses, that breaches of collective responsibility should be rare—that ideally they should be agreed collectively by Cabinet in advance and publicised in advance, with everyone knowing what the rules are in advance.

For example, I suppose we got used to the Prime Minister and the Deputy Prime Minister making different statements at the dispatch box, but much more surprising to many of us was the episode after the failure of the House of Lords Reform Bill where the Deputy Prime Minister put on halt the change in the boundaries, although that was legislation that had passed through both Houses of Parliament and was not scheduled in that way in advance in
the collective agreement. Do you think it would be helpful to have something clearly laid down? There has to be a degree of flexibility; we understand that. Individuals are going to make public positions fairly obviously clear, in a way to keep their own troops on side. But when it comes to Cabinet responsibility, do we not need some fairly clear rules about how to operate if we are not going to have a pretty chaotic situation?

Mrs Cheryl Gillan MP: Until being part of this Government, I had always firmly believed in Cabinet collective responsibility, but I am afraid that it is a belief system that is no longer modern or relevant. We have to deal with the situation as it is, and it is quite obvious that Cabinet collective responsibility does not exist in the pronouncements made on various policy areas. I can give you a little example, again of Wales, when the Deputy Prime Minister did a broadcast expressing a personal view on wanting a federal United Kingdom, which was certainly not coalition policy.

I was reminded of my position with Cabinet collective responsibility over the matter of a small railway that is going through my constituency called HS2. Some people will know that I have made it part of my regular work in the House to see whether we can bring about some changes to it. I think that Cabinet collective responsibility is getting increasingly difficult to claim for individual members of the Government on areas, particularly such as HS2 where it affects their constituency, for the simple reason that you are seeing the two parties that form the coalition Government expressing themselves in very different terms on areas of policy.

I agree with you: this area needs refinement. It needs examination. I do not think it needs a revolution, but it needs addressing so that individuals who are part of the Government have a certain amount of freedom to speak and express differences. The Government have not been brought down because different views have been expressed on different subjects. It may cause some confusion with the public, but we have not found it impossible to work within those parameters. Perhaps being more adaptable to the reality of policy and the issues would assist in this area.

Q69 The Chairman: Do you agree that you need clarity about precisely what it is?

Mrs Cheryl Gillan MP: That is right. I think it needs to be made clear as to where it applies, otherwise you risk confusing people who observe this place and the way in which government operates. Goodness knows they can be confused enough with things as they are, let alone as they will be in the future.

Paul Burstow MP: I agree with a lot of that. It is important in framing any rules around this, or any principles that you think are relevant to an understanding of collective responsibility in a coalition, that the lens you use is constitutional and not majoritarian or single-party. It is easy to mistake one for the other. Understandably, if one looks at it through a majoritarian or single-party lens, some of the things that have happened during the time of the coalition will be almost distasteful to some, because they break the conventions that have applied in a majority government. But that is the point: it is not a majority government, it is commanding confidence in the elected House on the basis that two parties have an agreement to govern together and secure that through the fact that they are working together and sharing their sovereignty, in effect.

It is important to recognise that there needs to be that give and take around articulating difference. A good example of that occurred a couple of weeks ago when David Laws got duffed over in the House of Commons for having the temerity to honour collective responsibility in setting out the Government’s position in a forceful way while at the same
time acknowledging that our party had a different view on these matters. In a mature democracy, that sort of difference and the ability to articulate it is very important. Framing rules that allow the articulation of those differences is an important part of what I hope this committee can do.

Q70 Lord Crickhowell: In putting my question, I think I indicated that I understood the need to articulate differences. The question is: should we have clearer rules, perhaps in the Cabinet Manual, about where complete changes of policy are taken unexpectedly? The example I have given is obvious. The view has been taken, and I repeat it, that there is merit in trying to reduce substantial legislative differences to as few as possible in order to keep public confidence, and that you need to decide, preferably collectively, what the issues are going to be and announce that you are going to have a difference in advance, so that everyone is aware that this is an issue where the parties are going to differ.

The Chairman: Which happened in a single-party government on, for example, the European referendum in 1975.

Mrs Cheryl Gillan MP: Exactly. There have been times when a single-party government have agreed that their people can campaign on different platforms. It is not as though we are creating a precedent; it is just a question of getting it in line.

Tim Loughton MP: But there is a difference. I take as an example the married couples’ transferable tax allowance, which I have been vociferous on. It was specifically referenced in the coalition agreement and the Liberal Democrats could abstain on that issue. That is clearly understood, so the coalition Government can go ahead with it but the Liberal Democrats will not trump it, with party policy being against it. It is when issues come along that were not so clearly referenced in the coalition agreement, or even going against the understanding of the coalition agreement, that it becomes more difficult. I do not want to cause too much mischief, but Paul made a point about the difference between Liberal Democrat ministers and Liberal Democrat policy. In that case, the problem was the difference between Liberal Democrat ministers and the Liberal Democrat Deputy Prime Minister, and between ministers themselves. That is slightly mischievous of me.

The Chairman: Could I ask Mr Burstow, as I was not quite clear: would you therefore suggest that we should have, as it were, a suspension of our understandings about collective responsibility, for example, for a fixed term—for the duration of this Government—or are we saying that we have abandoned that and are starting on a whole different playing field?

Paul Burstow MP: No, I am not. It is important that the idea of collective responsibility is taken seriously. It is taken seriously inside the Government. The number of exceptions out with the coalition agreement over the last three and a half years has been very small. They have been high-profile, but the number has been very small. The vast majority of government and the communication of government policy across the coalition has been consistent. It is only those areas, if you like, which are about not the delivery of the Government’s policy but the ability to articulate a difference. In some of the preparatory work for coalition, some of us spent time looking at other Westminster-style democracies. I visited and talked to a number of people in New Zealand about the approach they had taken. They had written a good deal of flexibility in the agreements they had between parties to allow for these sorts of eventualities. So our constitutional arrangement can be quite flexible in this area.
Baroness Wheatcroft: I would like to ask you about what is not articulated in public. We have talked about the coalition agreement and the policy document that followed that, but to what extent were you aware of major haggling over policy between the two parties: “You can have this if we have that”? There are instances that have leaked out. I wonder how many there are that have not.

Mrs Cheryl Gillan MP: I would not like to venture any response. I am sure there were areas like that, but I am not aware—

Baroness Wheatcroft: There certainly were.

Paul Burstow MP: In process terms, part of the mechanism to enable that sort of dialogue to take place and agreement about what is in and what is out is done routinely through the quad. It is a symmetrical arrangement. It enables that high-level discussion, often underpinned by Home Affairs Committee discussions and other cabinet committee discussions in advance of it, to sift out the things that are most difficult and most complex in reaching an accord across the two parties. I have not come with a list of the things that you are seeking, though, I am afraid—sorry.

Tim Loughton MP: The quad is very important and has not been mentioned so far. There is another dynamic. I do not think it was unique to the Department for Education. Sarah Teather and I agreed on most things, and if we wanted to push something and the Secretary of State was not as amenable to it, it could be escalated to being a coalition issue. That was the trump card, so it is very useful to be in with your Liberal Democrat partner in order—occasionally, if the requirement was there—to trump the Secretary of State. By it becoming a Liberal Democrat coalition issue, you might get the result you wanted. There were quite interesting internal dynamics as a result of that. The quad is the ultimate arbiter of that as well.

Baroness Wheatcroft: The quad seems to work very effectively.

The Chairman: And if I may say without raising a red herring—because we have talked about the quad in other sessions, and as you mentioned this morning we have also talked about the “revival” of cabinet committee government—the quad is in a sense the 2010–13 version of sofa government, is it not? I leave that in the air.

Paul Burstow MP: It certainly takes place around the Cabinet table.

Mrs Cheryl Gillan MP: But it is not entirely transparent.

Lord Lester of Herne Hill: I understand the importance of emphasising collective responsibility and accountability to Parliament and to the public, which is extremely important. As a lawyer, you would think I was in favour of a lot of rule-making, but I cannot understand how one could frame rules to encapsulate what the three of you have helpfully described, because what you are describing is politics—political processes that have to be resolved pragmatically. We could think of platitudes like “Exceptions to collective responsibility must be this, that and the other”, but surely it is not possible to think of rules or even principles that have any real meaning other than in some report that will have no practical value.
**Tim Loughton MP:** The coalition agreement is something of a bible in all this. If you have set out specifics within the coalition agreement, it is clearly breaking the rules to then go against it. I was looking through the policy side of the coalition agreement, and the trouble is that a lot of it is in waffly language. I shall take some examples on the education side: “We will help schools tackle bullying … We will seek to attract more top science and maths graduates … We will create more flexibility in the exams systems”. Any party could have signed up to a lot of those, but specifically they have come down to quite contentious interpretations, particularly around the reform of the exam system. Should you have a system whereby you have to be more specific in the agreement at the outset, and then you really can point the finger of blame if one of the partners resiles from that? I think that if there is another coalition agreement, what is undertaken probably has to be far more specific.

**Lord Lester of Herne Hill:** What you are saying is that the coalition agreement becomes a kind of manifesto, which has been agreed by the parties and which should be treated in that way. I understand that, but my difficulty is that if you think of party whipping, for example, and of what happened in the House of Lords a couple of nights ago, you get me and others rebelling against our own whip to have some political cross-dressing with Labour on carbon capping. You will not find anything about that in the coalition agreement, but as government goes on issues like that arise, and whips have to understand that even party loyalty must sometimes give way to co-operation across parties if that is the will of the party at the time. This is all about give and take, and politics. I am still puzzled as to how one could go much further than what you have said about coalition agreement. That I understand, but to try and encapsulate this into a series of rules seems, to me, futile.

**Mrs Cheryl Gillan MP:** One of the problems is that because of the nature of the coalition, it is possible for a member of the coalition such as the Deputy Prime Minister, without any warning, to make a policy pronouncement or a pronouncement on another departmental area. You could have guidelines that would prevent that. You sit there as a secretary of state, and suddenly the Deputy Prime Minister says something that is completely outwith anything that has been discussed and is not his policy area, and he makes that pronouncement in public. That is difficult to deal with. It is difficult to deal with if you are in a one-party government, but it is even more difficult to handle when you are in a coalition. Do not forget—going back to the civil service—that we were suddenly dealing with a government of a different complexion here in Westminster from the Welsh Assembly, which was also providing issues and problems as to how you would handle having a Conservative/Liberal Democrat coalition here and a Labour Government in the Assembly. That in itself was a challenge to the civil service. You can almost cope with the political front within Westminster, but you are exposed on two fronts: an in-country front as well as internally. So “no surprises” would perhaps be my first rule. If it were to happen, at least make sure that your secretary of state in whatever department has at least a little bit of warning.

**Paul Burstow MP:** The “no surprises” point is a good rule. It certainly applied in the New Zealand context as part of confidence and supply agreements and coalition agreements. It has largely operated that way, but inevitably there will be occasions when it has not. There are two other areas where there is room for being clearer. The first is about information sharing and transparency within the government. The other is the ability to initiate policy formation, with the caveat that the junior partner in the department cannot then go off and publicise that—it has to be an internal process. In Scotland, they have an open space
agreement, basically, within coalitions they have had, which allows that conversation to take
place with civil servants on the understanding that that is kept within the government
machinery.

The Chairman: We are going to hear some evidence from the devolved governments and
assemblies, so hopefully that will throw light on that. I did not know, Mrs Gillan, if you
wanted to make any other points about the experience of devolved government in Wales,
and whether there was anything to be learnt from that. The open space agreement that Mr
Burstow has just mentioned is an obvious one from Scotland, but I do not know whether
there are any similar things from Wales.

Mrs Cheryl Gillan MP: No, except that there should be another forum whereby you can
bring—

The Chairman: You mentioned that.

Mrs Cheryl Gillan MP: I mentioned that before.

The Chairman: You have been enormously helpful. I do not know whether any member of
the committee feels there is something that they have not touched on that they wanted to
raise, or whether any of you three feel that we have missed a point that you want us to be
aware of. Members of the committee seem satisfied. I am not sure; Lord Powell is shaking
his head slightly.

Q73 Lord Powell of Bayswater: In the light of some of the comments, do you think that
the process of forming a coalition, if it is going to happen again, needs to be looked at
thoroughly? Particularly in relation to collective responsibility, we have heard of the
examples where it has not worked. The German method, for example, is interminably slow,
I agree, and that may not be easily reconcilable with our constitutional processes. On the
other hand, it is much more thorough, and they set up about five or six committees between
the two parties, crawl over areas of policy and reach agreements, and then you do not get
these breaches. The whole German government, having meticulously formed a coalition
programme, stick to it, and everyone in the coalition sticks to it, whatever the position of
their parties might have been originally. Do you think there is a case for a more structured
and detailed negotiation next time? We know why it was so rushed the first time—because
it was unexpected, it was new, it was different. Do you think there is a case for looking
again?

Tim Loughton MP: I think it is essential. It should not take as long as Germany takes, but if
we are left with a similar result after the next election as we have now, particularly if there
are fewer Liberal Democrats and perhaps fewer Conservatives but still enough to make a
majority, because there is a deal of dissatisfaction among Conservative backbenchers about
the coalition and the relationship with the Liberal Democrats—whether that is justified or
not is neither here nor there—and because there is some friction, I think, between the
Liberal Democrat membership in the country and some of the things in the coalition
agreement, it is not going to be as easy to assume that we can have another coalition.
Therefore I think it will be essential, in order to make it work if we are in that scenario, that
there is a full and publicly transparent process by which certain compromises have been
made, and the reasons for them, in order to sell them to our respective parties. That
probably means that the agreement will have to be more specific, for the reasons I have
mentioned, and we will have to have the fight up front as to why we or the Liberal Democrats have had to make certain compromises for the greater good, supposedly, of carrying on in government. If not, there will constantly be calls from backbenchers on either side and it will never get off the ground. We all knew why it had to happen last time: for the economic imperatives then. We do not have that emergency luxury, as it were, next time round.

Paul Burstow MP: My answer in simple terms would be no, because each election throws up its own parliamentary math that then determines quite a lot of the way in which coalition, if that were to happen, is formed. I do not see how you can corral and codify that into a strict set of rules when ultimately this is about the formation of relationships and sets of behaviour across two or more parties. What you need is exactly the point that Tim is making; you need processes that ensure that the parliamentary groups that are signing up to this feel a sense of ownership of it. One of the lessons that we drew was the value that we put on the idea that it was not just our parliamentary party in the Commons but our parliamentary party in the Lords, our Executive Committee and our whole party in conference that had to sign off on our agreement. I commend that to other parties who are engaging in these sorts of discussions, because that is the way you can build stability and manage the rebellions that inevitably will occur during the life of a government.

Mrs Cheryl Gillan MP: No party is going to go into an election saying, “We have a plan for a coalition.” Each of the parties will be standing on their own manifestos and moving them forward. However much we fantasise about having a process, I agree with both my colleagues that it will depend on the personalities involved, on the arithmetic after the election, and on exactly where we are in the country. We said at the beginning that we brought this coalition together because the people voted for a coalition. They wanted us to govern as two parties in the interest of the country and the economic situation. We do not know where we are going to be by the time of the next election, but I am very much hoping that we will return to single-party government.

Paul Burstow MP: A note of discord to end on.

The Chairman: On which note of agreement to disagree, vigorously, we will thank you for your time and valuable insights, which are very helpful. Thank you, all of you, very much.
WEDNESDAY 4 DECEMBER 2013

Members present

Baroness Jay of Paddington (Chairman)
Lord Crickhowell
Lord Cullen of Whitekirk
Lord Irvine of Lairg
Lord Hart of Chilton
Lord Lang of Monkton
Lord Lexden

Examination of Witnesses

Lord O'Donnell, GCB, Cabinet Secretary and Head of the Home Civil Service 2005–11, and Rt Hon. Lord Butler of Brockwell, KG, GCB, CVO, Cabinet Secretary and Head of the Home Civil Service 1988–98

Q111 The Chairman: Good morning, Lord Butler and Lord O'Donnell. I apologise for keeping you waiting but, as you could see, we had four people in our previous session and we were not capable of keeping to time; at least I was not. I remind you that this evidence session is being broadcast so, if you would be kind enough, please identify yourselves when you first speak for the benefit of the television cameras.

We had a detailed discussion with the previous witnesses about the role the civil service played in Scotland and Wales in negotiations and in preparation for coalition. I think it is fair to summarise by saying that all the witnesses thought that in both situations the role of the civil service had been important, so we will want to talk about that in the Westminster situation.

Before we come to that, perhaps we could ask you about the evidence we have been given about the relevance of the Cabinet Manual or the draft Cabinet Manual as it was at the time of the 2010 elections. Lord O'Donnell, you have been given a great deal of praise for having thought so far ahead in drafting that as it related to some of the coalition questions that arose, particularly drawing on your experience of the New Zealand situation. The evidence we have been given in the past few weeks is that those Cabinet Manual references should be expanded and probably made more definite as to some of the issues relating to the formation of a coalition government and the existence of a sitting government, particularly a sitting Prime Minister. I wonder whether that is your reflection.
Lord O’Donnell: Gus O’Donnell, former Cabinet Secretary and Head of the Civil Service. Thank you for those kind words. On the importance of the Cabinet Manual, this was possibly the first coalition for a long time so we were coming up to a situation where there could have been great uncertainty, particularly with the public, about what the constitutional and legal positions and the conventions were. For example, does the Prime Minister stay in office even though he does not have the most seats or votes? In that sense, it served a very good purpose and it was helped by lots of constitutional experts being able to explain that to the public in an independent way. It was as much as we could have agreed in the time there was available. It is a creature of the Government and therefore it was as much as could be agreed with the Government.

There are certain issues that were left up in the air. For example, it is for the Prime Minister to decide when to involve the civil service in discussions with the parties. Some people have suggested that that should be accepted as a conventional norm. That is obviously for the Government. I think that the process of engaging with the opposition is a good one. The process of the civil service being there to facilitate discussions and it being for the parties to decide how much they want civil service involvement strikes me as a rather good place to be. There are other circumstances, and I would urge the committee to look at an excellent transcript that will come out of an Institute for Government seminar that happened on 50 ways to leave a coalition. It talks about the role of the civil service in countries such as the Netherlands, where it is much stronger than it is in the UK, and Germany, Sweden and Ireland. There is a lot of interest there, which will provide useful guidance about where you might go and how the Manual might be strengthened. However, that is for the Prime Minister to decide.

The Chairman: You must have ideas. For example, we have just heard that in Wales and Scotland it was valuable to have an extended period of negotiation. Do you think it would be helpful if that was formally part of the arrangement?

Lord O’Donnell: There is no arrangement about how long it should take at the moment, is there?

The Chairman: No, but do you think it should, perhaps, be formalised?

Lord O’Donnell: Germany had a clear election result and they still do not have an agreement. They are close but it will be subject to the views of one of the parties. I would be nervous about a precise time limit. A general principle I would strongly advise for next time is that little phrase you have at the bottom of those financial adverts: the past is not necessarily a good guide to the future. Because we have had one coalition, that will change things. Given that we had a coalition and it turned out that the world did not fall apart with a coalition government, the markets will be much more relaxed about taking longer. Given that they have observed coalitions in other parts of the United Kingdom and on the continent, people will be more relaxed. I think there will be more time next time for parties to talk about it.

There will also be more complications because, this time round, I expect that the media will ask all sorts of questions of manifestos, precisely the sorts of questions that you were asking. “So, what of your manifesto is definite, and what is up for negotiation?” That may create more problems in negotiation. We were quite lucky last time in that all the parties had not really said much about it and therefore ended up in a situation where there was room for them all to negotiate.
Q112 Lord Lexden: How was the decision to construct a Cabinet Manual made? Did you propose it to Mr Brown, believing that a coalition government after the 2010 election was likely? Had, in the past, any attempt to formulate guidance, in however brief a form, been attempted—in 1974, for example? Was this an entirely novel development as 2010 approached?

Lord O’Donnell: That is one where we can safely divide up the answers. On your first question, Gordon Brown came in as Prime Minister and his first Cabinet was virtually entirely about constitutional issues and there was a big paper that was circulated to all members of Cabinet. He was very keen on exploring lots of these ideas, including the Cabinet Manual. It was with his approval that we started work on that. I submitted the draft of that chapter to the Prime Minister ahead of my appearance at the Justice Select Committee, saying that, given we had not produced the whole thing as there was not enough time before the election, I was keen that we tried to get that chapter out. He approved that I could put that draft out when I appeared before the Justice Select Committee. It never became more than a draft before the election; the final Cabinet Manual was sorted out later.

Lord Lexden: How did the inclusion of procedures that should be borne in mind if a coalition were formed come about?

Lord O’Donnell: There is not very much in there about coalitions for that precise reason. There is an interesting reluctance among the two big parties to contemplate or talk about the possibility of not having an outright majority. Looking at the polling evidence, if the trends of the past continue and the vote share of the two large parties continues to decline, an unclear result must be more likely in future.

Lord Lexden: Would you recommend that the existing Cabinet Manual be expanded to include more on procedures if another coalition is formed? If more of that should be included, what form should it take?

Lord O’Donnell: There is scope now, having learnt from coalition, to put down some things that might be able to be agreed. For example, one might want to expand on how to manage collective responsibility in a world where there may be some agreements to disagree which were clear in that coalition agreement. I noticed that you discussed that at some length. There are some areas where we have learnt about how things work in practice, which could be incorporated; that would be one. There should be a discussion about the role of civil service in its interaction with all the parties ahead of elections.

Lord Lexden: May I ask Lord Butler whether, for example, in 1974, any advice came from the civil service to assist the possibility of constructing a coalition government then?

Lord Butler of Brockwell: Robin Butler, Secretary of the Cabinet from 1988 to 1998 and private secretary at Number 10 in 1974. Before the Cabinet Manual was produced, there were conventions that were understood and there were briefings and conversations with the leaders of the parties before general elections. It was immensely helpful that they were put in writing before the 2010 election because, as Lord O’Donnell has said, that caused them to be much more widely known. 1974 is an interesting illustration of that because, although the conventions existed in 1974, when there was a hung result, Mr Wilson was able to represent it as a constitutional enormity that Mr Heath stayed in Government over the
weekend and tried to form a coalition whereas, in fact, it was perfectly consistent with convention. If the Cabinet Manual had existed, Mr Wilson would not have been able to make such a populist point.

Q113 Lord Lang of Monkton: I am concerned about how the Cabinet government process and Cabinet committee decision-making process are bearing up under coalition. At the outset, you probably felt that the situation was under control and could be managed. A Coalition Committee was set up but that committee has not actually been used very much; instead, we have the Quad, which seems to me to have a slight flavour of sofa government but I may be wrong. Do you think that the system is working or do you think, looking ahead to any possible future coalition, one should prescribe some different mechanism to hold it together?

Lord O'Donnell: Given we had very little to work on—that is, no precedent of coalition government in the United Kingdom post-Second World War—things have worked out a lot better than I had expected. I said there would be a trajectory. If you think about the cohesiveness of government out of 10, you give them 10 on day one in the rose garden and then it goes down to X, where X is hopefully above zero but may not be that much above zero, on 7 May 2015. It was always going to be that trajectory. In a sense, the way the coalition is turning out is pretty much as I would have expected. I would expect it to carry on down that trajectory.

The Chairman: Ending up where—1 or 2?

Lord O'Donnell: That is an interesting question. Where it will end up will be very little new legislation and year 5 will concentrate on implementation and getting on with things that have already been agreed. That may not be such a bad thing, but it is what is likely to happen.

On things that have worked, having Cabinet committees with a chair from one party and a deputy from another has gone very well. People forget all the things that are sorted out, and sorted out by Cabinet committees. Cabinet committees have done a lot more than previously, so, in that sense, it has been rather good for proper government. We thought we would need the Coalition Committee meeting two or three times a week. It has met twice. That role has been taken over by the Quad, which has turned out to be effective. Quads and bilaterals with the PM and DPM have been more effective. To me, that says that, whatever other matters we might put together in terms of formal structures for coalition, the personal chemistry between the Prime Minister and the Deputy Prime Minister and between those members of the Quad is hugely important. It is difficult to think about structures for that although it is important that we have civil service structures around both bilateral and the Quad.

Lord Lang of Monkton: Lord Butler, do you have any observations on that?

Lord Butler of Brockwell: I have only been an observer from the outside of what has happened under the coalition. It seems to me that Cabinet committees have played a more important role, although under previous governments some Cabinet committees were very important. My only observation on it is this: it was often suggested that a proportional representation system, which produced coalitions, would be more likely to produce collective Cabinet government. I contested that because things are actually resolved in quite small caucuses and they do not necessarily have to go to Cabinet committees or Cabinet
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government. One does not follow the other, but it is the case that there has been more collective government under the coalition. I welcome that.

Lord Lang of Monkton: Nevertheless, there has been the occasional breakout in terms of collective responsibility of sometimes jaw-dropping proportions. Do you think that could have been provided for in advance or not?

Lord Butler of Brockwell: I agree. This has been a constitutional innovation. Individual Cabinet ministers have been able to disagree with government policies openly, in a way that, under the conventions on which I grew up, would have been unthinkable.

Lord Lang of Monkton: Perhaps the Quad has helped them to get over that because they have had to come face-to-face with each other afterwards.

Lord Butler of Brockwell: It has demonstrated how flexible the British constitution is, that ministers in that situation could stay in office.

Lord O'Donnell: Remember, in a sense, it was set up by the fact that there was going to be a referendum on the alternative vote early on, which meant they were openly campaigning against each other. It shows the strength and, as Lord Butler said, the flexibility, that having—to use the phrase that was used by your previous witnesses—“knocked six bells out of each other”, they could come together and then carry on in a collectively responsible way.

Q114 Lord Crickhowell: I want to come back later to the role of the civil service during the process of setting up the coalition, of which we had quite a lot of discussion in the previous session. There are some points that arise from what has just been said about Cabinet responsibility. Cheryl Gillan, giving evidence, spoke about the difficulty that sometimes arose in the present Government of knowing exactly what is going on in those areas where you are not involved, or, if you are in a department where there are no ministerial representatives, or they are at junior level, of knowing exactly what is happening; those things may affect you.

In my time as Secretary of State for Wales, I was on all the key Cabinet committees that covered the main areas that affected the Welsh Office. It is clear that the Secretary of State for Wales is not in that position. Sometimes policy statements, for example, have been made by the Deputy Prime Minister about which she was not consulted and which conflicted with what her understanding was of policy. Is there a difficulty, where you have some departments effectively under the control of one party, with the other parties only thinly represented, in getting the flow of information that is necessary? It has been suggested that this is one area where special advisers have taken a much more important and key role. Is there a problem here and is there anything we can do about it in future?

Lord O'Donnell: Yes, there is a problem. It was, in a sense, predicted that if you were to have a coalition of this kind, there would be departments where there was no minister from one of the parties, particularly the smaller party. The question was: how did you coalitionise policies? I remember writing a piece of guidance, which I am afraid did not get used comprehensively across the civil service, saying that there should be, in every submission, a section about coalition and whether you have coalitionised this, essentially. In departments where there were no Lib Dems, this tended sometimes not to happen. It would then get
picked up quite late on at Deputy Prime Minister level, and then it would be quite difficult to unscramble and sort things out.

One of our proposed solutions was to increase the number of special advisers for the smaller party. Of course, the larger party found that a bit of a problem. Overall, that would mean increasing the number of special advisers, which has problems of its own. You need to try to set up machinery such that you can do that. The idea was that we set up arrangements whereby, if there was not a Lib Dem in there, there would be a notification to the Deputy Prime Minister’s office quite early on that there was an issue coming up and, therefore, they needed to engage and hopefully engage early. We tried to do that through the processes. It has not been perfect but, on the other hand, it is the nature of coalition with one very large party and one smaller party that there will be departments where the smaller party is not represented or not represented at a senior level.

Lord Crickhowell: Cheryl Gillan has suggested that the office of the Deputy Prime Minister, in a sense, could be the problem. The Deputy Prime Minister or his department could make policy pronouncements that had not been properly covered by the departments that were most affected by them. There is clearly a problem, and I wonder whether you could make some fresh suggestions that we could take up as to how this problem might be dealt with.

Lord O’Donnell: Certainly. The Deputy Prime Minister chairs one of the big committees, the Domestic Policy Committee, so it would be making sure that the representation on that committee is as complete as it should be and that the processes for clearing around departments are as good as they should be. If the DPM comes up with a policy proposal which, say, the Secretary of State for Wales did not know about, I would say, “Hang on”, because almost certainly that would have been cleared by the Prime Minister either bilaterally or in the Quad. The question would be not for the DPM but why the Prime Minister or the rest of the Quad not done their job in making sure that all ministers who were affected by that decision were aware of it and had their chance to have their say.

Lord Butler of Brockwell: The problem that Lord Crickhowell described is not unique to coalition. It is really a failure of collective government. That can happen in a one-party government as it can happen in a coalition. It is perhaps a more difficult problem in a coalition, but it is not unique to it.

Q115 Lord Irvine of Lairg: I assure Lord O’Donnell that this question is inspired by sympathy for the predicament of the civil service in circumstances where, to a greater or lesser extent, a coalition government sets aside the traditional principles of collective responsibility. We can think of examples: the reaction and responses to the Leveson inquiry is a good example. I ask this question to both of our witnesses. Suppose in a particular area there is no Cabinet consensus—and it is understood that there is no Cabinet consensus—but a particular minister whose views are well known on the issue comes to his permanent secretary and says, “I want to speak out on this issue. You know perfectly well that I am free to do so. There is no consensus. Would you, permanent secretary, please secure for me a briefing from my civil servants that will assist the presentation of my views to a wider public?” What should the answer from the permanent secretary be to that minister?

Lord O’Donnell: May I start off, because it is not a hypothetical question; it has happened quite a lot.
Lord Irvine of Lairg: Yes, I rather thought it might.

Lord O'Donnell: We decided on a way forward, which is that we will get the sanction of the Prime Minister and Deputy Prime Minister for civil servants to brief their different ministers in a way that will be known by both sides. Quite often in these cases, there are two opposing views, the Conservative and Lib Dem views, which are different. As you say, for various reasons there has not been collective agreement. The procedure we use is that we say to the Prime Minister and Deputy Prime Minister, “This is the situation. Will you sanction the civil service to support this Conservative minister in them providing advice on that particular policy option and will you allow us to do the same?” That will be kept to those particular ministers. That is the procedure that is used.

Lord Irvine of Lairg: Has the answer ever been “No, we don’t sanction it”?

Lord O'Donnell: Not that I am aware of but I left some time ago.

Lord Irvine of Lairg: I appreciate that. What in principle should the answer be to the question I just asked?

Lord O'Donnell: That is a sensible way forward. There is an issue, particularly as we approach the next election, when some of those answers are clearly about policies that I would call party differentiators.

Lord Irvine of Lairg: Which will feature in the campaign maybe.

Lord O'Donnell: They may well feature in the campaign. There is an issue then about symmetry between all parties, and that is an area where we need to think about where this leaves the opposition party.

Lord Butler of Brockwell: I would answer your question of principle that the first loyalty of a departmental civil servant is to his secretary of state. Of course, it has not been unknown in the past that secretaries of state have disagreed with their colleagues on policy. What is novel about the coalition and the way the coalition is working is that they wish to come out publicly and say that they disagree. That is what requires the sort of sensible arrangements that Lord O'Donnell has described.

Q116 Lord Irvine of Lairg: Does it cause embarrassment to the civil service, as the permanent secretary in question is bound to know that the advice, which he has been authorised by both the Prime Minister and the Deputy Prime Minister to give, is a political hot potato? It will be inferred that the civil service has assisted the minister in question.

Lord O'Donnell: I would say: as long as the civil servants in question live by their values. That is a good place to go back to. If they give honest, objective, impartial advice and they use the same evidence base, and both will be happy looking at what the other had put forward, it is inevitable. This is the world we are going to be in and we need to be transparent about what is going on.

The area that I am worried about—and I would like the committee to give the answer to this question because I am very concerned—is taking it forward. Imagine a world where the election result has resulted in a coalition of Labour and Lib Dem. We have a convention about papers of the previous administration not being open to the next administration.
What do we do about that convention next time? I do not know what the answer to this is. There are various ways you could solve it. You could drop the convention; you could think about ways to do it. It is going to be a problem and it is the kind of problem that is much better sorted out now than waiting until we have the issue and then confronting it.

Lord Irvine of Lairg: You must have a view of what the answer to your own question ought to be.

Lord O'Donnell: No, I struggle with this. All the answers I have come up with have serious drawbacks, so I am still thinking. I do not have an answer, I am afraid, which is why I have said any help from you would be much appreciated.

Lord Irvine of Lairg: We will have to be the philosopher kings then.

The Chairman: In a way you have both been fairly relaxed about the abandonment of some of the conventions which, as Lord Butler rightly said, we have all been brought up with, particularly the one about collective responsibility. Why does this one particularly trouble you?

Lord O'Donnell: I have lived in a world where that has been one of the rules we lived by. I have found it a very sensible rule. I, therefore, abandon it with some trepidation. In the end, probably the answer, if I am pushed, is that we will have to abandon it.

Lord Butler of Brockwell: The danger is to the view that the parties take of the impartiality of the civil service. If confidence in that was damaged as a result of abandoning the convention that would be very important.

Lord Irvine of Lairg: That was what prompted my questions in the first instance.

Q117 Lord Crickhowell: That takes us back to the role of the civil service during the setting-up of the coalition, because this situation may almost arise at that point, particularly if there is a different coalition emerging as a strong possibility and seeking advice. We heard in the previous session that there have been difficulties. Clearly there were in Scotland, at one point, which is why David Laws objected to civil service involvement in 2010, but we have heard of the practical advantages from our witnesses this morning. Ieuan Wyn Jones talked about some votes issues, how departments work, costings and so on. It seems to me there is a real difficulty if civil servants have been working for a coalition, have a view of government as it has been, in selecting civil servants to advise different potential partners—there may be more than one group involved—on the policy issues. I wonder whether you can advise as to what you think the role of the civil service, at that point, should be. How do you select the team of civil servants to deal with the different possibilities that may emerge in the future?

Lord O'Donnell: It is worth remembering that we did this last time. Every party, pretty much, had a person allocated to them. If there had been more parties involved, we would have been ready with a civil servant that the party leaders knew about who would be that interface. We managed to agree briefing guidelines as to how we would sort out difficult issues that were put to us by Conservatives and Lib Dems during that five-day period. We published that advice. You asked me about what could be in the Cabinet Manual; you could incorporate a lot of that document in the Cabinet Manual. That would be good. That gives
you the answer to most of these questions. If somebody asks you a question about, say, the economy or the costings of a particular policy, then the civil service can provide that information, but it will also provide that information to the other parties. That is a sensible way forward, in my view.

**Lord Butler of Brockwell:** The novel aspect will be the lead-up to the election with two parties of government. I was impressed by the term “private space” given to the two parties in government, which I understand they had in Scotland. I would favour widening the powers of the civil service to advise the opposition party as well as the two parties in government, partly in the interests of providing a level playing field between them. It is a good idea to have a point of contact for each party. I would not favour having separate teams of civil servants advising each party. I think that the parties ought to be able to go to the civil service, to the department, and get objective advice. To allocate separate teams of civil servants to the parties before the general election would be dangerous.

**Lord Crickhowell:** If you have two discussions going on, perhaps the Conservatives and Lib Dems on the one hand, Labour and Lib Dems, or—who knows?—the involvement of another party in the future, you can hardly have the same team sitting in on separate discussions.

**Lord Butler of Brockwell:** I think you can, with respect. Speaking as an individual, I was expected and did not find it difficult to advise the existing Government, before the 1997 election, and the Labour party and the Lib Dem party. The advice I gave was confidential to each, but that was perfectly possible. I do not see why that cannot be extended to civil servants who are being asked to advise on a particular aspect.

**Lord O’Donnell:** As Lord Butler said, we have an individual who does the liaison. That individual then goes back to the department. That is the right way to manage it. In terms of the teams that you refer to, that is something that obviously did not arise in 2010, because there were no teams and there were no civil servants in the negotiations between the parties. It is possible that, in future, the parties will ask for that.

**Lord Crickhowell:** That is what I am asking about, in the light of the experiences in Wales and Scotland.

**Lord O’Donnell:** Indeed it has. We were very aware of that and, in our preparations, we worked out, if we were asked to do that, how we might do it. Those teams did two things: they took a note of what was agreed, but they also provided advice generally in the form of wanting to go back. There were certain things; both parties might want to adopt a certain policy, and the civil servants would know that, actually, the previous government had wanted to adopt that policy, but could not for one or two practical reasons. There are those kinds of things you can feed in. That means having one or two civil servants potentially in those meetings and they would refer back. They would use the whole of the civil service. I share Lord Butler’s nervousness about big teams.

**Q118 Lord Irvine of Lairg:** Would you both agree that, no matter what the correct answer to some of these difficult questions is, the reputation of the civil service for political impartiality must not be sacrificed; it is an absolute?
Lord Butler of Brockwell: Yes.

Lord O'Donnell: I totally agree—honesty, objectivity, integrity, impartiality. That is what we do.

Q119 The Chairman: Does any member of the committee have something that they feel that they want to put that has not been discussed? Lord O'Donnell mentioned one point when I asking about extending the Cabinet Manual. You spoke about the need to be clearer about collective responsibility. Presumably that is a particularly tricky area in terms of political sensitivity, political disagreement, and so on. How do you imagine that being phrased, as it were?

Lord O'Donnell: There is the process of agreeing to disagree. In the past, if a Cabinet member disagreed on a fundamental policy issue, generally the view was, “Well, resign.” Here, if you look at the issues we have dealt with—nuclear deterrent, EU, boundaries, House of Lords reform—there is a whole set of issues where there have been agreements to disagree. As Lord Irvine said, the Leveson Inquiry was an example of an issue that arose that was not thought about when the coalition agreement was written, where the parties came to a different view. It would be good if we had clarity about what constitutes the sensible way when the two parties have a different view as to how to carry on. Agreements to disagree could be expanded.

The Chairman: If you look, for example, at the somewhat convoluted arrangement there was in 1975, ministers on the EU referendum were enabled to speak outside Parliament on different sides, but not to speak in Parliament and certainly not to vote on any motion, as it were, which demonstrated their disagreements. Could something like that be laid down in the present circumstances?

Lord O'Donnell: I am not sure that I would go with saying different things in Parliament and outside. I find that very odd.

The Chairman: That is why I was saying it was convoluted. It happened.

Lord O'Donnell: Indeed. There should be clarity that, on this particular area, there has been an agreement that the parties will disagree and will say different things. This is the way the Government will go forward or not, as the case may be. Here is how they will spell them out. Presumably, quite often with these decisions, you find that what happens, the way that they are resolved, is that the issue is given a good kick into the long grass post the next election. It will therefore appear in the manifestos and either will be resolved by one party winning outright or it will be something that comes out in the negotiations. If I were doing the preparations for next time, I would take seriously preparations for a minority government. We did a little bit about that, but that is an area where I would say it is probably worth—

The Chairman: Supply and confidence arrangements?

Lord O'Donnell: Supply and confidence arrangements, yes; precisely how they might work and how one might manage government during a period of minority. Again, there is not much to go on, on that.
Lord Butler of Brockwell: May I add one point, which goes back to a point we discussed at the beginning? The British constitution has changed and should be allowed to change. It may be that it is wiser to take a little longer about coalition negotiations. But I do not think we should not envisage that the British system would go quickly to a German arrangement. There will always be pressure for a resolution to be fairly speedy. If you imagine a situation after the next election where both parties are negotiating and perhaps the Labour party has more seats than the Conservative party, there would be a lot of impatience if the existing Prime Minister stayed in power for days or weeks while the negotiations went on. The habit of the British constitution of expecting a new government to come into effect quickly would not be easily overcome.

Q120 Lord Lexden: I am sure that is right. If negotiations were protracted, the Queen’s Government would have to carry on. What thoughts would you and Lord O’Donnell have on that possibly prolonged period dealing with urgent matters and on the role of the incumbent Prime Minister? Also, how should politicians prepare for the possibility of a longer period, at a time after an election when the press is likely to be clamouring for quick decisions on matters relating to the markets and the economy? Finally, not related to those points, one got the impression from Lord O’Donnell that it perhaps is preferable to have issues of dispute resolved in a small gang of four or whatever, rather than in the Cabinet committee specifically set up for that purpose. I wonder whether you could comment a little bit more on that, but I am mainly thinking of the period between a general election and the formation of the new government.

Lord Butler of Brockwell: On that part of the question—I will leave Lord O’Donnell to answer the other part of it—the civilised approach, which I hope would be followed, would be that during that interregnum the parties would feel an obligation to consult each other. If the Prime Minister stayed on and major decisions had to be made, he would consult the leaders of the other parties, in the hope of reaching an agreement. Even describing that illustrates why that period should be as short as can be managed.

Lord O’Donnell: It is interesting what we have seen in countries such as Germany. There have been lots of important issues in Europe and it has managed through this period. I agree with the sentiment of what you said. The British conventions are such that it would be one thing to say it might be a little longer than five days, but it would be another to go to Belgian proportions. I think that would be very hard. We had some big ECOFIN decisions about Greece and bailouts for Greece during that period. Everyone behaved very well and there was a lot of consultation between the parties, so that worked, but I would not want to stretch that too far. Hopefully these things could be done reasonably quickly.

Lord Butler of Brockwell: It would have been presumably more difficult, even in Germany, if it had not been clear that Frau Merkel was going to be the next Chancellor.

Lord O’Donnell: Yes, absolutely. As to Cabinet committee versus Quad, the thing to remember is that, ideally, everything comes through the Cabinet committee structure and that all works. The Quad is usually brought in when there is a really difficult problem, which cannot be managed by the normal processes. It is not that the Quad is taking over lots of other issues; it is taking over issues that you have tried in other ways and you are not getting anywhere, or there are very market-sensitive, budget-style issues. That is the kind of area where, in my day, the Quad was very active.
Lord Lexden: It is quite hard to see it that way as the gang of four has in fact decided so much and the Coalition Committee has met only once or twice.

Lord O'Donnell: It will vary a lot. Sometimes there is a decision on the Quad because they know where the Cabinet committee would be. Sometimes they are worried about confidentiality, which is always an issue the more people that are involved. I advised that you should use things like the Quad as a fall-back when you have not managed to do it through the other proceedings.

Lord Lexden: There is a danger, and perhaps that danger has occurred under this Government, that four people get used to settling a large amount and an oligarchical state of affairs is created.

The Chairman: Oligarchy or sofa government—that is your choice.

Lord O'Donnell: I remember that even during John Major’s prime ministership there was what was called the A Committee, the A Set. There are always informal arrangements where small groups of heavyweights get together.

The Chairman: Thank you both very much. The one thing that emerges strongly is the formality or otherwise of putting things in the Cabinet Manual. It has been very helpful to hear what you both had to say on that. Clearly, forward preparation is something which will help us, and that is something that the experience of the past nearly four years is going to inform party decisions, civil service decisions and ultimately government decisions. The British constitution may become a little dearer on this aspect. Thank you both very much. That was very helpful.
Q1 The Chairman: Good morning to our first witnesses in this inquiry. We are delighted to see you both here; thank you for coming. I think you know the broad areas that we wish to discuss, because we have circulated possible questions and Lord Norton was very kindly part of our private seminar on this in July. I understand that both of our witnesses would like to make brief opening statements, which may clear some of the ground. We have already read Lord Donoughue’s article on the Lib–Lab pact which he kindly sent us, which has been described by members of the committee as ranging from “entreating” to “grumpy”. We look forward to hearing your further comments on that and the general historical perspective, which you have described so well. Perhaps I could begin with Lord Norton and your brief statement.

Lord Norton of Louth: It is not so much a statement as that I thought it would be helpful to make a point of context, within which we could then have a discussion about the consequences of coalition for our constitutional arrangements. Although we have had coalitions before, we are presently in a unique circumstance in terms of how the coalition came about. This is the first time that we have had a coalition that has been the product of the arithmetic of the general election, where parties have had to come together to form a minimal winning coalition. We have not been in that circumstance before; we have had coalitions, but where one party has been dominant and could have governed on its own. So there have been other reasons why coalitions have been formed. That has certain
implications in the present circumstances for our constitutional arrangements which were not there before.

The Chairman: Lord Donoughue. I am sorry, I should have done this at the beginning, but I remind witnesses that this session is being broadcast.

Lord Donoughue: Thank you. I will just make a few points. My basic position is obvious, as you know. Since 1951, there has been much less support for the two main parties, so it has been much harder to create a majority government and there has been a much greater chance of a hung Parliament. The options that have been available are: a minority Government, as in 1974, 1976 to 1979 and as we should have had in 2010; a kind of pact in the way that I describe we had in 1977 to 1978; or the kind of coalition that we have been living under. I would like to stress the advantages of the alternatives to a coalition, as I fear that a younger generation will begin to assume that if they do not get a majority, they must have a coalition. The advantages are pretty clear: it is a more flexible and open form of arrangement, with Parliament having more influence, and it preserves the identities and values of the governing party. I hope the committee will present it as a strong alternative option. I think Cameron should have done that last time.

The disadvantages of a coalition do not have to be set out, because we live with them. You have the non-accountability of the coalition agreement, the fudge of policy decisions, the muddle of policy execution and the mediocrity of certain people who get into government who would not be in government if we did not have a coalition. I have in mind the Secretary of State for Energy and Climate Change, who will preside over the blackouts et cetera that lie ahead of us. Accepting a coalition as the natural response to a hung Parliament entrenches that fudge, muddle and mediocrity within government, damages the coherence and the unity of values of executive government and entrenches—or threatens to entrench—the third party permanently in government, which I do not feel is a good thing. I have many friends in the current Liberal Democrat party and I value their imagination et cetera, which brings a sort of adolescent charm to our politics, but I think it is a different thing when it comes to creating a responsible government. I also feel that the coalition has been a major factor in creating UKIP—of which I do not approve—because the Conservative party’s concerns over Europe, immigration, welfare and green climate policies are being suppressed a bit within that party, so they move outside the framework of responsibility and scrutiny in that main party. If you have coalitions then obviously we need changes to our conventions and to the assumption that, after an election, you form a government quickly. As in Germany, that may not be possible. The relationship between the parties, their manifestos and the elections, and the degree of accountability that is built into that, goes, or is much less. The coalition agreement has not been approved by the electorate. You begin the process of building items into a manifesto that are subsequently to be traded in the later negotiations. I am not sure that is a good thing. If we have a coalition, the coalition agreement should be placed before Parliament for approval and amendment. Obviously, collective government and the single voice of the Cabinet have already been abandoned. Reshuffles become very hard, with the Prime Minister not really in control—the whole process of coalition diminishes the power of the Prime Minister and I am not convinced that that is a good thing. It certainly damages the coherence of government.

In passing, I rather dread the prospect of a future Liberal Democrat–Labour government. My advice to the Labour party leader, if he is inclined to listen, is to look much more closely at having a future minority Labour government and preserving the coherence of its values, or making the kind of pact that we did before, with all its flexibility. That is much better than a coalition. I hope that this committee, which has a crucial role in this, will make clear that the
coalition is only one of at least three options that are available after a hung Parliament. In my view, it is the last resort.

Q2 The Chairman: Thank you very much, Lord Donoughue. As you rightly said, you have covered the entire field that we wanted to pursue with our witnesses this morning. I will start by asking a general question. What do you feel—both witnesses, Lord Norton perhaps to start—have been the major departures from what we would call our normal constitutional practice in the formation and existence of the coalition? Lord Donoughue mentioned one of these, which Lord Lester of Herne Hill—who unfortunately is detained in New York and cannot be with us this morning—has particularly asked us to pursue. That is the question, which again Lord Donoughue referred to, about the Prime Minister’s prerogative powers. Perhaps you would start Lord Norton.

Lord Norton of Louth: I think one can identify four departures, all of which bear to the point you have made in that they limit the power of the Prime Minister. Those four can be grouped under two headings. There are two that derive from the fact that we now have what I would regard as a dual rather than a single executive. That will be apparent by what I identify. One is in terms of ministerial appointments, which are no longer purely the prerogative of the Prime Minister as the sovereign’s advisor. The second relates to the convention of collective responsibility in terms of being united before the House. Decisions are arrived at collectively in Cabinet, which is then bound to support those publicly, including by vote in the House of Commons. Again we have seen a departure from that, without the convention itself being formally suspended. Those are the two that I would say derive from a dual executive.

You then have two other changes, which derive from the coalition making statutory changes in the form of the Fixed-term Parliaments Act 2011. One of those is in relation to maintaining the confidence of the House: the Prime Minister cannot now announce that confidence attaches to a particular vote in order to maximise government support for it. In 1972, on the second reading of the European Communities Bill, Prime Minister Ted Heath said, “If we lose this vote, this House cannot sensibly continue”. That is gone now, as the House has to pass the motion: “That this House has no confidence in Her Majesty’s Government”. That limits the position of the Prime Minister, in the sense that although you could still say that confidence attaches, that would only enable the Prime Minister—or the government—to resign, whereas previously one had the option of resigning or requesting a dissolution, and the normal practice was to request a dissolution. The other change is in respect of dissolution without an issue of confidence; the Prime Minister deciding after, say, four sessions that now was the time to go to the country and advising the sovereign to call a general election. It is now a fixed date, which again constrains the Prime Minister. I think that those are the four main changes. Two will have ongoing consequences because they are statutory changes.

Q3 Baroness Falkner of Margravine: I will address my questions to Lord Donoughue, as I think he would expect. Leaving aside the very colourful description of where you would like the future result of a general election to lie, you seem to contradict your own article. When harking back to the Lib–Lab pact, and that kind of looser arrangement, you said in your article: “Labour secured much more than the Liberals from the pact, getting a crucial stability for its parliamentary majority while conceding virtually nothing”. In light of that view, how do you foresee that a party that had historical evidence of securing nothing would wish to go back down a route that would secure nothing? My other question relates to your statement that this kind of coalition arrangement does not reflect the will of the people.
Several of our experts have pointed out in their written evidence that the percentage share of the vote is higher for a coalition than it has been for a single-party government, and is almost coterminous with the number of seats in Parliament. In that sense—59% of the votes and 58% of the seats—it appears to be a more proportional result than has been the case with a single-party government. I notice that Lord Norton disagrees with that. Perhaps he would like to come in on that.

**Lord Norton of Louth**: I will just deal with that point first. If party A gets 20% and party B gets 40%, and they form a coalition, it does not mean that they have the support of 60% of the voters. Not a single voter has voted for A plus B.

**Baroness Falkner of Margravine**: But there is the proportionality, in terms of the number of seats they get in Parliament being almost identical to the number of votes.

**Lord Norton of Louth**: I do not think that is relevant to the point. It is a political point: as long as A plus B have a majority in terms of seats, they have a majority, but it does not mean that they enjoy the support of any electors. You cannot prove definitively that they do.

**Lord Donoughue**: I have two points here. My main point about reflecting the electorate was that the coalition agreement had not been put to the electorate. That would have to be dealt with. I do not think there is any contradiction. The great advantage of that pact, agreement or understanding—it was described in various ways at the time—was its flexibility. The Liberals did not get much specifically out of it because they did not want much specifically. They wanted the Government to continue and Mrs Thatcher and the Conservatives not to come into power. That was an achievement, but I meant something specifically Liberal. The great point about such an arrangement was that, if they wanted more, they could negotiate more. It was a flexible arrangement and therefore made great sense. The main reason they did not get much was because the Liberals at the time agreed with much of what the Labour Government were doing. They did not want many changes to it. They were particularly concerned about the European elections and Scottish devolution and, as far as they were concerned, they got the opportunity on that. I do not think there is any contradiction there.

**Q4 Lord Crickhowell**: I want to raise a very narrow point. We will come to collective responsibility and those things later. I want to come to the moment and the electoral arithmetic—this unique situation. I want to discuss what actually happens. First, the sitting Prime Minister has the right to try to form an ongoing government. Can we deal with that? Secondly, Nick Clegg has repeated recently what he said before the last election, which is that the party which has the largest share of the votes has the clear right to seek to form a government. If you want a coalition, that is the party that you should seek to form it with, rather than with a smaller party. The question, if we are going to have a coalition, is about the actual formation. The third point is directly related to that, because it caused a certain amount of controversy and unfairness to the sitting Prime Minister. The duty of a sitting Prime Minister is to continue in office until he can go to the sovereign and say, “This is the moment when you ask so-and-so to form a government”. Could you deal with these rather detailed but important points that come immediately after the election?

**Lord Norton of Louth**: You have made the key point, which is the general acceptance that the government remain in office until such time as the Prime Minister goes to the Palace to give up the seals of office. A Prime Minister is entitled to stay. The precedent was Ted Heath
seeing if he could make an arrangement in February 1974. It is only at the point when it becomes clear that you cannot form a government, but there is somebody else who may be in a position to form a government, that you go to the Palace and the Queen can then call for the person whom she believes may be in a position to form a government. The formal position is clear. What complicated it in 2010 was the unique situation of the parliamentary arithmetic, which created what by our standards—if not by international comparison—were rather lengthy negotiations. That is the area one may need to look at in terms of how one deals with that circumstance, should it arise again. Should the parties wish to engage in negotiations—and following Lord Donoughue’s point, they may not wish to—what framework enables that to occur? We would perhaps want to avoid the problems that we saw in 2010, where people were not used to doing it and where there was pressure to reach an agreement quickly, so you came up with an agreed document but a document that, in some respects, showed signs of being rushed.

The Chairman: One of the interesting things that has emerged from our prior discussions and from the reading that we have done is the sense that there is a lack of clarity and public information. Given the circumstances that we find ourselves in—where, for example, the media may be misinformed in a constitutional sense, or there is, as you say Lord Norton, a lack of immediate experience of these things—we need greater clarity on this. One of the questions we need to ask is how we would achieve that.

Lord Norton of Louth: I think we have already made a start, or at least officials have, with the Cabinet Manual. This was one of the things that that sought to address, by providing some framework, what the role of the civil service is in facilitating the process. There is greater clarity but this is about whether one could do more in terms of anticipating, were there a repetition, the conditions that should be factored in—in terms of the information available to the participants to the negotiations and also that time factor as well. Those are the two areas that one would need to consider. It may be in future that the parties would anticipate themselves what they would do in those circumstances. The problem is that they would not make public what they would do until those circumstances actually arose.

The Chairman: Lord Donoughue? Do you want to add something to that point?

Lord Donoughue: I agree with everything that Lord Norton has said.

Q5 Lord Lang of Monkton: I would like to follow up on collective responsibility but preface it with a comment and perhaps a question or two to Lord Donoughue about his opening remarks. I have great sympathy with his aspiration for how the situation should be dealt with in a hung Parliament. I think it is fair to say that, at the time of the last election, there was an overwhelming obligation, in all parts of Parliament, to provide a firm government, because of the economic crisis. Against that background it is absolutely understandable that the choice of the coalition was the one that was taken. But that led to the need to put together and sustain in power a government of parties of different views. All kinds of things get bruised—there is a sort of force majeure that comes into play and a lot of conventions get overridden or, as I say, bruised. One of them is collective responsibility. Lord Donoughue, you referred to the attractions of flexibility in your answer to an earlier question, but the Government have possibly carried flexibility to extremes, to the extent that words almost mean what they want them to mean when they come to suspending collective responsibility here, there, to this person or that person, up to a point and so on. To try to get something out of this morass, what would you recommend should be done to
set down some sort of convention, or basis of judgment and activity, in terms of handling the

Lord Donoughue: To me, these conventions are bendable anyway. There is a reference in
your question to a doctrine. When I was in central government, and even when I was
teaching the subject, I was not very aware of tight doctrines. It seems to me—my friend here
is a much greater expert than me—that the unwritten constitution has always been fairly
bendable and that you adjust it to the needs of government but that conventions were a
very helpful guide. It has not troubled me too much that the Government have bent
conventions from a purist's point of view. It seems to me that the downside is that it gives
an impression of confusion and incoherence, as if they were inevitably playing it a bit on the
hoof as they went along; which is what you need to do to some extent, as has already been
indicated. For a start, if there is going to be a coalition, you need to spend much more time
after the election negotiating and discussing it. Having done that, any so-called coalition
agreement should then be presented to Parliament, voted on and be open to amendment.
From that point of view it would be, to use the term lightly, more democratic. I do not see
how you can preserve collective responsibility within a coalition. You have the kind of
situation we have currently, whereby members of the Cabinet basically attack one another in
public. I do not think that is helpful to good, firm and coherent government. That is why I
would much rather have a minority government or an understanding pact, which makes sure
that you have less of that. From 1977 to 1978, you had agreements to disagree but you did
not have public denunciations by one group of the other group. They had an understanding
and if they wished to go separately, as they did on one or two issues, they did and that was
understood. It did not create the confusion that one has in the present situation, where one
does not quite know who is running the Government. I like to have a Prime Minister who
sets the lead and negotiates it with his colleagues. When he has an agreement, you know
that that is what the executive is doing. I do not like the idea of people with no experience
having one foot in Downing Street and being able to veto what the main party has decided it
wishes to do.

Lord Lang of Monkton: We could all wish we were not where we are. Perhaps Lord
Norton has some thoughts.

Lord Norton of Louth: First, I agree with Lord Lang's opening point. He is absolutely right
to stress the economic circumstances. It was the electoral arithmetic plus the conditions in
which we found ourselves that provided the real incentives for creating a coalition. In other
circumstances, there may not be the same imperative for crafting a coalition. In this context,
the Liberal Democrats could not really afford not to go into coalition, given the economic
circumstances. On the point about conventions, I agree with Lord Donoughue that
conventions are conventions. There have been three occasions when the convention itself
was suspended prior to this year, when it was simply ignored. What can one do about it in
the context of a coalition? It strikes me that, in so far as you can plan for such an event, it
would form part of the agreement between the parties. Do not forget that in the coalition
agreement, there is an acceptance that, on tuition fees, the parties may operate differently in
terms of voting. In so far as one is agreeing particular measures, there might be an
agreement. It would be explicit that, in that particular context, there is an agreement
between the parties that the convention would be suspended. That might be the way
forward but that is as far as one could take it. It is a convention, and events may suddenly
arise which were not anticipated in any agreement, but you could try at least to formalise it
a little more so that it is not just suddenly ignored. A convention is a convention and
conventions are developed in order to make sure that the system works. Essentially, it is relating the political reality to the constitutional formality. That is the value of them.

**Lord Lang of Monkton:** Thank you for that answer. I asked the question because we had a lot of written submissions and there is a tendency for constitutional academics to feel an obligation to come up with a solution. Sometimes there is no sensible solution.

**Lord Norton of Louth:** I do not think that one can have a hard and fast solution. You can only come up with an agreement. The expectation would be that one would anticipate those measures where you might agree that the parties agree to differ.

**Q6 The Chairman:** It seems to me, Lord Norton, that you identified that you could of course in theory have some agreement about collective responsibility on specific issues at the beginning, but you rightly indicated, “Events, dear boy”. For the traditionalists—perhaps I include myself in that—the sight of the Prime Minister and Deputy Prime Minister making separate and contrasting statements about, for example, Lord Justice Leveson’s report from the government dispatch box means that if one is really, in any sense, abiding by a convention, one might just as well openly abandon it rather than trying to make it fit into the conventional way of operating.

**Lord Norton of Louth:** I agree with your assertion. It was my opening point, in that you are illustrating that we have a dual executive. Lord Donoughue’s point is that you avoid it by not having a coalition. I would not say that the conventions had got to the point where they cease to be conventions. We have had one example where it has been ignored; in all other votes, ministers have voted loyally with the Government. You could say that the point that Lord Donoughue made earlier about knowing what is going on in Cabinet also undermines the convention of collective responsibility, which is that you keep those deliberations quiet. The extent to which one has moved away from that is hardly specific to this Parliament—we have been seeing it for rather a long time. Nonetheless, it still offers something of an organising framework within which deliberation takes place and, with one exception, ministers have abided by it and voted loyally with the Government. I do not think you can generalise by saying that it has happened once and so one necessarily abandons the whole convention. Some alternative would have to develop to enable the Government to govern. The key point about collective responsibility is to have a government that are collectively answerable to Parliament and, equally importantly, to the people.

**The Chairman:** We will come back to that but I know Lord Crickhowell wants to make a point on this.

**Q7 Lord Crickhowell:** Some quite firm things are said about collective responsibility in the *Cabinet Manual* and they could be strengthened. Lord Lang referred, I think, to two papers that we have received in the recent past: one from Dr Andrew Blick and one from Dr Stephen Barber. They make specific proposals. Dr Barber comments in one paragraph: “Collective responsibility cannot be suspended very frequently, impulsively or unilaterally. Decisions to suspend collective responsibility must be made formally by the Prime Minister and his or her deputy, ahead of a vote or campaign and formal notice given to Parliament”. Dr Blick says: “They should be adopted by Cabinet as a whole, so that at least the departure from collective responsibility is in a sense a collective act”. You could develop some rules whereby any breaches you have are announced in advance. Parliament could perhaps have an opportunity to debate the decision to do it but you would not just announce, “Oh, we’ve
decided and this is what is going to happen”, impulsively and almost on the spur of the moment.

**Lord Norton of Louth**: I do not see how you go beyond what I have suggested, which is that the parties reach agreement initially on those matters on which they might agree to disagree. The response to the proposals that you have identified would be to ask how you would enforce them.

**Lord Crickhowell**: Yes, but I think they are dealing with the point that you made. You can have something in the original agreement but then the unpredictable happens: you get entirely new situations.

**Lord Norton of Louth**: Yes.

**Lord Crickhowell**: Surely you could have a convention that when new situations arise, the decision should be taken after a collective discussion in Cabinet as a whole. They should be announced formally in advance, Parliament should be warned about what is happening and they should be exceptional and rare events.

**Lord Norton of Louth**: But conventions are precisely that: they are conventions and develop over time. They are rules of behaviour that people adhere to in order to make the system work. If somebody says they are not going to do it, how do you enforce it other than by, in this context, the coalition breaking up?

**Lord Donoughue**: A small point: in the 1975 referendum on our membership of the Europe Community, it was discussed and the decision was formally taken to abandon collective responsibility and to allow parts of the Cabinet to campaign one way and parts to campaign another. That did work but worked for the reasons that I think you are implying, because it was done formally, openly, collectively and for a specific item for a specific time.

**Lord Norton of Louth**: Do not forget they were doing it in the context of single-party government, where the Prime Minister had control of the situation. It was agreed that the ministers could speak on a public platform—

**The Chairman**: But not in Parliament

**Lord Norton of Louth**: Not in Parliament, but they could then vote. Did Eric Heffer not speak against it and therefore get sacked?

**The Chairman**: Yes.

**Lord Norton of Louth**: In other words, the Prime Minister was a in a position to enforce what had been agreed.

**Lord Donoughue**: And take the opportunity to do what he wanted to do some time before.

**The Chairman**: Could we return to the broader points that you both mentioned—but which we have not developed because we have got on to the very interesting question of collective responsibility—about democratic legitimacy and the responsibility to the electorate? Lord Hart.
Q8 Lord Hart of Chilton: Lord Donoughue, you touched on this in your breathtaking jump over all the fences when you began but I would like to hear both of you expand a little on the democratic legitimacy and accountability of parties going in with manifestos of their own and then, over a weekend, cobbling together something rather different, where the public have never had any chance to have any involvement or comment. It may be said that a lot of people do not read the manifestos but nevertheless it seems to me that there is an important point. If you have separate manifesto commitments and then, over a weekend sometime later, something totally different is cobbled together, there is a problem in relation to legitimacy and accountability. What do you think?

Lord Norton of Louth: I begin by agreeing and adding to what you have said. The issue of accountability to the electorate arises not just at the start of the Parliament but at the end, if the parties then fight the election as separate entities. There is a problem where you are crafting policy as a result of post-election bargaining, for reasons that you have given. People may not read manifestos but they vote for a party that has laid a platform before the electorate and people vote for that party on the basis that they want it to be in government. One can apply the doctrine of the mandate. If post-election negotiation produces a programme that has not been placed before the electorate, the electorate has had no say on it. There is that but I would add the point that I have just made: you might implement it, because the two parties come together to do that as a coalition, but if they then fight the election as separate bodies, there is no one body that the electors can hold to account. Normally our system has what I call that core accountability—you have one body, the party, which is elected to govern and which is responsible for public policy. The electors know what the policy is and who to hold for account for it. In these circumstances, that goes, so that there is no direct responsibility for the policy that is being implemented. The most you can claim for it is that it is implicit through the endorsement of the House of Commons. But that is it.

Lord Donoughue: I agree absolutely with the point you make. For me, the basic criticism of what has happened is that parties went into the last election with manifestos. We know voters do not vote for everything and are not aware of everything but they are not what we are being governed by. We are being governed by a coalition agreement that was not submitted to the electorate, so it does not have that kind of democratic legitimacy. It also becomes a factor in the subsequent agreement, when people do not enforce or introduce parts of their manifesto because they say the other side will not put up with it or will veto it and so forth. I am sure you will focus on that in your report. Although I do not like coalitions, I accept there will be circumstances in which they will come about—and the kind of pact or understanding that I favour is a loose form of coalition—and this is a major disadvantage. Putting the agreement to Parliament and allowing it to vote on the agreement and amend it would legitimise it to some extent, but I still feel it is a far from an ideal arrangement. It will also have an impact on the construction of manifestos because parties will construct their manifestos with two parts: one will be the red lines that “we must have” while the other will be tradable. The electorate may not be completely aware of those two aspects.

Lord Hart of Chilton: As a result of this being cobbled together very quickly, a raft of constitutional proposals came forward without any consultation which, in some people’s views, would have wasted a lot of money and a lot of parliamentary time to no purpose.
Lord Donoughue: Absolutely. My main hostility to the coalition is to that undemocratic aspect of it.

Q9 Lord Irvine of Lairg: Your position, Lord Donoughue, is clearly expressed: you do not like coalitions. That is well understood. Let us suppose that the expectations of political parties have changed. They go into the next election aided by public opinion polls and the view is that the likely outcome is a coalition—contrary to your wishes—between two particular parties. I put this question to Lord Norton of Louth as well. Would it be practical politics for these parties in those circumstances, in advance of the election and in advance of the preparation of their manifestos, to seek to agree in specific terms policy objectives that will require legislation to be achieved so that the two manifestos of the likely coalition partners contain legislative proposals of specific and similar character?

The Chairman: The main point is the practical politics of this, as Lord Irvine has emphasised.

Lord Donoughue: Yes, that is the practical prospect that I suspect faces us and will face us much more in the future because of what I said at the beginning about the difficulty of making a majority government, which may continue. My main hope is that this committee will educate a political generation that a coalition is not inevitable and that there are alternatives. My fear is that they will assume it is inevitable.

Lord Irvine of Lairg: My question, as I am sure you will appreciate, was premised on that and most people will regard it as inevitable. I appreciate that you feel the political parties have to be educated to understand that it is not inevitable but, if you can bear to put that aside, where do the practical politics lie?

Lord Donoughue: The practical politics will lie with the parties themselves facing the prospect of this reality—which I accept of course—and how they react to it. I would prefer them to decide to try to create a majority for themselves and to even say that, in the first instance, they would not go for a coalition but for an understanding. In terms of choice of party, in what will still basically be a three-party system, it seems that the choices are not, mathematically, very many. You have only one option unless you form a coalition with the other main party. However, I hope that politicians will look at alternatives and grasp the disadvantages which have been discussed.

Lord Irvine of Lairg: That is well understood.

Lord Donoughue: I accept that I am slightly ducking your question.

Lord Irvine of Lairg: Before Lord Norton of Louth comes in, I just want to add one supplementary to my question. Let us suppose that my question assumes correctly where the practical politics lie and that the parties of the likely coalition—I know that is abhorrent to you Lord Donoughue—might negotiate provisions in their manifestos in broadly similar terms. Would that not also have the beneficial effect that the Salisbury–Addison convention should then, by rational extension, apply as it does today in relation to the manifesto of a single party that wins an election? By analogy, would it apply to the common objectives expressed in some detail in the manifestos of the two coalition parties?
Lord Norton of Louth: I will start on the first point and come on to Salisbury–Addison. It occurs to me that the answer, in terms of how the parties would respond, is the duck analogy. By that, I mean that on the surface they would have their manifesto saying, “We are fighting as single party, we fight to win and this is our programme”. Below the surface, there could be an awful lot of activity going on in anticipation—

Lord Irvine of Lairg: But on the surface, there would in practice be an identity between distinct provisions of the two likely coalition parties.

Lord Norton of Louth: It might shape how they would present their policies, although I am not sure it would affect it greatly. Parties are not going to abandon their key beliefs. It might be some presentational point, where you send out a signal, but I would have thought that that would be the extent of it when you think about what the parties stand for and their belief systems. Our electoral politics are adversarial and competitive; parties want to distinguish themselves from the other parties rather than identify their sameness. There would be problems, and you would be able to go only so far down that particular route. The parties would still, on the surface, be crafting manifestos designed to emphasise why voters should vote for that party and not think about it going into coalition. I still think that duck analogy would hold. The parties are not going to pursue what may end up being a self-fulfilling prophecy. If you think, “Potentially we’re going to go into coalition, let’s produce a manifesto for that purpose”, you might enhance the chances of being in a coalition. The parties would not particularly wish that.

On Salisbury–Addison, I suppose there are two points. One is the conundrum of what you do if the policy is in the manifesto of one of the parties to the coalition and the other is in the main opposition party’s manifesto, of which we have had an example in the current Parliament. The other point is that we have gone beyond Salisbury–Addison in the sense that the House of Lords now tends to accept that, if the House of Commons has approved a bill, we are not going to divide against it or vote it down on second reading. That has become so well established—and the House has largely abided by it—that I think it would be a case of following what the Commons has agreed. The House would then focus on what it currently focuses on, and does rather well, which is the detail of the legislation. There are problems for the House in terms of coalition but I do not think they are necessarily the problems of legislation coming forward that has been approved by the House of Commons.

Lord Donoughue: In terms of practical realities, I would add that I am sure that, before the next election, parties such as Labour and the Liberal Democrats will have people below the level of the leader—who would not wish to be involved—meeting, having discussions and trying to identify what is mutually acceptable and what is not. That has happened before, in 1974. I was Harold Wilson’s representative to the Liberal party, because I had many friends there, and had discussions with John Pardoe. They were not about the specifics of the manifesto, because things were not as advanced then, but I would imagine, in practical terms, such meetings would take place.

The Chairman: That is the duck analogy, which does not actually answer the point about democratic legitimacy.

Lord Donoughue: No.

Q10 Baroness Falkner of Margravine: I want to go back, Professor Norton, to your views on democratic legitimacy. Although I understand where you are coming from in terms
of our constitutional system in the United Kingdom—first past the post and so on—your comments that the electorate would not have any means at the end of the Parliament of “punishing” a party or of being able to distinguish which party was responsible for what slightly surprises me. I would have thought that, in today’s world, when all these disagreements are made very public, almost instantly, the electorate are canny enough to work out which party has which belief and which party does not. I can give you a current example and ask you to comment in the light of that.

In case you are not completely conversant with the current German situation, the FDP lost the election, in terms of missing the 5% threshold, particularly on the basis of one policy pledge it had made on the reduction of income tax, which it was unable to fulfil due to the exigencies of the eurozone crisis and so on. In campaigning leading up to the election, there was a lot of commentary about its failure to deliver on that. It is widely accepted in Germany that this is what cost it the 0.2% by which it failed to meet the threshold. Do you not accept, in light of those kind of examples in coalitions all over Europe, which occur on a regular basis, that the electorate are capable of distinguishing which party delivered what in terms of its pledges and why it did or did not do that? Democratic legitimacy is served by the fact that those parties come to the election at the end of their five years in office and allow the electorate to make a judgment.

**Lord Norton of Louth**: The short answer is no. There are two responses. My point was about collective responsibility of the government for government. Once you start disaggregating it, you have a problem in holding the body to account for public policy delivered during the course of that Parliament. Electors may wish to discriminate, but they lack a body that they can hold to account for the performance of the government. On your point about the partner in coalitions in Germany, the key point is that the FDP was not unusual as the junior partner in a coalition in losing out in an election. It is not universal but it seems to be a common outcome that where two parties in coalition go into the next election, the one that does disproportionately badly is the junior partner. There are other features as well; it is not just discriminating on the basis of particular policies. There are exceptions but it does not seem to be unusual. My key point is about collective responsibility of the government for government.

**Lord Donoughue**: Punishment later is part of democratic legitimacy. But that has nothing to do with the legitimacy of coming into government and what you have a mandate to do and not do to, which is a quite different question and where you get the trouble with the coalition agreement.

**The Chairman**: Lady Falkner’s point reminds us of the point about the extent and length of post-election negotiations. I have seen, in the press, Chancellor Merkel saying that it is unlikely that the new agreement will be formalised before Christmas. How easy would it be to get the British collective, as it were, to understand something of that sort? We have made the point about educating people for the future.

**Lord Norton of Louth**: You have probably gone some of the way already, simply because of the length of the negotiations that took place. This is a relative point relative to what the United Kingdom is used to, it was an awfully long period of time; relative to what happens elsewhere, it was extraordinarily quick. There were of course pressures particular to this case, not least the Cabinet Secretary explaining why they needed to perhaps reach a decision quickly. When you think about it, two things came together. One was the realisation, coming back to our earlier point, that the government are the government. The existing government
carry on governing until such time as one goes to the Palace. It is not as if there is a hiatus where there is no government. The government have not gone, and we do not end up without a government. You could carry on for a further period of time. There is also the fact, which is clear from what we have said already, that to some extent parties learn from what has happened previously, so there is more likely to be some consideration given, perhaps below the surface, as to what they will be negotiating about. The process may be clearer and better informed, and so avoid some of the elements of the coalition agreement that were clearly rushed, such as constitutional issues, which were perhaps not always that well informed. There may be recognition that it will take longer, if necessary, to reach agreement, and you could delay Parliament sitting and so on. I do not think that it creates insurmountable problems if we accept it could take a little longer in order to reach agreement and have a new government.

*Lord Donoughue*: I agree. We will learn lessons from the previous time. I have never been quite clear, from what I have read, how far the Cabinet Secretary and the civil service had prepared for this.

*The Chairman*: We shall have the opportunity to discuss these matters with the civil service.

*Lord Donoughue*: Do ask them if the outcome was their preferred one and if in fact they were preparing for it.

*The Chairman*: I think the likelihood of getting an accurate answer on the record for that is limited. Lord Lexden.

**Q11 Lord Lexden**: Three questions, if I may. The first is to Lord Norton, because Lord Donoughue has told us that he believes a coalition programme should be put before the Commons for a vote and the Commons should have a right to amend it. It would be useful to have Lord Norton’s view on that. Should the Lords, in these circumstances, vote as well? Secondly, many of the papers that we have had make reference to the case for an investiture vote to approve the appointment of the Prime Minister. It would be useful to have comment on that. Finally, primarily for Lord Donoughue, if there should be another pact as opposed to a coalition, should that pact be spelled out clearly in a written document, which would then be debated, if not approved, by the House of Commons and, indeed, the House of Lords, so that it is clear what the terms of the pact are?

*Lord Norton of Louth*: I suspect that the answer to the third question is the same as the answer to the first, in the sense that, if there is some agreement, one would expect it to be published should it be subject to a vote of the Commons. However, I am not sure what that would achieve, as the key point is whether the Government maintains the confidence of the Commons, which relates more to your second question. If you like, there might be a case for saying that there should be a confidence vote once the new government are formed in those circumstances. The Fixed-term Parliaments Act 2011 provides that if the Government lose a vote of confidence, they have to get the confidence of the House within 14 days. One might do something similar if you were going down that path. Whether it is necessary is another question. When a government are formed, they are Her Majesty’s Government. They will bring measures before Parliament and it is then for Parliament to decide what to do with those measures.
Even if it was accepted that there should be a vote on, say, a coalition agreement, I would be inclined to say that that should not extend to the Lords. I would have thought that the role of the Lords is to debate and advise—rather like on decisions of war, we are not there to conflict with the Commons on such issues. However, we are well-placed to discuss the matters and that would be entirely appropriate.

**Lord Donoughue:** I agree that it is a question for the Commons. If there was a looser pact or understanding, it would be written out—the five points were written out in 1977—and that would be put to the Commons. If that was voted on and approved, that would assist the Lords on Lord Irvine’s important question about the Salisbury–Addison convention. We would accept that as a basis on which to view our powers to reject or not. It would certainly assist the openness and democracy of the process if any understanding was written out, put to the Commons and approved. In 1977 it was not in that sense, but it was in the sense that the Conservative vote of no confidence, which was tabled in advance of the understanding, was defeated. The understanding was the basis of that defeat.

**The Chairman:** Lord Lexden, do you want to pursue any other historical points?

**Q12 Lord Lexden:** There is one. I had never seen, before your paper, that had the Liberals known that the autumn election of 1978 was not going to take place, they would have wished to continue the pact until the spring of 1979. That was new to me. Out of historical interest, would you like to comment on that?

**Lord Donoughue:** That was told to me in my house by both David Steel and John Pardoe. I had regular meetings with Pardoe before that and he had told me that the basis on which they were breaking up the pact was the impending 1978 election. Jim Callaghan felt very strongly that they should separate and be able to campaign in that election. That election did not happen but the Lib Dems—

**Baroness Falkner of Margravine:** The Liberals.

**Lord Donoughue:** The Liberals, I am sorry. Many of them are still the same. They were happy with that arrangement and were securing much of what they wanted. They were happy to continue, so it was broken up on a mistaken assumption.

**Baroness Falkner of Margravine:** With hindsight, as they reflected on it later, they were returned with exactly the same number of seats as the previous time. Had they been party to the winter of discontent, they may have been hammered rather more badly. It turned out rather better.

**Lord Donoughue:** Yes, they got fewer votes but the same number of seats. Had they realised that the winter of discontent was ahead, I think that might have led to some peeling off.

**Lord Norton of Louth:** If the Government had realised the winter of discontent was ahead they might have acted differently too!

**The Chairman:** I do not think that was a Liberal decision. I am aware of the time and aware that you have given us a huge number of valuable thoughts and indicators of your positions as well as indicators of further things that we must take up with other witnesses.
wonder if members of the committee feel that there are areas that we had talked about pursuing with Lord Donoughue and Lord Norton which we have failed to cover. Lord Lang.

Q13 Lord Lang of Monkton: There is a general point that I would like to raise with our distinguished guests. We have heard talk about the possibility of pre-election publication of coalition manifestos. Lord Irvine asked about the political aspect of that, and there are suggestions in academic papers, perhaps stimulated by this inquiry. That would lead on to red lines, to individual candidates spelling out where and how they stood and possibly even to calls for a separate coalition nomination of some kind being put on the ballot papers. The whole thing could get completely out of hand. We have also heard talk along the lines of, “After the election, take some time to form the coalition. Look at the government of Germany; they take weeks”. But that is the nature of their constitution: ours is, as Lord Norton said, an adversarial constitution. It does not presuppose coalition and, as Lord Donoughue has pointed out, a coalition is an extremely unattractive thing to graft onto it. We have this confusion over a pre-election and post-election period. Does it worry you that this could happen and do you see a way in which we could head it off?

Lord Norton of Louth: I am not sure how one could head off how politics may develop. I share your concern, because the more you fragment it in the way that you mention, the more it disempowers electors, in terms of the accountability of parties and then, through party government, public policy. You are, in effect, empowering the politicians. We should certainly try to avoid it, although I am not sure whether one can avoid it in a formal sense. The politics of the situation is to have electors vote and parties respond to that. But one needs to be aware of the dangers. It happens elsewhere, but that does not mean that it is a desirable course. The more one can protect against it the better, but I am not sure you can do it through a formal constitutional route.

Lord Donoughue: I agree. There is no need to follow other examples: we have a very good, flexible system and the less uncertainty the better. I do not think the stock markets would be very happy with all that uncertainty built in. I just point out that a looser pact, or an understanding arrangement, would take less time. It is something that could be announced in advance. A party in opposition would say that it can reach an understanding with another party, which would not involve the elaborate luggage that a coalition involves. That could be done much more quickly and with much less uncertainty.

Lord Crickhowell: I have one point about this idea that you can have a lengthy period and about the constitutional practice. Clearly, the ongoing German government have the ability to go on governing, otherwise you could not have this situation. My memory of being in government during an electoral period is that the scope and ability of government is extremely restricted. You are allowed, basically, only to hold the fort and are not allowed to bring forward any new proposals or do anything even if it urgently needs to be done. The idea that you can soldier on for an extended period seems to me to be rather unfounded.

Lord Donoughue: A swift process is better and we should stick to it if we can.

Lord Norton of Louth: But bear in mind the implication of what you just said. You are quite right that during an election campaign you have a government holding the fort. In the old days, it was the Lord Chancellor who presided. But that was for three or four weeks, where you just hold the fort; here, we are talking about a matter of days, for the purposes of
reaching agreement. There is a slight element of, “How long is a piece of string?” in terms of how many days before it is deemed to be lengthy.

The Chairman: Thank you very much. Does any other member of the committee want to pursue any point? I am not going to raise this enormous hare at this point in the proceedings, but Lord Donoughue mentioned the stock markets. I am concerned about this. We have talked about democratic legitimacy and of course we are back to the situation of the government being formed by the markets, which I think is an interesting issue to pursue, but not this morning. I am very grateful to you, Lord Donoughue and Lord Norton. It has been a valuable session and has started us off in a splendidly energetic way. Many thanks for your time and your valuable thoughts.
Evidence Session No. 8    Heard in Public    Questions 121 –140

WEDNESDAY 11 DECEMBER 2013

Members present

Baroness Jay of Paddington (Chairman)
Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Falkner of Margravine
Lord Hart of Chilton
Lord Irvine of Lairg
Lord Lexden
Baroness Wheatcroft

Examination of Witnesses

Rt Hon. Baroness Royall of Blaisdon, Leader of the Opposition in the House of Lords,
and Rt Hon. Lord Falconer of Thoroton, Lords Opposition Spokesman for
Constitutional Issues and adviser on Planning and Transition into Government

Q121  The Chairman: Good morning and thank you both very much for coming. This is
the last day of our evidence on this inquiry. We have heard a lot of very interesting, but
somewhat conflicting, views on whether a coalition is causing any permanent changes to the
constitution or whether it is just something that pragmatically the Brits will continue to
mould to. We have had quite a lot of discussion with our witnesses about whether there
have been affects on the House of Lords from the coalition, and whether anything about the
coalition, which we have experienced for three and a half years, is going permanently to
affect how governments operate in the future, even if they are majority governments. The
issue of collective responsibility comes up often.
I wonder if we could start by asking both of you whether you feel that the arrangements we
have for government, under our loose organisation of constitution, have been affected by
the coalition and whether you think any of those changes are likely to be permanent.

Baroness Royall of Blaisdon: I am very grateful for this opportunity to have a discussion
with your committee because I think the issues before us are extremely important. The role
of the House of Lords has changed with the fact of the coalition, in combination with the
increasing number of peers. This House has a fine reputation as a House that revises and
scrutinises legislation. Potentially, it is now a House that simply rubber stamps the
programme of the Government. Whether that is healthy one could discuss for a long time. Personally, I think the correct constitutional role of this House is to scrutinise and to hold the Government to account, and that role is changing.

**Lord Falconer of Thoroton:** The three things that strike me about the permanent affect the coalition might have had are, first, that there were insufficiently clear arrangements about how to deal with the transition from a majority government to minority government, whether it be a minority government or one in coalition. There was uncertainty about the position of the Prime Minister between the end of the general election and the formation of the new Government. If statistics are right, suggesting more coalitions, that might that become more of a problem, and it needs to be addressed.

The second issue is the erosion of collective responsibility to the point where good governance may be damaged. There is a reason why we have collective responsibility. You can depart from it on big issues like tariff reform and membership of the European Union, but is it a good idea to depart from it when responding to the Leveson report, or issues of less significance than that? Does that provide a template for the future even in single-party government? Obviously, there are differences; the two parties have political reasons for separating, but might it provide an excuse in future for people in the same government to put pressure on who has control?

The third aspect, which I saw particularly during Leveson, is an uncertainty of command over the civil service as a result of the erosion of collective responsibility, particularly on cross-cutting issues. My experience of being in a single-party Government was that although we had disagreements there were clear means of resolving problems. Where there are not clear means of resolving problems, because they are a coalition government, watching civil servants with people from different parts of the Government giving instructions, it was not clear to them who really had authority. That gave rise to difficulties. I wonder whether that might give rise in the future, even in a single-party government, to difficulties.

**The Chairman:** I am sure we will return to the issues of collective responsibility and the role of the civil service, because they have come up in our discussions with other witnesses, but could we focus for a few minutes on the House of Lords and the conventions that apply to that? Lord Irvine, did you want to take this up?

**Lord Irvine of Lairg:** No. I wanted to ask other questions.

**The Chairman:** Okay. I thought we were going to discuss the Salisbury/Addison convention at this point.

**Lord Irvine of Lairg:** I am very happy to do that. I did not realise that was what you were signalling by what you said, Lord Chairman.

**The Chairman:** It is my inability to express myself.

**Q122 Lord Irvine of Lairg:** Let us deal with the Salisbury/Addison convention. Do you think that potential coalition partners who see themselves as such in advance of a general election might do well to see if they could have specific commitments in their individual manifestos in common terms, so that if they form a coalition it can be argued that they are entitled to the benefit of the convention?
Lord Falconer of Thoroton: If there is a coalition and both parties in the coalition have committed themselves to a particular piece of legislation, the underlying principle of the Salisbury/Addison convention should apply to that piece of legislation.

Lord Irvine of Lairg: I entirely agree, but the issue that I am inviting you to address is whether that fact—I regard it as a fact—indicates that potential coalition partners should seek to agree parts of their separate manifestos so as to ensure that they are expressed in common terms and, therefore, they can fairly argue that they have the benefit of the convention if they go into coalition.

Lord Falconer of Thoroton: If they want the benefit of the convention, yes, but there may be other reasons why it would be inappropriate for them even to discuss putting together the same form of words in relation to a particular piece of legislation. For example, and this is the position of the Labour party, we do not want to craft our manifesto on the basis of being ready for a coalition; we want to craft our manifesto on the basis that it is our unadulterated pitch to the electorate. But on the Salisbury/Addison convention alone, the way you put the question to me, it would help both parties in a subsequent coalition if they had crafted their commitments in that way.

Lord Irvine of Lairg: What I am suggesting is that since some parties have positions in common, would it be wise, in advance of an election that it is thought is likely to be hung, for parties to be able to say, “These are our manifestos and, of course, it is victory that we are after. We do not contemplate, along with Queen Victoria, the possibility of defeat but still, as a precautionary measure, we ensure that key policies are expressed in common terms.” I do not see any incompatibility between the two positions.

Lord Falconer of Thoroton: I see a political difficulty in that.

Lord Irvine of Lairg: How do you overcome it?

Lord Falconer of Thoroton: You cannot, I do not think. You have to make a choice between, on the one hand, preparing yourself to be ready for the Salisbury/Addison convention or on the other, as is our position, we will not craft our position to the electorate on the basis that it would be a convenient position to have for the purposes of applying the Salisbury/Addison convention subsequently. There is another point, which is that the Salisbury/Addison convention, as Lord Cunningham’s joint committee’s report indicated, is broadly accepted as going beyond simply those bills that were in a manifesto and, subject to exceptions, it now covers any government bill. On the benefits of your approach, even if you want to put your unadulterated, own-party position—it might be sensible to do that—do you really need to do that when you have the benefit of what is a government bill convention when the time comes?

Lord Irvine of Lairg: Does that entail, so far as the Labour party is concerned, your ruling out negotiations between the parties or potential coalition partners in advance of the election?

Lord Falconer of Thoroton: Yes, we are.

The Chairman: I know that both Lord Crickhowell and Lady Falkner want to come in on this, but Lady Royall, do you want to make a point?
Baroness Royall of Blaisdon: I would like to say something about the Salisbury/Addison convention, but maybe other people wish to ask questions about it.

The Chairman: One of the things that was noted was your suggestion in an exchange with Lord Strathclyde in the House was that you felt, with a coalition, the Salisbury/Addison convention did not apply.

Baroness Royall of Blaisdon: For things like the Health and Social Care Bill, for example, that was not part of the coalition agreement. Nor was it in either of the manifestos. I believe the Salisbury/Addison convention did not apply to that. Were Labour to become the government at the next election, the Salisbury/Addison convention would be extremely important in enabling a democratically elected government with a mandate from the people of this country to get its legislation through. It is not for me to ask questions, Lord Chairman, but I postulate that the Liberal Democrats, I think in 2005, indicated that they did not feel that they were bound by the Salisbury/Addison convention. If I might flippantly say so, I wonder whether they were indulging in some futurology, because it is conceivable that after the next election there may be three or four times more Liberal Democrat peers than there are Liberal Democrat Members of the House of Commons. The Salisbury/Addison convention will, perhaps, assume more importance after the next election.

The Chairman: I have no doubt Lady Falkner will want to pick that up, but Lord Crickhowell caught my eye.

Q123 Lord Crickhowell: I was going to make exactly the point that Lord Falconer has already made: that we have moved on. We accept that it is not the job of the House of Lords to overrule the other place. It does not work when legislation starts in the House of Lords, because it is one thing to say that when business comes from the Commons we are not going to overrule Commons and we go beyond Salisbury/Addison. But there is room for argument when the legislation starts in the Lords. That is, perhaps, when Salisbury/Addison does not apply. Would you comment?

Baroness Royall of Blaisdon: Yes. I had not thought about that point before—about legislation that starts in the House of Lords. Notwithstanding where a piece of legislation starts, it is still the creature of government, and therefore the Salisbury/Addison convention should apply just as much in the House of Lords as it does in the House of Commons.

Lord Falconer of Thoroton: What Baroness Royall has just said was the view expressed by Lord Cunningham’s joint committee that the Salisbury/Addison convention applied just as much to a bill that had been referred to in a manifesto, even if it started in the Lords. My recollection was that some bills that we had referred to in manifestos in 1997 and 2001 started in the Lords. Lord Cunningham’s joint committee considered that issue and concluded that it applied just as much to those bills. The essence of the convention is that you have the mandate of the people to put this bill before Parliament, including the Lords, and therefore the Lords should not frustrate the mandate of the people. That is Salisbury/Addison strictly. In any event, the wider bit of the convention—it applies to government bills—would equally apply to a government bill that started in the Lords.

Lord Crickhowell: Does it not come down to the fact that it is now generally accepted that we do not reject Government bills at second reading but we are perfectly entitled to
amend bills? It is the function of this House, although if they get sent back to us by the other place, we will not resist the will of the other place for too long.

**Baroness Royall of Blaisdon:** That is correct. That is the convention by which we work. You may wonder, my Lords, because we agree with that convention, why we voted against the Health and Social Care Bill at second reading. That bill was neither in a manifesto nor in the coalition agreement, and therefore we felt that we were able to.

**The Chairman:** We have had evidence that although it was not in the original coalition agreement, it was in the Programme for Government that fleshed out the coalition agreement. Lady Falkner or others may want to ask about the status of those agreements in the future and whether they should be susceptible, for example, to a House of Commons vote. Lady Falkner, did you want to continue on the Salisbury/Addison convention or did you have another point?

**Q124 Baroness Falkner of Margravine:** First, Lady Royall, your arithmetic is intriguing, and I would love to work out whether you meant that we would have the same number of peers but a much diminished Commons party, or many more peers. That is another conversation.

On the Salisbury/Addison convention, I wanted to ask Lord Falconer this. I have been told recently, and I am not alone in having been told this recently, that the convention would apply even in the case of the forthcoming European Union (Referendum) Bill, which is a private member’s bill. Would you hold that the Salisbury/Addison convention applies to a private member’s bill? We have been talking about government bills.

**Lord Falconer of Thoroton:** No, I would not. If the Government will not make it part of their programme and it is not been previewed in a manifesto, I see no basis for why it should be given the mandate of the people.

**Lord Crickhowell:** This takes us to the wider point about the supremacy of the other place. This is a piece of legislation, private member’s bill it may be, that has been supported by very large majorities in the other place. For example, a lot of the amendments were defeated by majorities of 250-plus. Therefore, it has the overwhelming support of the other place and probably the overwhelming support of the country. Is it likely that in those circumstances this House would choose to overrule the other place by blocking such legislation? Would it not endanger the position of this House in the future, and all those who have sought to defend it, if the House were to act in that way?

**Lord Falconer of Thoroton:** No doubt it is a factor that this House will take into account in determining how to deal with it, but you are asking me questions about the constitutional conventions that govern the relationship between the two Houses. The convention has only gone as far as saying that the norm is, “This House will not defeat bills that are in a manifesto of the governing party or are a government bill”. The Government know perfectly well that they can get the benefit of the convention if they make the European Union (Referendum)
Bill part of their programme. But if they cannot, they know that they do not have the benefit of the convention. In my view, there would be no breach of precedent or convention, on the part of this House, if for example it chooses to reject the European Union (Referendum) Bill.

**The Chairman:** I wonder whether if I could ask you both to comment on the specific point put to us by several witnesses that one of the ways around some of these difficulties—not necessarily that one—is to get the broader coalition agreement, if we are faced with another coalition, agreed by the Commons. The Programme for Government in 2010, for example, would have been put to a House of Commons vote.

**Baroness Royall of Blaisdon:** I have not discussed this with Lord Falconer. However, I see the coalition agreement as being a tool of government rather than a tool of Parliament. Were it to be put before the House of Commons, it would in essence be a vote of confidence rather than anything else.

**Q125 Lord Cullen of Whitekirk:** Some people say that there is a deficit in democratic legitimacy if no one has voted for the coalition agreement, and therefore it is said that it should be put forward as a programme for the next five years for the House of Commons to approve. Other people say it is completely unnecessary and it can be dealt with in the ordinary way through debate on the Queen’s Speech.

**Lord Falconer of Thoroton:** There is merit, although it is not for me to comment on this, in the coalition agreement being debated and voted on or against in the House of Commons, because it means that if it is voted in favour of, the Commons have approved a five-year plan. It also gives the opposition an opportunity to indicate what is wrong with it. But from the point of view of the issues that we have been talking about, I do not think it makes any difference. A bill does not become a government bill because it has been referred to in a coalition agreement. The bill is a government bill because it is a government bill quite separately from the coalition agreement. Although I can see advantages and disadvantages in the Commons voting on the coalition agreement, I do not think it affects how the Lords should view legislation that comes from the Commons.

**Lord Lexden:** A short addendum: would there be merit in a vote on the appointment of a Prime Minister in a coalition?

**Lord Falconer of Thoroton:** Part of the problem about the appointment of a coalition government is that the country is faced with the difficulty of who should have the first shot at trying to create a coalition. There are arguments for what has been described in the evidence before you as an instigator vote, because then you avoid the problem of Her Majesty the Queen having to make a choice about who should have the first shot. There have been circumstances, and I note that Lord Adonis drew your attention to Stanley Baldwin leading the single largest party in 1923 but Ramsay MacDonald, number two party, going into coalition with number three. That was anticipated and expected. It is, sometimes, not quite as simple as going for the largest party. I have not reached a final conclusion in my own mind on this, but would it be sensible, where it is not clear cut as it was for example in 1997, that Parliament convenes quickly, swears Members of Parliament in, and then has an investiture vote on who is going to lead the attempt to build a coalition, or form a minority government—whichever he or she chooses—so that that person is chosen by Parliament, not the monarch? And is also the person who decides the extent to which the civil service assists in coalition building? From the end of the general election in 2010 Gordon Brown had
control of the civil service, quite rightly, but it might be sensible to shift that power to the instigator. There are also issues about ensuring that the Queen’s Government continues in those circumstances. I would be in favour of considering that question.

The drawback is that you could have a situation where you have Prime Minister X, who has just lost the general election, and you then have Prime Minister Y, who is the instigator. Prime Minister Y fails to form a government, and then ultimately it is Prime Minister Z who becomes the Prime Minister, and you have three Prime Ministers in the space of 10 days. That may not be desirable. I am not quite sure how you get around that problem.

**The Chairman:** Did you want to pursue that, Lord Lexden?

**Lord Lexden:** It is very tempting, but no.

**The Chairman:** Perhaps we should move on to something that you both raised in your opening remarks: collective responsibility. Lady Wheatcroft?

**Q126 Baroness Wheatcroft:** I wonder whether you would both say how you feel the concept of collective responsibility has changed. Lord Falconer, you mentioned the extraordinary reaction to the Leveson Inquiry. I do not think anyone had seen anything like that before. Do you think this could become the norm?

**Baroness Royall of Blaisdon:** I do not know if it could become the norm. In a coalition government it could become the norm, but if we reverted to single-party governments I do not think it would become the norm, because in order for a single party to govern there needs to be real belief in collective responsibility. I cannot imagine a circumstance in which a single-party government would be able to govern if the concept of collective responsibility were denigrated or damaged in that way.

**Baroness Wheatcroft:** But in your opening remarks you suggested that there was a precedent now that might apply to a single-party government.

**Baroness Royall of Blaisdon:** That there was a precedent?

**Baroness Wheatcroft:** That we have seen now that you can abandon collective responsibility.

**Baroness Royall of Blaisdon:** I do not think I suggested it. It was not me; it was Lord Falconer.

**The Chairman:** Sorry to interrupt, Lady Wheatcroft. I think this is one of the points that we are trying to get at: whether some of these things that have happened in practice over the last three and a half years are going to become such established precedents that we could see them bubbling up again in a single-party government?

**Baroness Royall of Blaisdon:** I will let Lord Falconer answer that. Were I to be part of government, I would do my utmost to ensure that the doctrine of collective responsibility was adhered to. That is what the people of this country need.

**Lord Falconer of Thoroton:** I completely agree with Baroness Royall that collective responsibility is a very good thing. It means that the government operate together as a team.
Not abiding by it not only damages the functioning of government, it considerably reduces confidence in government. We have worked well over 100 years with collective responsibility only being broken on major issues: tariff reform in the 1930s or membership of the European Union in the 1970s.

My worry about what is happening now is that the Government plainly regard collective responsibility as an inconvenience from time to time that can be got round for political reasons. There are obvious examples like the boundary review and the Leveson Inquiry, but also allowing ministers to vote for an amendment to the Queen’s Speech about the European Union. The Government see all these issues about collective responsibility as being issues of political management. That weakens the authority of the Prime Minister and the Government. It makes members of the Government think not, “What is best for the Government?”, but “What is best for my faction or me in the Government?” That is hugely damaging.

The worry I have about the future is that if you can avoid collective responsibility to keep the Government together, because they have two parties in government, will that become the norm for big political parties where there are significant disagreements? The obvious example I have in mind is the Conservative party, which is riven by disagreements about Europe and other things. If it were ever to become a single-party government, would it regard the way it has behaved over the last three or four years as a template for the future? That is my worry.

Baroness Wheatcroft: If that were to be the case, and even now that we have seen it happen on a few occasions, what are the implications for the civil service?

Lord Falconer of Thoroton: The implications for the civil service are difficult. I watched the Government in action in relation to the Leveson report. There were disagreements within the Government about the Leveson report. There was no clear way that was apparent to the Government of resolving these differences. There were just different factions talking outwards. From time to time I was privy to seeing the factions talking to the Labour party because a cross-party consensus was being sought, with civil servants in the room. It was very confusing for them. There was no clear leadership. If collective responsibility is something you sometimes apply and sometimes do not, there is a lack of a sense of process. In the government in which I served, where collective responsibility was accepted, there was a sense of, “We have to produce a united front looking outwards. We may have our disagreements, which we deal with privately through a Cabinet committee system or accepting the authority of the Prime Minister, but to the outside world we will keep a united front”. That had gone. For the civil service, that was very difficult.

That then leads to the possibility of factionalism within the civil service. Instead of trying to agree and participate in a good process, you start to align yourself to a baron within the political parties, and that becomes very dangerous. Although, like Baroness Royall, I would firmly say that we must adhere to collective responsibility, I am not sure, nor am I that optimistic, that the trends this Government have started, which are wholly inimical to good government, will not be followed in a one-party government.

Q127 Lord Crickhowell: I agree with almost everything that has been said, having served in the days of collective responsibility. Lord Falconer made the point that there is a difference between a single party and a collective, in that he has observed the authority of the Prime Minister has been seriously undermined in the coalition and the authority of the Prime Minister will be much stronger in a single-party government. I can imagine in the Cabinet in which I served the matter being dealt with pretty firmly by my Prime Minister. I
think a strong Prime Minister will be still in a powerful position, even with a party that has strong differences of opinion. I am less worried about a single party.

A view has been expressed to us from a number of quarters that if we are going to have departures from collective responsibility in coalition, it ought to be rare. There ought to be clear rules: it should be announced in advance and it should be based on a decision of the Cabinet. What should not happen is the astonishing action of the Deputy Prime Minister to block matters that had already been approved by both Houses of Parliament, without any prior consultation, as happened on the boundary issue. We have to have basic rules or we will have the weakening of government and the difficulties for the civil service that Lord Falconer has described.

Lord Falconer of Thoroton: I agree that where you have a coalition government, the best way to deal with it is to agree in advance the things that cannot be agreed upon and agree a process by which they will be dealt with. They sought to do that in the coalition agreement by referring to things like Trident, which they did not agree on. You cannot expect two political parties to suddenly agree on things that they had previously disagreed on. But I agree with you that the danger to good government in eroding collective responsibility is where parts of the government, not the Prime Minister, who are not in agreement with anybody else think that they can depart from agreement whenever they like.

We were delighted that the Deputy Prime Minister led the Liberal Democrats into the position he did in relation to the boundary review, but it was wholly undermining of the process by which you should conduct yourself government. It was done unilaterally, it was done having specifically agreed to the measures, and it was done in a way that refused to accept the authority of the Prime Minister and the rest of the Government in flagrant breach of an agreement. What did the public think was motivating that part of the Government? It was obvious that they were putting their own interests ahead of good government. That is wholly inimical to people's confidence and trust in government.

Q128 Baroness Falkner of Margravine: On the broad point of this being damaging to good government, do you not think that the public, who after all voted for what some people might consider messy outcome—a coalition government rather than a strong single-party government—draw their conclusions from things like deviations from collective responsibility? I do not want to put words into your mouth, but where they see unedifying or self-serving behaviour by one political party—that is what you are trying to say; I dispute that, but this is not the time to discuss it—do you not think they will draw their conclusions and vote appropriately next time if they felt strongly about it?

There is quite a lot of evidence that the public think that having a plurality of parties in government might provide better outcomes for public policy. I think Lord Falconer said that this was on the whole bad for good government, but stuff happens over a five-year fixed-term Parliament. You cannot foresee on the day that you write the coalition agreement in 2010 what might come up in world and domestic politics over a five-year period. Surely the constitution and the arrangements for government need to be sufficiently flexible to allow for unexpected scenarios to be dealt with in a grown-up and adult fashion where parties say, “We come from different perspectives on this and this is what we think.”

Lord Falconer of Thoroton: I agree with the proposition that the public can make their mind up about how a Government have behaved when they come to the next general election. I agree that unexpected things happen. The point I was trying to make was that the purpose of collective responsibility is to tie the Government together in a proper process. It is the most flagrant breach of collective responsibility for part of a government to say, “I do
not like the way the government are going, even though I agreed to that, so I am just going to act against what the government agreed.” The reason why I think that is such a problem is that a government are a coherent, joined-up organisation that should all be pointing in one direction. It is a disgraceful way to behave to have agreed to have joined the government and then to attack it on a particular issue. That is inimical to good government. It is wrong for me to make an assumption about how the public would view it, but I think it is bad for government.

**Baroness Falkner of Margravine:** But there are two parties to every agreement, and if one party believes that the other has not delivered on its side of the agreement, it might take that perspective.

**Lord Falconer of Thoroton:** You cannot run an organisation like that.

**Baroness Falkner of Margravine:** You can. It is successfully running as we speak today.

**Lord Irvine of Lairg:** I can assure you that I am acting as devil’s advocate here. What I am interested in is contrary to what Lord Falconer has said; perhaps there is a different principle at work from a Liberal Democrat perspective, which I invite you to comment on. Surely the Deputy Prime Minister’s position was, if I turn it into legal language, that the coalition agreement was an entire agreement. Yes, the Tories failed to deliver on the House of Lords reform. That means there has been a repudiation. We treat the coalition agreement as an entire agreement, and now we can, for our own part, not be bound by a part of the coalition agreement, which we did agree, on the basis that it was an entire agreement along with other provisions, and that the Conservative party would deliver a majority for that other part, namely House of Lords reform. I am trying to be fair to the Liberal Democrats; it is a very unusual position to adopt. Could I have your comment?

**Lord Falconer of Thoroton:** the problem about that is that it would be perfectly legitimate for the Liberal Democrats to say, “By not delivering Lords reform, you have very significantly broken the agreement.” That would have given them perfect liberty to say, “We are going to walk out of the Government because the agreement has been repudiated.” What seems to me to be inconceivable is saying, “Now that you have failed to deliver Lords reform, we can pick and choose which bits of the agreement we abide by and which we do not abide by.” Then you have a situation where there is no real agreement, because we are only bound by the bits we want to be bound by. It becomes an impossible position.

So, yes, I do not dispute the analysis that there might have been a repudiation of the agreement by the Lords reform stuff. I do not know whether that is right, because it appeared to be rebellion by backbenchers, because no Tory minister voted against Lords reform. What I do not see as being an even arguable position is that we can pick and choose in the light of you breaking one bit of it. You have a choice if you are the Liberal Democrats: either stay or leave, but comply with the basic requirements of good government if you are staying.

**Lord Irvine of Lairg:** I am pleased to have that answer on the record.

**Q129 Baroness Wheatcroft:** I would like to ask whether you think it should be the foundation of any coalition agreement that the doctrine of collective responsibility should be abided by on both sides.
Baroness Royall of Blaisdon: It has to be explicit in the coalition agreement where there is no agreement. Lord Falconer cited Trident. As long as it is explicit where the disagreements are, I think it would be healthy to say that the doctrine of collective responsibility should be adhered to.

The Chairman: We are trying to find ways of putting some of these specifics, these examples, into some form of principle, given the unwritten nature of the constitution. For example, last week Lord O'Donnell was firmly of the view in giving evidence to us that there are certain matters—one of them you have just spoken about, Lady Royall—which could be put in a revised edition of the Cabinet Manual. Would either of you think that was helpful?

Baroness Royall of Blaisdon: The Cabinet Manual is very important guidance. It provides the right guidance, and it should be put in the manual.

Lord Falconer of Thoroton: I agree. Although collective responsibility is referred to in Mr Cameron’s revised Ministerial Code, it does say subject to it being set aside. I accept that there may be occasions—tariff reform, European Union—where it might be set aside, but it is very important that if it is put into the Cabinet Manual, it is put in on the basis that it will be departed from only in very exceptional circumstances.

Lord Crickhowell: As we are on the Cabinet Manual, can I raise an important question? We have heard a lot from Lord Falconer about the civil service. Lord O’Donnell, when he gave evidence to us, spoke about his anxiety about the convention that the papers of the past government should not be shown to the incoming government. He posed the difficulty that arises where you have a coalition—and you may have a different coalition next time—of what the rules should be and how you define them in the documents that the civil service is allowed to reveal to the incoming government. It seems to me an important question. He was clearly worried about it and was hoping that we, as a committee, might find some way of giving guidance. I wonder if you can help us.

Lord Falconer of Thoroton: Well—

The Chairman: Right, we will move on.

Lord Falconer of Thoroton: I have not given that one second of thought before now. I find that the first things I say about these things tend to be wrong, so I do not know whether it is wise for me to give my first view. I do not know. The thought that is going through my mind is that you could have a Labour–Lib Dem coalition following a Tory–Lib Dem coalition. Does that mean the convention that you do not show the papers of the previous government to the incoming government applies? My instinct is that the convention should apply: that you should not show the papers.

The Chairman: To both parties of the new government?

Lord Falconer of Thoroton: Exactly. They should both be restricted from the past. That may seem slightly artificial in some cases, but it provides protection. You should not feel that everything you have done in confidence is then going to be shown to the incoming government. However, that is without much thought.
Q130 The Chairman: You have both illustrated that you are to some degree uncomfortable with many things that have happened under the coalition. Do you therefore agree—this obviously has to be broad agreement—with the proposals put forward by some people that government in this country is better suited to majority governments, and therefore if we have a fluid post-election situation, people should look more towards a minority government or perhaps one that is supported by another party on the basis of confidence and supply?

Baroness Royall of Blaisdon: I personally think that government is more secure as a one-party government. Obviously, a majority government is preferable. Were we to continue with coalition governments, we need not political parties but committees like your committee, Lord Chairman, to do a lot more thinking about where the gaps are.

The Chairman: We are trying.

Baroness Royall of Blaisdon: I know you are trying, but clearly there are problems and gaps that can be filled. The sort of deliberations that you have been having will serve future administrations very well when they are looking at these things. Personally, I prefer single-party governments.

Lord Falconer of Thoroton: Obviously, I prefer single-party government—Labour party government.

The Chairman: Yes, but if we are in a fluid post election situation?

Lord Falconer of Thoroton: I do not think it would be right to say that a coalition is better or worse than a minority single-party government. It will depend completely on the circumstances. One of the inadvertent consequences of the Fixed-term Parliaments Act 2011 is that it makes coalitions more likely than minority governments. In the last 50 years minority governments, or governments with very small majorities, have been embarked upon on the basis that the Prime Minister—Harold Wilson in 1964 and 1974; it was not quite a minority in 1964 but a minority in 1974—knows that he can choose the moment at which he has the next general election in order to get a majority, which Harold Wilson did successfully in both cases. If you cannot do that because the Fixed-term Parliaments Act only allows you to go to the country early where you have lost a motion of confidence in the House of Commons, then you have less room for manoeuvre and that might make you more willing to have a coalition rather than a minority government. It would be wrong and unrealistic to say that one is better than the other overall. It will depend.

Lord Hart of Chilton: If you were to win a majority government, would you seek to change the Fixed-term Parliaments Act?

Lord Falconer of Thoroton: We opposed fixed-term parliaments.

Lord Hart of Chilton: But in the future, if you were a majority government, would your advice be to change that Fixed-term Parliaments Act?

Lord Falconer of Thoroton: I speak entirely for myself; I would seek to change the Fixed-term Parliaments Act for two reasons. Five years is too long; the natural rhythm of our
electoral system is four years, with the ability to extend. Secondly, it is too rigid. There should be much greater flexibility about when there are elections.

Baroness Royall of Blaisdon: Can I make a prosaic point about legislation and coalition government? Perhaps this is because we are not used to coalition government, but I feel that while my government did not present fully rounded legislation and possibly the best drafted legislation at all times, I feel that with the coalition government there have been more badly drafted bills—uncooked bills, if I might put it like that. I suspect that the reason is that the two parties within the coalition are still discussing the legislation sometimes before it is published and dealt with in Parliament. That is something that we need to look at. It is not good service to government.

Q131 Lord Lexden: That makes the role of the House of Lords scrutinising and revising very important. You indicated at the start that you thought this was being impaired. I speak as one who has just had 12 days in Grand Committee on the Children and Families Bill. Could you comment a bit more on the role of revising and scrutinising the coalition Government?

Baroness Royall of Blaisdon: The role of the House of Lords has become even more important in terms of scrutiny and revision. Interestingly, the role of Crossbenchers has been enhanced. In the past, because there were two political whipped voting blocks against the government, my government had to use advocacy and persuasion in order to get our legislation through. That is not so much the case now. We, as an opposition, have to work really hard to gain the support of the Crossbenchers. Therefore, Crossbenchers have a more important role in ensuring that changes are made to legislation.

The Chairman: I am afraid we are going to have to conclude. I am very grateful to you both. I wonder whether any member of the committee feels there is an obvious point that we have failed to ask Lady Royall or Lord Falconer.

Lord Hart of Chilton: My last question is this: you have made it clear that as far as your advice to the Labour party is concerned—I know that is your role in terms of preparing for government—you would not write any funny lines in the manifesto in order to attract a coalition partner. But are there any other steps that you will be taking in advance of the next election to prepare for a coalition?

Lord Falconer of Thoroton: Our position is, and I agree with this strongly, that we have to put our unadulterated position to the electorate. Obviously, it would be sensible to give thought to what the constitutional position is, were there to be an inconclusive result in the general election. But in terms of how you craft your policy pitch, it has got to be on the basis of “This is Labour’s position.”

Lord Hart of Chilton: I wondered whether you were thinking of dance partners.

Lord Falconer of Thoroton: I am not thinking of dance partners. I know what you mean Lord Hart; the answer is “No” to that question.

The Chairman: We had some interesting evidence from the devolved governments. Lord McConnell of Glenscorrodale, for example, was sure that the manifestos would be flexed.
Lord Falconer of Thoroton: I read Lord McConnell's evidence; Lord McConnell said, “In drafting our manifesto in the Scottish elections, we did it with an eye to a possible coalition.” We do not take that approach in drafting the manifesto for the forthcoming general election.

The Chairman: Thank you very much. That is a conclusive conclusion. You have both been very helpful. In the same way that I asked members of the committee whether they had any burning issues that we had not covered, do either of you feel there is something obvious we have missed?

Baroness Royall of Blaisdon: I think not, Lord Chairman.

The Chairman: Thank you very much indeed. You have been very helpful.
Manifestos and accountability

It has long been the case that governments have brought forward legislation (including constitutional measures) that has not been included in their manifestos. However, to address the on-going debate about democratic accountability, Parliament could seek a commitment that in the event a bill is brought forward that did not appear in the manifesto of any party to a future coalition, then it will receive mandatory pre-legislative scrutiny, unless there are particular reasons (e.g. urgency/need for emergency measures) that do not permit this.

The practices of the House of Lords have moved beyond the original terms of the Salisbury/Addison Convention. As set out in the 2006 Joint Committee on Conventions, it now applies in effect to all government bills. To reject a bill from a coalition government at second reading on the basis of accountability derived from manifestos would be to seriously challenge the democratic legitimacy of the House of Commons.

The content of party manifestos is solely a matter for political parties. At the next election, the parties will have to give much greater consideration to the content of their manifesto in light of the possible need to negotiate with other parties. This may lead to a more detailed articulation of a greater number of policies with a view to using these to populate a future programme for government during the negotiations. The manifestos will also have to be prepared – e.g. in relation to ‘red lines’ – with an eye to how they might be used during the campaign, and particularly during the party leader debates (should they go ahead).

Coalition in the last parliamentary session

If the coalition continues through to the general election it is unclear whether it will be a lame-duck last session, with little or no legislative initiative, or whether efforts to assert an independent identity within the constraints of government will lead to a proliferation of small bore policy announcements and legislative tidying-up measures designed to appeal to core and potential swing voters in the run up to the election. The introduction of a fixed-term Parliament allows for better planning of the legislative timetable. Assurances should therefore be sought from the government about the management of business in the final session in order to avoid the problems of the ‘wash-up’, as there can be no pretence of uncertainty as to how many sitting days remain to debate legislation and no excuse for restricting scrutiny.

In the event that the coalition comes to an end prior to the end of the session then this could cause considerable disruption to the business of both government and both Houses of Parliament in the final months. For example, new ministers would presumably need to be appointed to fill positions vacated by the Liberal Democrats; this could have a knock on effect on parliamentary committee membership.

Undoubtedly questions will also be asked – particularly by the media – about whether ministers resigning before the end of the Parliament in order to end the coalition will be paid a tax-free severance payment, and whether new ministers who take their place, but who may within months cease to be ministers after the general election, will also be eligible for such a payment.
If the coalition ceases, will the Liberal Democrats once again receive Short Money to support them in opposition? This may prove to be an issue of contention if the consultations between parties and the civil service have not begun before the end of the coalition but the Liberal Democrats are perceived to have potentially benefited from official advice prior to departing government. It would therefore be useful for the rules governing pre-election contact with the parties prior to the general election to be clarified in order to establish fair access for all parties. At present access has been granted by the Prime Minister for anything up to 16 months in advance of the election. Now that the date of the general election is known there is no reason why a clear policy should not be collectively agreed by all the parties in advance.

**Collective ministerial responsibility**

How the doctrine operates in practice is a matter for each government to determine for itself. In addition to the provisions in the Ministerial Code the coalition set out clearly from the start (in the Coalition Agreement for Stability and Reform published on 21 May 2010) what collective rules would apply, and specifically what departures from collective responsibility would be permitted. In general this approach has worked. The extent to which the parties breach collective responsibility is naturally constrained by the likelihood that they will be criticised in the media, and potentially penalised at the ballot box, if they give the impression of being constantly disloyal and divided.

However, there are two areas of potential concern:

Firstly, the extent to which the parties may be willing, for partisan ends, to breach collective responsibility at a late stage of policy and legislative development, as witnessed in relation to House of Lords reform and the revision of constituency boundaries, even though the legislation was originally agreed on collective terms and there had been no previously announced provisions to disagree. Apart from questions about unity of purpose and collective responsibility, such departures raise practical problems for good governance and the effective use of resources. It is estimated, for example, that over 200 hours of parliamentary time was spent on the now abandoned legislation to revise parliamentary boundaries.

Secondly, it is unclear how collective responsibility may play out in practice during the caretaker/purdah period following the dissolution of Parliament if the coalition does not break up prior to the election. The Cabinet Manual states that ministers are required to ‘observe discretion’ during this period. However, given the need for the parties to promote their distinctiveness in an election period it is a requirement that may come under some strain, particularly if a crisis were to develop and there was some disagreement between the governing parties about how it should be dealt with.

**An extended election period**

The length of time between dissolution and the formation of the next government in 2015, and therefore the length of the caretaker/purdah period, may be considerably greater than for any other election in modern times. The Electoral Registration and Administration Act 2013 extends the length of the general election timetable from 17 to 25 days (although secondary legislation, expected in 2014, is still required to bring this into force). For the purposes of this timetable weekends, and bank holidays do not count. If the 25 day timetable is applied for 2015, then dissolution will take place on 30 March (with Easter falling in the
election period) with the poll taking place five and a half weeks later on 7 May. In contrast, under the current 17 day timetable, Parliament would be dissolved on 13 April.

In 2010, there was a further 12 days between polling day and the meeting of the new Parliament. This was double the length of time after the three previous elections but was adopted following a recommendation by the Modernisation Committee in 2007. In light of the possible need for negotiations in the event of a hung Parliament it is unlikely and undesirable that this transition period will be shortened. If Parliament were to reconvene on the same basis on 19 May 2015, then potentially, at 51 calendar days, this could be the longest period between dissolution and assembly since 1924, and 15 days longer than was experienced in 2010.

Prior to 2010 the previous benchmark for negotiations in the event of an uncertain election result was the three days of February/March 1974. That has now been pushed to five days by the events of May 2010. However, clearly the longer election timetable may unhelpfully increase pressure to conclude any negotiations at a quicker pace than might otherwise be desirable in 2015.

**Investiture Vote**

In so far as a convention was deemed to exist that a vote to amend the Queen’s Speech was tantamount to a vote of no confidence, the Fixed Term Parliament Act has now reduced the constitutional import of the Queen’s Speech. In light of this, and the extended election timetable, there is now a strong case for holding an ‘investiture vote’ to confirm the identity of the Prime Minister and government after Parliament reconvenes, (following the swearing of oaths and the Speaker’s election), rather than waiting for the later date of the conclusion of the Queen’s Speech debates (which in 2010 was not until 8 June). The investiture vote would provide earlier public clarity and certainty about the government’s identity with the later Queen’s Speech facilitating discussion of the more detailed elements of the government’s programme once inter-party discussions have concluded.

The one practical problem this would pose is that in the event of a change of Prime Minister, the incumbent would have to remain in office until the investiture vote was concluded. The Cabinet Manual has partly addressed the ‘squatter in Downing St’ issue regarding the duty on an incumbent Prime Minister to remain in office until the identity of their successor is clear, but an investiture vote would provide much greater clarity. It would also have the advantage that the elected House of Commons would be ‘choosing’ the Prime Minister and the Monarch would then appoint its choice. This approach would represent a significant new departure in the culture and practice of politics in the aftermath of an election and would require considerable public education and explanation.

**Alternatives to coalition – lessons from the Lib-Lab Pact 1977-78**

It has been suggested in some quarters that a minority government, supported through some form of ‘confidence and supply’ agreement, modelled on, for example, the Lib-Lab Pact of 1977-78, would be a better outcome than a coalition. But an examination of the operation of the Pact suggests such an agreement would pose its own challenges in terms of constitutional and political practice.

In a Joint Statement in March 1977, the Liberals agreed ‘to work with the Government in pursuit of economic recovery’ and the government agreed to establish a Joint Consultative
Committee to examine government and Liberal policy proposals prior to their submission to Parliament. The government was not bound to accept Liberal ideas and the Liberals were not committed to supporting the government on any issue other than a no confidence vote. Beyond economic concerns, the life of the Pact was largely predicated on two issues: devolution and direct elections to the European Parliament. The agreement was renewed in July 1978. Although the Liberal leadership would have liked to extend its life for 18 months or more, the wider party wanted shorter renewal periods in order to have more ‘bites at the cherry’ through future rounds of negotiations.

Lib-Lab consultation took place at three distinct levels.

Individual ministers and their Liberal shadow spokesmen consulted on specific areas of policy within their departmental remits. Policy representations were made to ministers and the Liberals were consulted on the details of legislation prior to its submission to Parliament.

When agreement could not be reached issues were referred upwards to the Joint Consultative Committee (JCC). Here the government was represented by the Lord President of the Council (Michael Foot) and the Chief Whip (Michael Cocks). The Liberals were represented by Alan Beith, Emlyn Hooson, and John Pardoe. Other ministerial/shadow administration spokesmen attended dependent on the issues being discussed. The consultation process was co-ordinated by the JCC Secretariat which was staffed by civil servants from the Privy Council Office.

If disputes could not be resolved at the JCC they were referred to the Prime Minister and Liberal Leader. They met on an ad hoc basis to settle policy issues and to discuss, on Privy Council terms, wide-ranging matters of strategy and presentation. The Prime Minster’s Private Secretary (Kenneth Stowe) attended these meetings and minuted policy and legislative discussions pertaining to the Pact but withdrew during party political discussions. When a clear resolution could not be reached there was a tendency to resort to ‘free votes’.

Although minutes of the JCC and Callaghan-Steel meetings were taken these were not routinely circulated to Liberal participants. This exacerbated existing problems with the inadequate internal systems of communication within the Liberal Party and confusion often resulted.

The Pact led to requests from the Conservatives for a readjustment of Liberal representation on Commons Committees, the calling of Liberal MPs as government supporters rather than opposition spokesmen, and accountability at the despatch box for the conduct of the JCC and the meetings between the Prime Minister and Liberal Leader. However, Callaghan and Foot consistently refused to answer questions in the House of Commons about the Pact process, invoking the ‘no ministerial responsibility’ rule by claiming that the talks with the Liberals were inter-party and non-governmental and therefore not subject to scrutiny by the opposition. However, Pact meetings were attended by civil servants, and the JCC secretariat was paid for through public not party funds. The Liberals were also given privileged access to government information not usually enjoyed by opposition parties.

The Liberals did secure a number of policy concessions but these were generally small scale, and of limited value in terms of presenting clear ‘Liberal’ influence and identity to the
electorate. In some cases the benefits could not be advertised as they amounted to ‘pork barrel’ politics. For example, £25 million was secured to augment the concessionary bus fare schemes run by County Councils in rural Liberal areas and the government undertook a complete review of the Lord Lieutenants Advisory Committee and the constitution of the Magistrates Benches to ensure Liberals were properly represented.

As the Pact came into operation in the second half of the Parliament the Liberals entered the ‘consultation’ process at too late a stage to exercise much direct influence on policy development beyond stopping an initiative outright. They also lacked the research resources to contend with the arguments posed by the government machine when it came to the detailed minutiae of policy and bills.

Minority government models of this sort are not necessarily transparent, open and accountable. On the contrary, the Pact involved inter-party negotiations and policy and legislative trade-offs conducted behind the scenes by a small, elite number of politicians at the head of each party. Members of both the Parliamentary Labour and Liberal Parties – across the internal ideological divides – frequently expressed dissatisfaction with the arrangements and there was little formal public or parliamentary accountability.

15 October 2013
Q14 The Chairman: Good morning. Thank you for coming, and for the very helpful background papers that you gave to the committee, which have been extremely useful in our preparation. Given our conversation off the record just now, I will not ask you to make individual statements at the beginning of the committee. We will get straight on with the discussion of the issues that you have drawn to our attention and the particular points the committee wants to address. May I remind you that we are broadcasting this session so if you could identify yourselves when you first speak that is helpful for the record and makes it easier for those watching on the intranet. If I may begin with you, Professor Hazell—I am sure both your colleagues, Mr Winetrobe and Dr Fox, will want to join in—I have been interested in what I would describe as your somewhat sanguine approach to the creation of coalition government, which suggests that it involves very little constitutional change, and that the constitution—in so far as it exists—can be infinitely flexed to accommodate whatever the politicians wish or feel suits them at any particular moment. I wonder if that is a fair description of your overall position and whether you think that there are any serious departures from constitutional practice that we are seeing at the moment or may see in future.
Professor Robert Hazell: Thank you, chairman. For the record, I am Professor Robert Hazell from the Constitution Unit at University College London. I welcome the committee’s inquiry, which I think is timely and could prove very important, but, as I have indicated in my evidence, I do not think there are any very big problems that you are likely to unearth. I do not anticipate that the committee will make very sweeping recommendations in your eventual report. What I hope the committee will highlight is small particulars where current arrangements could be improved: very often the best work of select committees, especially committees like this, lies in small particulars. If I could at the beginning mention, too, that there are two respects in which I think the Cabinet Manual needs to be strengthened. I hope that those might find a place in the committee’s eventual report. They are highlighted at the beginning of my written evidence. The first item is what I call the duty on the incumbent Prime Minister to remain in office. Here the Cabinet Manual is now rather ambiguous, in part because of a previous recommendation by this committee. In effect, I am slightly audaciously inviting the committee to revisit a previous recommendation. So far as I know, committees are not bound by previous reports and famously the Appellate Committee of this House, when the Law Lords sat here, decided that it was not bound by its previous decisions. If you felt able to revisit this, it is a matter—although seemingly small—of real importance if there is a hung Parliament after a future election and the incumbent Prime Minister remains in office. You will remember over the weekend after the last election in May 2010 some of the newspapers had headlines “Squatter in No. 10”. There was a really fierce and vicious campaign to try and persuade Gordon Brown to leave office, in my view prematurely. The present draft of the Cabinet Manual in effect goes both ways. It says, “it remains a matter for the Prime Minister … to judge the appropriate time at which to resign”. It refers to recent examples and then says, “It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention”. It is ambivalent because this committee, having heard evidence on the point, did not make up its mind as to which set of evidence it preferred. I would invite you, if you felt so inclined, to revisit that evidence and support the evidence from four very distinguished members of this House—former Cabinet Secretaries Lords Armstrong of Ilminster, Butler of Brockwell, Wilson of Dinton and Turnbull—who were unanimous that there was a duty on the incumbent Prime Minister to remain in office until he was able to advise the Queen who should be appointed in his place, that person being the person who, in the new Parliament, could command the confidence of the House of Commons.

Q15 The Chairman: That is your first important point about changing the Cabinet Manual. May we pursue that for the moment and come back later to the other point you want to make? Dr Fox, do you have anything you want to add to that particularly?

Ruth Fox: No, I was going to address your point about the constitutional issue and whether we are sanguine.

The Chairman: Maybe you could respond in general to that point and then specifically if you had anything to add or detract from what Professor Hazell said. Ruth Fox: On the wider point about the constitution, we know that the result in 2010 was unique and there has to be some flexibility for the political parties to address that. We cannot avoid that in terms of practical politics, realising the plural nature of politics, the fragmentation of support for the main parties and increasing support for the third party and others, that at the end of the day the political parties have to sort out a deal of some kind. While there have been problems with coalition government, there would equally be challenges with minority government. I can elaborate on those in the context of the Lib–Lab
pact later on. In terms of the wider point about the Cabinet Manual, I am probably a little less of a fan of the Cabinet Manual than Robert. In terms of the squatter in No. 10 issue, there is concern about, when the parties are negotiating, at what point the Government are formed and how that is identified in constitutional terms, particularly in the context of the impact of the Fixed-term Parliaments Act 2011 on the Queen’s Speech and its constitutional import. That is where I think an investiture vote would be useful. That would help address, identify and clarify for the public and politicians exactly what the situation is in those early days after the election once Parliament returns.

The Chairman: You have both made a number of points that I know members of the committee will want to pursue. Mr Winetrobe, do you have any general points about the wider constitutional implications that you would like to say now?

Barry Winetrobe: To introduce myself, my name is Barry Winetrobe. I used to work for many years in the research service of the House of Commons, dealing with constitutional and governmental matters. I then taught for a while in various universities, under both of your legal advisers, albeit briefly. I worked briefly in the Scottish Parliament when it was being set up. I think my general view is the same as Robert’s in the sense of being relatively sanguine. My only scepticism is the use of the word “flexibility”, if that has a normative sense of being a good thing. I think it is a euphemism for “things happen as a matter of practical politics in relation to the particular situation that arises”. The thing about constitutional practice and conventions, and things in between, is that very often there are various conventions or practices that are available on a pick-and-mix basis. They are suitable for particular circumstances and not for others. There is something non-transparent about that but my general view is that it is a matter of practical politics for each particular situation and that everything that anybody does in these circumstances, as in 2010 or whenever, is potentially creating a precedent that may or may not be picked up, or may or may not crystalise into legislation, for example.

Lord Irvine of Lairg: You are saying that we should not try to create a spurious science out of it.

Barry Winetrobe: I am trying to say that you should not try to create a whole matrix of possibilities saying, “If situation X happens then these are the steps in this sort of flowchart to happen next”. There will always be a situation that comes up that does not quite fit. 2010 had its own specialities because of the economic crisis. Who is to say that things would have happened the way they did in “normal” economic circumstances? I am sceptical of trying to provide straitjackets, whether that is legislation which is explicit or in something like the Cabinet Manual which purports to be simply a description of what occurs but will inevitably be taken as official guidance by which those within the magic circle will operate. The more you bind and restrict discretion and scope for parties to do what suits best, hopefully in the public interest, the more risk that you are creating problems. Things like the Fixed-term Parliaments Act 2011, for example, crystalise in legislation one particular bit without thinking about what the knock-on effects and unintended consequences are.

Q16 Lord Powell of Bayswater: I share the chairman’s surprise at what seemed a rather complacent attitude about the degree of change that the coalition involves. I am not suggesting that anyone in the coalition violated any constitutional principles. But it seems to me, as someone who worked for quite a long time at the very heart of government—in a humble position, but nonetheless with a good view of it—that the way government is
conducted today is almost unrecognisable compared with single-party government and how that works. Seeing collective responsibility suspended, either by agreement or sometimes randomly, the constraints on the powers of the Prime Minister and the constant bargaining that goes on over policies, it seems to me that an accumulation of exceptions, taken together, involves considerable change to the practice and process of government. For me, that shades into constitutional change: when you have more exceptions than rules the change is significant. I do not quite understand where you are coming from on this. Is it because you think that coalition government is a good thing to be encouraged, and therefore you find lots of reasons why this is not very significant in our constitutional terms?

Professor Robert Hazell: Where we are coming from is a fairly detailed research study that we did for 18 months, published in a book called The Politics of Coalition, which takes no view on whether coalition government is a good thing or a bad thing. Our single, overarching question was “How does coalition government work?” To that end, we interviewed about 100 people in the first 18 months of this coalition Government, so mainly in 2010 and 2011. We found some quite striking things. First, from all the officials—like you, I am a former civil servant—there was a very strong welcome that there had been a return to what they called proper Cabinet government. The Cabinet system, in their view, was working much better than it had in the Blair/Brown years. Cabinet committees were regularly meeting and cabinet committees are the main forum in which, formally, the coalition parties sign off the deals that they agree. As you may know, every cabinet committee has a chair from one coalition party and a deputy chair from the other. The other striking thing that we found in our interviews was that—contrary to what you might expect, but again this will not surprise you as an old Whitehall hand—the disagreements within the Government were more often between ministers of the same party than between ministers of different parties. They were classic Whitehall interdepartmental disputes, which are the core business of any government. Whitehall departments in effect represent different interests and those differences of view always have to be resolved. The Cabinet machinery is the classic way in which that is done so, in our study, we found no significant difference between coalition government and single-party government. Our interviewees told us that the coalition, certainly in its first couple of years, worked more effectively as well as more harmoniously than the previous single-party Labour Government.

Lord Powell of Bayswater: Perhaps it is unlikely that civil servants would rubbish the serving Government. After all, it is not their job to do so. I still do not think you answered about the totality of the changes amounting to significant change. If you take them all together, they really are quite significant. You could look at each one and find a justification for it but it is a different way and process of governing. Maybe you think it is better. The fact that there is a chairman and deputy-chairman for every Cabinet committee may, in your view, be better. It is different, and because there are such a number of differences one cannot avoid the conclusion that, taken together, it amounts to significant constitutional change.

The Chairman: Mr Winetrobe, I think you wanted to come in on that point.

Barry Winetrobe: Just briefly. First, I should have added to my rather rambling CV that I am currently an honorary research associate at Robert’s Constitution Unit but I am speaking purely in my own capacity. I was not involved in any of these particular studies but I should have mentioned that at the beginning and I apologise for not doing so. To answer Lord Powell’s point, as alluded to earlier, my concern primarily is issues of public accountability and transparency, especially in this modern age where there are greater expectations as well
as a greater capacity and ability for the public to be involved. Therefore, I am not saying that one view is right and one view wrong, that one type of government is right and one wrong, or that the *Cabinet Manual* is a bad thing or good thing. I am saying that we have evolved. You called it constitutional change. I think the constitution is constantly changing. Changes of government or of the format of government give an opportunity for more obvious change. To some extent, we have evolved a system of the incoming government saying “Here are the rules by which we will be playing over the next five years”. The government after that can make up their own rules, subject to whatever constraints there are in legislation or really binding convention, such as the prerogative and so on. I think it is very important to make clear what those rules are or how the game is played through these programmes for government, coalition agreements and so on, and that governments, in terms of their outward-facing actions, do what they say they are doing and operate in the way they say they are. There should not be some written constitution in somebody’s textbook or whatever while things are actually operating totally differently from that.

**The Chairman:** I think we shall return to that. I take your point strongly about public accountability. That is the point that Lord Powell and I have been trying to get at: the sense that we do not want, in today’s age, to be in a position where it looks as though it has all been fixed up in a way that is untransparent.

**Barry Winetrobe:** It is not so much fixed up. It is more than that: that you operate one way and say you are doing something else.

**The Chairman:** Not necessarily. It is just that it is unclear.

**Q17 Lord Lang of Monkton:** To make it plain, the committee is a broad church and is not deeply divided or deeply on one side or the other. I was struck in a positive way by the introductory remarks of Mr Winetrobe and Professor Hazell. Coalitions come and go. They are all different and have different circumstances. We find distasteful some of the things that they do but that is not a reason for changing the constitution on a permanent basis for something that is essentially ephemeral. I think the strength of the constitution is that it is durable; the underlying structure is intensely flexible and durable. It would be a mistake to throw up things that could turn out to be irrelevant, such as—some might say—five-year Parliaments. I would like to focus on the investiture point, which has been touched on. Professor Hazell, I read your paper and found myself almost cheering some of the things that you said. I put a tick against a large number of your comments. I would like to explore with you the question of the investiture vote and the Prime Minister. There is a timing aspect to that. It seems to me that there is also great sensitivity over the position of the monarch. Is this not one of the few areas where the royal prerogative is truly royal? It allows flexibility for a person, the monarch, to try to break the logjam. If you start requiring the House of Commons to appoint the Prime Minister before the monarch is able to exercise that prerogative, I think there is a breach of that prerogative that might be more sensitive than you allow. You refer to Scotland as an example but there is a separate agenda there. First, it is a devolved and therefore secondary Parliament rather than a primary Parliament. Mr Winetrobe shakes his head but will have the chance to reply. Secondly, there is an assertion within Scotland that power comes from the people whereas in England I think the general assumption is that power flows from the monarchy, the crown. That assertion is perhaps pursued by those who have other agendas in Scotland. It is not totally accepted in a widespread way any more than King James VI would have accepted it, but it is one of the reasons why Scotland is not a good example to pray in aid. Do you see
the timing problem as being solved best by the monarch asking somebody to form a Government, then allowing the Prime Minister to go to Parliament and then possibly seeking a vote of confidence, but not doing it the other way round?

Professor Robert Hazell: May I deal with the position of the monarch first and then come to the timing problem? On the position of the monarch, yes, this is a prerogative power but if you were to have as a witness in front of you anyone from Buckingham Palace I think they would be insistent that this is an area where the monarch seeks no discretion. The constitutional convention is now quite clear that the Queen shall appoint as Prime Minister that person who commands the confidence of the House of Commons. In discussions I had before the last election with members of the Royal Household I got the understanding that they were quite anxious that that should be clear and publicly understood. They regard as dangerous the suggestion that the monarch has any remaining real discretion. Those days are gone. On the timing, I acknowledge that this is the one weakness of the investiture vote proposal, which let me hasten to say that I strongly support. I agree with everything Ruth Fox said. The difficulty is partly one of what we are used to. Following previous elections, we are used to the removal van in Downing Street and a very rapid change of government. That is not the way it happens in many other Westminster systems where they allow for a longer transition. They allow the previous Prime Minister—the incumbent—to remain in office. What we propose is that the first item of business in a new Parliament should be for the newly elected House of Commons to nominate that person who commands the confidence of the new House so that it is abundantly clear who commands the confidence in the new House of Commons and how that has been arrived at. The one advantage in terms of accountability and public understanding of how our democracy works is that, when we vote in general elections, we are voting in a parliamentary election. It is a two-stage process. We, the voters, elect a Parliament and it is then up to Parliament to decide who shall form the government. I believe the investiture vote is a much clearer and more transparent way of making that two-stage process clear than the traditional five-day debate on the Queen’s Speech with a vote of confidence at the end of it.

Q18 The Chairman: I think, though, that Dr Fox added to that the idea of a vote on the coalition agreement. Do you want to address that point?

Ruth Fox: At the next election, because of the Electoral Registration and Administration Act 2013, we are potentially going to have a much extended timetable. We are looking at potentially 51 days if the changes are implemented for a 25-day election timetable. That would be the longest period since 1924 between dissolution and the assembly of the new Parliament. If you were to add on a period of potentially a month after that to the Queen’s Speech—the point at which you would identify formally, in constitutional terms, the Government and the meeting of Parliament—that is a huge amount of time. I think there are advantages in having the investiture vote at an earlier stage, shortly after Parliament has assembled and when it is clear what the identity of the Prime Minister and the Government will be. Then you have a period of time before the Queen’s Speech. In fact, you could delay the Queen’s Speech a little to give the parties more time to determine the detail of their programme. In a sense, the Queen’s Speech is then not a confidence issue any more but a point at which there is a debate and vote about the programme for the coalition Government. The investiture vote helpfully addresses the points about public clarity, identification of the Government and the moment of transition. I fully agree with Robert about the royal prerogative and keeping the monarch out of this. This is a political problem for the politicians to resolve, not to bring the monarch into. An investiture vote would
formalise that process and give the coalition parties more time to sort out their legislative programme. Given the extended timetable in future, that will be incredibly helpful and much more understandable for the public.

**Q19 Lord Crickhowell:** Dr Fox, you brought me neatly to the point I was going to come to: the question of timing and the purdah period. The Prime Minister is the first person entitled to try and form a government. Assuming he fails, we then go into negotiations. As you said, we could have a very long period while the former Prime Minister is sitting in No. 10 before we have a government. My memory of being in government during election periods is that the powers of government during elections are extremely tightly constrained in terms of what you can do and say. We are moving into a situation where the former Prime Minister is sitting for a very long time powerless to govern and we do not have a Prime Minister with the authority to take measures until you have had this investiture period. Are we not moving into a situation, which we have not had before, where not just during the period of forming the government—five or 10 days, the kind of situation we had last time—but for 51 days plus, effectively we do not have a government in this country that can actually do things? Is that not so, and how do you overcome that problem?

**Ruth Fox:** The 51 days would be from dissolution to the assembly of Parliament, whatever happens and whatever the outcome of the election. That assumes that there would be around 12 days from the election to the assembly of Parliament. We will not know until the proclamation what that length will be but that was the length last time. I think it unlikely that that will be reduced by the Government. There are 12 days from the point of election to the point of assembly where you have that purdah/caretaker period, whatever happens. That would give parties time to negotiate, to work out the identity of the government and Prime Minister. Prior to 2010 the arrangements were three days for negotiations in the 1970s; you then had five days in May 2010. It may take longer next time—who knows? But then, once Parliament has assembled, if it has settled on the identity of the Prime Minister and government, and there is an outline agreement, you could have the investiture vote shortly thereafter. You would not be extending much beyond the 51 days. You elect the Speaker, members take their oaths and the investiture vote would happen soon after that. You are not talking about extending beyond that. What you are probably looking at is something like two weeks where, if the incumbent Prime Minister is not going to be the new Prime Minister, he or she will be in office waiting until the investiture vote. But the alternative is that they may need that time anyway to negotiate. Who knows? It would depend on the electoral arithmetic. It may be quick; it may not be.

**Lord Crickhowell:** I do not think you have fully answered my question. I understand all that. In the past, as soon as the Prime Minister or someone has decided that he can form a government and before the Queen’s Speech or anything, you have ministers in office, you swear in the Privy Council and so on, and you get into departments. You are actually running the country during this period. My question is that it seems you are creating a situation where there is a potential vacuum. We might be in the middle of a financial crisis, a middle east crisis or all sorts of things. I worry what happens to government during this period when effectively ministers are not allowed by the civil service—enforcing the rules during a purdah period—actually to run the country.

**Ruth Fox:** I do not think that that is entirely true. They have to observe discretion about how they conduct things and the consultation between parties, but that is the reality through the 51 days of the election period. The same things would apply. If there was a crisis—say
Syria—in week three of the election period, shortly after Easter, you would be in the same circumstances. The parties have to resolve that. In the event of an emergency, the Prime Minister is still the Prime Minister and the Government are still the Government. They would act, in consultation with the opposition.

The Chairman: Do you not think it would be worthwhile at least to try to establish some way of dealing with that before the situation arose? The difficulty is that you all say “Well, who knows? We have to find out”, and “Maybe this or that”. This is exactly the question that Lord Crickhowell and others are asking: surely there should be some predisposition as to what the theoretical possibility might be and the potential solutions.

Professor Robert Hazell: Could I answer that with a solution? It brings me to the second respect in which our Cabinet Manual could usefully be strengthened. First, under the old rules, if I can call them that, the Queen’s Speech was prepared in the most ludicrous hurry. To have a little more time is a good thing. Secondly, we will have a government. We need, as you say, always to have a government. This is where I hope the Cabinet Manual might be strengthened: we will have a government that, until it is clear who can command confidence in the new Parliament, govern subject to what I call the caretaker convention. There was a very good example of that. You asked what would happen if there was a crisis. On the Saturday two days after the general election in May 2010, there was a very important meeting of European finance ministers: the first bail-out. It was very important that the UK Government be represented at the meeting. It was represented by Alistair Darling, then Chancellor of the Exchequer. Following the caretaker convention, he consulted his opposite numbers, the Treasury spokesmen in the Conservative and Liberal Democrat parties, about what line he should take at that important meeting. That is how a caretaker convention can operate and governments can still be effective and make decisions. The key principle behind the caretaker convention is that, wherever possible, they should not make a decision that will bind the hands of a future government—the government that can command confidence in the new Parliament. In other countries, it is perfectly normal to have a period of several weeks before the new government are formed. They manage perfectly well. It is only for us that it feels unusual and uncomfortable because we are so used to the removal van in Downing Street.

The Chairman: If you want to strengthen the Cabinet Manual to cover that sort of eventuality, how do you do it?

Professor Robert Hazell: By using the term “caretaker convention”, which at the moment the Cabinet Manual, for reasons I do not understand, feels uncomfortable about. At the moment, it confuses the restrictions on what a government can do, using the words of Lord Crickhowell, with restrictions on what a government can say. Those are two different things. The purdah rules, as they are called in the manual, restrict what a government that cannot command confidence can say. A caretaker convention describes a caretaker government that is restricted in what it can do. It is conceptually distinct, but in terms of practical importance and clarity for all those involved it is very helpful to have two different terms for those two different kinds of restriction.

The Chairman: That is very helpful.
Q20  **Lord Irvine of Lairg:** It is hard to invite you, Professor Hazell, to draft on your feet, as it were, or from a sedentary position, but could you define for us as best you can the essence of this so-called caretaker convention?

**Professor Robert Hazell:** Yes. That is slightly easier because it is the term they use in two other Westminster systems: Australia and New Zealand.

**Lord Irvine of Lairg:** So be it, but could you define it for us?

**Professor Robert Hazell:** Yes. When a government remain in office as an incumbent government but it is not yet clear who can command confidence in the new Parliament, then that government do not have full political authority to govern. They have the legal authority—they are still the lawful government and they can and must make decisions as the lawful government—but the principle behind the caretaker convention is that they do not have the political authority to exercise full power and introduce new policies, make important decisions over public appointments and the like. Those are things that, wherever possible, they should defer so as not to bind the hands of a new government that command confidence in the new Parliament.

**Lord Irvine of Lairg:** What may it do and not do during the caretaker period?

**Professor Robert Hazell:** May I give you an example from New Zealand to try to crystallise that? Forgive me, I cannot remember the date but it was at the time of a general election. In New Zealand they have a relatively small air force. They had put on sale their fighter aircraft. A Labour Government had been in office and it looked as though after the election a National Government—the Conservative Party in New Zealand, who are rather more hawkish on defence and foreign affairs—might assume office. As luck would have it, there came a bid for those fighter aircraft and the Ministry of Defence was very tempted to sell them because they had been on the market for some time. It was advised by the Cabinet Secretary in New Zealand, who is the guardian of proprieties, “No. Although I understand that it must be very frustrating for you because you have been longing to sell these aircraft, there may be a change of government. The new government may have a different view about defence capacity and therefore we should not sell the fighter aircraft from under their feet”. That is how, in one small example, it can crystallise in practice.

**The Chairman:** Let us assume that somebody has met Parliament or there is some understanding of who the Prime Minister will be in a coalition arrangement. Can we move on to the formation of the Government? I think Lord Cullen wanted to ask about the appointment of ministers.

Q21  **Lord Cullen of Whitekirk:** Actually what I wanted to ask about is the idea that the coalition agreement should be submitted to the House of Commons as a means of avoiding the complaint that no one voted for the coalition.

**The Chairman:** Yes, that is also important.

**Lord Cullen of Whitekirk:** If Parliament is hung, it is plain that the electorate has spoken but has spoken giving a mixed message. Compromise is obviously going to be necessary. No doubt, every effort will be made to form a stable government in those circumstances. The coalition may well command a clear majority of votes as opposed to the individual
composition of seats. In those circumstances, why should it be appropriate or necessary for
the House of Commons to have submitted to it the coalition agreement for the next five
years of the Parliament, knowing as we all do that manifestos are not written in stone?

Professor Robert Hazell: I support what Dr Fox said in suggesting that the coalition
agreement should be subject to a vote and approved by the House of Commons. That is a
more modest proposal than our proposal for an investiture vote, which would come first. I
would float the idea that instead of the traditional vote on the Queen's Speech which sets
out the government's legislative programme for the first session of the new Parliament, given
that if there is a coalition the parties will have negotiated a coalition agreement it might be
more suitable for there to be a debate and vote on that agreement as a programme for the
whole Parliament. That is the suggestion being floated.

Lord Cullen of Whitekirk: I am concerned by the justification for that.

Professor Robert Hazell: It is to do with transparency and the point that you made at the
beginning: "no one voted for this". It makes clear to electors that in parliamentary elections
it is a two-stage process. In voting, we elect a Parliament, the Parliament then chooses the
government, the government then decide on their programme and it is then up to
Parliament to approve the programme as a whole. Traditionally that is done in the Queen’s
Speech when it just approves the legislative programme in year one. The proposal is that if
Parliament had a vote on the coalition agreement in effect it would be voting to approve the
overall policy programme for the whole Parliament.

Lord Cullen of Whitekirk: But in practice majority governments frequently diverge from
their manifesto statements and sometimes add to them unexpectedly. I am concerned about
the situation in which you do not get a clear-cut result and compromise is necessary. Why
do we not leave the politicians to get on with that, knowing very well that the result may be
some form of mixture between the policies of one party and those of another?

Professor Robert Hazell: Forgive me, I may not understand your point. Are you suggesting
that when there is a coalition and the parties have negotiated, they should not necessarily
have a coalition agreement at all?

Lord Cullen of Whitekirk: Oh no, I am not suggesting they should not have it. They may
or may not publish it, I understand. But if they have published it I want to know why it
should be necessary or appropriate for it to be vetted by the House of Commons as a new
part of our constitutional system.

Professor Robert Hazell: I am not arguing that it should be necessary. Forgive me: do not
let me overstate this. In my mind, it is a modest and desirable improvement on the
traditional Queen’s Speech debate in the first session, which is just about the first year’s
legislative programme.

The Chairman: Forgive me, Lord Cullen, if I have misunderstood the point you wanted to
raise but because of time constraints we need to move on to the operation of the
government rather than its formation. Lady Falkner, you wanted to address the question of
appointments and so on.

Q22 Baroness Falkner of Margravine: Yes, could I start by saying that we are a broad
church in this committee? I have great sympathy with what all three of you have said.
Perhaps that is because I worked on democracy and governance at the Commonwealth Secretariat. I saw a lot of Westminster systems in operation that, as Professor Hazell pointed out, encompassed flexibility. I say that not in a judgmental way. I am sympathetic in practical terms to what you are talking about. As Mr Winetrobe said, stuff happens. I want to take you on to prerogative powers of the Prime Minister. To use a recent case in the media, we had the appointment of someone at the Department of Energy and Climate Change where there was some controversy because the preferred candidate of the Secretary of State was not approved. In another example, in the recent reshuffle there was a candidate appointed without the wholehearted endorsement of the Secretary of State at the Home Office—from what we hear. I want to explore the extent to which, in a coalition, the Prime Minister should make all appointments in his party and the Deputy Prime Minister make the appointments in his party. Or, should they have a more formally embedded system of consultation where, in other words, the appointments that come out evolve from consensus on both sides rather than my man or woman versus yours? I wondered if you had any thoughts about that.

Barry Winetrobe: To go back to what we said at the beginning, I am fairly relaxed about that. The coalition partners should decide that for themselves, as long as they publish it. We have a few fixed points. We might get to a situation like that—forgive me if it already happens and I am not aware it. The traditional thing is the Prime Minister being the Queen’s first minister and the sole conduit to the monarch. That still exists and the Deputy Prime Minister does not have an independent right of access to the monarch as I understand it, even under the present system.

The Chairman: Except if he is Lord President of the Council, as he is at the moment.

Barry Winetrobe: Yes, but in the sense of appointments, giving advice on making recommendations or sackings and so on, everything flows formally through the Prime Minister. If that is the way they want to do it, that is fine as long as everybody knows that is how it works. If there are other situations that do not suit that, then presumably one or other party will regard it as a deal-breaker. If the two parties want to come to the point where their continuing existence depends on one appointment or other, which I doubt would happen except in a very extreme situation, then so be it. It has to be on a government-by-government basis and that might well encompass the idea of “We have decided the proportions, we have then decided which ministries, who goes in which ministry and then the individuals”. There are various layers of this allocation process. If you have a situation that allows the two parties to select and fill their posts with whomever they wish and the other party just has to swallow that, then fair enough. You could argue that does not make for good government within a particular department, but that is how they have chosen to do it. Similar things happen within single-party governments. Different people in different wings of a party are put in government departments to keep an eye on the other, or whatever. I do not think in principle that there is anything really different there that requires formalising.

Ruth Fox: I broadly agree with Mr Winetrobe. At the end of the day, it is a matter for the parties, the Prime Minister and the other party leader to negotiate and decide between them. As Barry said, if that is transparent then it is fine. On the point about a secretary of state not being comfortable about ministers inserted into their department without prior consultation, that can happen in single-party governments where Prime Ministers put in
people that the secretary of state might not like for political reasons. That is just reality and one of the discomforts of coalition that the parties have to live with.

The Chairman: I know that Lady Wheatcroft wants to raise the question of collective responsibility, which comes, I imagine, from what you have just said.

Q23 Baroness Wheatcroft: Absolutely, and I appreciate the response you gave that governments have to be pragmatic in these circumstances. I go along with that but when I read your responses to the issue of collective responsibility there seemed to be a theme that, on the whole, the sanction would be public opinion. Public opinion does not like it when governments are split; this helps enforce collective responsibility. I wonder whether that really applies once you lose single-party government. It seems to me that the doctrine of collective responsibility is fading fast. I understand that when Professor Hazell interviewed people the divisions seemed stronger within parties, but nevertheless they felt obliged, during the lifetime of governments, to abide by the doctrine of collective responsibility. We have seen examples under this government where that is not the case. I wonder if it reaches a stage where you think that is potentially damaging.

Professor Robert Hazell: May I mention a core document for your inquiry in terms of the operation of this coalition government? That is the document published on 21 May 2010, the Coalition Agreement for Stability and Reform. It is a very short, very clear three-page document setting out the principles and procedures by which the two parties in the coalition would manage the collective business of government.

To go back if I may to the previous discussion about the appointment of ministers, it has two sentences on that which are very clear. It says: “The Prime Minister, following consultation with the Deputy Prime Minister, will make nominations for the appointment of ministers. The Prime Minister will nominate Conservative Party ministers and the Deputy Prime Minister will nominate Liberal Democrat ministers”.

Coming to your point about collective responsibility, there is a quite a long section, section 2—

The Chairman: I think we are familiar with it.

Professor Robert Hazell: The point I am making is that the coalition government are very clear how the principle of collective responsibility applies.

The Chairman: They were in principle. This is the point we are making. They were in May 2010 but the point that Lady Wheatcroft is making is that when there are obvious divergences from even that agreement, which was as you said relating specifically to a particular situation, at what point does the doctrine—as Lady Wheatcroft appropriately called it—of collective responsibility simply need to be abandoned?

Professor Robert Hazell: Forgive me but I think it has a lot more elastic in it yet. Under the previous government led by Tony Blair as Prime Minister for 10 years, collective responsibility was frequently quite conspicuously absent in terms of the relationship between No. 10 and the Treasury. This is nothing special or unique about coalition governments. In terms of the doctrine potentially having a lot more elastic, forgive me for harking again to Commonwealth examples but it is helpful to see how other Westminster systems have adapted to coalition government. In New Zealand, collective responsibility has been relaxed
a lot further than we have seen here and the government have been able to operate perfectly effectively.

**Baroness Wheatcroft:** My point was that both of you, Dr Fox and Professor Hazell, argued that the public do not like ministers misbehaving—I suppose that is the way to put it simply—and therefore they respond at the ballot box. That is a sanction held over government and collective responsibility. But I wonder whether that is the case when you have not just the Brown/Blair axis but a government effectively split between two parties that have major disagreements and it becomes apparent that that affects the doctrine of collective responsibility. Will the public be much more indulgent?

**Professor Robert Hazell:** A criticism that you could make of our study is that we only looked at the first 18 months of the Government. That is true and maybe we caught them at their most harmonious moment. Recent contacts I have had in Whitehall suggest that it is still the case that many of the most important differences within this coalition Government are those between ministers of the same party, not between the coalition parties. On the whole, the Government have shown a lot of discipline in relation to their collective responsibility. You might have a different perspective because, as one of our interviewees famously said to us, we have a coalition Government but not a coalition Parliament, so the differences between coalition parties are much more closely visible to you as parliamentarians—it is the same in the other House—than perhaps they are to those working in Whitehall.

**The Chairman:** In a sense, that is what we are addressing: parliamentary responsibility.

**Barry Winetrobe:** I think this is a situation where you have to think what “collective” means: collective in facing whom? Collective responsibility grew out of the idea of a group of ministers having a collective purpose against the monarch, whereas that was not the original idea. Then it was collective vis-à-vis Parliament: it was the confidence principle, to use the traditional constitutional jargon. A great part of the traditional doctrine was all this notion of confidentiality, secrecy and privacy—a lot of which has been modified drastically in the last 10 or 15 years. People do not really see that as a core part of it. When I was doing some work on it in the devolved Parliament of Scotland—which contrary to what Lord Lang said, is for these purposes a Parliament in the same sense that this is one—there was clearly a fear that if collective responsibility was not imposed the two parties might split within the government. Therefore, in addition to the traditional notion of collective ministerial responsibility, i.e. holding all the ministers together whether of one party or not, there was need for a further layer which I called—although it did not take root—a collective coalition responsibility. That was the idea of binding, in addition, the two parties together.

As it turned out, certainly in the early days of the eight years of coalition government, that did not arise as a problem. The issues and controversies about collective responsibility and whether ministers should resign were in traditional areas of disagreeing on a constituency basis and so on. The notion of it being necessary to bind the coalition together did not really arise so clearly in those days. I am not saying it will not arise now. If I remember correctly, the Scottish guidance in the *Guide to Collective Decision-making* and in the *Ministerial Code* did not say when it should be set aside, whereas the present agreement does. I do not really think that makes much difference. Again, it is the transparency. If everybody makes clear that this is what they are doing and that there are set points at which there are disagreements, the public accepts that. What I think is the problem is if you are pretending one thing and doing another. I do not think that the idea of speaking out against things is really
undermining. The media, the rolling news and all that, might make a great song and dance about it but I do not think the public is that worried. There are obviously some key situations—similar to what happened in 1989 with Nigel Lawson—when you have divergent advice in the perception of the public in terms of core economic policy or things like that. Obviously, you have to have a collective, unified voice to the outside world in core areas like defence, national security and core economic and financial questions. But other than that, I do not see that there is anything particularly different about being a coalition government and collective responsibility, other than that use of the doctrine to try and bind the parties together, as well as the individual ministers.

**Q24 Lord Crickhowell:** A number of those who have given evidence so far have suggested that breaches of collective responsibility should be exceptional rather than frequent and be made clear in advance, and that it is very desirable that they should be the result of collective Cabinet decision rather than that of an individual. Professor Hazell, you referred back to the coalition agreement and what was said at the start. You talked about the strength of Cabinet decision-making since the agreement. To take one obvious example, following the collapse of House of Lords reform we had a decision by the leader of the Liberal Democrat party that was certainly not envisaged in the original agreement: not to proceed with legislation that had passed through both Houses. It was not a collective decision taken in advance with plenty of warning or the result of collective Cabinet decision-making. Surely that is a fundamental change. I am less concerned by statements by ministers trying to strengthen themselves: “I am really a very powerful chap and I think things differently”. I am concerned about the role of collective Cabinet decision-making. We have a strange anomaly. We have the quad, and I am not sure how it relates to collective Cabinet responsibility. Is not something to be said for a system in which you say, “We are going to do this as an exception, we will announce it in advance and we would like it to have the full approval of a collective Cabinet decision”, rather than “I am in a huff and have not got what I want so we will breach the previous agreements”?

**Professor Robert Hazell:** Forgive me, I am at a disadvantage: because this fell outside the period of our study I have not done any interviews about this particular episode so I genuinely do not know what kind of notice, if any, the Deputy Prime Minister gave before he said he was withdrawing support from the other side of that.

**The Chairman:** Frankly it is the principle, whether or not the notice was given. As Lord Crickhowell said, there have been previous instances where that kind of policy disagreement within a one-party government has led to resignations. That has been, whatever we are going to call it, the convention. What we are trying to establish is at what point you feel—you have all talked about flexibility—these conventions and understandings, whether they be about collective, Cabinet, government or ministerial responsibility, are pushed to such an extent that there are real differences in the way we are governed.

**Professor Robert Hazell:** That was a seismic political event because it followed a very serious parliamentary defeat and therefore setback for the Liberal Democrats as one partner to the coalition.

**The Chairman:** But it did not lead to the kind of results which, in a one-party government, one would have expected.

**Professor Robert Hazell:** Are you suggesting that the Deputy Prime Minister should have resigned?
The Chairman: That would have been a more normal expectation historically of that level of policy disagreement within a one-party Cabinet.

Baroness Falkner of Margravine: May I come in on that, after we have had the answer from Dr Fox?

Ruth Fox: Going to Baroness Wheatcroft’s point, public opinion constrains but does not enforce with regard to collective responsibility. In my submission to the committee I point out that the one area in terms of collective responsibility where I have a concern is exactly this one. Lord Crickhowell has slightly stolen my point. There seem to be three circumstances in terms of collective responsibility. There are those you can set out at the beginning of the coalition, where you can clearly state them and that is very public and transparent from the outset. Secondly, there is response to events—Leveson, for example—where there can be an agreement within the coalition, whether it has gone through the Cabinet machinery or is an agreement between the Prime Minister and the Deputy Prime Minister, to set aside collective responsibility publicly and openly from the outset. I think there is a problem with setting it aside once you have gone through a legislative and policy process that has gone through collective decision-making. There is an issue about accountability but there is also an issue about good governance and effective use of resources. The amount of parliamentary time and money spent on that is a serious problem. The problem is how you constrain that because the only option is essentially capital punishment for the coalition. That then brings you back to the politics. Unless as part of the coalition agreement there are clear rules set at the outset about those circumstances and what would happen, it is really for the parties in the current circumstances to determine what to do. I do not want to reopen the issue of the caretaker and purdah period, but if the coalition does not dissolve before the election— who knows?—how does collective responsibility hold during that long purdah period? I do not know what the answer is because I have only begun to think about it. It might be worth thinking about what kind of rules could be needed by the coalition to set out how it will deal with issues in the most highly partisan period, to address that collective point if it continues as the incumbent legal government.

Q25 Baroness Falkner of Margravine: We obviously come from two different perspectives on that particular example, but I want to go to the principle behind it, unedifying as that example was. One can look at what happened there and draw the general conclusion that Lady Wheatcroft started with: that the public would not be pleased to see what happened there—for all the reasons you gave, the waste of resources and so on—as a general principle and that they will punish the perpetrators of that lapse of collective government accordingly when the time comes. I would see that as part of the negotiation of a coalition. There were two promises, pledges or agreements made. One side thought that one was contingent upon the other and the other side did not. As a side decided to abandon one aspect of it, they would have known what the consequences were. It would have a grown-up discussion. Do you feel that in your description of flexibility, and the transparency and accountability angle as well, that the public would expect people to have known the consequences of what they do, and will therefore take a view on that when the time comes?

The Chairman: That is a political judgment.
Barry Winetrobe: In an ideal world, you write down every eventuality in an early agreement or as things arise, in particular Queen’s Speeches or when new circumstances arise. But you cannot get away from realpolitik. You are not in a coalition in a wartime or quasi-wartime situation where party is put aside. You are in a coalition of parties competing for their best result at the next election. The whole coalition is predicated on that. It is not a putting aside of party; it is accommodating parties. Therefore crises like House of Lords reform or boundary changes are just one of those things—In place of strife in the late 1960s—where collective responsibility was not enforced in terms of a sanction. James Callaghan did not resign or anything—

The Chairman: He was demoted.

Barry Winetrobe: My point is that I do not think—

The Chairman: He was moved sideways.

Barry Winetrobe: He was moved sideways after the devaluation, but anyway he then became Foreign Secretary and Prime Minister so it did not do him that much harm.

The Chairman: That was because it was a position of principle.4

Barry Winetrobe: Sorry, can I just make one point? It goes back to the point of what collective responsibility is for. Some of the comments around the horseshoe implied that, like other constitutional conventions or rules, this is somehow an external, scientific law of nature and therefore events, circumstances and conduct have to follow it to keep that rule going—whereas it is the other way round. The rule is there because it happens to be convenient in normal circumstances for good government.

The Chairman: I cannot believe that. Lady Wheatcroft.

Q26 Baroness Wheatcroft: I am interested in Dr Fox’s point that it is an issue of governance if Parliament spends a great deal of time and money pursuing something that was in the Queen’s Speech. Should there be a mechanism, agreed at the beginning of a Parliament, that if a coalition agrees a policy and puts it in the Queen’s Speech, they are then bound to follow that through? Should it at least be something that goes into a manual?

Ruth Fox: Well you could, but the question then is: what is the sanction? Essentially it is the collapse of the arrangement between the parties. If you want to put that in at the outset, then do, but be very clear between your parties that that is the sanction. That will act as a possible constraint, but it depends on the third party’s perspective on the political interest. Nick Clegg feared, so it is said, that he would not be leader of his party three months down the line if he did not do it. It is a political judgment for the party leader.

Professor Robert Hazell: This was an episode of parliamentary government. The plans to reform the House of Lords were in the coalition agreement. We know that many people in

4 Note by the witness: May I clarify what may read on the page as a difference of view over the ‘In Place of Strife’/James Callaghan example? I was alluding to the traditional notion of a penalty for breach of collective responsibility being removal from that collective government, whether by dismissal or resignation, rather than any other lesser disciplinary sanction, such as demotion from the ‘Inner Cabinet’, while remaining within the government.
the Conservative party had their own doubts but, faithful to the coalition agreement, the Government did introduce their Bill for Lords reform. It did not get through Parliament. As parliamentarians, I would expect you all to say, “This was Parliament showing its strength and its value”.

Baroness Wheatcroft: Absolutely.

Professor Robert Hazell: The question then follows: what should the coalition have done following the defeat of quite a flagship measure? Forgive me, but I do not think anyone should have or needed to resign. I know of very few precedents where ministers have resigned following a significant policy defeat. Just take the history of Lords reform and the Labour Government’s Bill in 1968, which took up huge amounts of parliamentary time—many more hours, I think, than this Bill last year. The lead minister did not resign, so I would have been surprised, startled, amazed if Mr Clegg had felt obliged to resign.

Lord Crickhowell: But the boundaries changes legislation had gone through Parliament. It had been approved by both Houses—

Professor Robert Hazell: Indeed.

Lord Crickhowell: Rather like President Obama’s healthcare. It is then, subsequent to that, that we say, “Oh well, it is the law. It has been passed, but we are going to ignore it. We are going to do it in our own way”. It is a difference. That is the point, not the overthrow of the House of Lords reform, which was Parliament acting as Parliament is entitled to. The point is that the other action was in fact not a part of any agreement. It was an action taken not as a result of collective discussion or Cabinet discussion.

Professor Robert Hazell: We genuinely do not know. I do not know.

The Chairman: In that case, let us move on, because we are short of time because this has been so interesting. Lord Lexden wanted to raise some points about the implications for the House of Lords, reformed or unreformed, of coalition.

Lord Lexden: Forgive me, I have to leave fairly shortly. Could I take you to the important area of coalition government and party manifestos that precede its formation?

The Chairman: Could we focus on the House of Lords just for the moment, if you do not mind Lord Lexden, simply because we are going backwards if we discuss that question. I know you want to raise points about party manifestos, but maybe we should do that with the parties.

Q27 Lord Lexden: On the House of Lords, I have a very simple question: how, in your view, does its role change under a coalition government, if at all?

Professor Robert Hazell: I do not think it does change significantly. This House, since the big reform of 1999, has been a House in which no single party has a majority. That is of enormous value and a great strength of the reformed House of Lords. Depending what kind of coalition government is or might be formed in future, the strength of the parties in government may wax or wane, but even with the Liberal Democrats supporting the
Conservatives as part of a coalition government, the Government do not have a majority in the House of Lords. It is that principle which it is important to hang on to.
If you are asking about the Salisbury convention, as you know this was looked at very extensively by a joint committee of both Houses in 2006. They revised and slightly rearticulated the convention to state that they felt that in future this House should not block or wreck government bills rather than simply manifesto bills.

The Chairman: Lord Lexden wants to follow that. Then we will hear from Lord Lang.

Lord Lexden: There was a suggestion in one of the submissions made to us that it might be sensible to look again at the 2006 discussions and conclusions that emerged. Would you support that, or do you believe that what was settled in 2006 can remain?

Professor Robert Hazell: I thought it was an extremely detailed and thorough piece of work, as you would expect from a joint committee, and I see no need to revisit it.

Lord Lang of Monkton: I was going to ask about that. It was not totally settled because it is still not accepted universally. Passing references were made to it by the last Leader of the House, and I think by the Prime Minister at some stage. I do not think this is a coalition issue at all; I think it has stuck with the coalition. Would it not be sensible that somebody in the House of Lords should set down precisely where we have got to on this so that it becomes a more established convention, and do you think that it should also extend to wrecking amendments, which destroy a bill not at second reading but later on?

Professor Robert Hazell: It is not settled, you are quite right, because the joint committee in 2006 did not feel it right to try to codify in hard, concrete, very precise terms, for reasons I hope you will understand and understand much better than I do, because it goes to the self-restraint which this House, as an appointed unelected House, shows in giving way to the wishes of the elected chamber. That is not something which it is at all easy to crystalise in sharp terms. It is a matter for constant negotiation.

The Chairman: Dr Fox, did you have anything to add?

Ruth Fox: I broadly agree.

The Chairman: Mr Winetrobe, do you have any points you wanted to make?

Barry Winetrobe: No.

The Chairman: I think we are drawing rapidly to the time when we need to close this fascinating discussion, but I wonder whether any member of the committee feels that there is some point that they definitely had not had covered? Lady Falkner.

Q28 Baroness Falkner of Margravine: My question is about the role of the civil service. Professor Hazell, you have said in your written evidence that Whitehall has been considering a protocol whereby a junior minister can commission a briefing for his or her eyes only, with the agreement of the secretary of state. This is a broader point about how policymaking is explored when you have a secretary of state from one party and a junior minister from another. I wonder whether you would elaborate on this protocol and how it would work.
Professor Robert Hazell: As I understand it, they have decided not to have such a protocol. This is a really important issue and it is a pity that we have come to it right at the end. It is something that I hope this committee will explore further with other witnesses, and better witnesses than me. It goes to the pre-election contacts that traditionally have been allowed with the opposition party or parties in the run-up to an election. We know the date of the next election, in May 2015. We know that conventionally those contacts will be authorised about 12 months beforehand, so from around the spring of next year the Cabinet Secretary will be contacting the opposition parties and saying, “Would you like to start pre-election contacts?”

The issue, and it is a really difficult one, is how to ensure a level playing field between the parties that are currently in government and the opposition parties. This brief paragraph that you have alighted on is Whitehall’s first thoughts, which as I say have not been put into effect, as to how the parties in government might try to get briefing that will help to inform their plans for the next Parliament.

Baroness Falkner of Margravine: It is not just the parties in government versus the party in opposition, it is also a question of the more significant party in government versus the junior partner. The secretary of state can authorise any policy issue to be examined and a paper provided. A junior minister has to stick to their portfolio responsibilities; they cannot range over the breadth of the department, and that creates its own problems.

Professor Robert Hazell: Indeed, and in that respect there did not appear to be a level playing field between the junior party in government and the senior partner. Again, I have no inside knowledge, but my guess is that when the idea of this protocol was first floated, that might have been a reason why the Liberal Democrats, as the junior partners, would not have been very attracted by it.

The Chairman: Thank you, Lady Falkner. As you say, we are going to pursue this with other witnesses, but I am grateful to you for putting that on the agenda, as it were. Lord Crickhowell had a point.

Q29 Lord Crickhowell: Dr Fox made a number of interesting points about coalition in the last parliamentary session, particularly if the coalition broke up, and whether we need to have some thought, and perhaps rules, in advance about financial issues, ministers departing, compensation and the rest, which would be extremely sensitive, touchy even, if they were not looked at in advance. We do not have time, I suspect, to pursue it now, but you might comment briefly. It may be something that we ought to think about rather more during our inquiry.

Ruth Fox: I wholeheartedly agree. Depending on the point at which the coalition might dissolve, if it dissolves, there are issues about what kind of support would be available to the third party as it goes back into opposition and about how rules, processes and procedures in the House of Commons would adapt back to the arrangements of previous Parliaments. There would be issues about what would happen with ministerial resignations; with new ministers from the main party being appointed to positions for a set period, which could be anything from a year to two or three months depending on the point of dissolution; with ministers being in office and departing ministers having severance payments; with the new ministers coming in, and if they are not part of the next government then also having severance payments. You can imagine the media headlines. It would be pretty horrendous.
There are some very practical issues that need to be thought about, and perhaps the coalition needs to reach an agreement in advance on how they will handle them. Equally, if the coalition does not dissolve—I think the working assumptions of everybody have been that it would in order to give the third party an opportunity to re-establish its identity—that caretaker period is worth thinking about.

**The Chairman:** Thank you very much. This has been a fascinating discussion. You have given us very helpful written evidence and I know that we have not covered everything that you addressed in them. I hope you will have a chance to keep an eye on the other evidence that we take over the next few weeks, because some of the points—the one for example which Lady Falkner raised at the end about the civil service—we will develop with other witnesses. If you feel, looking at it over that period, that we are missing some important and worthwhile fact or issue that we have not discussed, please be in touch. We are very grateful to you for your continuing involvement in this discussion. Thank you, all three of you, very much indeed. It has been very interesting.

**Professor Robert Hazell:** Thank you very much. We wish you well with your very important inquiry.

**The Chairman:** Thank you.
Transcript to be found under Rt Hon. Paul Burstow MP
Overview: the constitutional framework

There are three respects in which the constitutional framework could usefully be tightened up:

Duty on incumbent Prime Minister to remain in office

This was considered by the Lords Constitution Committee in their report on the draft Cabinet Manual (Twelfth Report, March 2011). In that report the Committee stated:

> It is a matter of debate as to whether a Prime Minister has a duty to stay in office until it is clear who might command the confidence of the House of Commons. The Manual should distinguish between the right to remain in office and the duty to do so … [and] state that there is a degree of uncertainty on this point (para 59).

The Cabinet Office accordingly redrafted the Cabinet Manual to read as follows:

> … it remains a matter for the Prime Minister, as the Sovereign’s principal adviser, to judge the appropriate time at which to resign … Recent examples suggest that previous Prime Ministers have not offered their resignations until there was a situation in which clear advice could be given to the Sovereign on who should be asked to form a government. It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention (para 2.10).

It would be helpful if the Committee could be less equivocal, and support the views of Lords Armstrong, Butler, Wilson and Turnbull that there is a duty on the Prime Minister to remain in office until it is clear who should be appointed in his place. After the last election Gordon Brown was denounced by the Sun for being a ‘Squatter in No 10’. If the Cabinet Manual stated the position more clearly, it would make it easier for constitutional experts and election commentators to say more confidently that Prime Ministers in Brown’s position are under a duty to remain in office until they can advise the Sovereign who should be appointed in their place.

Investiture vote

An alternative appointment process would be to have as the first item of business in the new Parliament (after swearing in) an investiture vote, whereby the new House of Commons elected the Prime Minister. This is the process followed in Scotland (under s46 of the Scotland Act 1998), whereby the Parliament chooses the First Minister, and the Monarch then appoints the person nominated by the Parliament.

That would have the merit of being more transparent, and clearly demonstrating that the Prime Minister commands the confidence of the new Parliament. It would require the incumbent Prime Minister to remain in office until the investiture vote. Given the ‘removal van’ attitude to Westminster elections, that might prove uncomfortable if it was clear that the opposition party or parties had won the election.
Caretaker convention

The Cabinet Manual has been greatly improved by recognising three separate contexts in which the incumbent government will be restricted in what it can do, because it no longer commands the confidence of Parliament. These are in the pre-election period, once Parliament has been dissolved; post-election, if there is doubt about who can command confidence in the new Parliament; and mid term, following a successful no confidence motion. But the Cabinet Office is unwilling to use the terms ‘caretaker government’ or caretaker convention, although these terms have been readily adopted in Australia and New Zealand.

This may in part be because Cabinet Office still tends to associate restrictions on government activity with restrictions on government publicity: the so-called ‘purdah’ rules. But the restrictions on government publicity apply during any election (local elections, devolved elections, European elections), in order to prevent the governing party from seeking unfair advantage by issuing good news stories from Westminster. The two sets of rules come together during a general election campaign. It would help to keep them conceptually and practically distinct if Cabinet Office could adopt the term ‘caretaker convention’ to describe the restrictions on government decision making. The ‘purdah’ rules describe the restrictions on government publicity, which apply during any election, even when the government has a majority.

We now answer the Committee’s specific questions.

1. To what extent are the UK’s existing constitutional conventions and practices unsuitable in the context of a coalition government?

The UK’s flexible constitution is easily adaptable. In practice, very little adaptation has been required for the circumstances of the current coalition. It enjoys a comfortable majority in the House of Commons, and governs in a majoritarian way.

2. What are the constitutional merits and demerits of coalitions compared to other means of forming a government in a hung parliament, such as minority governments or supply and confidence arrangements?

In a hung Parliament where no single party commands a majority, it will require co-operation between parties to get any legislation passed. Under a coalition that negotiation and co-operation takes place within the government. Under minority government, it takes place within Parliament, with a separate ‘mini-coalition’ of support being required for each bill. Coalition is generally more stable than minority government, because the parties can form a majority. But some coalitions are also minority governments: as has often happened in Denmark, and New Zealand.

3. What lessons can be learned from the practices of other parliamentary democracies, including the devolved administrations in Scotland and Wales?

See the last three of our publications listed above, which all draw heavily on the lessons from overseas. The secret of good coalition government in New Zealand has been summarised as ‘good faith and no surprises’. In the UK’s 2010 Coalition Agreement for Stability and Reform this was expanded to:
‘goodwill, mutual trust and agreed procedures which foster collective decision making and responsibility while respecting each party’s identity’.

**Collective ministerial responsibility**

4. Does the doctrine of collective responsibility require adjustment in the modern era? If so, in what way?

It is up to each administration to decide how much it wishes to observe collective responsibility. The Prime Minister will publish his government’s rules of collective discipline in the Ministerial Code, and now in the Cabinet Manual. There is also a separate section devoted to collective responsibility in the Coalition Agreement for Stability and Reform (section 2, 21 May 2010). In practice all modern governments observe a high degree of collective responsibility, because they will get punished in the media and by the electorate if they fail to do so. Media stories of party splits, and public perceptions of divisions and disloyalty, are very damaging to a party’s electoral fortunes.

Under coalition members of the government continue to support government decisions, but are free to acknowledge that the decision was a compromise between different points of view of the coalition partners. But our Whitehall interviews in 2011 found that differences of view were more frequent between ministers of the same party (eg between Ken Clarke and Theresa May, or Vince Cable and Chris Huhne) than between ministers from different parties.

5. How, if at all, does the doctrine need to be altered to allow Parliament to hold coalition governments properly to account?

The doctrine requires no alteration, because it allows for some flexibility. An example would be the four exceptions mentioned in the 2010 Programme for Government where the Conservatives and Liberal Democrats agreed to disagree. But there may need to be minor alterations in parliamentary practice. For example, at PMQs, the Liberal Democrats have lost visibility, because the supplementary question which used to be offered to the Liberal Democrat leader has now become an additional question for the Leader of the Opposition. Procedural difficulties have also arisen in the Lords about whose turn it is to speak next.

6. How does the doctrine interact with the Fixed-term Parliaments Act 2011? In particular, what is the impact of the reduction in potential confidence votes in the House of Commons?

There has been no reduction in potential confidence motions. The rules for no confidence motions have not changed. A no confidence motion still requires a simple majority to be passed. What has changed is that if no new government is formed within 14 days which can command a majority, then Parliament is dissolved. The other change is that the House of Commons can vote for its own dissolution: but that requires a high threshold, of two thirds of the House.

7. In what circumstances should the Government be able to suspend collective responsibility? When and how should such a suspension be announced? What should be the consequences of a suspension?
The government should be able to suspend collective responsibility whenever it wants. The Prime Minister can announce the suspension, its terms and its duration. The consequences of such a suspension were in evidence during the AV referendum in 2011, when the Conservatives and Lib Dems campaigned on opposite sides. The government retained collective responsibility on all other issues. The long term consequences for a government which suspends collective responsibility too frequently are political, and electoral: governments which are perceived to be excessively divided generally get punished at the polls.

**Democratic legitimacy and electoral mandates**

8. What is the status of coalition agreements, and how do they interact with party manifestos?

A coalition agreement is the programme for government agreed by the coalition parties. It is not necessary for them to publish such a programme, but it helps in terms of coalition planning and management, and the transparency and accountability of the government if they do so. The agreement combines elements from the coalition parties’ respective manifestos: how much of each manifesto is reflected in the agreement will depend on the negotiating strength and skill of the parties.

In 2010 it was commonplace for critics to say ‘But I didn’t vote for the coalition’, or ‘I didn’t vote for this coalition agreement’. One way to reinforce the status of the coalition agreement might be for the opening debate on the Queen’s Speech to be one in which the House of Commons is invited to vote on the coalition agreement as the programme for the whole Parliament, and not just to approve the legislative programme of the first session.

9. How, if at all, should the format of manifestos be changed to reflect the likelihood of hung parliaments? In particular, is there a case for parties specifying in their manifestos which of their commitments are intended to be non-negotiable?

This is a matter for the political parties. Their manifesto writers are certainly likely to have half an eye on the possibility of negotiations following the election, whether for coalition or minority government. Some manifesto pledges may be drafted as non-negotiable; others as bargaining points. Mindful of the damage subsequently caused to the Lib Dems by their firm pledge in 2010 to abolish student tuition fees, parties will beware of making excessively firm commitments which might subsequently have to be modified. Another lesson from 2010 is to recognise the advantage that comes from a detailed manifesto with a lot of commitments. The 2010 Programme for Government was 75 per cent Conservative but only 40 per cent Lib Dem; one reason was that the Conservative manifesto had contained over 550 pledges, and the Lib Dem manifesto well over 300.

10. Should the main political parties seek to agree before a general election the processes they will follow in the event of a hung parliament? In particular, should the parties aim to agree on the length of time allowed for inter-party negotiations? If so, what should that length of time be?

The most important thing for the parties to plan in advance is the internal processes which they will follow, in terms of their negotiating team, its reporting lines, and how the party will be consulted and approve any coalition deal. The Labour party got this badly wrong in 2010.
The Lib Dems consulted their party extensively, thanks to the ‘triple lock’ provision in their constitution.

In planning for possible negotiations, it would be helpful if the parties could agree some of the basic logistics in advance, so that the Cabinet Office can make the necessary preparations. For example, in 2010 three possible venues were prepared: Admiralty House, Cabinet Office and the House of Commons. If one venue could be agreed in advance, that would save unnecessary expenditure.

The ‘five days in May’ to negotiate the 2010 coalition agreement was exceptionally short by comparative standards. In most European countries it takes weeks, or even months. But in fact it took 14 days to negotiate the Conservative-Lib Dem Programme for Government, published on 20 May 2010. What was unusual was publication of an interim agreement. That initial coalition agreement of 12 May was 3000 words; the detailed Programme for Government was almost 16000 words. (To illustrate the difference, the initial agreement was silent about NHS reform, with a single pledge devoted to the health service; in the PfG, this expanded to 30 pledges). But there is a trade off between the duration and the momentum and secrecy of the negotiations: in 2010 the parties were able to maintain tight secrecy because the negotiations were so short. Another reason for the short negotiations in 2010 was the political arithmetic. If in 2015 the balance of parties is more even, with several plausible coalition options, the negotiations could take longer.

11. What is the proper role for the civil service in the inter-party negotiations following a general election resulting in a hung parliament?

The civil service stands ready to play any role which the parties want. In Scotland this has included being in the room, taking notes and providing summaries for the parties of the state of play. In 2010 it was the parties who decided they did not want that kind of support. The civil service could also provide advice to the parties upon request, about the cost or the feasibility or the timetable for implementing particular policies. That could help to avoid commitments in the programme for government which subsequently prove to be impracticable. But there would need to be a clear protocol about the terms on which such advice was provided, in terms of its availability (to all the negotiating parties?), confidentiality etc.

There is a separate issue about access to civil service advice before the election. Access to such advice for opposition parties is explained in para 2.21 of the Cabinet Manual. No such facility is offered to governing parties. They can use their position in government to ask the civil service for advice on policies which carry beyond the next election. But the Liberal Democrats feel disadvantaged. Conservative Secretaries of State can ask for briefings across the department’s whole range of policies. Lib Dem junior ministers are limited to their own portfolios. So for example Jeremy Browne MP, as the Minister for Crime Prevention, cannot ask for briefings on immigration or police reform.

Whitehall has been considering a protocol whereby a Secretary of State could commission a private briefing for his or her eyes only, with the authorisation of the Permanent Secretary. And a junior Minister could commission a private briefing, with the authorisation of the Secretary of State. But Lib Dem junior ministers might be understandably reluctant to disclose to a Conservative Secretary of State how their minds are working.
An alternative solution might be for all requests for pre-election briefing to be channelled down the same route as advice to opposition parties. In that way all the parties, whether in government or opposition, would be treated on the same footing. Election briefing Policy Units might be established in all departments, subject to a common protocol, which would be policed by the Permanent Secretary.

12. How does the role of the House of Lords change when there is a coalition government? The House of Lords is already a chamber in which the government does not have a majority, so it is used to the fact that the government has to construct a coalition of support for each bill. Since the advent of the Conservative-Lib Dem coalition, the government’s task has become slightly easier, because the Liberal Democrats are now part of the government. Under the Labour government 1997-2010 the Liberal Democrats were the pivotal party in the Lords, and determined the outcome of most divisions: now it is the cross benchers who are the pivotal group. Under Labour the government lost roughly 1 in 3 divisions; under the coalition it has averaged 1 in 5.

13. How (if at all) does the Salisbury–Addison convention apply in a hung parliament? How does the convention interact with manifestos and coalition agreements in these circumstances?

The convention has come to apply to all government bills, not just to bills mentioned in manifestos. The Joint Committee on Conventions said in 2006 that ‘to reject Bills at Second Reading on a regular basis would be inconsistent with the Lords’ role as a revising chamber’. In allowing government bills a Second Reading, the Lords are acknowledging the democratic legitimacy of the elected chamber.

**The internal organisation of the government in a coalition**

14. What constitutional principles should govern the royal prerogative of appointing ministers, and the allocation of ministerial portfolios, under a coalition?

Ministers are appointed by the Crown on the advice of the Prime Minister. The allocation of ministerial portfolios will be a matter for negotiation between the coalition parties. The starting point is usually that the number of ministerial posts allocated to each party should reflect their respective strengths in the House of Commons; but the smaller party often gets more than its proportionate share.

The smaller party faces a strategic choice: whether to go for depth or breadth. In 2010 the Liberal Democrats chose breadth, trying to spread their ministers across almost all Whitehall departments.

15. What is the constitutional status of the office of Deputy Prime Minister in a coalition? In particular, what formal and/or informal control should the Deputy Prime Minister exercise over those royal prerogatives conventionally exercised by the Prime Minister alone?

The office of DPM has no formal constitutional status. It is up to the PM and DPM to negotiate at the start of the coalition what role the DPM will play, as Cameron and Clegg did in 2010. The control of the DPM over the powers exercised by the PM is spelled out in the Coalition Agreement for Stability and Reform of 21 May 2010:
The initial allocation of Cabinet, ministerial, Whip and Special Adviser appointments between the two parties was agreed between the PM and DPM.

Future allocations will similarly be agreed between the PM and DPM, including any changes to the allocation of portfolios between the parties.

No Liberal Democrat minister or Whip may be removed without full consultation with the DPM.

The appointment of Privy Counsellors will be made following full consultation with the DPM.

When the PM is consulted over the Budget, the DPM should also be consulted.

The establishment of Cabinet Committees, their members and terms of reference will be agreed with the DPM.

The DPM will serve on each Cabinet Committee and sub-Committee, or nominate another member of the government to do so.

The general principle will be that the PM and DPM should have a full and contemporaneous overview of the business of government. Each will have power to commission papers from the Cabinet Secretariat.

The Coalition Committee (the top Cabinet Committee) will be co-chaired by the PM and DPM.

The PM will consult with the DPM on all public appointments.

16. What special considerations should be given to the cabinet committee system under a coalition?

The Cabinet Committee system is the main mechanism whereby the coalition parties jointly sign off on all government policies, through meetings and through ‘write rounds’ to all the members of Cabinet Committees. Under the present coalition’s procedural agreement of 21 May 2010 all Cabinet Committees have a chair from one party and deputy chair from the other. The chair and deputy chair must jointly agree the agenda for all meetings and the content of write rounds. In practice all important issues are negotiated informally first, in a variety of forums: the PM and DPM’s weekly bilaterals, the Quad (PM and DPM plus Chancellor and Chief Secretary), regular meetings of Oliver Letwin and Danny Alexander, Ed Llewellyn and Jonny Oates, etc. So the joint agreement to a policy in Cabinet Committee is often the formal signing off on a series of informal discussions.

17. What constitutional issues arise when there are ministers from different parties within an individual department?

The Liberal Democrats have ministers spread across 15 Whitehall line departments. The most common pattern, found in a dozen departments, is for a Conservative Secretary of State to have one Liberal Democrat amongst his team of junior ministers. In addition to managing their own portfolio, these Lib Dem junior ministers are meant to maintain a watching brief across the whole department, and to ensure that all policies are ‘coalitionised’ within the department. In practice the extent to which each Secretary of State involves the junior ministers is a matter for them. Some junior ministers have been marginalised, denied access to meetings and papers, and there has been nothing which No 10 or the ODPM can do to persuade a recalcitrant Secretary of State to be more inclusive. A second difficulty has been the imbalance of resources: junior ministers have small Private Offices, typically with a quarter of the support provided to a Secretary of State, and it is very hard to monitor the whole of a department’s policies with such small capacity. This is why in autumn 2011 the
Liberal Democrats were assigned an additional six Special Advisers, allocated so that there is roughly one supporting every two Lib Dem junior ministers.

2 October 2013
Transcript to be found under Dr Ruth Fox
The Caretaker Convention

In my oral evidence on 16 October I was asked by Lord Irvine to explain the caretaker convention. This is not a term used in the UK Cabinet Manual, but its effect is expressed at paras 2.27 to 2.29 of the Cabinet Manual, which state:

Restrictions on government activity

2.27 While the government retains its responsibility to govern and ministers remain in charge of their departments, governments are expected by convention to observe discretion in initiating any new action of a continuing or long term character in the period immediately preceding an election, immediately afterwards if the result is unclear, and following the loss of a vote of confidence. In all three circumstances essential business must be allowed to continue.

2.29 ... Ministers continue in office and it is customary for them to observe discretion in initiating any action of a continuing or long term character. This means the deferral of activity such as: taking or announcing major policy decisions; entering into large/contentious procurement contracts; making some senior public appointments ... If decisions cannot wait they may be handled by temporary arrangements or following relevant consultation with the Opposition.

My main objection is that these restrictions on what governments can do (the caretaker convention) are conflated in this section of the Manual with the restrictions on what governments can say (the ‘purdah’ rules). The confusion is seen in the phrase ‘governments are expected to observe discretion’. The purdah rules are about governments observing discretion in what they say (OED ‘discreet: being circumspect, not speaking out’). These rules apply during any election, even when the government has a majority. They are conceptually and practically distinct from the restrictions on government decision making which apply when the government can no longer command confidence. This would all be much clearer if the Cabinet Office could use the terms ‘caretaker convention’, ‘caretaker government’ and ‘caretaker period’ in this section of the Cabinet Manual. It would also help if they had a separate section on the restrictions on government publicity which apply at election time. There is no such section at present: merely a very short paragraph which states:

2.34 Some more limited restrictions on government activity also apply during other elections: to the European Parliament, the Devolved Administrations and local government. The guidance issued by the Cabinet Office for the May 2011 elections provides an example.

In articulating the caretaker convention, the Cabinet Office might find it helpful to refer to the section on the Caretaker Convention in the New Zealand 2008 Cabinet Manual (paras 6.16 to 6.35). That is longer and more detailed than we require. The key paragraph on the caretaker convention is 6.20:
6.20 Where it is not clear which party or parties will form the next government following a general election or mid-term loss of confidence in the government, the following principles apply to government business (at every level).

(a) In general terms, the normal business of government and the day-to-day administration of departments and other agencies in the state sector may continue during the caretaker period.

(b) Decisions taken and specific policy determined before the start of the caretaker period may be implemented by a caretaker government (subject to paragraph 6.21).

(c) Matters may arise, however, that would usually require decisions, such as those concerning:
- significant or potentially controversial issues;
- issues with long-term implications that would be likely to limit the freedom of action of an incoming government (such as signing a major contract or making a significant appointment);
- new policy initiatives;
- changes to existing policy.

(d) Decisions relating to those matters should:
- be deferred, if possible, until the political situation is resolved; or
- if deferral is not possible, be handled by way of temporary or holding arrangements that do not commit the government in the longer term (for example, by extending a board appointment or by rolling over a contract for a short period); or
- if neither deferral nor temporary arrangements are possible, be made only after consultation with other political parties, to establish whether the proposed action has the support of a majority of the House. The level of consultation might vary according to such factors as the complexity, urgency, and confidentiality of the issue.

26 October 2013
Mr Ieuan Wyn Jones—Written evidence

Evidence by Ieuan Wyn Jones, Deputy First Minister and Minister for the Economy and Transport in the One Wales coalition government 2007-2011

1. Introduction

1.1. During the second National Assembly term (2003-2007), the Labour Party in Wales decided to form a minority administration. They had won 30 of the 60 seats in the 2003 election. They effectively secured a majority when the Assembly elected a Plaid Cymru member as Presiding Officer and an Independent member as Deputy Presiding Officer. In the event however, Labour found it difficult to command a majority on all votes, particularly when the opposition parties increasingly joined together to vote against the government.

1.2. Labour’s position weakened when it lost its majority. Between 2005 and 2007, the government had to secure deals with the opposition parties to ensure support for their budget, and lost crucial votes.

1.3. As a result of increasing cooperation between the opposition parties, and the likelihood of Labour losing seats in the 2007 election, much of the election campaign in March and April of that year was dominated by the possibility of a coalition government in the Third Assembly term. All the parties were regularly challenged by the media as to their preferred partner or partners in the event of no party securing a working majority.

2. Post 2007 election discussions

2.1. In the 2007 election, Labour lost ground and returned with 26 seats. Plaid Cymru was the second largest party with 15, the Conservatives came third with 12, the Liberal Democrats won 6 seats and there was 1 independent member.

2.2. When it became clear that Labour could not form a stable government with 26 members, discussions began to form a stable government. A number of options were possible, a Labour-Liberal Democrat coalition, a Labour-Plaid coalition or an agreement based on confidence and supply, and the so called rainbow coalition of Plaid Cymru, the Conservatives and the Liberal Democrats.

2.3. At the beginning of the discussions in May 2007, most commentators agreed that the most likely outcome would be a Labour-Liberal Democrat coalition. The two parties had been in coalition in Wales on a previous occasion, between 200-2003 and the two party leaders then remained in post. It was also Labour’s preferred option in the early days of the discussions. Their Plan B was a confidence and supply agreement with Plaid Cymru.

2.4. However, it became clear that the Liberal Democrat leadership in the Assembly favoured the rainbow coalition. They suspended their talks with Labour and negotiating teams from the three parties drew up a programme for coalition government under the working title the ‘All Wales Accord’.
2.5. As leader of Plaid Cymru, I had set up two negotiating teams, one to further discussions with the Conservatives and Liberal Democrats on a coalition, and another to discuss a confidence and supply agreement with Labour. By the 22nd of May, almost three weeks after the election, the Plaid Cymru group called off the discussions with Labour and decided to proceed with the coalition talks with the other two parties. In my view a confidence and supply agreement was only appropriate in circumstances where the smaller party had very few members. Since my party had 15 members, a coalition seemed the only real option. In addition, it could be argued that following the Government of Wales Act 2006, a confidence motion carries little political significance since it does not follow automatically that an election would be called if the motion was carried. Some legislatures have annual confidence motions, the Assembly does not.

2.6. I had looked at examples of confidence and supply agreements elsewhere in the world, and in all cases they were with parties who had single number members, and often as little as 2 or 3. The confidence and supply discussions with Labour were within the context what some have described as the New Zealand option. This was a variation on the normal confidence and supply arrangements, and meant that the smaller partner could secure a ministerial position which operated outside the usual agreement on collective responsibility. In our case, this was dismissed given the size of our group. However, I do believe that it merits further consideration where discussions are with a party with a very small number of members.

2.7. I had come to the view that any agreement reached by the Plaid Cymru group would need the support of the wider party. Constitutionally, we only needed the support of the National Executive, a body of some 25 representatives. However, I felt that I needed widespread support for any deal and decided that I would convene a special National Council, with up to 300 representatives. It was a key decision, since all coalitions go through difficult periods, and wider party support was critical in overcoming them.

2.8. The discussions on the rainbow coalition collapsed when the Liberal Democrats failed to secure the support of their National Executive, prior to the decision being taken to a Special Conference. The Labour leader was then elected as First Minister heading a minority Labour government. Shortly afterwards, discussions commenced between our two parties on seeking an agreement to form a coalition government. These talks commenced on the 12th June and were agreed by the parties at separate party meetings on the 6th and 7th July 2007.

3. The coalition agreement

3.1. The main body of the coalition agreement contained the policy agenda the government would pursue. The agenda represented the coming together of the manifesto commitments of both parties. A small number of manifesto commitments were ruled out as being unacceptable to one side and the other, and the remainder of the time was spent in discussions between the main negotiating teams and party spokespeople. Each side was given assistance by the civil service to ensure that the proposals were deliverable. Party leaders were only called upon to adjudicate if there were difficulties which could not be resolved between the negotiating teams.
3.2. The coalition agreement also contained a key section on governance arrangements. This set out that the principle of collective responsibility by ministers would be upheld. However this principle was underpinned by an agreement to share information and a mechanism to resolve disputes. The Ministerial Code was updated to reflect this agreement.

3.3. It was agreed that although the Labour First Minister formally appointed all members of the Cabinet, he would agree to appoint Plaid Cymru ministers following the nomination of the Plaid Cymru leader who had been appointed Deputy First Minister. The post of Deputy First Minister is not recognised by the constitution or the legislative framework within which the Assembly operated. However it has played a key role in all the coalition agreements entered into in Wales, since the leader of the smaller of the two coalition parties plays a vital role in maintaining the cohesiveness of government relations.

3.4. Given that Plaid Cymru only had three Cabinet portfolios and one deputy minister, it was important to ensure that the party had access to all the papers presented to ministers in departments where we had no ministerial representation. It was agreed that all the papers would flow to the offices of the First Minister and Deputy First Minister. The sharing of information was vital to the success of the government, although the agreement was not always adhered to.

3.5. Two special Cabinet Committees were formed, one to monitor the delivery of the government’s programme, and the other to consider Finance. Since agreeing the budget was seen to be one of the key annual decisions faced the government, early agreement on priorities was important. These two committees were merged into what became the Budget and Performance Committee. This committee was seen as a success across government, since it allowed both parties the opportunity to highlight areas which could cause friction at an early stage.

4. The operation of government

4.1. The civil service’s senior management team, by and large responded quite quickly to the needs of a coalition government, although some found the need to serve two parties very challenging. They had been used to all the key decisions flowing through the office of the First Minister, and found it difficult to adapt to the need to secure the support of both offices (FM & DFM). There were aspects of these challenges which were not satisfactorily resolved even after 4 years. The power vested in the office of the First Minister and the practise followed since 1999 meant that the DFM’s office had to be extra vigilant to ensure that all key decisions had to be agreed, and all information on which those decisions were made was provided. Through the sheer volume of government business, and the relatively small team attached to the DFM’s office, there were occasions when vital information was missed.

4.2. We agreed that both parties should appoint special advisers to assist Ministers with policy delivery. Originally two special adviser posts were allocated to Plaid Cymru with a third post being added later. As well as offering policy advice, and often liaising with senior departmental civil servants, they also were actively involved in
resolving any areas of potential conflict between the parties of government. They would also hold discussions with their counterparts supporting Labour ministers to make sure that we were aware of announcements being made by ministers in departments where there were no Plaid ministers. Senior civil servants found that the existence of special advisers assisted them in the sense that they were kept out of discussions with a political content and context.

4.3. Below the ranks of the senior civil service, many middle ranking officials serving the government initially found the role of serving a coalition extremely challenging. Their default position was that they were serving a continuation of the previous government, and briefings provided to ministers to participate in key debates and to answer Assembly questions contained very little reference to the coalition agreement. I found that these early briefings contained material very similar and sometimes identical to those provided for my predecessor.

4.4. It took some 12 months for this issue to be satisfactorily resolved. After speaking to many officials taking part in the process of providing briefings, I do not consider their attitude to have been hostile to the new government. They were simply operating within the system they were very used to in Wales, where there had been virtually no changes of government since 1999.

4.5. One feature of the operation of the One Wales government was the adoption of policy initiatives introduced as a response to the financial crisis of 2008. These were not included in the coalition agreement but were a direct result of the difficulties we faced. For example, we introduced the ProAct scheme which provided an element of wage subsidy to companies who faced short time working. It was seen as a very positive step by companies who otherwise would have made their employees redundant.

4.6. There were some difficulties in relations between Welsh Ministers and Ministers in Whitehall departments. This was particularly so for deputy Ministers in Wales, and they did not feel that UK ministers appreciated the fact that they had delegated responsibilities. Another factor was the constant changes in ministerial appointments in Westminster, whereas Ministers in Wales stay in post for much longer periods. This lack of continuity made maintaining relationships very difficult.

5. Collective Ministerial Responsibility

5.1. We agreed that collective responsibility would apply to all the decisions of the government in the delivery of the coalition agreement. However, it was also important to maintain the distinct identity of each party, given that the existence of a coalition does not lead to a merger. Each party was allowed to express differing views, where they existed, on all matters outside the coalition agreement. These were invariably in areas outside the devolved competencies, such as Home Affairs, Defence, Foreign Affairs and Treasury matters. These also provided something of a safety valve for the parties.

5.2. One of my early worries was the fact that my party could be outvoted in Cabinet or Cabinet committees, and such a situation had to be avoided if we were to maintain
cabinet responsibility. It was thus agreed that we would not proceed by majority voting in cabinet and committee discussions. Although some meetings inevitably became tense and occasionally fraught, on no occasion did we take votes. We came to an agreement with give and take, and with compromises being reached. I cannot recall an occasion when collective responsibility was under such strain that we had to consider anything approaching ‘an agreement to differ’.

6. Lessons

6.1. There are a number of lessons I can draw from the experience I had in the period 2007-11 in Wales.

6.2. I would have included in the coalition agreement the need to formalise the position of Deputy First Minister. It may be difficult for civil servants to know how to relate to a Deputy First Minister who has no constitutional position, and where the First Minister’s position is established and defined in statute. The power vested in a First Minister is considerable, and the weakness of the DFM’s position was exposed and, if only rarely, exploited.

6.3. We were right to leave the distribution of portfolios between the two parties until after the discussions on the coalition agreement had been concluded. However, it would have been useful to have expert constitutional advice on how the departments were being set up. We found that despite agreement on broad areas, some of the detail led to wrangling over policy areas within portfolios. We found this a major issue in the areas of the environment and rural affairs where the potential for cross over is considerable.

6.4. I did not consider that profound constitutional issues arose when ministers from different parties were appointed to one department. However, one error we made was to have a deputy minister whose portfolio ranged across two departments which had cabinet ministers from different parties. Accountability became blurred and confusing.

6.5. Civil servants need training in how to respond to the needs of a coalition government. We lost valuable time in the early months in ensuring that civil servants are aware that they are serving a new government.

6.6. Time is needed to conclude the terms of a coalition agreement. The current coalition in Westminster concluded their discussions in a weekend. Although we went through a number of iterations, the fact that we took our time (over 2 months) over the formation of a government paid off. It became a durable and stable administration throughout the 4 year period. In the interim a caretaker leader should be appointed to carry out the necessary functions of government.

6.7. I do not consider that political parties are ready to set out coalition terms prior to an election. That may come in time, but we are not there yet. Each party wants to have the freedom to set out its stall during the election period, and present key policy objectives to the electorate. The preparation of a manifesto in two parts, with one setting out the programme for a majority government, and another dealing with
priorities for a possible coalition is probably a step too far at present. We may see a party breaking new ground in this area in time.

6.8. Civil servants have a key role in inter-party talks following a general election. They will already have been involved in drawing up their own plans for implementing the policies of a likely incoming government. Although, quite rightly, they will shy away from giving policy advice, their help in discussing ways in which similar policy objectives can be meshed into a coherent package would be invaluable. I consider that their advice on how departments should be constructed would help, particularly for parties who have little or no previous experience of government. Political parties sometimes carve up departments for party management reasons without sufficient thought to how those departments can be set up and their impact on other areas of government.

25 November 2013
Q100  The Chairman: Good morning, and thank you all very much for coming. Thank you, also, warmly for the written material you have provided for us, which has given dear indications of your different experiences in Wales and Scotland, and also some leads into areas that we want to discuss. We have read Lord McConnell’s 10 tips for making coalition work, which was published in one of the Scottish newspapers. This meeting is being broadcast; if you would be so kind as to, when you first speak, identify yourselves, that would be helpful.

Perhaps I could put this inquiry into the Westminster context. During our inquiry we have talked to people who have been involved in the coalition here, and also people who were involved in earlier arrangements between parties in government, for example the Lib–Lab pact in the 1970s. We have discovered that there is debate within the Westminster system as to whether, when you have the kind of election results that you have experienced in Wales and Scotland—reflecting the PR systems that you have—within the framework that we have of parliamentary government, forming a formal coalition government is the best way of dealing with that; whether a minority government is more appropriate; or whether even something more informal like a confidence and supply agreement makes life easier or is more appropriate within the parliamentary system. Those are some of the general questions that we would like you to address for us in the context of your experience. There are also practical questions about operating in a coalition government on matters that you have raised in your written material on collective responsibility in a coalition. Those types of
matters seem to be relevant when looking at the potential formation of other coalition
governments in Westminster.

It was clear that we were making it up as we went along in 2010 and, possibly, we continue
to do so in some respects. Although the coalition has held together, there have been some
rather extraordinary, in the context of properly understood parliamentary government,
breaches of, for example, collective responsibility. Again, can we learn from what you have
learnt from your experience in Wales and Scotland? That, in a way, is the primary question.
What do we, at Westminster, learn from what you have experienced in coalitions?

*Rhodri Morgan*: I am Rhodri Morgan, ex-First Minister of Wales and leader of two separate
coalitions: one for two and a half years with the Lib Dems, from the end of 2000 to 2003;
and again with Plaid Cymru from 2007. I retired at the end of 2009 but the coalition lasted
until 2011.

The point about what Westminster can learn is highly relevant. I can only speak for myself
but I did think that in 2010, if Labour had been serious about trying to outwit the idea of a
Conservative–Lib Dem coalition, they should have called in Jack, me, and possibly Henry
McLeish, as three wise Celts, to give them the benefit of our experience. Indeed, it may be
that they did call Jack but not me, I do not know; they certainly did not call me. I thought
that was odd, in a sense that at the end of the M4 or the road to the isles, shall I say, we do
have the ability to teach if we have experience. I learnt a great deal from Bertie Ahern, the
Irish Prime Minister and I rang up Helen Clark before forming the coalition with Plaid Cymru
in 2007. I had a long chat to her.

*The Chairman*: Helen Clark in New Zealand?

*Rhodri Morgan*: The then New Zealand Prime Minister. She sent Pete Hodgson, the Health
Minister, who happened to be in Europe, to Cardiff to meet the Labour Party Welsh
Executive on a Saturday morning, after going, inevitably, to see Cardiff Blues versus Leinster
at Cardiff Arms Park on the Friday night. It was incredibly useful to have the benefit of
somebody who had been in a multi-tier coalition in Helen Clark’s administration, with some
parties fully in the government, another minor party in the government but not abiding by
Cabinet collective responsibility and a third party, the Greens, who were in a supply and
confidence arrangement. She had ripped up the Westminster rule book completely on
Cabinet collective responsibility and survived quite happily. She had said, “Do not worry
about Erskine May. Do not worry about all the previous rules. Just ignore them, do your own
thing and you will probably find that you can make it work.”

*The Chairman*: Was that what you took away most vividly, that you just tore up the rule
book?

*Rhodri Morgan*: We did not worry about the rule book or Westminster precedent then.
We pushed ahead, confident that, when you have PR, you are probably quite often going to
have coalitions; if that is what the electorate tells you, then that is what you have to do and
make it work.

*The Chairman*: Do you think part of the reason that you succeeded in doing as you
wanted was because Cardiff is not quite as much under the spotlight in terms of
expectations of things like collective responsibility as Westminster is?
Rhodri Morgan: No, it is simply because it is new; it is not hidebound. Westminster is hidebound, but we are not because it is a new body. New Zealand, likewise, likes to think of itself as a model of democracy, but that does not mean it has to follow everything that is in Erskine May.

The Chairman: What would you have said to the Labour party, for example, had you been asked to come to Westminster?

Rhodri Morgan: It would have been very sad and nothing to do with our experience in Cardiff, otherwise that would have been bad for me, but I would have told Gordon Brown that he, sadly, had to go and that another Labour leader should be asked to take over. But the difficulty was what the Liberal Democrats had said about going with the majority party, however small that majority might be. Then it is how you do negotiations, and this is the point I made in my written evidence about keeping the alpha-males out of this because that is catastrophic.

It is not the party leaders who should do the negotiation. It is people with an ability to set the past aside and to be very non-tribal and try to move on. You have to try to outbid whatever the Conservatives are saying. For instance, when it was becoming evident that the Conservatives were going to demand the dropping of that famous Lib Dem commitment to students to have no tuition fees, could Labour have outwitted them on that? Because there are separate negotiations going on; we had experience of that in 2007. You have two games of chess going on: can you come up with a better offer?

Q101 The Chairman: I must ask Lord McConnell—because he has not yet said whether or not he was consulted—if he had been, what he would have said.

Lord McConnell of Glenscorrodale: I am Jack McConnell. I led two coalitions as well. First, I took over the leadership of a coalition that had existed from 1999 and did exist until 2003 between Scottish Labour and the Scottish Liberal Democrats. Then in 2003, I formed a new coalition with the Scottish Liberal Democrats, which ran for four years until 2007.

I was not consulted by politicians in 2010 but I was in contact with civil servants, which perhaps showed that they were a bit more attuned to experience elsewhere than the politicians were. There is a time and a place for other arrangements, either minority government or confidence and supply. But when the time is right, a coalition is a very workable form of government and this country needs to get used to it.

The two coalitions that I led were very different in many ways. The first coalition in Scotland between 1999 and 2003, I have always described as the “Add-the-Liberal-Democrats-on coalition”, because, essentially, in 1999 there was a Labour programme for government that was being implemented. After the Scottish Parliament elections, there was a need to form a coalition to secure a majority in the Parliament and the Liberal Democrats secured a number of policy concessions in order to join the Executive. In terms of ministerial responsibilities and ministerial cohesion, it had some success, but with occasional difficulties, because no one had anticipated exactly how it might work in practice.

By 2003, we had learnt a lot of those lessons. We had a much clearer central purpose to what we were doing. Both parties had fought the election with manifestos that were partly designed for the possibility of negotiations afterwards. Negotiations were well organised. They were much more on an equal basis, although recognising the different strengths of the two parties. In four years, first with Jim Wallace as my deputy, and then Nicol Stephen, we had a majority of either four or five in the Parliament. For the whole of those four years, we lost no votes on government legislation and only on one afternoon, on one amendment, did
the two parties in the coalition ever fall apart on a piece of government legislation. That was on a licensing amendment on a particularly horrendous day.

We would occasionally split in the Parliament when a matter that was not devolved was being debated. For example, if there was a motion from the opposition on a Westminster issue, we would agree to go our own ways. But on our own legislative programme, I do not think we lost a vote in four years. That was because we had a central purpose and a degree of trust. I would regard those as the two key elements. If the coalition here can keep those together for another 18 months, they will see out the full five years. Trust and a central purpose are the two key things to any successful coalition.

**Q102 Lord Hart of Chilton:** In the essence of coalition, the electorate do not know what they are going to get until they have got it. In forming and tearing up the rule book, was there any reaction from the electorate as to what you had done?

**Rhodri Morgan:** I do not believe there was because, in a way, they were getting what they had voted for. To vote in a majority government is not easy to do under PR. I know Alex Salmond has ripped up the rule book; it is not exactly ripping up the rule book but it is achieving a majority with 40% plus of the seats in a list system, which is intended almost to prevent you getting a majority; that is a remarkable political achievement. Normally speaking, under PR it is very hard to win a majority, especially in Scotland—not quite so much in Wales, because only 33% of the seats are on the list in Wales. If people want to vote a majority in, they can, and if they do not vote a majority in, the implicit outcome that the people have chosen is going to be either coalition or a minority government, which has the potential to be very rocky, as we were in the first 18 months in Wales, where there were no arrangements. Then, when we formed a coalition with the Liberal Democrats, 40% of into that Assembly term, had the electorate voted for that? Not consciously. However, they certainly voted not to give Labour a majority, but to put Labour well ahead of any other party. That is what the electorate chose.

**Ieuan Wyn Jones:** I am Ieuan Wyn Jones. I was the Deputy First Minister in Wales during the coalition with Labour between 2007 and 2011.

The context in which you have a coalition also depends on the election itself. In the election in 2007, because the opposition parties had been working together a lot more in the Assembly, there was an expectation among the media and the public that the 2007 election was likely to produce a situation where the parties would have to work together. In a lot of the political discussion around the election in March and April 2007, I was often asked as party leader, “Which party would you go into coalition with?” There was this general feeling in Wales. When the election result came, nobody was surprised; in fact, they were expecting the parties to talk together. In a sense, the public were ready for it.

**Lord Stephen:** I am Nicol Stephen. I was the Deputy First Minister, as Lord McConnell has explained, from 2005 to 2007 and the leader of the Liberal Democrats in Scotland at that time.

The expectation of coalition in Scotland in 1999 was very different from the expectation of coalition in 2003, because in 1999 the civil service were geared up to give support to Donald Dewar, who was Secretary of State for Scotland, and the Labour party, which was in Government. The expectation in the media was that all of this would be sorted out over the weekend. Famously, Donald Dewar gave two sides of A4 to Jim Wallace, which was general principles of working together, and hoped that the Liberal Democrats would sign up to it. The idea of a negotiation, and that negotiation being, first of all, about policies, and then only
if there was agreement on policies, starting to discuss positions, ministerial portfolios and ways of working, was established in 1999 but there was no understanding of that in 1999. By 2003, it was a far more developed, understood situation and we deliberately took more time in the negotiations, which followed the same procedure. We had much more detail about working relationships in the partnership agreement. I have printed it out. I had not looked at it for a long time. It covered issues such as collective responsibility; portfolios; the roles of the First Minister and the Deputy First Minister, roles which were, as I understand was also the case in Wales, pivotal to the coalition and working relationships; and partnership party support for the Executive and Parliament. It was all set down in quite a succinct final page of the partnership agreement so the policies were the main part of the document. We followed that and it was a far more effective process supported by the civil servants in a much better understood way in 2003.

Q103 Lord Crickhowell: I want to ask about the role of civil servants in this. I was intrigued by what Rhodri Morgan said. He said that alpha males should not be involved in the negotiations. In my dealings with him, he was the Welsh alpha-male par excellence.

Rhodri Morgan: I was not part of the negotiations.

Lord Crickhowell: I was amused by that. He then went on to say that the teams should involve two key, trusted civil servants. Later, you say, “Do civil servants self-select … some pro-continuity and some pro-radical change? Is that proper? Does it cross the line for neutrality principle?” Mr Wyn Jones, you have a great deal to say about the role of the civil service. There are certain things that clearly they are very useful in: how departments are constructed; whether things, in practical terms, will work. Yet you also say that many civil servants had great difficulty, initially, coping with coalition because they had been so used to dealing with one-party governments. So there clearly are difficulties.

In 2010, in Westminster, the parties decided not to use the civil service in the actual negotiations. We would like to hear your views about this and the practical difficulties that may arise in ensuring that the civil servants play a valuable, constructive role but do not become involved in the politics of the negotiation.

Ieuan Wyn Jones: My first experience of working with civil servants in Wales was in 2003 when Rhodri, as First Minister, wrote to me and said, “We would like you to consider whether you want to have a discussion with civil servants about manifesto commitments.” I took that offer up, and I built up a good relationship with him, in the sense that the then permanent secretary designated the civil servant to work with us. I was confident that none of the stuff I discussed with him would be discussed anywhere else. By the time we came to 2007, I was confident that, if I called on the civil servant to give me advice, then I would accept it.

It happened in two different ways in 2007. Prior to the election, we were given access to the civil service. They never get involved in policy options, but the two key things they discussed with us were affordability and deliverability. When we went into coalition discussions in the days after the election, we had three or four possible options. So the civil service was not involved. It would be impossible for civil servants to be involved in three or four discussions going on at the same time.

However, when we were in discussions with the Labour party, the agreement was that there would be one dedicated civil servant attached to Labour and one to Plaid Cymru. We would then discuss how you mesh together policy options that were quite similar but needed tweaking in order to write them into a coalition agreement. That support was invaluable.
You have to remember as well that while Rhodri had been in government, I had not been. Therefore, I needed somebody to tell me whether the stuff that I was saying, what we wanted to include, was deliverable. Having that confidence was very helpful.

On the other point you made about civil servants, there is a distinction between civil servants at the top level, who understood what we were doing, and middle-tier civil servants, some of whom found it difficult. I quoted, in my written evidence, the example of turning up to answer Assembly questions and all the answers were the answers given to my predecessor—they had not really understood that there was a new government in place. I had to send them back and ask for new answers. That took a while, and I was a little surprised because there had been previous coalition governments in Wales.

Rhodri Morgan: To add to the difference between the Westminster situation in 2010 and what we were facing in 2007, it is a four-party system in Wales; in Scotland—there are also the Greens in Scotland, at the edge, making it five—whereas, here, it is three. In 2007, we were by far the largest party. We had 26 seats but not the 30 that we had had in the 2003–2007 Assembly. We had dropped four, which was bad, but we were still twice as big as any other single party. We thought that we should attempt to lead a possible coalition government but the other three parties had been thinking about the possibility of a rainbow coalition, excluding Labour, if they got sufficient votes. They certainly had the votes. However, the Liberal Democrats were very divided as to whether they thought they were closer to Labour or closer to the Conservatives. It is always the big divide, as it was here in 2010.

Initially, we offered the Liberal Democrats the same deal that they had, roughly speaking; two Cabinet posts and so forth, policy commitments on this that and the other. At the same time, the Liberal Democrats, we were aware, were talking to Plaid Cymru and the Conservatives. That process took roughly a month and the Liberal Democrats, as an ultra-democratic party, had all sorts of executive board meetings, which would favour, then reject, then favour, then reject again, various deals. That took a whole month. It was only then that a deal with Plaid Cymru became a possibility, which took the month of June, right up until the party recall conferences which are incredibly important to give you credibility with your political parties, and which we had not done in forming a coalition with the Liberal Democrats a third of the way through the first Assembly term in 1999–2003. Recall conferences, which give the party an opportunity to express a view, are very important if you start off straight after an election. That, in all, took two months: the month of May, while the rainbow coalition and the less favoured Labour–Lib Dem coalition were being discussed in parallel; then the month of June was the drawing up of the agreement between Labour and Plaid Cymru, which was then approved in recall conferences on the Friday night and the Saturday morning, in Plaid Cymru’s case, in the first week of July.

Lord Crickhowell: At which point does the civil service become really important?

Rhodri Morgan: I believe that there were some groups of civil servants who thought, “Here is an opportunity not to have a boring Labour government back in again, with or without junior partners. Would it not be nice to start afresh?” Many civil servants in Westminster probably thought it was time for a change in 2010 and put themselves forward to act as the support team to the negotiations of the rainbow coalition, excluding Labour. Then there were other civil servants who thought, “No, that is not what the electorate want. Labour have got 26; that is twice as many as others and we are supportive of continuity” and so on. It was not war between two lots of civil servants; I do not want you to think that. But it was
a tricky situation to handle in terms of the permanent secretary, when some civil servants are keen on change and others want a tweaked continuity.

**Lord Crickhowell:** But you would have them involved.

**Rhodri Morgan:** They are the people saying, “Is this feasible? Is this affordable?”

**Q104 The Chairman:** We must put it to our Scottish witnesses that one of the things that David Laws said to us, in the context of the Westminster situation in 2010, was that the Liberal Democrats did not favour having civil servants present because of their experience in Scotland.

**Lord McConnell of Glenscorrodale:** I will let Nicol deal with that point. From the point of view of the Constitution Committee, the key point here is that there is continuity—consistency—between civil servants independently, neutrally and confidentially advising oppositions in advance of an election, as they do under existing agreements in Westminster and in the devolved administrations, and civil servants performing a similar role immediately after an election, should negotiations begin. There are two benefits in that: one is that the machine knows what is going on and can prepare for government; they can also inform the politicians and their advisers on feasibility, costs and, at times, perhaps, suggest nuances that might be helpful. It also means—because the civil service takes on the administration of negotiations, both working in teams, but also working to pull it all together at the end—that politicians concentrate on what is important, which is the building of trust and a central purpose for the coalition. There is a real advantage in this and, as long as there is a proper relationship where the politicians and their advisers deal with the politics and the civil service deals with support, administration and cohesion, I think it works in practice. It is also constitutionally consistent with the advice given to oppositions in advance of elections.

**The Chairman:** I will let Lord Stephen comment on David Laws’s point.

**Lord Stephen:** In 1999, it was a difficult experience. The civil servants were learning very quickly, but still learning, the process of coalition. Civil servants, until then, in Scotland, as is the case in Westminster, were used to single-party governments. We were changing that for the first time. David Laws was part of that experience in 1999 because he was part of the negotiations. He once famously requested a very senior civil servant to leave the room and arranged for him to be replaced by another civil servant who would be constructive to the negotiations. David Laws’s experience of 1999, perhaps, coloured his view of what should be done in 2010. I do not know; I read his evidence and he still feels, instinctively, that it would be better were civil servants not involved. By 2003 the Liberal Democrats and Labour were very positive about the role of the civil servants in negotiation. They were professional, experienced and very supportive. We would wish that to continue, I am certain, if there were to be another coalition in Scotland; I cannot speak on behalf of my colleagues at Westminster.

**Q105 Lord Irvine of Lairg:** I am sure you have read the paper called *Northern Exposure*, written by Sir John Elvidge, a former permanent secretary to the Scottish Government. Can the point that all of you have been making really be made better than this: that civil servants assist the formation of coalition governments by providing facts and evidence during the
negotiations to prevent unworkable commitments being drawn up? Is that not what it comes to?

**Lord McConnell of Glenscorrodale:** That is certainly one of the key purposes.

**Lord Irvine of Lairg:** Is there any other key point that you would want to make?

**Lord McConnell of Glenscorrodale:** The capacity of politicians to manage this process and the time scales involved is enhanced by using the administrative capacity of the civil service to support the process.

**Lord Stephen:** In 1999 there were policies that the civil servants described as unworkable, which were enacted and delivered in the coalition government. 1999 was a difficult experience; by 2003, there was none of that negativity or misinformation. I will try to be gentle and leave it at that.

**Ieuan Wyn Jones:** There is another advantage: if you have had civil servants as part of the negotiating team—I am not saying that they negotiated policy but to give advice—once you are then in government, implementing it is a bit easier, because they have been part of the discussions. If they told you in advance, “You now have a policy that is workable”, it is very difficult for them to turn around and say, “You cannot do it.” So that was a tremendous help.

**Q106 Lord Irvine of Lairg:** I am addressing Rhodri Morgan. When I read his very helpful short paper, I found myself agreeing with the first two paragraphs to such an extent that I was nodding my head. But then I wondered whether Rhodri Morgan was being, perhaps, a little too prescriptive in wanting to exclude the leaders, absolutely, from negotiations. Could they not, for example, develop something that could be called a logjam, because of a difference on a major policy matter, which could only be resolved by bringing in the leaders? I wonder whether you would qualify the absoluteness of the first two paragraphs.

**Rhodri Morgan:** That is a failure of my English prose, I am afraid, in that I meant to imply that the negotiating should be done by people who are natural-born negotiators with a conciliatory mentality. Then, when logjams arise, they report back to the leader of one party and presumably to the leader of the other party or parties at the same time. They ask, “Can we give a bit of ground on this?” and they say “No”; “Can we give a bit of ground on that?”, and then they say “Yes” and go back and try to meet them halfway or whatever. Yes, there should be a report-back mechanism, otherwise you could finish up a month’s work and then one of the party leaders says, “I am not signing up to that. You never told me.” There has to be a report-back during that process of negotiating.

**Lord Irvine of Lairg:** Good, we are entirely agreed on that. I was wondering whether you were too absolute in, perhaps, implicitly excluding a face-to-face discussion on the logjam issue between the party leaders on the ground that they are alpha-males.

**Ieuan Wyn Jones:** The way we worked was that Rhodri and I met initially to agree that, if we could agree a policy agenda, we would have a coalition; that was the first meeting. Then the negotiating teams went about it and, by and large, agreed the policy content. Only on one or two occasions during that month did Rhodri and I need to meet, but we did, in order
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to just say “Yes” or “No” or “Sort it out”. But it was pretty rare and the negotiating teams just got on with it.

Lord Irvine of Lairg: Absolutely, but neither you nor Rhodri Morgan precluded?

Ieuan Wyn Jones: No.

Rhodri Morgan: Certainly not.

Lord McConnell of Glenscorrodale: When I was preparing for the committee last night, I had one eye on the TV, where there was a very interesting documentary on Machiavelli, which went through some of his key rules of power. One of the things that he said was that it was important for leaders to have those that you could deputise to in order to do some of the difficult work. In many ways, that is what needs to happen in these negotiations. In Scotland, we had what became known in 2003 as the Cathy and Tavish show, which was Cathy Jamieson, MSP, now MP, who was my deputy, and Tavish Scott, who was delegated by Jim Wallace to lead the negotiations for the Liberal Democrats. They conducted, at the head of two teams, the negotiations. There were certain key points when the negotiations stopped and they came to Jim Wallace and me for a face-to-face discussion on resolving the logjams. It worked very well but it became, on a daily basis, known as the Cathy and Tavish show on the television as they gave an up-to-date media briefing on the progress of the negotiations. Machiavelli would have been proud of it.

Q107 Lord Lang of Monkton: All the details you have given us, both in answers to questions and on paper, have been fascinating. The difficulty I have is reflecting on the extent to which what you are saying has relevance to the situation at Westminster, were there to be another coalition government. The Assembly and Parliament that you are talking about were designed, almost, for coalition because of proportional representation. It is also the case that the areas of policy for which you have responsibility are not the really major national areas of policy that could cause intense difficulties, possibly of an existential nature. Perhaps you could indicate, in answering the question I am about to ask, whether you think the principles that you have enunciated still apply and to what extent they do. In particular, Lord McConnell, in your top 10 tips, one of them is, “Agree a clear policy programme and priorities now and stick to it.” That is point 2. Point 6 is, “Use the agreed programme as a guide, not a straitjacket.” There seems to be a conflict there.

I do not see anything in the top 10 tips referring to collective responsibility. That is what I want to ask, against the background I have described: to what extent was collective responsibility a fundamental principle of your coalitions?

Lord McConnell of Glenscorrodale: We had a very strong commitment to collective responsibility. If I was writing those top 10 tips today, rather than when I did at the beginning of this coalition, I would maybe highlight that more. I took it almost as read. That would be a key element of the coalition. While the current coalition in Whitehall has survived, and I think will survive until the next election, I do not think the breakdowns in collective responsibility here have been healthy for the Government or the country. Whatever happens here after 2015, that needs a bit more thought.

Lord Lang of Monkton: Did you ever experience the extreme flexibility of this matter, which we have experienced at Westminster?
Lord McConnell of Glenscorrodale: I will highlight a couple of examples. I think the Prime Minister has been significantly more party political at, for example, Prime Minister’s Questions, than I ever felt able to be as First Minister in Scotland. I was always very conscious at First Minister’s Questions that I was speaking on behalf of the whole coalition for that half hour every week. The Prime Minister seems consistently to refer to Conservative policies or the Conservative leadership of the coalition in a way that I did not feel able to. There is clearly an agreement that allows that to happen. That is one thing that has surprised me about the current coalition, and is definitely different from the way we operated in Scotland.

The other thing I wanted to mention, which I think is important, because there will be a lot of speculation about this over the next 15 or 16 months, is that we kept dialogue in place during the elections in 2003 and 2007. Although the coalition parties effectively went their separate ways at the beginning of the election campaign and we ran two completely separate campaigns on two completely separate manifestos, there are always going to be issues that arise during an election campaign that need the attention of government ministers with responsibilities.

We had one particular issue, I think in 2003, where a change in the taxation system, following the budget here, had an impact on the provision of a service in Scotland, for which we had not legislated. We had to agree administratively a budget allocation. Jim Wallace and I agreed, behind the scenes, a budget allocation during the election campaign that we then legislated for after the election. Dialogue between the two leaders in a situation where they are constantly debating with each other in public is still going to be important during the election campaign. That may have implications for the way in which parties, the civil service and bodies here operate, which would not have been foreseen.

Lord Lang of Monkton: Mr Morgan, did you have an agreed policy for collective responsibility, to which everyone was strongly committed? Did you have arrangements for setting it aside by agreement in certain circumstances?

Rhodri Morgan: No, not the latter, but it did happen from time to time. At times of party conferences, speeches of a more tribal nature are naturally made. Jack is absolutely right; relative to the present Westminster coalition, we had a tighter definition of Cabinet collective responsibility. It was one government with two parties forming it, not two separate parties in a semi-circus-horse element. It is this business that I refer to in my paper as claiming separate authorship of specific policies, which Jack said he would not have allowed. I agree; I would not have allowed it either, or thought it healthy. The present coalition Government here seems to live with each party claiming separate authorship of specific policies, either by agreement or by assertion. I am not clear which.

Q108 Lord Lang of Monkton: Thank you very much. Can I go back to Scotland then? Between 2007 and 2011 the Scottish National Party governed in a minority position without any formal coalition. Can you tell us how that happened and to what extent there were underlying agreements?

Lord McConnell of Glenscorrodale: As I understand it, they had an extremely informal understanding with the Scottish Conservatives that they would be able to continue in that position without losing a confidence vote. There was not a formal confidence and supply arrangement of any kind; I would not want to suggest that. However, there was an understanding that Alex Salmond had secured the most seats in the 2007 election, and in the views of some in the chamber, it was time to change. Therefore, he could confidently plan
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four years of government on that basis. Each year, when the budget came along, I think—Nicol was in the Parliament at the time and was more active than I was; I was there but I was not in a leadership position—the Conservatives never voted against the nationalist budget at any point in the four years.

Lord Stephen: That is correct. Certainly, they negotiated with the SNP at that time and were keen to try to emphasise Conservative wins from the budget negotiation process. It is not commented on a great deal in the media in Scotland, but if you look at the voting record, you will find, week in and week out, it was the Scottish Conservatives that allowed the SNP to win parliamentary votes.

Lord Lang of Monkton: Do you think it is a viable way of running a minority government, without a coalition? Do you think that the coalitions that you have described are the only way forward?

Lord Stephen: Clearly, it can be viable and it is particularly important as an option when there is a very small minority party. The reason that this developed in Scotland in 2007, although still a surprise to many of us, was because the Conservatives and the SNP had worked in opposition when there had been a Labour and Liberal Democrat coalition. They had got to know each other very well and co-operated in opposition. It depended very much on the circumstances of that situation.

As Rhodri Morgan has explained, some very unusual coalitions can occur. We need to get used to coalition government in Britain. We can be very fussy or certain about how it should work, but the truth is that coalition can be difficult and there can be a lot of surprising compromises made simply to maintain effective government and to avoid the day when coalition breaks down and you have a vote of no confidence or a collapse of the government and a general election. That keeps everybody’s minds focused. There are situations that you expect to come up, but it is not always the minority party that is rebelling; sometimes the larger party can rebel. You have to have a situation where the First Minister and the Deputy First Minister can go into a room and be honest with each other that they are in a situation that is less than ideal. They need to ask, “Do we work together to resolve this and move forward or do we let it all come clattering down?” Over the years we have managed to keep it on track. That is the truth of it.

Q109 Lord Cullen of Whitekirk: I was going to ask about the provision for the First Minister to be nominated within 28 days. Do you see that as relevant to Westminster? Do you see it as useful? Are there drawbacks? I would be very interested to hear what your experiences are. They may help us in our deliberations.

Lord McConnell of Glenscorrodale: I have a unique experience of this. When my predecessor resigned in November 2001, and I was elected leader of the Scottish Labour Party, there was a general assumption that that automatically meant I would become First Minister by the Tuesday or Wednesday of the following week. The first thing that happened was I got a telephone call from the Liberal Democrats to say, “You do realise that there is a vote in Parliament next week and we have to vote for you. We may have been in coalition for the past two and a half years but we are not going to be voting for you unless you come and meet our group and talk to us about your commitment to the agreement that was reached in May 1999.” I had to go from the elation of addressing my own party, and being selected as a leader, to a committee room in the Parliament and sitting down with the Liberal Democrat group, three or four of whom were, at that point, very hostile to the
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classification=Official:Coalition

coalition and wanted to know what I was guaranteeing to secure their votes. That process of the First Minister being agreed by the Parliament by a vote is very different from what would be the situation here.

The Chairman: But would it have relevance? We have had evidence suggesting that there should be a vote on a coalition agreement, which would be effectively the same thing.

Lord McConnell of Glenscorrodale: That would be a healthy arrangement. It ensures that the leaders have secured the support of their parties. It would be helpful for collective responsibility because, if there is a split in the Parliament, then it is easier to impose the rules of collective responsibility. In general terms, I would support that, recognising that it would be a big change for the UK Parliament to go down that road.

Ieuan Wyn Jones: The assumption I always had about the 28 day rule was that there was an assumption that there would have to be discussions; therefore you allowed 28 days. Whether it should be 28 days or six weeks is a matter of debate. In our case, because of various difficulties, it took two months, although Rhodri had been nominated and was accepted as First Minister before our negotiations concluded. I cannot understand how you can bring a coalition together in a weekend; I find that difficult to accept. You are coming out of an election; the emotion is raw. Rhodri used to use the words, “Knock six bells out of each other” during the election. In a weekend you cobble up an agreement; I find that a bit difficult. It took us a while just to bring the parties around to the idea and to work out policy and governance arrangements. It takes a month; in my view, that is the minimum.

It is also important for the body to which you are answerable, which is the Parliament here or the Assembly in Cardiff, to have a vote to sanction that. It not only gives the First Minister or the Prime Minister legitimacy, it also gives the coalition legitimacy because then you have the confidence of the body from which you have to work for the next four or five years.

Rhodri Morgan: The 28-day rule was critical in 2007 because when I was re-nominated we had not got anywhere near the coalition agreement that transpired a month later. What it did was bring to an end the rainbow coalition alternative to a Labour-led coalition. The mood music changed completely after I had been re-nominated. It came a day after the Lib Dems had finally decided at their executive in, I think, Llandrindod Wells that they were not going to support the rainbow coalition—that is, the “anybody but Labour” coalition.

The Chairman: The timing was valuable, then. The timeframe, as you have just pointed out, Mr Wyn Jones, was completely different from the Westminster experience.

Rhodri Morgan: Yes, it was not the end of the beginning but the beginning of the end. It certainly was not the end, but it came half way through and the mood music completely changed. That is when we started to eye Plaid Cymru across the dance floor and they were eyeing us back, as it were. It took another month before we got to the stage of forming a coalition.

Q110 The Chairman: I am going to ask one last question; I think it was raised by Jack McConnell. You said that after the first coalition agreement in Scotland, the manifestos subsequently were partly designed to look towards a coalition in the future. Do you expect that is going to happen in the Westminster election in 2015?
Mr Ieuan Wyn Jones, Rt Hon. Lord McConnell of Glenscorrodale, Rt Hon. Rhodri Morgan and Lord Stephen—Oral Evidence (QQ 100-110)

**Lord McConnell of Glenscorrodale:** Yes. The party manifestos in Scotland in 1999 were partly the creation of parties that were still Westminster-orientated, and then they drew up a Scottish manifesto as an aside. By 2003, the party manifestos were designed, created, written and agreed in Scotland by each of the parties, I think it would be fair to say, without any external engagement from the rest of the UK. However, each of us was conscious that we would be going into negotiations afterwards. As Labour leader, I was preparing a set of demands in which I knew there were some red lines but there were other areas where I was prepared to negotiate. I was very conscious that I needed to have a manifesto that was relevant for those circumstances. I think the Prime Minister and the Leader of the Opposition would be foolish not to think on the same basis for 2015.

**The Chairman:** Although all their representatives who have given evidence to us adamantly state that it is a million miles from their minds.

**Lord McConnell of Glenscorrodale:** They will deny it.

**The Chairman:** Thank you all very much. It has been a very helpful session. You may think that the analogies between your experience and Westminster are not as close as we might have originally thought, but you have illustrated clearly to us that there are many things to be learnt, not least the questions of considering the history and thinking towards what may happen rather than making it up as we go along. Many thanks indeed.
EXAMINATION OF WITNESS

Rt Hon. David Laws MP, Minister of State at the Cabinet Office and Department for Education, and member of Liberal Democrat negotiations team after the 2010 general election

Q44 The Chairman: Good morning, Mr Laws. Thank you very much for coming. We are broadcasting on BBC Parliament this morning. I am assuming that you did not want to make an opening statement. Is that correct?

Mr Laws: Not unless you want me to say anything, chairman.

The Chairman: May we leave it at that. If we have not covered ground that you wanted to cover by the end of the proceedings, we can ask you if you want to add anything at that point, rather than doing it now. Perhaps we could look back to 2010, and ask whether there was a possibility from the Liberal Democrat point of view that there was going to be a coalition arrangement or some form of joint parliamentary and political government after the possibility of a hung Parliament. Were there any manifesto commitments, for example, that you felt were above or below the line in potential negotiations? We have looked at the confidence and supply arrangement in the 1970s, and we heard from Lord Steel of Aikwood last week that he felt that many of the questions about financial stability, which were in the coalition agreement in 2010, could have been covered by a similar type of confidence and supply agreement this time around.
Mr Laws: Thank you for inviting me to give evidence to your committee today. Yes, we did do some preparation for the possibility of a hung Parliament in 2010, not a long time in advance of the general election. My recollection was that it started in earnest in the early months of 2010. Nick Clegg set up two groups, one to look at the process of putting together a coalition agreement, what type of agreement that might be, where there might be policy problems. He also put together another small group of people to look at some of the mechanics of coalition government and to work with senior civil servants, so that there was a clear expectation on both sides of what would happen if there was a hung Parliament. We did not draft our manifesto with that possibility in mind. We put in what were the key Liberal Democrat policies, which we had debated and discussed over the previous couple of years. We certainly thought that one possible outcome of any talks in a hung Parliament was our not being able to have a full governing coalition and perhaps having some sort of confidence and supply arrangement. We drafted various documents, including for the possibility of a confidence and supply arrangement.

Q45 The Chairman: In the end, I think you said in your book, and I believe this has been reported elsewhere, that was not seen as sufficient to achieve the kind of stability that you wanted. I am interested in your reaction to the fact that Lord Steel, who operated a confidence and supply agreement in the 1970s, when the financial and economic situation was pretty desperate, seemed to think it would have been sufficient.

Mr Laws: There were some differences of view among the team. Nick asked to do this work before the general election about whether confidence and supply would be a reasonable arrangement, but it was only after the general election, when we got into talks with the other parties, that the group of us who were negotiating and our wider parliamentary party formed the view that a confidence and supply arrangement would be very much second or third best, for two reasons. One was that this was quite a difficult time economically, as everyone recalls, and we wanted to make sure that there was a government with a strong mandate and the ability to sort out the public finances and get the economy back to growth. Also, there was a view in our party that confidence and supply might be the worst possible combination for a third party, in that it would give us a lot of responsibility for the Government without an awful lot of influence. Whatever was agreed on day one, in terms of the confidence and supply arrangement and the key policies that would become part of that—I published in the volume that you mentioned the draft confidence and supply agreement that the Conservatives put to us during those talks—the feeling was that, whatever was contained in that document, once a government gets up and running there are decisions that you have to take every day about new policy and responding to developments. Whatever, therefore, you put in a confidence and supply arrangement would not give you any leverage over all those ongoing decisions. The clear message that we got from our colleagues in the parliamentary party was that, whatever the result and whichever party we were in coalition with, they wanted it to be a full coalition and not just a confidence and supply arrangement.

The Chairman: I think we will return—I know members are interested in this—to the question of the potential and actual leverage of a third party/second party in a coalition, in the way you have described it. Perhaps we could pursue a little the constitutional principles around the formation of the Government.

Q46 Lord Lang of Monkton: I am interested in the fixed-term Parliaments legislation. One can understand the force majeure of the economic circumstances made it desirable to have a five-year Parliament, but how did this feature in the discussions that you had? Was it
essentially a Liberal-promoted proposition resisted by Conservatives, the other way round, or was it jointly reached? What other factors do you think it brings into play in the overall operation of the constitution?

Mr Laws: I think it was, in both sets of talks, probably about the least controversial of the proposals for political reform. Obviously getting agreement on things like Lords reform and changing the voting system was highly controversial, particularly in some of the talks. Having a fixed-term Parliament was something that not only we were in favour of; I think the Labour party also was, and it seemed to me from the talks that the Conservative party did not regard that as constitutionally objectionable. There was also an understanding that if a coalition government was to be stable and both partners in it were to have confidence in each other over time, particularly with the very big economic rebuilding task that we had to do, a fixed-term Parliament would complement that, because it would give both sides assurance that this was an enterprise that was going to last the period of time and one side would not suddenly pull the rug from under the other after a short period.

Lord Lang of Monkton: Does it not undermine the fundamental principle that a government should remain in power as long as they command a majority in the House of Commons? Thereafter, an alternative should be sought, which might involve a general election. Does it not disenfranchise the electorate to some extent, which might be stuck with a paralysed government after a coalition fails?

Mr Laws: The electorate, as far as any of us who had produced this hung Parliament could judge, would probably most have wanted the parties to work together to form a stable arrangement, particularly at a time of such economic crisis, and to deliver in government. We were well aware that if we could not form a coalition or some kind of stable relationship that would last, we could face another general election. I am not sure that the public would have particularly welcomed that in close succession to the previous general election, because I suspect they would have had a similar view about the three political parties. We felt it was incumbent on us to try to put an arrangement in place that allowed us to work together, unless there was a very clear view in Parliament that the Government could not go on. We wanted to build in an assumption that the Government would continue, rather than create uncertainty about how long they could last for.

Lord Lexden: I have two supplementary questions, if I may. Why five years, rather than four, four having been part of the original Tory proposals under the confidence and supply arrangement put to you? Secondly, why legislation? Why was a binding declaration or a binding motion not deemed sufficient? A huge amount of time was taken to pass the Fixed-term Parliaments Bill through both Houses and, as far as I am concerned as an old-fashioned Tory, it is not a desirable piece of legislation.

Mr Laws: On the four year/five year issue, that was simply what came out of the talks. You could make the argument for either. I cannot remember whether our formal position was four years as a party, but obviously we were coming out of a situation where Parliaments could be as long as five years. I suppose if you ask any politician, right after a general election, whether they want a longer or a shorter Parliament, that may have an influence, but it was not a great issue of principle; it was a pragmatic conclusion to go for the existing length of a Parliament. It made sense, given that there was an agreement on both sides, for the long term to put it in legislation in a clear and decisive way.
Lord Lester of Herne Hill: As an old-fashioned Liberal Democrat, am I not right in thinking that other countries, in their written constitutions, provide expressly for fixed-term Parliaments, as this is a way of achieving legal certainty?

Mr Laws: Yes, you are absolutely right.

Q47 Lord Crickhowell: In the coalition agreement, there were five areas where the parties agreed to adopt different positions, which takes one to the question of collective responsibility, which we have taken a lot of evidence on. I do not think any of us have much difficulty in understanding that there were certain things where different positions or even, in order to keep the parties behind happy, different views would from time to time be expressed. What has surprised many of us was the occasions when the rules we have always understood about collective responsibility have been completely put aside. We have had the Prime Minister and the Deputy Prime Minister making different statements and, perhaps most crucially, the occasion when, after the failure of Lords reform, the legislation on the rearrangement of boundaries, which had gone through both Houses of Parliament, was put aside just like that.

A number of our witnesses have suggested that breaches of the principle of collective responsibility should be unusual and that there should be rules about how they are introduced. They should usually be based on collective Cabinet decisions, they should be announced in advance, and it should be clearly understood what the rules are, if we are not to have a situation where the whole system of collective responsibility goes by the board, which seems to have happened. Some of us lived with that system. We quite often had profound disagreements even within parties. Nonetheless, we lived in the Cabinet I served in on the basis that, if we parted company or disagreed, we resigned. Would you comment on whether this is a satisfactory position or whether there should be some rules or conventions about how we follow the principle in future?

Mr Laws: The principle of collective responsibility is still taken incredibly seriously, and I say that as somebody who has recently been to the House of Commons chamber to defend part of a government policy that happens not to be that of my party, and then been criticised a few days later when my party leader drew attention to what party policy is, in a perfectly right and proper way, for defending the coalition's position. We take this very seriously, but there are two observations, qualifications—call it what you wish—about how this operates in a coalition government.

The first, which to some extent is true in a one-party government but is more complex in a coalition government, is that you can only really have collective responsibility if there is collective agreement. In a one-party government, that might mean the Prime Minister ultimately taking a decision, even if some Cabinet colleagues are concerned, but in a minority. In a coalition, it really does mean that there is an expectation, on all the big decisions, that those will have been agreed at a senior level. There are very good and effective mechanisms, some formal, some informal, for making those agreements. If one party—and I suppose it is more likely to be the smaller of the two parties—feels that it has not been part of a collective agreement, then collective responsibility is difficult to operate in the same way.

Secondly, there is an assumption that, where parties make agreements, particularly in the coalition agreement but also in other ways, if one side of the coalition then diverts from those agreements, that can have consequences for other areas of agreement. That is what we saw in the Lords versus the boundaries issue, although technically we have postponed the review on boundaries into the next Parliament rather than cancelled the legislation
altogether. Of course, we never had a timescale on the boundary review in the original coalition agreement.

**Q48 Lord Crickhowell:** Although the understanding in the coalition agreement was that Lords reform was linked to another policy area, not the abandonment of the boundaries. This was legislation that had passed both Houses after very extensive deliberation and it was overturned simply, quite suddenly, on the decision of the Deputy Prime Minister.

**Mr Laws:** First, the legislation will still come through in the next Parliament. What we are talking about is the timing of it. Yes, there was a disagreement. It is also true that these things were discussed in the same context in the coalition talks. I do not think either coalition party would say that the other can simply walk away from serious commitments made during the coalition talks without there being consequences. I would fully expect that if we agreed to some major policy positions with the Conservative party, or the Labour party in a future coalition, in coalition talks, and then three months or a year into the Parliament we thought, “Oh, we no longer want to hold to those commitments; we will just dump them”, I would expect that to have consequences for the willingness of the other coalition party to abide by the pledges they have made. Broken promises in coalitions have consequences on both sides. That may be uncomfortable, but I think most people would see that as reasonable.

**Lord Crickhowell:** Would you agree that very frequent breaches of collective responsibility also have consequences? They are not likely to inspire great confidence in the electorate. Therefore, some rules, perhaps in the *Cabinet Manual*, about the basic principles on which they operate might be good for the constitution.

**Mr Laws:** Yes, and I think that those rules are there in the latest version of the *Cabinet Manual*, which was issued in 2011. These things are slightly different when you have a coalition government, because previously there was an assumption that collective responsibility meant there was a single-party government; they have a position and all ministers have to stick to that or leave the government. That assumes that it is quite easy and straightforward in a single-party government, which it generally is but, I admit, not always, to come to a single position.

What is more tricky in a coalition is if you expect collective responsibility and you do not have collective agreement on the position. If the Prime Minister simply announced some new policy tomorrow of great importance without consulting our side of the coalition, I do not think we would simply say, “Now, there is collective responsibility. Whatever the Prime Minister said yesterday we must agree to.” We would say, “We would really like to have heard about that and discussed it beforehand.” In fairness to the Prime Minister, he and his senior colleagues are pretty assiduous in making sure that there is a good degree of consultation before major announcements. They have put in place this quad mechanism—two Liberal Democrats, two Conservatives—which is a serious way of making the coalition work and which gives us, as the smaller party, a lot of ability to debate, discuss and agree these sensitive issues in a way that we might not have expected prior to the formation of the coalition. We need to recognise that that is a good mechanism.

**Lord Lang of Monkton:** You stress the importance of collective agreement before collective responsibility could apply. It puts in mind a situation where a policy has had collective agreement, has been spoken in support of by both parties of the coalition at the despatch box and is then departed from. That, I would have thought, was a breach of
collective responsibility. Last week, a question was put to Lord Steel of Aikwood about collective responsibility: that a breach would be acceptable if agreement to depart from it on the specific issue was reached by both sides, but a unilateral breach of collective responsibility would be deplorable. He agreed with that. Do you?

Mr Laws: I am not sure. Are you referring to the Lords versus boundaries issue?

Lord Lang of Monkton: No, I am referring to the generality.

Q49 The Chairman: We are trying to look at the constitutional principles, if there are any, around this.

Mr Laws: My principles would be, first, the need to have collective agreement before collective responsibility; second, if, for example, the Liberal Democrat party, to put it the other way round, tore up two or three major parts of the coalition agreement that we signed in May 2010, and then the Conservative party said, “Frankly, the three things that were really important to you we have changed our mind on, because you have not followed your side of the agreement”, I would say bluntly to my colleagues, in private, that that was the price we paid for going back on part of our agreement. That is important in a coalition government: you have to reach a collective agreement at the beginning and through the process. When you have a collective process of agreement that is respected, collective responsibility flows from that.

Lord Lang of Monkton: That does not answer my question, but I know Lord Lester wants to come in.

Q50 The Chairman: It comes back to the question that Lord Lang put to you earlier, which is that there would be consequences, although you did not elaborate on the consequences, except that other people might exhibit the same kind of bad faith, if you want to call it that, about other agreements. Of course, in a non-fixed-term Parliament, you could have the disintegration of the government because they would no longer command the collective enjoyment of the majority in the House. As Lord Lang put to you earlier, that in a sense has now been put beyond the pale, so you can have these apparent fundamental differences, which do not lead to collective responsibility, without there really being any consequences.

Mr Laws: Up to a point. If both sides lose confidence beyond a certain point, and particularly if the House as a whole wants to have a general election, it can do so. Personally, in respect of the disagreements that we have had in the coalition so far, the most serious of which has been the dispute over Lords reform and boundaries, I do not believe that if we did not have a fixed-term Parliament we would have had a general election. Both party leaders, however irritated they may sometimes be about things that they feel they could have been consulted on better or agreements that have not been made, are strongly committed to the coalition. I believe the things that unite the coalition, particularly over sorting out the economy, are more important than divisions. Both senior leaders have been framed by leading this coalition. I do not think that either of them would have wanted to bail out after any of these disagreements if they had not had a fixed-term Parliament. I do not think it would have made any difference.
**Lord Lester of Herne Hill:** Your answers are making me think more clearly about the difference between a constitutional principle and politics. I think what you are saying is that constitutional principles are all very well but that when you are dealing with disagreements within a coalition it is the political consequences for the coalition, and ultimately the electorate, which really matter, rather than the formulation of formal constitutional principles or rules. Am I misunderstanding it?

**Mr Laws:** That is broadly right. I am saying that, when you have a single-party government, there is an assumption that however they make their minds up, a decision will be made that will usually be the decision that the Prime Minister wants. There is an assumption in a single-party government that everybody will fall into line and if they do not want to fall in line they can leave the government.

In a coalition, you cannot expect either side to adopt that collective sense of responsibility about all the difficult decisions unless there is a process to secure agreement, not just at the beginning of the coalition but throughout the coalition, over major policy areas—not every bit of minutiae. The second thing is that it has consequences if any party to the coalition decided not to honour the pledges it has made, because it is not realistic to assume that the other side will just say, “However often you break parts of the coalition agreement or anything else we have agreed recently, we will just plough on innocently, implementing all the things we agreed.” That would not be a sensible assumption for any party to make about the behaviour of another and I do not think it would be a sensible way for any party to behave.

**Q51 Lord Lester of Herne Hill:** This committee is concerned about constitutional principles, but ought we to be thinking about the difference between whatever constitutional principles should apply and what lawyers would call “rules”? Take co-decision as an example. The coalition agreement says that there should be co-decision on ministers’ appointments, special advisers and so on. It does not say anything about senior civil service appointments, for example. I cannot imagine a constitutional principle that says that in a coalition there must be joint agreement, co-decision, about senior civil servants’ appointments, but I can imagine that the coalition agreement says, “We agree that there will be co-decision in the following way about such and such.” I am trying to find a distinction between necessary rule-making, which is really between the partners, and something up there called constitutional principle. I am trying to see what is up there that is over and above the agreement between the parties and the political consequences. I do not know whether you can help me on that, but maybe it is a lawyer’s preoccupation.

**Mr Laws:** I do not know whether I can or not. I have to be honest and say that I look at this from a pragmatic party-in-power basis. One of the benefits of your committee, with all the resources and experience you have, is that you will probably be able to think more ably than I will about what constitutional implications there are and how much we need to accept that in a coalition government these things will operate in a slightly different way, or how much we should seek formally to acknowledge and codify those things and reflect them in the *Cabinet Manual*.

Some assumptions on this issue that you are raising are particularly relevant to single-party governments, but they work in a slightly different way in coalitions. I leave it to you to reflect on whether you think that there is such a gap between the two positions that these things need to be codified more formally, or whether what I am describing is a sensible way in which these principles should be applied in a coalition government. It feels more like the
latter to me, but there may be wider conclusions to draw, which you will want to do in your inquiry.

The Chairman: I think you have hit on the nub of this inquiry; that is precisely what we are attempting to define: whether the understandings, conventions or rules, or however Lord Lester has described it, become irrelevant if you have a coalition government; whether you can, in a typical British muddling-through manner, to use a cliché, just do the pragmatic thing that you have described, or whether that is transgressing some basic principles.

Mr Laws: I would not want to imply in any way that this more pragmatic approach meant that we should not take the principles of collective responsibility very seriously. They are taken very seriously. It is what you have to do before you can assume that that collective responsibility is fully engaged.

The Chairman: We are reassured to hear you say that, because some of our witnesses have suggested that this so flexible that frankly it has gone by the board.

Q52 Baroness Falkner of Margravine: Some of our witnesses have also suggested, like you, that pragmatic coalition government entails some give, a bit of elasticity. It is pointed out that the immediately previous Government, the Blair/Brown years, and all the evidence of lack of speaking from the same hymn sheet, reminds the public whether a government are delivering broadly on what they are supposed to deliver on or not. Ultimately the test will come from the public in a general election.

Could I take you, Mr Laws, to the formation of the Government and the issue of how ministerial appointments were ascertained and divided up? What thought was given to breadth versus depth, which has been mentioned—in other words, having several Liberal Democrats or Conservatives in one department, rather than scattering them more widely across government? Can I take you, in the second part of that question, to the coalition agreement for stability and reform of 21 May 2010, which clearly set out the steps to be taken to go through appointments? I remind you that in the recent reshuffle, it appears from what we have read in the media that certain appointments were made—I think it was the Home Office—without the consent or knowledge of the Home Secretary, and likewise one or two other appointments. To what extent do you think it is important to stay with the coalition agreement for stability and reform and work those processes through diligently, rather than springing surprises on ministers?

Mr Laws: On ministerial appointments at the beginning of the coalition, all that was discussed between Nick Clegg and the Prime Minister, I suspect, very late in the process of forming the coalition. As long ago as the first Scottish Parliament coalition in 1999, where a number of colleagues had taken advice from other countries about how coalition-forming was best done, we had taken the clear view that you should not talk about the apportionment of jobs while you were trying to get the policy agreement, particularly if it affected people who were on the negotiating committee. Their view might be tainted by which party was offering them the plumiest job. We did not discuss in any way in the negotiations, with either the Labour party or the Conservatives, how ministerial jobs would be allocated. All that was done by Nick Clegg and possibly Danny Alexander, probably 24 hours before the coalition was put together, and in the case of the junior ministerial jobs it was the day of the formation of the coalition. I do not know how much consideration was given to the possibility of putting a lot of Lib Dem ministers in one department. I think we had decided that it would be more sensible to
make sure we had representation across the Government. We did not want to have full responsibility for only two or three areas. Personally, I think that is the right thing, in that it is risky to colonise bits of a government and to be very detached from other areas. If we had been detached from major departments such as the Treasury, there would have been much more risk of the coalition parties parting company, because we would not have felt fully involved.

As far as the reshuffles since the election are concerned, they followed the usual protocols about the extent to which the Prime Minister has to consult other colleagues. I do not know whether and how secretaries of state were consulted in the recent reshuffle, but I imagine there are precedents for Prime Ministers parachuting in new junior ministers without detailed discussions with secretaries of state. If it happened in the recent reshuffle, I doubt it was the first time ever.

Lord Lexden: Could I return for a moment to disagreement and collective responsibility? Why has greater use not been made of the Cabinet’s Coalition Committee, set up specifically, as I understand it, to overcome disagreement and thus help maintain collective responsibility more effectively and diligently? This body has hardly ever met.

Mr Laws: It has been displaced by two things. One is that, whereas we might have assumed at the beginning of the coalition that we would need a very formal mechanism to reach agreements, the reality is that quite a lot of things are agreed bilaterally, sometimes formally, sometimes by more informal arrangements between the Prime Minister, the Deputy Prime Minister, the Chief Secretary and others, sometimes Oliver Letwin and me. Relationships and sense of trust at the top of the coalition have been much better than might have been expected, given that we did not know how a coalition would work.

The second thing is that I do not think we anticipated that there would be this quad mechanism when the coalition was formed, which in some ways operates almost as an inner Cabinet of two Liberal Democrats and two Conservatives, and sorts out many of the thorniest issues; it discusses autumn statements, budgets and so forth. Those mechanisms—formal, informal, bilateral and quad—have displaced the need for a more clunky, heavy-handed committee to meet. You probably know better than I do, but I think that committee has met incredibly rarely, because there are better ways of sorting out problems.

Q53 Lord Crickhowell: In response to Baroness Falkner’s question, you dealt with appointments. I am interested in dismissals. This is one of the areas where the authority of the Prime Minister in a normal government has been greatly altered. I believe on one occasion, replacing a minister, Clem Attlee simply said, “Not up to it”, when asked why he had got rid of that person. If there is a failure of competence, the Prime Minister has less freedom than in the past simply to say, “Not up to it. You’re going”. Is the same level of agreement likely if the Prime Minister wants to get rid of a minister? Does that not put enormous pressure on the Deputy Prime Minister—say the Prime Minister wanted to get rid of someone—who may feel he has to defend his own appointment, recommendation or his own party? Is this a potential area of difficulty?

Mr Laws: I suppose it might be. I am not aware that it has been. So far, it works on both sides on the basis of both party leaders—the Prime Minister and the Deputy Prime Minister—consulting each other and discussing all appointments, so that there are no surprises. I am not aware of a situation where either has sought to interfere in or displace ministers in a way that goes beyond the arrangement that they have to agree these things between them.
I believe that the process of making some of these things more difficult by requiring agreement between the Prime Minister and Deputy Prime Minister is probably quite healthy and means that the tendency to keep reshuffling governments and ministers at high speeds is impeded in a way that probably benefits the public. That is a side effect of coalition government, rather than something we have built into the structure of it.

**Lord Lester of Herne Hill:** My experience in government is antique, because it is a long time since I worked with Roy Jenkins in the Home Office in the mid-1970s, but in a single-party government there was a great problem about access to information and informed decision-taking for Cabinet ministers who did not have a proper brief outside their departmental responsibility. For example, Roy Jenkins would have no Home Office brief about devolution or labour law or matters of that kind. It may have changed, but that was certainly true in the mid-1970s.

When one is dealing with the coalition, co-decision on some issues is important. I wonder whether, with the benefit of your experience, you think it would be better to have closer agreement on co-decision on, say, the appointment of senior civil servants or the use of prerogative powers—war making, treaty signing and so on—and access to background information before decisions are taken, so that the junior partner can really be involved in the decision-taking process.

**Mr Laws:** Some of those things work extremely well, perhaps for the collective benefit of the Government; there are others where they do not always work so well. I think, although obviously I do not have any experience prior to this Government, that the Cabinet committee system, if anything, works better than it might have done in a single-party government, because Nick Clegg chairs, for example, the Home Affairs Committee. The write-around process is very real, where ministers often challenge proposals that are made from other departments. The Home Affairs Committee has real and genuine debates about issues, which sometimes are along coalition lines but sometimes are not. There is greater expectation of debate in some of these areas than might be the case with single-party governments, and there are other major policy debates that are had through the quad process that give more scrutiny to things like the budget and the autumn statement than probably would have happened under some previous governments, albeit for only the members of the quad and not more widely.

The challenge is that departments are set up generally to function as pyramids, where the status of the secretary of state is very different from that of the junior ministers. Therefore, where we do not have, as the smaller party, the secretary of state in a department, we have to work hard to make sure we are across not just the areas that our junior ministers are responsible for but everything that is going on in the department and that we are able to anticipate coalition problems and issues before they arise or before a policy decision has been taken. Sometimes that works quite well and sometimes it works less well. It depends sometimes on the ministers in question; it depends upon the adviser present and how much advisers can help ministers to spot issues and controversies that are coming up. In that area, departments are not automatically set up to operate in a coalitionising way, if I can use that word.

**Lord Lester of Herne Hill:** In future, do you think, in the light of what you have just said, that the junior partner should bargain harder for more real co-decision and information sharing?

**Mr Laws:** There might be some advantage in codifying more clearly in coalition governments: the rights of the junior party, access to information, the way in which junior
ministers might be involved in decision-making within departments where the departmental head is not in the same party, and the extent of adviser support. At the moment many of our junior ministers rely on often very good advisers, but advisers who are pooled across departments and are usually advisers to the Deputy Prime Minister, working for him rather than for the junior ministers, which is sometimes a strength and sometimes may be a weakness. It would be possible to formalise best practice more effectively in coalition governments. At the moment, we are amending in a rather British way the previous single-party arrangements, sometimes quite effectively but sometimes less effectively.

The Chairman: Lord Lester has helpfully taken us into looking at what may become a more regular pattern—we are told by the pollsters and so on that there is a potential for further hung Parliaments—and what you have learnt from the formation and operation of the present Government. I think Lord Hart wanted to pursue this.

Q54 Lord Hart of Chilton: It cannot have escaped anyone’s attention that there may be a replication of the voting intention of people in 2015. I am curious to know, having learnt from your experience so far, what steps you are taking to prepare yourself for next time round.

Mr Laws: We have not started any of that work yet, because it is too far from the next general election, to put it bluntly. I would not be surprised if we started earlier than we did last time, which was only a few months beforehand, but given that there is still whatever it is—18 months—until the next general election, it is a little early to start fantasising about what the outcome might be. We might have a hung Parliament, but my party has practised at expecting hung Parliaments for a number of decades and sometimes they do not come along as frequently as you would wish for.

Lord Hart of Chilton: Would that possibility affect your drafting of a manifesto?

Mr Laws: No. Ultimately, the job of all the parties is to give people a clear choice. It would be very sad if all the parties wrote down their policies and then thought, “Oh my goodness, we’ll never get agreement on these things”, and ended up with a convergent process where the public did not get a choice between different visions for the future. We will write our manifesto on the basis of the policies that we believe in. Of course, all the parties will have to reflect carefully on the way in which they communicate what they can deliver during the election campaign, on the basis that they will have to think, if they are in a coalition, about which of these things they could definitely deliver and what the consequences would be of making a statement during the election campaign about something that might be tricky afterwards. All the parties will probably write their manifestos based upon what they believe in. They then need to think carefully about communicating their positions throughout an election campaign, particularly if they think a hung Parliament is more likely than not.

Lord Hart of Chilton: What lessons do you think have been learnt as to the processes by which consideration is given to coalition formation?

Mr Laws: Do you mean by the parties themselves?

Lord Hart of Chilton: Yes. I am looking at it from your point of view.
Mr Laws: We had an enormous amount of scrutiny of our process within our party as to whether we had made the right decision. We had this triple-lock process that had been put in place, in the event that there might be a coalition with another party, which required us to consult the parliamentary party and our federal executive, and potentially to have a vote of party members. There is not really a lot more scrutiny that you can have than that. Other parties may want more formalised mechanisms to agree, rather than outsourcing it completely to their leaderships.

Last time, we were quite lucky in that the coalition was formed quite quickly and the pressures there were, partly because we had the difficult economic circumstances, so there was a lot of pressure to get on with things. We had a hung Parliament where we had some leverage, because although a coalition with the Labour party was really quite tricky, given the numbers, there were arguably two potential outcomes that gave us some leverage. All these things led to relatively speedy decision-making compared to coalition-forming in other countries, and therefore we did not have the situation where the Prime Minister had resigned and left the country for a long period of time with no government.

In the future, we should not assume that things will be quite as straightforward. We should not assume that the parties will resolve their differences quite as quickly. Because we have had one coalition, parties will be inclined to insist on making sure that there is a lot of scrutiny and that they feel happy with it. We almost came to a situation in 2010, as you know, where the country was left for a while without a clear new government, when Gordon Brown decided to resign as Prime Minister. It almost overlapped the new Government and the old one enough that the country did not notice. It is possible in future that we might need to formalise a bit more the rules about how governments come and go, so that we avoid the risk that we could easily have had if we and the Conservatives had taken a lot longer to negotiate our coalition agreement, or indeed if our party had decided to veto it. There could have been a difficult situation where the country would have been left without a government. We should not take that risk for granted. We need to reflect on what is expected from ingoing and outgoing governments next time.

Lord Hart of Chilton: Do you have views about how that should be?

Mr Laws: I personally think that it should be even clearer than it was last time. We knew last time that there was a very clear expectation that the parties would come up with a proper arrangement to give the country a government, make decisions among themselves and not involve the Palace in difficult decisions about how the parties interacted. There was a sort of expectation that the Prime Minister would stay in place until that process was largely finished, but your committee and others could arguably look at precisely how those rules operate and work out whether there needs to be a stronger presumption that the Prime Minister, whatever media pressures there are—particularly if the Prime Minister is seen as having lost the election—has to stay there until we know whether a government have or have not been formed. I can see an argument for that, because it could have been a less tidy process if a few of these things that I mentioned had happened.

Lord Hart of Chilton: Do you think that, once reached, a coalition agreement should be approved by Parliament?

Mr Laws: It implicitly is through the Queen’s Speech. That is my view. That effectively acts as a mechanism for Parliament to decide whether they agree the coalition agreement and the programme that the government have.
Q55 Lord Powell of Bayswater: We are curious as to why you decided not to take up the offer of civil service support during the coalition negotiations. From your book, one gets the impression that it was partly the experience in Scotland, where apparently Liberals felt that the civil service was under Labour influence. They regarded Labour as the bosses. That could not really have been the reason in Westminster, because the Conservatives had been out of power for 13 years, so you were on an even basis in that way. In hindsight, do you think it would have been better to involve the civil service and would you do so in future, given the greater complexities you have talked about?

Mr Laws: We do not have a party view on this, but I can tell you my view on it. My view is that we had a lot of very professional high-quality civil service support, in the sense that if we wanted to have questions answered about policy or costing details, we had all that to hand, straight outside the door, in a very professional way, as you would expect from our civil service.

The question that parties had to answer, both Labour and the Liberal Democrats, and the Liberal Democrats and Conservatives—because we were both offered this by the Cabinet Secretary—was whether we wanted civil servants in the room discussing how we put together our two different manifestos. Personally, I do not think that was either necessary or likely to facilitate a good, open and honest discussion. Sometimes, when two parties sit down after fighting a general election and discuss thorny policy issues, it can be better to do so in a more informal way than where people feel that there are formal minutes being taken and that it is a much more formalised process.

This was not the main reason why we did not have civil servants in the room in 2010. From Scotland there is also a slight risk, where you have two parties with such a different strength of numbers of Members of Parliament or Members of the Scottish Parliament, if you are the smaller party, that the civil service will see in effect that the people who are most likely to be in government and at a senior level in government are from the larger party. While the civil service is always very professional in our country, there is potentially an imbalance of influence between the smaller party and the larger party, which could be an issue. The main reason why we did not have the civil servants in the room this time is that we did not really feel that it would be conducive to putting two political manifestos together, but we had full and very professional support when we needed it.

Lord Powell of Bayswater: If you are after the next election negotiating a similar coalition between the two same parties, would that still apply? You would have had five years experience of working with the civil service, which is reasonably unembarassable about what politicians say to each other in coalition negotiations or even in Cabinet.

Mr Laws: I would stick with our previous mechanism. I do not know whether last time we invited feedback on the drafts as we were going along. I genuinely cannot remember whether we did or not. It would not surprise me to know that the civil servants knew what was in our drafts, because that is the job of civil servants: to know everything.

I would want to ensure that we gave civil servants the opportunity to say, “Have you thought whether it is possible to introduce these 18 bills within the first six months? Have you thought about the practical issues to do with this, that and the other? If you had been in government last time, you would have realised that we tried this and there were these particular problems.” That sort of input is quite useful, but when politicians are hammering out political agreements and trying to pull their manifestos together, sometimes they want to be able to speak in an open and blunt way. That argues for not formally having civil servants in the room, but that is only my opinion. Colleagues on the other side of the
coalition may have a different view. Even some of my colleagues in the negotiation might have a different view.

**Lord Powell of Bayswater:** Would it be useful to have a coalition negotiation handbook that covered all the technical issues? I am not talking about the policy, but simply the sorts of issues you have just mentioned: have you considered this, that and the other, the timing of legislation and all these issues? There is a checklist.

**Mr Laws:** This is a matter for the Cabinet Secretary rather than me, but it might be useful at some stage to have set out for the various parties that might be involved in this what the options are for involvement and what advice they can get. As you know, we were offered at one stage input from the Governor of the Bank of England, which we did not take up. I cannot remember whether it the security services offered as well, but it might be useful to parties in coalition talks to understand the different forms of civil service involvement and support, which might not just be in the room or outside but, “Do you want us to look at the drafts and give you useful feedback? Do you wish to see the Governor of the Bank of England separately or together to discuss things?” It could be useful for people to be clear about what the options are.

**Q56 The Chairman:** Following on from Lord Powell, you have talked a couple of times about planning, if we can call it that, and possibly formalising and codifying various points. Lord Powell has invited you to comment on the possibility of a handbook. You spoke as though the general election in 2015 was a long way away, but in terms of codifying, formalising and putting matters of this kind into some transparent form, which could be understood by potential participants in a coalition agreement, it is not very long. Do you know from the ministerial perspective if the Cabinet Office is looking at these matters?

**Mr Laws:** I genuinely do not know. I do not believe any ministers are. It would be for the Cabinet Secretary to decide how he wanted the civil service to prepare for this.

**The Chairman:** Beyond the civil service point, which what Lord Powell was raising, you have mentioned formalising and codifying some other things, such as the recognition that the Prime Minister who is in Downing Street should be entitled to stay there, even if he has lost the election, until there is a clear agreement about who is forming the next government.

**Mr Laws:** I am not aware that there is any political discussion of these things. Since there might, in certain circumstances, be a political interest in the rules being set in one way rather than another, ministers would be cautious about getting involved in that and would look, first, for debate to be stimulated in this place, as you are already doing. Also, on some of the narrower issues, we would probably look to the Cabinet Secretary to decide what he thought might be best practice, not perhaps on some of the issues about when and where the Prime Minister should leave, but on things about what offer might be made to political parties to facilitate talks.

**Q57 The Chairman:** It seems that there is some sort of breakdown with the understanding that you have that the civil service should not be involved in these negotiations because, as you said, you may need to have tough discussions about relevant and relative manifesto commitments; but the civil service, in the form of the Cabinet Secretary, should be the person to identify the rules by which these discussions should take place.
Mr Laws: Where the rules are fairly dry and practical about what support would be offered by the civil service to parties in coalition, it is right that that should be led on by the Cabinet Secretary and the civil service rather than by politicians. On other issues, such as whether it is appropriate to codify more clearly the assumptions made during a hung Parliament about what the Prime Minister of the day will do, that might be something for wider debate, but I do not believe there is such a debate at the moment. If committees such as yours felt that there were weaknesses in the existing system, that might be something that the ministers who are responsible would want to look at carefully.

The Chairman: You have used the words “potential to formalise or codify” some of these general issues. It seems to me, therefore, that it is important that this should be considered by the politicians, as well as by the permanent civil servants.

Mr Laws: I am sure that if your committee says we should do that, the right minister—

The Chairman: I wish we had that authority.

Mr Laws: It would not be me, because I do not lead on these constitutional issues, but I am sure that the ministers responsible would look very closely at the recommendations.

The Chairman: Thank you very much. Does any member of the committee want to pursue any points? Did you have anything further you wanted to say, Mr Laws, or were there things we have not covered that you were anxious to get on the record?

Mr Laws: No. I think that you have covered all of the points that I was expecting you to want to raise.

The Chairman: Thank you very much for your time. It has been very valuable.
The Chairman: Good morning. I am sorry we kept you waiting. We had two articulate and generous witnesses who were giving us a great deal of interesting information. We are most grateful to you for coming, Mr Letwin. This is the final evidence session on this long and interesting inquiry. We have spoken to a wide variety of people, some who are in government now and some who have been in government, with interesting perspectives from the historic as well as the contemporary points of view. Could we start with a little modern history from 2010 and ask you how well prepared you think the Conservative party was for the possibility of coalition government before the last election?

Mr Letwin: Thank you. I should answer that in two ways. Up until the middle of the election campaign, we were rather unsurprisingly focused on trying to win the election in the traditional way. You cannot try to half win an election. We therefore were devoting—I think it would be fair to say—zero attention to the question of what the outcome might be, other than trying to ensure it was a Conservative government. But there came a moment when the polls made it clear that there might be a hung Parliament and, at that stage, as has been documented recently by various people who have written books about the subject, we began to think about what the shape of the negotiation, if one was forced on us, might be. I was able to devote—I was commanded to devote—most of my time to doing that in the last few days of the election campaign.
Being politicians, we were fascinated by what the other parties had in mind in any event. If you are fighting an election campaign, you need to know a lot about what your opponents are thinking and what they are likely to say or do. Therefore, it was not as if we were suddenly discovering the existence of other parties and their programmes; we had quite a working knowledge of it already. It was a question of trying to work out how to deal with the negotiation that might occur in the light of the knowledge that we already had and in light of the considerable ignorance and guesswork, because, while we were fascinated by it and could read what was public, we were not privy to the internal discussions of other parties. We had to make certain guesses about what things really mattered to them and what things they would be likely to give way on.

**The Chairman:** What did you learn from that that might be useful running up to 2015? One of the suggestions that has been made to us—it was made last week by Lord McConnell of Glenscorrodale, who had experience in Scotland of creating coalitions—was that manifestos would be somewhat flexed in light of that kind of experience that you had in 2010, in theory, but we now have it in practice. What is your observation of that?

**Mr Letwin:** We did not, in any way, contemplate this when we were writing in the manifesto.

**The Chairman:** I meant now. What are your reflections on what you learnt from 2010 for the present situation?

**Mr Letwin:** It is early days. I cannot say that we have a draft of the manifesto sitting around. My feeling is that we will almost certainly want to write the manifesto that we will want to write in the hope of having a full-fledged overall Conservative majority administration. We will write it in that way and then come to any other questions that we may come to at any other time, if we come to them.

**Q133 Lord Crickhowell:** I would like to start where Lord Falconer of Thoroton finished, which was with fixed-term Parliaments. I entirely understand why a fixed-term Parliament was introduced with the coalition, but the question was put to him whether, if his party won the next election, they would keep a fixed-term Parliament. His answer was pretty clear: he would want to do away with it because it completely alters the way in which parties are likely to behave in the aftermath of a close election result. You are more likely to go for a coalition in the knowledge that you cannot do what Harold Wilson did on two occasions and form a minority government with the expectation that you might win an early subsequent election. He also argued that five years was too long; he would prefer four years. If, as I hope, our party wins the next election, would you contemplate doing away with the fixed-term Parliament? Or is your view that it has such advantages that we should keep it for ever?

**Mr Letwin:** The first thing I should say is that this is rather above my pay grade. I do not get to make those decisions and as far as I am aware—and I think I would be aware—that is not, at the moment, any settled disposition one way or the other. It is not a subject that we have spent any time talking about. Slightly hazardously, I give you my own opinion, therefore, but it is on the proviso that it is entirely my own opinion and it may not be in any way what emerges as a consensus. I think there are significant advantages to fixed-term Parliaments. Incidentally, our system is not, strictly speaking, as I am sure you are aware, a system of fixed-term Parliament; it is a system of fixed-term Parliament subject to the Government
being able to continue to command the confidence of the House, which is a very important difference, and I think a correct proviso.

Subject to that proviso, the general assumption that you are trying to govern for quite a long period encourages one important form of behaviour in which this Government have tried to specialise, and in which all governments, whatever their persuasion, should try to specialise. That is, trying to do what one thinks is the right thing for the country in the long term, knowing that we will be judged on how far the public agree with you that the country is heading in the right direction five years later, rather than trying to take a series of steps that will look good three months or nine months later, enabling you suddenly to launch a general election campaign and score a great victory. If Britain were endlessly governed by short-term manoeuvres designed to create popularity on a short-term basis, it would be very badly governed.

**Lord Crickhowell:** Yes, but a number of our witnesses have been so critical or hostile to the whole business of coalition that they have argued they would prefer a confidence and supply agreement or an attempt to form a single-party government rather than to go in to the whole agreement. What is your view about the desirability, having not got quite what you wanted but pretty close to it—being the largest party—of having the freedom, which we lack at the moment, to run the thing as the party would like it run?

**Mr Letwin:** I think that single-party majority government is preferable, because it means that what the party in question has put before the electorate at the time of the election and what it does and is judged on are more likely to be consistent. That increases genuine democracy. The business of reaching agreements after an election—privately, inevitably—which do not, inevitably, fully reflect the programme of either or any of the parties that have formed that coalition, is intrinsically less democratic than one where you go before the electorate, you put your programme, you try to win government and then you carry it out. Therefore, I am entirely in favour of, and remain entirely wedded to, the idea that the best way to govern this country is to have overall majorities.

I do not think that fixed-term Parliaments particularly lessen the chances of that. Incidentally, it would be perfectly possible—indeed it was one of the things that we contemplated at one stage—to have a supply and confidence arrangement in a fixed-term Parliament. I do not know whether this would be easier or more difficult that in a non-fixed-term Parliament. But the only real difference between fixed-term Parliaments and non-fixed-term Parliaments is the ability of the Prime Minister of the day to seize a moment of popularity and try to get a majority, an even larger majority or an overwhelming majority—whatever it may be. While you can see the desirability in some circumstances, it tends to reduce the long-termism in people’s minds. The governments that I respect, even ones I do not agree with—and I think that the Attlee governments were good governments of this country—did the job they were trying to do well, because they had a view and they carried it out. They did that consciously thinking it was the best thing for Britain. Similarly, the Thatcher governments tried to do the right thing. In both those cases, the people leading those governments thought about them as multi-year projects and—you and I have some experience of this—Mrs Thatcher did not seek to maximise popularity at a particular point in a Parliament. She rather regarded it as a badge of honour that you got very unpopular when you were doing difficult things, and you ended up putting before the electorate where you had got to and they judged. That is the right attitude. Fixed-term Parliaments tend to encourage that attitude.
**Lord Hart of Chilton:** One side of the coin of fixed-term Parliaments is the grand and lofty views that you have just expressed. Another side of the coin, surely, was that the fixed term was to help cobble together the coalition and keep it going?

**Mr Letwin:** It is perfectly true that the reason why we felt it necessary to agree a fixed-term Parliament was because that made it much easier to manage the dynamics of coalition. I hope you are not thinking that I am in any way dissimulating; I entirely accept that that was the origin. As a matter of fact, as we thought about it, we came to the conclusion that it was quite a good idea for the reasons I have set out. It was both convenient and desirable.

**Lord Hart of Chilton:** I understand that, but if you are a majority government again, surely the advantages of not having a fixed term outweigh the fixed term.

**Mr Letwin:** This leads to the question of whether our constitution should be responsive to the convenience of the then Prime Minister, or should it be responsive to what it is that gives incentives for a succession of Prime Ministers of different political persuasions to govern as well as they can for the long term?

**Q134 Baroness Falkner of Margravine:** I did not want you to leave with the impression that the majority of witnesses were hostile to coalition government. The part-pris witnesses perhaps might have been, but there was a considerable range of evidence from non-partisan people who thought that coalition and indeed cabinet government were working very well. I want to take you to a question about the Cabinet Office and the role of the civil service. To what extent do you believe, having been at the heart of the previous negotiations, that the civil service should be involved in negotiations and provide support to the parties?

**Mr Letwin:** I would not want to make a general rule, because I am sure that different circumstances call for different approaches. But my experience was that while the most senior people in the civil service, including the then Cabinet Secretary, were immensely helpful and co-operative and offered all sorts of support, when it came to it, we did not need it. I cannot speak for the Liberal Democrat side of the talks, but from our point of view we knew what it was that we were trying to achieve. We knew what it was that we thought we could adjust in our own programme. We guessed what it was that our Liberal Democrat colleagues could adjust. We did not need any help.

I found those days rather liberating in that respect. Ever since then there is this large apparatus that has huge advantages but also has huge disadvantages. It clouds as well as illuminates. In those days, things were very clear. We had spent a long time—in my case, five years of hard work—putting together a policy programme. I knew every detail of what we were trying to do. The ability to discuss that with another set of politicians who equally understood what they were trying to do, under circumstances where there was, as a matter of fact, a great deal of overlap, although some notable differences, was a liberating experience because we did not have a crowd of people explaining to us all sorts of difficulties. We were just working out what we hoped for. I have been thinking subsequently—I have not come to any conclusion yet—about how one could try to do this better in the circumstances of a majority administration. But part of the effect was that, because the programme for government was a contract between two parties, it had a hold—and has ever since—on the Whitehall machine that I am not sure manifestos typically have had. There is a pretty elaborate process that we set up for if you wanted to change anything in the programme for government, and a pretty elaborate process we set up for
monitoring—I have spent half my life over the last few years doing this—whether we were, in fact, executing it. Therefore, the machine has found it extraordinarily difficult, even where it has been tempted to do so, to explain why we cannot do something. It therefore has moved into the right mode, which is to work out how we can do it with least disadvantage and greatest advantage. I would like to get to the point where whichever party wins whatever election as a majority administration with a manifesto, it has that manifesto taken in the same spirit thereafter, because that is a very important document. That is something that should not be regarded as an interesting frippery that goes alongside Times editorials. It should be regarded as a programme.

Baroness Falkner of Margravine: It imposes a sort of discipline on everybody—all three parties.

Mr Letwin: Yes. Incidentally, that also helps democracy. If parties go into elections knowing that they are going to be expected to carry out that manifesto, it is a jolly good thing, because it makes them focus on whether they really intend to carry it out.

Baroness Falkner of Margravine: It has certainly focused Liberal Democrat minds on the future. To follow up that broad question, were civil servants to be involved, do you believe that might open up the right for Freedom of Information requests about coalition negotiations to apply, where civil servants are involved?

Mr Letwin: That is a very interesting question but I am afraid one you will need to put to a lawyer. I do not know the answer to that. I am dear that it is one of the disadvantages, in my view, of any coalition discussion and of coalition government. I am clear that in order to make a coalition happen you have to have genuinely private conversations, because you have to be able to say things to one another that you would not want anybody else to hear. Incidentally, another liberation in those days was that it was the only time in my 17 years in British politics when I have not had the slightest concern for what anyone in the media thought, because they did not know anything; we were not telling them anything, nor were our Liberal Democrat counterparts. It was a marvellous moment when we moved out of the media glare. Again, I am not sure that is good for democracy, but it is very pleasant not to have the slightest intrusion.

The Chairman: Five days?

Mr Letwin: Very short.

Q135 Baroness Wheatcroft: Since government moved back into the media glare, one issue that has been a focus of their attention has been the doctrine of collective responsibility and when it can be abandoned. I would be fascinated to hear your views. We heard some quite spiky views from Lord Falconer in our previous session about whether it is appropriate for a government, once established as the Government, to have Cabinet members dissenting.

Mr Letwin: There are lots of things to be said about this. No government could persist for very long, very effectively, without some doctrine of collective responsibility. There has to be a degree of acceptance that, even if you do not happen to sign up to a particular measure,
if that is the decision your colleagues have arrived at, if you do not want to resign, you get on with it. Having said that, it would be naive to claim that, at any time in the lifetimes of any of us, British politics has ever consisted of governments no member of whom has ever said or briefed anything which would suggest any degree of dissent from anything that government is doing or contemplating doing. As a distinguished journalist, you have probably spent a great deal of time highlighting to the British public where there was dissent. So, in that respect, this Government, and coalition government in general, is not that different from single-party government.

Incidentally part of the point of the doctrine of collective responsibility is to create a certain atmosphere within the machine so that it is effective—that is perhaps for our fellow citizens the most important aspect of it. As it happens, this coalition Government have had an internal dynamic that has been extremely courteous, gentlemanly and grown up. I do not want to be partisan, but my strong suspicion is that the previous regime contained certain tensions at certain points that were more vigorous than have been the case in this multiparty Government. I do not think that you either get pure unanimity of view or unruffled process of government out of maintenance of the pure doctrine of collective responsibility.

Having said that, it is true that you need to make adjustments to the doctrine of collective responsibility if you are running a coalition and you have run out of certain agreements. For example, it was arranged that on a very small number of matters, if we pursued them as a government, Liberal Democrat members would abstain, thereby enabling us to carry measures in the House of Commons, but without Liberal Democrats voting for them. Is that a breach of collective responsibility? I suppose, in some sense, it is, but it is a workmanlike, grown-up way of dealing with an inevitable issue. We have developed certain constitutional devices in order to keep the show on the road in a workmanlike, grown-up way. That is the best feature of the British constitution. I can see all sorts of disadvantages about our unwritten constitution, but one of the advantages is that when you hit an unforeseen circumstance, sensible people get around the table and work out a sensible way of dealing with it and the machine works out how to manage that. That is what has happened.

Q136 Baroness Wheatcroft: For the effective working of coalition government, do you think that those areas capable of a divided approach should be agreed in advance with all else being subject to collective responsibility?

Mr Letwin: I would not be hard and fast about it. Most of those where there have been permitted divisions were agreed in advance. But occasionally, as we have gone along, we have identified other such cases, and that has worked okay too. My experience of coalition overall is that it is remarkably like what Relate counsellors have told me is true of marriages: that they go well if the two parties have a relationship that enables them to be open with one another so they understand one another’s feelings as well as is possible for human beings to do. It is certainly that way with coalition. The discussions we have between ourselves at the centre of the coalition about how to conduct affairs in the light of disagreements are very open and robust in the sense that, with perfectly good humour and in an atmosphere of cordiality, we nevertheless have very different views. We bring these out and we discuss them. If they were festering sores by now, the whole thing would have collapsed long ago.

It is because it is in the open, we have decided there are some things that we cannot do together because we cannot deal with them at all. There are other things that we can definitely do together because we agree about them entirely, and there are other things where it is more nuanced; one side is willing to let the other side go forward but only under certain conditions—that is where you have these kinds of accommodation. That is all brought out as long as you are having an open discussion on a continuing basis.
Baroness Wheatcroft: Have there ever been occasions when you have felt you needed a Relate counsellor?

Mr Letwin: No. I can give you a good example of the lack of need of that. When Danny Alexander and I originally set up the mechanics of the coalition, with a great deal of help from Lord Wallace of Tankerness, we provided for a Resolution Committee, consisting of Danny and me, to deal with issues that were causing trouble before they got to the Coalition Committee, which is five people on either side. The trigger for this was the ability of the chair or deputy chair of any of the Cabinet committees—and if the chair is Conservative, the deputy chair is always Liberal Democrat or vice versa, which is another party mechanic—to raise a flag and say, “The committee may have voted by majority or by consensus in such and such a direction but I, as a member of the opposite party do not agree with this; now we go through this process.” We rather imagined—I should not speak for Danny but certainly I rather imagined—that this was a process that was going to happen pretty often. It has never happened. The committee I am talking about is a committee in name only; it has never met. Regarding the Coalition Committee, I cannot remember the exact number of times we have met but it is likely three or four, never because of such a red flag but because we were discussing some issue that we wanted to resolve. Mostly we have resolved things simply by discussion between representatives of the two parties—ultimately, of course, between the Prime Minister and the Deputy Prime Minister; quite frequently between them, George Osborne and Danny Alexander; sometimes between them, George Osborne, Danny Alexander, David Laws and me; and sometimes with other groups. But one way or another, formally or informally, we have arrived at accommodations.

The Chairman: I am picking up that your understanding of this and your expectation is that, as long as there is cordiality, good arrangements and openness—all of these words that you have used—anything can go: there is no, as it were, given structure or given principle of government that cannot be used—you used the words convenient and desirable—in certain contexts.

Mr Letwin: The wonder of the British constitution is that, as long as everybody has found a sensible solution, it is implemented.

The Chairman: The sensibleness has to be judged by whom?

Mr Letwin: Ultimately, by the electorate, but in the meanwhile by Parliament. You have to command the confidence of the House of Commons.

Q137 Lord Crickhowell: You have been wonderfully gentlemanly and diplomatic, and clearly fulfil an invariable function at the heart of government by being so. Nonetheless, there have been some fairly remarkable breaches of what used to be thought acceptable conventions—over Leveson and boundaries, just to cite two. A number of witnesses, including Lord Strathclyde, expressed strong views on this topic. There is a strong view that has been advanced to us from all sorts of quarters that, while the general position you describe is inevitable in a coalition, the breaches of collective responsibility should be as few as possible; they should be, wherever possible, announced in advance; they should be agreed in advance by the Cabinet; and there should be an understanding that if you have frequent, violent and unexpected actions, as the boundary decision was—let us face it—this is bad for government and sets a bad precedent for government. We have heard strong views on this, not just from critics and academics outside but also from members—previous members, at
any rate—of this Government. Do you not think there should be general rules that reduce
the rather unexpected—for those of us who lived in single-party governments—remarkable
events as far as possible?

Mr Letwin: You will not be surprised to hear me say that I wish that my Liberal Democrat
colleagues had been willing to support the boundary changes. They think they were right,
and it is regrettable that we did not have the capacity to carry them through. I agree with
you that it is always advantageous that government should proceed as smoothly as possible
with as few unexpected ruptures as one can manage. I accept your general principle.
Having said that, I do not think there is any merit in creating tests. You face the situation you
face. It may be one in which you are trying to manage a party running an overall majority
administration that has within it great tensions on a particular issue. There have been some
in our party’s history and in the Labour party’s history as well.
You may face a situation where you are trying to run a coalition government or indeed a
supply and confidence arrangement. In any of these circumstances you hit certain issues and
you have to find your way through them. I do not think it is sensible to try to create tests
that mean, if you cannot pass those tests, you have to give up on the job as a whole. If I am
asked whether I think this is as good a government as we could have provided the country
with an overall Conservative majority administration, I would honestly have to tell you that I
do not think it is quite as good. There are some things that we would have done that we
have not been able to do and some things that we would not have done quite the same way
if we had been able to do them freely ourselves.
But if I am asked a different question, which is whether I think that in 2015 we should be
able to put before the British public a reasonable account of what has been achieved to
rescue a country that was in a very dire state in 2010, I think we shall be able to put forward
such an account. We would have provided a good government, and if there were some
accommodations and breaches of conventions on the way, accepted by Parliament, to enable
the government of the country to be carried on to achieve those generally good results, that
is much better than if it had fallen to bits.

Lord Crickhowell: You do not feel that some strengthening of the Cabinet Manual would
be desirable, as some people have suggested?

Mr Letwin: No. It would require great wisdom to foresee all the circumstances that might
arise. It is better on the whole to manage them as you go forward.

The Chairman: What we are trying to get at, and it is really a reflection of my previous
question, is not the potential different circumstances that may arise but what principles all of
this should be based on.

Mr Letwin: As I have grown older I have become less entranced by principles and more
interested in outcomes for our people.

The Chairman: That is an interesting remark.

Q138 Lord Lexden: Not as a principle, but would it have helped the practice of this
coalition and perhaps the practice of further coalitions if its programme had been submitted
to a vote of the House of Commons? Secondly, would there have been merit in submitting
the proposed Prime Minister to a vote of the House of Commons?
Mr Letwin: On the first, I would not have any objection to the idea that the programme that emerges should be put before the House of Commons. One could predict quite accurately what the result would have been in 2010 if, having formed the coalition and produced the programme for government, it had been put before the House of Commons.

Lord Lexden: Would it have made the subsequent practice easier to have had a vote on the entire programme?

Mr Letwin: I do not think so, because the evidence so far suggests that the day-to-day contractual nature of it—the fact that it is an undertaking of two parties, without which the coalition would not be able to proceed—means that it has been extraordinarily carefully implemented. I can send this to the committee if it would be helpful, but we literally go through month by month every item on it to see how far we have progressed; we have pretty much implemented what is there.

We have done the same process with the mid-term review. We are less fully advanced, inevitably, in implementing that, but we go through the same arduous business of working out, “Are we doing these things?” There is a world of difference between carrying out a programme and achieving the results you hope to achieve by that programme. There is much work to do on implementation in the sense of getting things to happen on the ground in the way that we want them to happen, but as a discipline—that the Government are setting out to do certain things and to check that we are doing them in a timely way, as promised—it has been fantastically effective. I do not think there is any previous British government who will be able to claim so clean a bill of health on doing what they said they were going to do, for better or worse—in my view, better.

On the question of the Prime Minister, I defer to you and to other members of the committee who are much more learned than I am about the constitution, but I take it that the fact that someone is Prime Minister in our constitution means that it is expected that they could win a vote of confidence. I wonder whether one needs to test that by having a vote of confidence; I do not see any particular reason why I would object to that being the convention, although I do not see any particular advantage in it. At any moment, presumably, the opposition, which is an important part of our constitution, has numerous representatives in Parliament and is quite able to speak for itself, could call a vote of confidence and find out whether the Prime Minister still has confidence. The fact that it has not presumably means that it thinks he would get a vote of confidence so I do not think it would make too much difference.

Q139 Lord Cullen of Whitekirk: May I ask you about the time that may be taken for the negotiation of a coalition government? Do you think more needs to be said for the benefit of the public and media, either in the Cabinet Manual or by this committee, to make sure that the period is long enough to ensure that all necessary detail is dealt with without, at the same time, hobbling processes of government?

Mr Letwin: In a word, no. I hope to contribute to sparing the nation finding out whether this is true by having a majority Conservative administration after the next election. But if there were, at any future date, another coalition and if anyone were to ask for my advice about how quickly to try to put it together, my advice would be to try to put it together even more quickly than we did, and it was pretty quick.

You are dealing with a situation in which both or all of the parties that are in discussion know a lot about their programmes and other parties’ programmes, particularly because they have just fought a general election and led up to it thinking about their programmes.
There is no more information they are going to get. The longer you take, the less clarity there is and the greater the chance that all sorts of trees will hove into view and obscure the wood. It is the clarity of brevity in the light of deep knowledge of what each is proposing that I think gives huge advantage. When I look at countries like Germany, the Netherlands and others, which have much greater experience of coalitions and take much longer to negotiate them, and I talk to politicians in those countries, they seem to think it would be much nicer if they could do it quicker. We found a way of doing it very quickly. That was hugely advantageous.

It is true that the circumstances of 2010 were very particular. We were on the brink of an international financing crisis. We had just suffered a massive recession. We had a banking crisis. We had a hung Parliament. If you wanted to create circumstances for a run on the pound and an inability of people to borrow money to finance what was then the largest deficit in the western world, you could hardly have created better circumstances. The Cabinet Secretary, when he first addressed us—or almost any time he addressed us in this process—made it clear to us that as far as he was concerned it was up to the political parties and the nation as a whole what government they ended up with; but he wanted a government, because he did not think this country could sustain not having one for very long under those circumstances. I accept that it was a highly charged circumstance and if you were in much better circumstances, the need to proceed at that pace would be less than it was then. However, it would still be worth doing, because you need a certain amount of time, but you do not need more than that time—the more time you spend, the less good it will be.

Q140 Lord Crickhowell: I would like to ask the question that Lord O’Donnell posed to us: whether you have a view about the convention that government ministers are not entitled to see the papers of previous governments from different parties. There is a problem for the civil service in dealing with this if a new coalition were formed and one party in the previous government became a party of the new government. What the rules should be was exercising Lord O’Donnell considerably. Lord Falconer, who admittedly had not been given prior warning and answered off the cuff, did not seem too worried about it. Lord O’Donnell I think was rather hoping that we might have some helpful suggestions. We are looking for some suggestions from you as to what might be the sensible way of dealing with it.

Mr Letwin: I would not be at all happy with the proposition that the discussions that Conservative colleagues and I have had during this period of government would be available to Labour counterparts were they to become the government next time or the time after that. Whether we had been in any one of those Parliaments a government of coalition or otherwise seems to me immaterial. The principle is that I cannot find out, rightly as it seems to me, what Gordon Brown said to the Cabinet Secretary or what two Labour ministers said to one another until whatever expiry of years it is that enables these things to be made public. I cannot access that information. It is right that I should not be able to, because they knew that I would not be able to and therefore they were able to have the conversation they did.

Lord Crickhowell: The information might be provided to the Labour party, for example, by the Liberal Democrat members of a new coalition. If that were to happen, they might say, “This has happened,” but the actual papers, which the civil service have, would not be revealed. That is the difference.
Mr Letwin: Yes, I have been operating on the happy assumption that they will not be.

The Chairman: Thank you. Mr Letwin, do you have any points you feel we have missed that you wanted to make?

Mr Letwin: Not at all. Thank you very much.

The Chairman: That has been very helpful. We would be grateful, if it were possible, to see your timeline of delivery. That would be very helpful.

Mr Letwin: Yes. I warn you to stand by for a large pile of paper.

The Chairman: Perhaps you want to have somebody edit it so we see the main corners being turned. Thank you very much indeed. This was very valuable.
MONITORING OF COALITION COMMITMENTS

Following my appearance in front of your Committee on 11 December, I am writing to provide further detail about how the Government monitors the implementation of Coalition commitments.

The principle Coalition Commitments, excepting Treasury publications (Budget, Spending Reviews and Autumn Statements) can be found in two key documents. These are the “Programme for Government” (May 2010) and the “Mid-Term Review” (January 2013).

There are several ways in which progress is reported and tracked, both physically and internally, within departments and the centre of government.

Public Reporting of Progress

Other than the “Programme for Government Update” which was published alongside the “Mid-Term Review”, the public reporting on progress against commitments is provided in departmental business plans.

Since the formation of the Coalition Government, the primary role of business plans has been to provide transparency and public accountability on implementation of the reforms and policies set out under the Coalition Programme for Government and Mid-Term Review, as well as other agreed Government policy.

Each department’s business plan includes its agreed Coalition priorities, the key policy and implementation actions departments will undertake and, by when; expenditure for each year of the current Spending Review (SR10) period and the indicators and other data they will publish on the cost and impact of public services.

Real time updates are published on a dedicated website (transparency.number10.gov.uk), reporting publicly whether the actions set out in departments’ business plans are being carried out and completed on time. The updates set out which actions have been completed, and for those that have been missed an explanation is given.

The last refresh of the Business Plans (May 2013) incorporated each department’s related Mid-Term Review commitments. At the time of writing, over 90% of those business plan actions have either been completed or are already underway.

Internal Reporting of Progress

Just as business plan progress updates are available to the public, the Cabinet Office’s Implementation Unit also provides ministers with an update each month, highlighting any missed actions and recommending ministerial action as appropriate. These updates provide the Chief Secretary and me with a detailed overview of how the Government is progressing against these important commitments and can often help in my discussions with Cabinet colleagues about departmental implementation issues.
In addition to the detailed monthly reporting of business plan actions, I also receive a comprehensive update each quarter on the current status of the individual Coalition Commitments. This rather large spreadsheet provides us with an assessment of whether a commitment has been or is expected to be fulfilled. It illustrates the level of progress the Government is making and helps us to prioritise and decide where to direct our focus, should the need for any support to departments be necessary.

I trust that you will find this information helpful, and that your clerks will be able to access and print out from transparency.number10.gov.uk whatever check-lists of actions and commitments the Committee wants to see.

Rt Hon. Oliver Letwin MP
Minister for Government Policy
Cabinet Office

20 December 2013
Transcript to be found under Rt Hon. Paul Burstow MP
Overview

1. The 2010 general election produced the first hung parliament in nearly forty years, and resulted in the first formal coalition government since 1940-5. This outcome challenged the conventional expectations of Westminster politics: that arithmetic of the simple plurality electoral system – combined with the structure of the party system and the parties’ electoral support bases – would result in a decisive outcome rewarding a single party with the spoils of government.

2. Yet, it is important to note that coalition government is unexceptional. Constitutional reforms intended to realise a more consensual model of democracy were introduced throughout the twentieth century, and gathered pace from 1997 onwards. In particular, the process of devolution in Scotland and Wales has meant that minority and coalition politics is anything but exceptional. Moreover, coalitions at Westminster are not without historical precedent, with the Conservative and Liberal parties governing together in 1895, 1916 and 1931.

3. The experience of coalition and minority government in Scotland and Wales constitutes a fertile site of lesson-learning and good practice. In Scotland and Wales, non-majority governments have clearly been accepted as legitimate governing outcomes by parliamentarians and the public, reflected in the relative stability of their cabinets. The average duration of cabinets in both legislatures is 1,327 days for coalitions and 917 days for single party minorities, which significantly exceeds the respective European averages of 868 days and 552 days (1945-1999).

4. Undoubtedly, there are important constitutional and institutional differences between Westminster and its devolved counterparts. The Westminster system of government rests on the capacity of the executive to dominate the legislature, which is a source of both governing stability and strength; whilst the institutional structures associated with devolution have been purposely calibrated to realise a more consensual form of governance. It is also important to note the different competencies of the devolved regions and Westminster, which have generated alternative governing imperatives. Nonetheless, these differences should not be overstated, as the devolved administrations and Westminster are ‘most similar’ owing to a shared constitutional history and culture; the cross-over of parties and individuals between the two levels; and the way in which the experiences of governing at each level reflect the continued shift towards greater ‘modified majoritarianism’.

Collective ministerial responsibility

5. Coalition government runs counter to the expectations of a single-party majority cabinet, and is seen to challenge collective decision-making. Yet, such a simple read-off rests on an assumption that political parties are homogenous entities, and a more accurate and nuanced approach to political parties would be to view them as flexible umbrella organisations that span a range of factions and groupings. In reality, parliamentary parties are often heterogeneous, and in Westminster democracies politicians tend to face a number of conflicting loyalties to their constituents, their party and to Parliament. There is a long – indeed, often colourful – history of such schisms and divided being acted out within the arena of government.

6. There is therefore no automatic reason to assume that and coalition government undermines collective responsibility within Cabinet. Several mechanisms have been created to ensure greater
cohesion within Cabinet; and the relative infrequency of Cameron’s ministerial re-shuffles has further prompted stability. There are also important pragmatic electoral incentives for cabinet stability.

7. However, it is clear that beyond Westminster, the binds of collective responsibility are weaker. Both parties acknowledge that coalition is a short-term arrangement; and as the 2015 general election approaches, each party has attempted to distinguish itself in terms of ideology and policy. This is known as the ‘unity-distinctiveness dilemma’, whereby coalition partners seek to simultaneously maximise governing coherency effectiveness whilst promoting their individual identities. The recent Eastleigh by-election witnessed fierce competition between the Conservatives and Liberal Democrats, the Secretary of State for Work and Pensions advising the Conservative candidate to continually remind voters that ‘your last MP was a liar’. Similarly, at the Liberal Democrats’ 2013 spring conference, the Deputy Prime Minister robustly criticised his Conservative colleagues for failing to deliver a fairer society.

8. A simple reading of Fixed-Term Parliaments Act 2011 would suggest that the fixing of parliaments, and the requirement of an extraordinary majority in the House for its dissolution, have altered the basis of Parliament’s right to express its confidence in the government of the day. Nonetheless, the political reality is that the Act at best preserves the status quo and at worst further insulates government in terms of parliamentary accountability. In reality it is unimaginable that – should a Prime Minister deem it necessary – the decision to dissolve parliament early will be met with resistance within the House, thus risking a ‘lame duck’ government.

9. It is entirely compatible with constitutional tradition for any government to collectively agree to set aside collective responsibility. The current Programme for Government, contains provisos for the relaxation of collective responsibility around issues such as university tuition fees and electoral reform, and the Ministerial Code was revised in 2010 to allow collective responsibility to be relaxed ‘where it is explicitly set aside.’ Such ‘agreements to differ’ can also be seen as embedding important ‘safety valves’ into the system. However, it is crucial that either the specific issues (when known) for which collective responsibility will be set aside are clearly specified and agreed on in advance, or that broad principles for the setting aside of collective responsibility are delineated (e.g. in relation to issues of conscience). It is of crucial importance to have clear criteria, as this promotes both governing stability and governing transparency. Conversely, the ad hoc suspension of collective responsibility erodes stability, and risks the uncertainty and opacity of confidence-and-supply forms of governing.

Democratic legitimacy and electoral mandates

10. The average duration for coalition negotiations in Europe is twenty-three days, but in the UK a broad agreement was reached within five days, with the Programme for Government and the Constitutional Agreement for Stability and Reform being published nine days later. Yet, although a case can be made that in this instance, negotiations proceeded too quickly and without sufficient transparency, it would be unduly prescriptive to set a limit on their length. Negotiations will always be affected by a range of uncontrollable and highly variable electoral factors such as the distribution of seats and the ideological distance between potential partners.

11. During the coalition negotiations only limited civil service support was taken up, as parties preferred to talk directly without the presence of civil servants. There is the potential that the involvement of the civil service could undermine its neutrality, and therefore the scope and nature of civil service support should be clearly delineated (e.g. in the Cabinet Manual). A further risk to impartiality is posed by any reforms that institute a more direct relationship between ministers and civil servants (e.g. through ministerial patronage), which will necessitate consideration in the event of their introduction.

12. Comparative research reveals that coalition agreements are generally accepted as binding, having an intrinsic enforcement value, particularly if made public. This logic therefore suggests that Programme for Government should assume the same status as a manifesto, and thus be subject to Salisbury-Addison Convention. The majority of commitments in the Programme for Government are derived from the coalition partners’ manifestos, with around twenty percent of commitments being attributable to both parties. However, around fourteen percent of its commitments appeared in neither manifesto, thus lacking the (tacit) consent of the electorate. Whilst these commitments are the likely outcome of complex and highly political bargaining during the negotiations, democratic transparency should encourage parties to respect a rule of ‘no surprises’ with regards to content, especially if the status of coalition agreements is elevated to that of a publicly endorsed manifesto.

Conclusion

13. There are several scenarios for May 2015: an outright victory (most likely for Labour); the continuation of the current coalition on a jointly-elected platform; the continuation of the current coalition following post-hoc negotiations; or, the establishment of a new coalition between Labour and the Liberal Democrats. The least likely of these outcomes is the continuation of the current coalition on a joint platform endorsed by the electorate. Each partner has frequently reaffirmed the transitory, pragmatic nature of its relationship and have begun to assert their policy and ideological differences in increasingly robust terms.

14. Yet, whilst recent opinion polls place the Opposition ahead, evidence suggests that coalitions are likely to become an established feature of the British constitutional landscape. The critical factor that underpins non-majority outcomes is the existence of a system of multi-party politics, which is exactly what appears to be emerging in the UK. The ‘number of effective parties’ competing in general elections has steadily increased from 2.87 in 1979 to 3.72 in 2010; and the rise in issue-based voting has allowed new parties to rise in prominence, such as the UKIP who were the fourth largest party in 2010, securing 9.6% of the popular vote. At present, the impact of multi-party politics remains constrained by the first-past-the-post electoral system: whereas 3.72 effective parties competed in the 2010 general election, the number of effective parties returned to Westminster (i.e. in terms of seats won) stood at 2.58. The issue of electoral reform is beyond the scope of this inquiry, but it is important to note this tension, which will be further exacerbated if turnout continues to fall. What remains clear is that the two-party system – which has been the critical factor in the stable single-party government associated with Westminster politics— no longer functions, and that non-majority governments to become anything but exceptional.

30 August 2013

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7 This calculates the number of parties weighted by their relative strength, using a widely recognised formula. See Laakso, M. and Taagepera, R. (1979) ‘The Effective Number of Parties: A Measure with Application to West Europe’, Comparative Political Studies, 12 (1), 3-27.
Transcript to be found under Mr Ieuan Wyn Jones
The Chairman: Good morning, Lord Steel and Lord Morgan. Thank you very much for coming and for agreeing to discuss the areas which we have indicated we want to explore. I am sure that you will have specific points you want to make. There is a broad range of constitutional questions that the committee is concerned with. We would like to focus on some major points, one of which is the possibility of a looser arrangement for government than a formal coalition within the British system when there is a hung Parliament. The second is the question, which has historical as well as current interest, of the position of a minor party or a second partner in a coalition. Then there is the question of parliamentary endorsement of any arrangements that are made, whether formal or informal. Finally, Lord Steel, we would be very grateful if you were able to reflect on the situation in Scotland when you had a coalition government and whether there are any points we should look at in the context of the Westminster Parliament. We have been interested in the somewhat sanguine academic evidence that we have had from some of our witnesses about the infinite flexibility of the British constitution and therefore a lack of concern that people have about anything which is done provided that it is done by an elected politician. I reflect my own view in saying that some of those things in which one is either experienced or brought up to believe in about British government seem to be perfectly malleable to any political decision which happens to be useful at the current time. Perhaps I may begin by asking you both whether you think that there have been major departures from constitutional practice and constitutional convention in the formation and running of coalition government. One is referring particularly to the current one, but there are many
historical examples which you, Lord Morgan, have illustrated very helpfully. Lord Steel, perhaps you could begin.

**Lord Steel of Aikwood:** I think the historian should talk about those examples.

**The Chairman:** Indeed. I defer.

**Lord Morgan:** This is a different kind of coalition from many that we have had. The one that I have written about at some, perhaps excessive, length was the coalition of 1918–22. That was with a fragment of a party—half the Liberal party roughly—and the consequence was that its future was always unstable. Indeed, from about mid-1920 onwards, the coalition was simply drifting with no particular purpose other than the rather important purpose of keeping Lloyd George as Prime Minister—but no other particular policy. This one is two entire parties operating under a fixed-term Parliament and they are going to be there, for sure, until May 2015. Having said that, and perhaps I could elaborate on this later, I think in some ways, extraordinary though it was, the coalition of 1918 was a more orthodox and properly formed coalition despite its very bad reputation, whereas this one seems quite unusual and I am not sure that the constitution is capable at the moment of coping with it.

**The Chairman:** That is the point we would be very grateful for you to expand on, and please do so now—about the constitution being able to cope with the present situation.

**Lord Morgan:** It seems that that the coalition was not elected. It went before Parliament not on the basis of an agreed manifesto. In 1918, divided though they were, the coalition Liberals and the Unionists, or Conservatives, had one manifesto. The people knew for whom they were voting. My recollection is that about a million and a half people voted for the coalition Liberals whereas nobody actually voted for the Liberal Democrats or, for that matter, the Conservatives to be in this coalition. So there is an absence of a mandate, an absence of a manifesto, and consequences, which I am sure we will look at, for collective responsibility. That seems to me, frankly, bizarre under the present circumstances.

**The Chairman:** We shall certainly return to collective responsibility. I think that Lord Lexden wants to come in.

**Lord Lexden:** In 1918 there was a joint manifesto of Bonar Law and Lloyd George. One is rather impressed by the fullness of it. This is a more detailed manifesto than the electorate had been accustomed to receiving before the First World War, yet is it impressive in the way it is infused with Liberal principles; for example, self-government for Ireland, the replacement of the House of Lords, an elected second chamber and land nationalisation. It is quite a full manifesto and it relates very directly to the legitimacy point.

**Lord Morgan:** It is a full manifesto and, as you imply, Lord Lexden, it is a very Liberal manifesto. It was written by a famous Liberal historian, HAL Fisher, who knew how to write—or knew how to write history at least. It presented a clear picture to the country. In my opinion, despite its later ill-repute, the coalition operated largely on the basis of that. If you look at what it did about Ireland, about social reconstruction and, to an extent, about foreign affairs, you will see that, to a degree, it was faithful to its original mandate.

**Lord Steel of Aikwood:** If I can pick up on what Lord Morgan was saying about this coalition not having a previous agreement: it is true that nobody voted for it and nobody expected it,
but it would have been irresponsible of the political parties in the situation following the
previous election had they not got together to attempt to form a stable government given
the financial situation of the country. Whether that stable government should be a coalition
or a parliamentary agreement is something that we might come on to later, but it seemed to
me that the most significant early move of the coalition was the decision to have a fixed-
term Parliament. That provided the cement for the coalition to ensure that it would last
even though there was no previous agreement. That remains a very significant move.

Q31 The Chairman: The point that you raise, Lord Steel, about alternative parliamentary
arrangements is something that we are very interested in. As you mentioned, this was a way
that it was thought in 2010 that stability would be achieved, whereas the argument about the
parliamentary arrangement is usually that it is not stable. What is your reflection, historically,
on that and on the alternative?

Lord Steel of Aikwood: I think that it could have been stable. You could argue that an
agreement for confidence and supply, as it is called, could have been stable if it had been
allied to the fixed term. If the two had gone together—I do not know whether there was
any discussion of that; I was not party to these discussions—I see no reason why that could
not have been an acceptable alternative.

Lord Morgan: It seems to me that the fixed-term Parliament means that a coalition for
which nobody voted is now almost impossible to remove. I accept totally Lord Steel’s
authoritative judgment on whether this was the only political solution, but the question
whether it is compatible with our constitutional arrangements and tradition is quite different.

The Chairman: Lord Steel, given that the situation in the 1970s was pretty unstable
economically, do you feel on reflection that that arrangement would have been more
successful had it been formal coalition.

Lord Steel of Aikwood: I think that the situation was quite different on two grounds. First,
we were in the middle of a Parliament; it was not immediately after an election. It was a mid-
term issue where the Government had gradually lost their parliamentary majority, so there
was only the fag end of a Parliament left in which to consider what to do. The other
difference between then and now was that I led a very small party compared with the Liberal
Democrats today—I cannot remember how many MPs we had; I think that it was about a
dozen. A full-blown coalition would have been a bit lop-sided, to put it mildly, just to
support a parliamentary majority. So the arrangement that we came to in the 1970s was, I
think, the right and proper one at the time.

The Chairman: Do you think that it fitted more comfortably—given that there were
different historical facts about it—with the constitutional conventions?

Lord Steel of Aikwood: Yes, I think it did, because it provided the Government with the
assurance of parliamentary solidity for the remainder of the Parliament—initially, it was for
18 months—to enable them to deal with another financial crisis.

Lord Morgan: That is absolutely right; I agree with Lord Steel. It introduced a period of
stability, although the question was stability for how long. When I had the privilege of writing
your father’s biography, Lady Jay, I discussed this with Jim and asked him, as so many people
did, why there was not a general election in September/October 1978. He told me that he
had gone through, in his way, the electoral statistics and concluded that they were likely to produce a continuation of the minority government situation that he had had for the previous 18 months. He did not want a re-run of that; he would almost have preferred to be defeated than have a re-run. That suggests that, in the end, his impression of it was not favourable, although I hasten to say that his impression of Lord Steel was extremely high. He writes with great warmth about him in his book and he spoke in very similar terms in our conversations.

**Lord Steel of Aikwood:** I had a similar conversation with him some time after, when he came on holiday to Scotland after he had retired. He gave exactly the same answer to me as he gave to you, to which my response was, “Well, what was wrong with that? We were doing quite well.”

**Lord Lexden:** Perhaps I may ask Lord Steel whether he feels that the pact of 1977–78 might have benefited from fuller preparation. I think that you have been quoted as saying fairly recently that little discussion took place after the October 1974 election as to what might happen if the circumstances of 1977 arose and that the party as a whole had not brought its collective mind to bear on this. You have got the support of the parliamentary party. Do you think that in circumstances where a pact might seem the best course in future there should be wider consideration within the party than took place at that time?

**Lord Steel of Aikwood:** You are probably making a good point. There was no advance discussion. The situation loomed because of the motion of no confidence that the Leader of the Opposition had put down for the following week, so we had only a weekend in which to decide what to do. My mind goes back to the earlier episode, after the February election in 1974, when Ted Heath made overtures to my predecessor in the Liberal party. I was Chief Whip at the time; we were a very small group. I remember the discussion that we had after the election in room J below, where the parliamentary Liberal party met. There was general agreement that there was no way that we could vote for or support the Prime Minister because he had gone to the country on the issue of who governed Britain and lost; and, anyway, even added together, we did not make a majority. For all these reasons, we were not going to accept his overtures. I remember very clearly Jo Grimond, who was the former party leader, saying at that meeting, “But let us not get carried away with the immediate discussion. There has got to be a serious discussion in the party about what the circumstances would be in which, if this happened again, you would be prepared to support a government.” He was absolutely right. It was because of his declaration on that issue that I continued to keep an open mind on the subject.

**Q32 Lord Crickhowell:** I was very interested in Lord Morgan’s initial statement about the fact that the 1918 coalition had a mandate and a manifesto and so on, yet on reading your very interesting paper, Lord Morgan—I always enjoy reading your history—I was struck by what a different world it was from the current world. There may have been a manifesto, but it was concocted in smoke-filled rooms by people with no connection with the party in the country. You comment that there was no effective grass-roots organisation. You say that the Liberals in the coalition were a relatively frail reed. They had no clear membership—the links with their departed brethren who followed Asquith remained important—and it was a pretty rough and ready process that had led to it. Although there may have been a mandate, it seems to me that the crucial difference is that the world has fundamentally changed in that now we are dealing with parties in the country, with a press that takes a totally different role, and with openness about events. The constitutional
situation now is totally different, and it is very difficult to draw any conclusions from these interesting historical past events.

Lord Morgan: I do not think it is a totally different world. In December 1918, it was a world in enormous flux. The First World War had transformed British politics, and there was an element of fluidity. One consequence of that was that a lot of the debate took place not in Parliament but in the newspapers. The role of the press, and, I may say, the role of spinners and special advisers, was certainly around in that time. You are entirely correct in implying—

Lord Crickhowell: And lobbyists?

Lord Morgan: Oh, yes, plenty of them, and rather more dishonest even than now. In 1918, it was a coalition created at the centre. It had no grass-roots foundation, particularly on the Liberal side, in the way that the coupon, the arrangement of the seats, in 1918 was conducted. So there was a basic artificiality.

I will make one other general point, if I may. The great weakness of the British constitution is its secrecy. It operates in a closed atmosphere. We do not have a written, codified constitution, which I know would take ages to produce but which I have always supported for a variety of reasons. The secrecy surrounding the 1918 coalition, and for that matter the 1931 coalition, which we have not discussed yet, seriously discredited it. In my opinion, the secrecy with which this present coalition came into being in a few days, discussed by just a handful of politicians with nobody knowing the outcome, has helped further to discredit politics. It is a reason, although not the only reason, for the cynicism and lack of confidence that people have in the political system.

Q33 Baroness Falkner of Margravine: Lord Morgan, can I ask you to elaborate a little on what you said about the current coalition coming about as a consequence of conversations between a handful of politicians? What do you mean by that, and do you therefore consider that the Liberal Democrats convening a party conference to approve the coalition to be redundant?

Lord Morgan: The people did not approve it, whatever the Liberal conference approved. I feel that we had a general election, in which people made a series of promises to the electorate, and it was followed by a secret conclave and uncertainty as to which way the Liberal Democrats were likely to go. The degree of popular ratification either in the country or in Parliament was zero.

Baroness Falkner of Margravine: Can I come back on that, because last week we had evidence from academic experts who reminded us that the British constitution, in its mandate, operates in two parts? The public vote for representative Members of Parliament, from which emerges the Prime Minister. In 2010, certainly from what we know of the Liberal Democrats, the parliamentary party, including surprisingly the party in the House of Lords, was consulted extensively, I believe, on four or five occasions. So in terms of the constitution and the mandate that the voters give, the mandate was given to MPs, who then translated it into a mandate to form a government. I understand that that happened on the Conservative side as well, although perhaps not as extensively as Conservative MPs might have wanted. So both the Prime Minister and the Deputy Prime Minister emerged out of a representative democratic process.
**Lord Morgan**: I take that point, but I think that it illustrates how the division is accentuated between the popular will being expressed and popular sovereignty being enforced, and the politicians reaching a decision. It is the kind of thing that has led to the discrediting of party politics in, for example, Italy. I was in Italy in 2011 and hardly anyone was celebrating the 150th anniversary of the Kingdom of Italy, because it just seemed limited to them, and in their case—they are not here—a corrupt political class was making the decisions in private and turning up in the end with people such as Craxi, who led the Italian socialists in government for years, even though he had less than 10% of the votes. Therefore, nobody was cheering in Italy and I would be very sad if we approached that situation here. I think it is possible—we will no doubt discuss this—to have some kind of parliamentary ratification as well, which we did not have this time.

**The Chairman**: We will certainly come on to that. I know that Lord Lang wants to come in, but did you have any comment that you wanted to add to that exchange, Lord Steel?

**Lord Steel of Aikwood**: I am not sure that I agree with Lord Morgan about parliamentary endorsement, because, as Baroness Falkner was suggesting, once the two parties had come to an agreement, they automatically had a parliamentary majority. I am not quite sure what other endorsement was required.

**The Chairman**: We might come on to the suggestion that has been made by some about having, for example, an investiture vote.

**Q34 Lord Lang of Monkton**: I can understand why, towards the end of a five-year term, a pact of the kind entered into in 1977 by the Liberal party and the Labour Government makes sense for survival, but looking to the future and a possible hung Parliament, where do our witnesses consider that a confidence and supply agreement might fit into the scheme of things? What considerations would come into play? Do you think it is a viable option?

**Lord Steel of Aikwood**: One consideration is the relative strength of the two parties. As I indicated earlier, if the third party, the balancing party, has a substantial number of Members of Parliament—60-odd, which they have now—that is a very different situation from the one in which they have only a dozen or 10. I do not think that in that situation a coalition should automatically be thought to be better than confidence and supply. That is a major consideration.

The other would be the state of the country at the time. Are they, as happened both in the 1970s and last time, a government who are grappling with a serious financial situation, or are they not? If they are not, the confidence and supply becomes easier, I would have thought.

**Lord Morgan**: I agree with Lord Steel pretty much on that. The problem with confidence and supply arrangements is, first, how long they would last. Were they just session by session? I think that was why Lord Callaghan in the end became dissatisfied with the circumstances of 1977–78, even though they brought unquestioned benefits, including in the economy.

The other question is: what is the substance of them? The only guarantee of that would be making it as clear and as publicly available as possible. Private, covert arrangements, and there are a variety of them, are unsatisfactory for our democracy and a major reason why there are so many criticisms of our system from a variety of pressure groups at the present time.
The Chairman: I know that Lord Irvine wants to come in, but can I ask a supplementary question to that point, Lord Morgan? With the Fixed-term Parliaments Act 2011, which makes a considerable difference, you could presumably have a stable confidence and supply arrangement that lasted for a Parliament, if that was agreeable?

Lord Morgan: I would prefer that to what we have now.

The Chairman: You are nodding too, Lord Steel.

Lord Steel of Aikwood: I am nodding because I came back to the point that the 1977–78 arrangement was past the mid-term point of a Parliament. If there had been an election in the autumn of 1978, as we all expected, and if Mr Callaghan’s advice was correct that we come back with another hung Parliament, we would have been negotiating for a full Parliament, which would have been quite different. I do not think we would have done it on a session to session basis.

Lord Lang of Monkton: Would you have gone for a confidence and supply arrangement at that stage, or would you have insisted on full coalition, given the numbers that you had?

Lord Steel of Aikwood: I do not know. I had a very brief conversation with the Prime Minister when we ended the pact about what might happen in future. At that stage, we did not rule out a coalition, but, again, numbers would have come into it.

Lord Lang of Monkton: It would presumably ease the collective responsibility point and therefore leave the minority party free to be critical of government policies in a way that of course is unthinkable at present.

Q35 Lord Irvine of Lairg: I wonder whether the exchanges between our witnesses disclose a fundamental disagreement between them, but that the courtesy of the exchanges has been such as not to bring it to light.

Lord Steel of Aikwood: We are not a coalition.

Lord Irvine of Lairg: I appreciate that, and I hope that after this group of questions you will definitely be seen not to be. As another politician in a different context said, it is a waste of time for sailors to complain about the weather at sea because the weather at sea is what it is. The current coalition partners faced a particular situation, and when they decided to make their coalition agreement, Lord Steel said—I have sympathy with the proposition; indeed, I agree with it—that it was unavoidable and in the national interest. Do you agree with that, Lord Morgan? Surely it is unsurprising that the coalition agreement that follows between parties of a particular size does not naturally yield itself to the constitutional conventions that arise in the context of one-party government.

Lord Morgan: I think it matters in part what sort of continuity there is between pre-election politics and post-election politics. What we have is a response to the particular situation of a so-called hung Parliament that was not anticipated. I think that it should be clear. I do not think that the circumstances in which the present Government came into office were clear, and that is a major reason for the disenchantment with politics.
Lord Irvine of Lairg: I do not quite understand that, because the two parties—the Liberal Democrat party and the Conservative party—were faced with a particular situation after the outcome of the election was known. I do not see how it would have been realistic to expect them to have anticipated that particular set of circumstances. Therefore, what point is there in saying that it would have been better if that had been anticipated?

Lord Morgan: No, it could not have been anticipated; it is a matter of how you respond to it, I think.

Lord Irvine of Lairg: Well, quite. Do you agree with Lord Steel that the response to it was responsible and, indeed, almost unavoidable?

Lord Morgan: I think that politically it was unavoidable. I think that constitutionally—that is the remit of this committee—the nature of its authority is extremely questionable. They formed a coalition, and that, it seems to me, was inherent and inevitable in the circumstances. The question is what the coalition was about, what it was for, what its purposes were.

Lord Irvine of Lairg: You could read the coalition agreement and that would tell you.

Lord Morgan: After that—I imagine we will get on to collective responsibility shortly—what the coalition is about and what its nature is have been interpreted totally differently, even this week by Mr Clegg. It is one thing having the form of a coalition; it is another thing having some sense of unity of conception of policy and unity in the implementation of policy, when the circumstances arise in which people see ministers apparently having agreed in Cabinet to, let us say, free schools and then the Deputy Prime Minister says, “Well we keep our options open on this and we have the gravest doubts about it.” I think that the man on the Clapham omnibus would say, “Where are we?”

Lord Irvine of Lairg: With your permission, Lord Chairman, I invite Lord Steel to comment on that.

Lord Steel of Aikwood: If I cast my mind back to the situation in the 1970s, if the Prime Minister had gone to the country in autumn 1978, as we expected, I was expecting to run an election campaign focusing on the role that we had had as a small party and asking for more members in order to increase that influence in the following Parliament—not excluding a full coalition but certainly looking to a whole-Parliament agreement. That opportunity was slightly lost by the fact that an election did not take place then. But that would have satisfied the point you are making, Lord Irvine. It would have been openly canvassed during the election campaign. That did not happen at the last election, which is Lord Morgan’s point. As I recall, there was little discussion of what might happen if nobody had a majority. It was not a major feature of the election. That was the problem that Lord Morgan seized on. As to the present situation, where ministers appear sometimes to contradict what is government policy, this comes back to the chairman’s original point. The constitutional arrangements are uncertain. You have a diminution of collective responsibility, in my view, at present. Maybe that is inevitable in a coalition.

The Chairman: Could we momentarily park the collective responsibility question, which I know Lord Crickhowell wants to come on to? On Lord Morgan’s general point about
openness, Lord Cullen had another point about ways of establishing clearly who was governing.

Q36 Lord Cullen of Whitekirk: I think this was touched on briefly earlier. Some of our witnesses suggested that to counter criticism that voters cannot vote for a coalition, future coalition agreements should be voted on at the start of a new Parliament as the programme for the entirety of that Parliament and possibly subject to amendment by the House of Commons at that stage. I invite each of you to comment on that. Do you think it useful or relevant and what might the implications be?

Lord Morgan: I agree with that proposal. I teach a seminar with Dr Andrew Blick, who has sent you written evidence. I have read it and broadly speaking I agree with it. It seems to give some kind of proper constitutional basis and a public one—it is recorded in Hansard and so forth. Incidentally, there was a problem with the arrangement that Lord Steel negotiated with Lord Callaghan, although I think it worked excellently—as a supporter of devolution, I think it had a positive effect on that. But it was an arrangement that was very difficult to approach. The ministerial committee was not subject to scrutiny in Parliament. Michael Foot said that it was an inter-party matter and not an internal government matter. I looked in vain, perhaps not surprisingly, in Michael Foot’s papers for the minutes of that meeting. Again, more openness in democracy, which is more conspicuous in other countries, notably the United States, is here lacking in our arrangements.

Lord Steel of Aikwood: I am not certain about this. Lord Cullen’s suggestion is that after the coalition was formed there should have been some kind of parliamentary vote. But in effect that happens, because the minute the coalition is formed various things come forward and the Queen’s Speech is produced. What difference would a resolution saying, “We support the coalition” make? I am not clear that it would make all that big a difference.

The Chairman: There is also the question about a so-called investiture vote.

Lord Cullen of Whitekirk: If the difficulty is that the electorate had not had a chance to express a view, you do not move down that road because it is still a view taken by the elected representatives.

Lord Steel of Aikwood: But who else could take it? That is what the elected representatives do.

Lord Cullen of Whitekirk: That is what I am suggesting.

Q37 Lord Irvine of Lairg: The contrary to what Lord Cullen has stated is surely this: a coalition agreement represents the maximum on which the two parties who constitute the soi-disant coalition can agree. Parliament is not a party to this coalition agreement. If Parliament voted that it should be amended in some respect, surely that is not real-world politics. In very difficult political circumstances—and there was a financial dimension of course, as Lord Steel said—it could make confusion worse confounded.

Lord Morgan: I am really putting to that to Lord Steel.

Lord Steel of Aikwood: I agree. A problem could arise if the MPs in the minor party got so unhappy about something that was being done in the name of the coalition that they
revolted against the Government. But that is a little difficult now with fixed-term Parliaments.

Lord Hart of Chilton: Even if the programme was approved, the individual measures would still have to progress. Simply because you had approved them in one session would not mean that as the individual measures came forward that would bind anyone, so I am not certain where it would take you.

Lord Steel of Aikwood: You say that it is binding, but if you take the example of the House of Lords Reform Bill—

Lord Hart of Chilton: No, I am saying that it would not be binding. Parliament would have approved the coalition agreement but individual measures in that agreement would then have to come forward and anything could happen. You could not say, “Aha, you’ve all approved this, so how can you go back on that?” I am not certain how the approval of the coalition agreement would take you further forward.

Lord Steel of Aikwood: I agree with Lord Hart. If you look at the example of the House of Lords Reform Bill, it was part of the coalition agreement. It fell apart in the House of Commons not through the vote of the minority party but that of the majority party. But the rest of the agreement goes on.

The Chairman: Did you want to come back, Lord Cullen? There seems to be disagreement between members of the committee rather than between the witnesses.

Lord Cullen of Whitekirk: I want to make it clear that I do not disagree with what has been said by Lord Irvine or Lord Hart: I am simply putting up the arguments to see what is said.

The Chairman: Let us then move on to the question of collective responsibility, which Lord Steel has just touched on.

Q38 Lord Crickhowell: Lord Morgan, you have twice been critical of what has happened on collective responsibility since this Parliament began, which is a view that I share. As a former Cabinet minister bound by collective responsibility, I find a situation where you can have the Prime Minister and Deputy Prime Minister making separate statements and some of the other things that have happened very peculiar. I understand the desire of members particularly of the minority party to make clear their general political stance in statements. That arises probably because, as you say in your article, Younger’s role in 1922 indicates the organic link between protest in the country and disaffection at the centre. Clearly, members of the coalition will be trying the whole time to keep their supporters onside. You quoted with favour Dr Andrew Blick’s evidence to us and you will therefore recall that he argued that formal breaches of collective responsibility should be exceptional. They should be agreed by Cabinet as a whole. They should be used in issues of first-order importance. They should be clearly time-limited and ministers should register their positions with the Prime Minister. They should be exceptional and announced in advance and everyone should know what they are. We would not then have had the remarkable situation which followed the House of Lords Reform Bill, to which Lord Steel referred, when the Deputy Prime Minister suddenly said that the consequence was that a piece of important legislation on constituency boundaries that had already passed through both Houses of Parliament was not going to
come into effect. That was a total breach of any known understanding of collective responsibility. Where do we go from here? What would you add? Do you agree with Dr Blick?

**Lord Morgan**: I agree totally with Dr Blick on that. The *Ministerial Code* supposedly allows for occasional dissent—even the name “dissent” can produce problems. If I may go back to 1931–32, the Liberal ministers were allowed to agree to differ on free trade. But that meant that the whole economic policy of the National Government, particularly towards what was then what was then called the Empire, was hobbled for 12 months. It was a problem long before they finally got out. What we now appear to have under the *Ministerial Code* as laid down by Mr Cameron—a code that is not known to the general public, which is again one of the features of the exceptional secrecy of our extremely bad arrangements—is that it can be broken almost at will. Issue after issue arises. There is a question of specific measures such as the decision on free schools. There is also a wider question: what does the coalition stand for? What, for example, is its policy on Europe? I speak, as I know Lord Steel is, as a strong pro-European. The coalition’s position on Europe seems to me to be shrouded in total obscurity. Half the Government spend their time criticising the EU and looking forward to reducing or removing its arrangements, starting with security and human rights matters. The other half say that it is tremendously important for our country. In that case, on broad issues of fundamental strategy—whatever you think about the EU it is immensely important for our country—the man on the omnibus simply does not know what the Government’s policy is. That is replicated on issue after issue in specific cases. I thought the decision about constituency boundaries was extraordinary and constitutionally quite improper. The arrangement made was between the rearrangement of constituency boundaries and AV. That was it within the Act. That was what we all spoke about 11.00 at night because it had not been discussed in the House of Commons. AV was the link; it was not Lords reform, which was a completely separate issue. It was a spurious excuse and a terrible way to run a whelk stall.

**Q39 Lord Crickhowell**: May I ask one supplementary before we hear from Lord Steel? You refer to the *Cabinet Manual*. This committee has reported and recommended improvements to the *Cabinet Manual* and I hope we have done something to publicise it. We will almost certainly want to refer to the *Cabinet Manual* and make some suggestions on this point in our report. Do you think that the *Cabinet Manual* could play a more important role in this constitutional matter if it was publicised and given more authority than perhaps it has had?

**Lord Morgan**: It is the best arrangement that we have at the moment and yes, I do think that.

**The Chairman**: Lord Steel, do you want to make a general comment about Lord Crickhowell’s original question?

**Lord Steel of Aikwood**: When you have two parties in government, there may well be divisions. I think the man on the Clapham omnibus is perfectly capable of understanding that the two parties do not necessarily agree on everything. The opportunity to listen to them and decide what they are going to do about it comes at the next election when they will set out their stalls. In the meantime, the coalition has the prime objective of recovering the financial situation of the country. Anything else is a plus.
Baroness Falkner of Margravine: This question is to Lord Morgan. One can leave aside the constituency boundaries issue as a single issue, but you used other examples such as free schools where there was disagreement within the Liberal Democrats. The Minister of State—

Lord Morgan: That makes it worse.

Baroness Falkner of Margravine: It may make it worse, but I am trying to work out from your description of events whether this is normal even in a majority government or whether this plurality of views is unique to a coalition. I take you back, Lord Morgan, if one wanted an example from a Conservative Government, to the Westland affair, or more recently, under Blair and Brown there were manifold disagreements, not least among Cabinet members over the Iraq war. Do you really see this as unique and applicable only to coalition government or would you accept, as several people have pointed out, that disagreement can happen within majority governments as vocally as we have seen in coalitions—perhaps not as frequently, but they have happened and have been very significant?

Lord Morgan: I totally agree: you have a plurality of views within a government. You had Jim Callaghan presiding at one time over Roy Jenkins and Tony Benn.

Baroness Falkner of Margravine: Indeed—the break-up of the Labour party over Europe, because you mentioned Europe, and the formation of the SDP.

Lord Morgan: Yes, there are plenty of examples in the Labour party. I nevertheless think that there is a fundamental distinction between politicians who disagree widely and who may hate each other, as Blair and Brown appear to have done, but are within the same tabernacle and broad church going to the country under the same manifesto, and a different party with a different manifesto which in part—as over famously over tuition fees—it contradicts when in office. That seems to be different in character. I do not think, with respect, that ordinary citizens understand that. They say, “What is government policy not merely at Westminster level but at the local level?” They are confused. It has worked rather better elsewhere. I think that the Plaid Cymru and Labour coalition in Wales worked quite well for one very good reason: there was virtually no difference in principle between them. It was an effective period of government, but maybe there was a consensual atmosphere within Wales. I do not think that applies in Scotland because the Scottish Nationalists are at odds with everyone else.

The Chairman: May I press you on the point which has been raised by Lady Falkner’s question, which was the constitutional issue with intra-party policy disagreements? Where does the constitutional issue arise in terms of the collective responsibility of Cabinet, particularly vis-a-vis Parliament? We have talked on previous occasions about the European referendum in 1975 where there were clear, basic, fundamental differences within the Government, but there were agreements about collective responsibility towards Parliament and externally. Do you feel that that is a relevant constitutional line?

Lord Morgan: Yes, I think that 1975 is a very good analogy. The agreement to differ laid down by Harold Wilson said that ministers should not broadly campaign against the Government. They could take a specific difference of view and that caused problems, I agree. But at the present time we have significant members of the Government, including their
Deputy Prime Minister, campaigning against their own policy on issue after issue. I do not think that is reputable.

**Lord Crickhowell:** For the record, since Westland has been mentioned, it led to rather an important resignation. That is the difference in Cabinet government. If you part company, you resign. You do not continue as a member of the administration.

**Lord Morgan:** Yes, people used to in the good old days.

**Lord Steel of Aikwood:** You could not expect a Liberal Democrat minister to resign simply because they took a different view on some aspect of policy.

**The Chairman:** The question is why not, if you are part of a collective government.

**Lord Steel of Aikwood:** Yes but collective responsibility has to be tempered by the fact that there are two parties in government. That is my point. I do not think that it can operate in exactly the same way as a single-party government.

**The Chairman:** But then we come back to the question: at what point does collective responsibility cease to be relevant as far as our constitutional conventions are understood?

**Lord Steel of Aikwood:** It is less important in a coalition. People have to accept that there will be differences, but the basic purpose of the coalition continues. That is the point that I keep making. I keep making it to members of my own party as well. We have armies of people—Baroness Falkner may or may not agree with this—who spend their time sending us messages. Nowadays, we are supposed to tweet to tell people what wonderful things the Liberal Democrats are doing in government and the great gains that we are making as against the Conservatives on this, that and the next. It is frankly a little absurd. I think that the coalition should stick to its main purpose and everything else is a bonus.

**Lord Lang of Monkton:** Surely the distinguishing feature is whether or not the convention is breached by agreement. To breach it by agreement—whether on a specific issue or on a more general position—is reasonable and defensible. To breach it unilaterally is, to use Lord Morgan’s word, intolerable.

**Lord Steel of Aikwood:** That is a fair point.

**Lord Lang of Monkton:** Do you agree?

**Lord Steel of Aikwood:** Yes.

**Lord Lang of Monkton:** Thank you.

**The Chairman:** I know that time is passing. We want to cover two other important issues. First, how the House of Lords is affected.

**Q40 Lord Lexden:** I wonder whether you believe that the House of Lords should conduct itself differently under a coalition government. An extended version of the Salisbury–Addison convention provides that the Government's legislation should not be overturned, although a process of revision or amendment can be a large and very time-
consuming affair. Should the House of Lords seek a more assertive role under a coalition government? One or two of our experts suggested that might be appropriate. At the very least, one or two of them suggest that the basis on which the House of Lords operates at the moment might be revisited, and a committee should be established to examine the existing conventions. What are your views?

**Lord Morgan:** I have some sympathy with that. I do not think that the House of Commons is challenging the Government very effectively, partly for the constitutional reasons that we discussed. The passing of time has an effect. I think that pro-coalition peers in the Lords have somewhat sharpened up their acts. They are more inclined to call each other “my noble friend” than at the beginning. One of the problems, and I speak now as a Labour peer and not an historian, is that we are a minority and to defeat the coalition we need the support of a lot of Crossbenchers who, frankly, broadly do not turn up. Attendance is extremely poor on the Crossbenches. Many of them are experts on a particular topic and they do not intervene on partisan matters. If you are a famous doctor, architect or lawyer, you come to debates on that subject. There is not therefore the same possible, stable opposition as there was before. I am sympathetic to the view that the Lords should be more probing and forceful.

**Lord Steel of Aikwood:** I think that we should be a bit careful. Because we are not an elected House, I do not think that we can be too forceful in opposing what the Government are doing. As far as the convention is concerned, I suppose that the Salisbury–Addison convention applies to both manifestos. Since the coalition did not have a manifesto, as we discussed earlier, it must apply to both manifestos.

**Lord Irvine of Lairg:** Does that mean the common parts of the two manifestos? In other words, you have to look at each manifesto and see if each is, in substance, promising legislation in a particular sense.

**Lord Steel of Aikwood:** I do not know of any case that has arisen where that has been debated. I do not recall any event.

**Lord Irvine of Lairg:** But would that not make sense? Since the Salisbury–Addison convention applies to the manifesto of a single party, which has won an outright victory in the general election, if we are going to extend that doctrine by analogy to a coalition government, it should be to those parts of the manifestos of each party that have a common purpose that is evident from the face of the manifestos. One can then say, “We coalition have the benefit of the Salisbury convention.” If you agree with that, does that not mean in contemporary politics that it would be wise for parties that anticipate that they may be in a situation where they wish to form a coalition to construct their manifestos accordingly around common legislative policies?

**Lord Steel of Aikwood:** I have been involved in constructing manifestos. The thought of trying to construct it in concert with other parties would be very difficult.

**Lord Irvine of Lairg:** The fact that it is difficult does not mean that it cannot be done, especially if we are in a new era of coalition politics.
Lord Steel of Aikwood: I suppose that what you are saying is that in constructing a manifesto, people should have an eye on other people’s manifestos. But they cannot until they are published. You are putting forward a very difficult proposition.

Lord Irvine of Lairg: You could have a conversation with your likely coalition party about it in advance of drafting a manifesto.

Lord Steel of Aikwood: That presupposes that the minority party has a fixed view as to who they would leap into bed with after the election, which I do not think is the case.

Lord Hart of Chilton: Going back to Lord Irvine’s first question, if there is not an overlap, the principle should not apply.

Lord Steel of Aikwood: I suppose that is right.

The Chairman: Lord Morgan, do you have a view?

Lord Morgan: I agree.

Q41 The Chairman: May we turn to the Scottish situation and your experience there, Lord Steel? As always, we are encouraged by some of our academic witnesses to look at experience in other jurisdictions. Obviously, Scotland is a near-at-hand example of where coalition government has been practised.

Lord Steel of Aikwood: At the start of the Scottish Parliament you had a Lib/Lab coalition for two successive parliaments. The situation that brought that about was quite different from the one here for two reasons. One was the electoral system. The country as a whole was conditioned to the fact that it was likely, after an election, that more than one party would be required to form a government. That was the nature of the beast. That is quite different from what happens here. Secondly, you had a situation where the Parliament came into being very quickly after Mr Blair’s Government were formed and on the back of the constitutional convention in which the Labour and Liberal parties had worked very closely together. You had these two factors that pre-informed the existence of the coalition, which is entirely different from what has happened down here. I was in the chair of the Parliament and so politically neutral, but it has to be said that the coalition worked extremely well for those two Parliaments, but with those two backgrounds.

The Chairman: You are saying that that was on the basis of a different electoral system, but also on the clarity of the presuppositions about what would happen.

Lord Steel of Aikwood: Exactly.

Lord Lang of Monkton: I am very pleased to hear Lord Steel say that, because the fact that it is a proportional representation Parliament fundamentally changes the situation. However, there may be aspects of procedure and practice within the Scottish Parliament that might be of advantage to us in preparing a report relating to the possibility of future coalitions. I would be interested to hear your thoughts on that.

Lord Steel of Aikwood: Yes, there was one thought that I had. Things were changed as a result of the experience of the first coalition. That was the standing orders. I am sorry that I cannot remember the detail, but the time allowed to form a coalition was very short in the
first instance and we managed to get that changed to face up to the reality that coalition was likely to be the norm. The time allowed between the election and the meeting of the Parliament was extended and that was an important feature. In fact, I would say that here at Westminster one of the problems was that the gap between polling day and the first meeting of Parliament was too short.

**The Chairman:** That, again, was about understandings and expectations, not least from the media rather than any constitutional convention.

**Lord Morgan:** I do not know about Scotland, but I expect that the possibility of coalitions is assisted by the broad tendency of devolution to strengthen the movement for nationalist independence sentiment in Scotland and for the Scottish Nationalists therefore to be on their own. In Wales it has had a different effect. On balance, the movement for Welsh independence is close to zero and therefore coalitions are easier.

**Lord Lexden:** Could Lord Steel comment on the success with which the coalition governments in Scotland practised collective responsibility?

**Lord Steel of Aikwood:** They did totally. I do not recall any episode during the two parliaments when we had the coalition where there was any public dispute between ministers of the kind that we have seen here at Westminster. To pick up on what Lord Morgan said, I do not think that one should draw a broad parallel between Wales and Scotland of that kind. We are going now into party politics, but the reason the Scottish Nationalists won an overall majority was more to do with the weakness of the other parties than any move for independence among the electorate.

**Lord Lang of Monkton:** The devolved institutions do not have responsibility for the really major national issues and therefore it is less likely for there to be broad disagreement within the coalition. Also, they are born into a coalition world. The present situation is anomalous—unfortunate but anomalous.

**Lord Steel of Aikwood:** I agree with that.

**Lord Morgan:** It is worth noting nevertheless that, as Lord Steel said, these successful Scottish Governments covered the whole range of Scottish policy-making. We were talking earlier about coalition manifestos. Broadly speaking, they do not apply to Scotland. The great bulk of policy on health, education, transport, housing and so forth is solely for the Scottish people.

**Q42 Baroness Falkner of Margravine:** I want to take Lord Steel away from the Scottish experience. Rather than having a full coalition do you believe that, in the smaller party, in today’s world, MPs would consent to a confidence and supply arrangement? In other words, would they consent to co-operating with the majority party and keeping it in government if they were not going to be full members of the government? Lord Donoughue said of the Lib–Lab pact that the parliamentary majority of the Labour party was such that they conceded virtually nothing to the Liberals. Do you think in future that the parliamentary party of the Liberal Democrats would agree to a confidence and supply arrangement if they were going to get virtually nothing, in Lord Donoughue’s words?
Lord Steel of Aikwood: I have argued with Lord Donoughue about this before. He misses the point that the 1977 arrangement was limited to rescuing the financial situation. We were not looking for items beyond that. There were minor things such as help for small businesses and a few other things like that, but that was not the purpose; the purpose was to provide the stability to deal with the demands of the IMF and recovery of the financial situation. If you are asking whether in future a parliamentary party of quite difficult people, as we know them to be, would agree to a confidence and supply agreement if they were not going to get jobs, I cannot answer that because you would have to ask them. There is the risk that if they are not actually in government than the arrangement is fragile. That has to be accepted as true. But I do not think I can answer the question on their behalf.

Q43 The Chairman: You have certainly answered a large number of questions and we are very grateful. I am aware that we suggested to you that we would be keeping you for about an hour and that hour is up. I do not know whether any member of the committee has anything particular to ask that has not been covered. Do Lord Morgan or Lord Steel feel that there are points that they were anxious to make that they have not been able to do?

Lord Morgan: Thank you. It has been very enjoyable.

The Chairman: Is there is anything further that you are dying to say that we have not covered?

Lord Morgan: On the last point, I wonder whether the arrangements of this coalition would be a marker for smaller parties in future and that they would not settle for less, but that is a matter of opinion.

Lord Steel of Aikwood: To repeat something I said earlier, and this is in answer to Lady Falkner as well, a great deal depends on how many MPs we are talking about. Are we talking about a dozen, 50 or 60? There is a fundamental difference there.

The Chairman: Do you think that the fundamental difference between the potential for supply and confidence or for full coalition depends on numbers?

Lord Steel of Aikwood: Yes.

The Chairman: That is very interesting.

Lord Steel of Aikwood: If you have 50 or 60, you might as well form a coalition.

The Chairman: Thank you both very much. It has been a very interesting and helpful session and we are grateful for your time.
When a potential coalition or sub-coalition agreement is being negotiated, the practical question is who should actually do the negotiating? What should the involvement of the Party Leaders themselves be? My view is that Party Leaders should not be involved because the 'hard stuff', the brinkmanship bits and bobs in the negotiation of an agreement may leave behind bad blood which could vitiate the process of government, where the FM/PM to DFM/DPM relationship depends on the ability to rub along together.

Negotiation should be carried out by a key Minister or equivalent, with the personal qualities of having touchy-feely diplomatic skills. Alpha Males need not apply! Special Advisers or at least one key Special Adviser plus one or two key trusted civil servants should complete the team. The two teams of negotiators should report back (but not daily) to the Party Leaders on sticking points, timelines for finishing the job etc. Party Leaders should only come in right at the end, when the job is done.

Civil Service support may have to extend to giving support to more than one lot of negotiations going on simultaneously. Whereas the largest party may open negotiations with one other minority party, that minority party may also be trying to create an alternative government majority with a different First Minister. The same team of civil servants can’t provide support to both of these simultaneous negotiation groups. Do civil servants self-select under these circumstances, some pro-continuity and some pro-radical change? Is that proper? Does it cross the line for neutrality principle?

My view is that the negotiating parties should spend as much time as possible drawing up a Green Book or Bible, stating exactly what the putative coalition is going to do, if confirmed in office. An extra week of negotiations may well lead to an extra year of stable coalition government.

When that Bible of agreed policies and actions has been completed, should political parties seek submit policy package to a ‘recall’ party conference for approval before entering coalition? My experience is that this is the safest course but it may be thought over the top, if the coalition is not starting right at the commencement of the term of the legislature. It is not really necessary if the coalition kicks off halfway through the term.

On collective Cabinet responsibility, the Westminster or Erskine May rulebook was comprehensively torn up by Helen Clark in New Zealand as a way of dealing with the consequences of PR in the mid-noughties. It was of considerable comfort to us in Wales from 2007 onwards that we didn’t have to get too exercised about this whole issue. If it was expedient for parties to keep their identities in coalition set-ups, you could let that happen, at least at the margins. Minority parties could be allowed to ‘own’ an issue, so long as this happened by agreement and not by unilateral assertion.
I hope you find the above a useful starting point for my evidence session.

1 December 2013
Rt Hon. Rhodri Morgan, Mr Ieuan Wyn Jones, Rt Hon. Lord McConnell of Glenscorrodale, and Lord Stephen—Oral Evidence (QQ 100-110)

Transcript to be found under Mr Ieuan Wyn Jones
Transcript to be found under Lord Donoughue
Note to Constitution Committee for its inquiry into ‘The Constitutional Implications of Coalition Government’

From Rt Hon. Peter Riddell, CBE, Director, Institute for Government

1. Having followed the committee’s inquiry closely, I wanted to raise three points before the hearings conclude: first, on the workings of the coalition before the election; second, on the role of the civil service at the time of any negotiations; and, third, on the position of the incumbent Prime Minister during any negotiations.

2. The Institute for Government has done, and is doing, considerable work on the operation of the coalition and the lessons for possible contingencies after the 2015 general election. We are currently undertaking a project entitled Year Five looking at the final year of the coalition and the run-up to the election, taking account of overseas experience. Since this project is only half way through, the comments in this note are my personal ones and not the Institute’s developed views.

3. First, the final 12 to 18 months of the coalition raises tricky constitutional as well as political questions—notably over the asymmetrical position of the two coalition parties in seeking civil service advice. The conventions created for single party governments now risk creating a serious anomaly during the run-up to a general election. This is the period when ministers seek briefings to assist in the preparation of policies which carry beyond, or cannot even be introduced, until after a general election.

4. In most departments, the Liberal Democrat minister is in a relatively junior position, covering a relatively narrow brief—with relatively few cases where a Conservative minister is in a junior position. While he or she may be consulted on wider ranging issues affecting a department, this varies, largely depending on the attitude of the Secretary of State. But such a Liberal Democrat minister can only ask for civil service briefings on his or her own portfolio, while a Conservative Secretary of State can, of course, seek briefings across the range of a department’s activities. This imbalance restricts the scope of a junior partner to prepare for a general election compared with the senior partner.

5. Various solutions have been suggested such as the procedure applying in Scotland before the 2007 election, whereby ministers from the two coalition parties (there Labour and the Liberal Democrats) sought briefings on policy issues which were not disclosed to the other party. Discussion in Whitehall on a protocol or formal guidance covering this issue has not got anywhere—and the main approach has been
case-by-case as in the response to the Leveson inquiry where the civil service prepared briefings to the Prime Minister and Deputy Prime Minister who took contrasting views.

6. There is the possibility that when the access talks between Shadow Secretaries of State and Permanent Secretaries start next year, the main Opposition party may be able to conduct wider-ranging talks with the civil service than the junior coalition partner. One solution might be for all pre-election briefing, covering policies for the period after May 2015, to be conducted on the same basis for all parties, whether currently in Government or in Opposition. This would cover matters intended to feature in a party’s manifesto for the next parliament—though would clearly not affect advice on current policy issues requiring decisions before an election.

7. Second, the role of the civil service during negotiations. With the support of the Prime Minister, Lord O’Donnell, the then Cabinet Secretary, offered support for the negotiations after the May 2010 general election. In practice, this merely resulted in the Conservative/Liberal Democrat talks taking place in the Cabinet Office, though the short-lived Labour/Liberal Democrat talks occurred in Parliament. However, the three main parties did not involve the civil service in the meetings, unlike, previously, in Scotland where officials were in the room and assisting the parties. The 2010 practice seems preferable since it is up to the politicians to negotiate an outcome to an essentially political question.

8. However, the awkward question remains of the civil service being asked to respond to questions from the negotiators on, for instance, the costing of various proposals. However, the provision of factual information can easily be interpreted or presented in a partisan away, and being seen to favour one side or another. It is clearly desirable for information to be available but that needs to be distinguished from the provision of advice which is only available to the government of the day. This issue is more important than it appears and worries the senior civil service who, rightly want to remain non-partisan and do not want to be seen as assisting one party rather than another. One solution might be that when officials are asked for information, it is provided to all the negotiating parties.

9. Third, the position of the incumbent Prime Minister. Professor Robert Hazell of the Constitution Unit has already raised with you the ambiguities over the position of the incumbent Prime Minister during post-election negotiations. The question is whether the incumbent has the duty or the right to remain in office until it is clear who might command the confidence of the House of Commons—a point also addressed by Lord Adonis in his evidence to the committee. The current position—as reflected in the revisions to the Cabinet Manual—is unclear and the committee could play a useful role in clarifying the position. The duty/right contrast is too stark.
10. There are two clear priorities; First, that there cannot be a gap in government, apart from the formal handover at Buckingham Palace. And, second, the monarch should remain above the fray and not be involved, or be seen to be involved, in choosing between the parties and their leaders. This was successfully achieved in 2010 through the good sense of Gordon Brown and other party leaders, and the unobtrusive presence of the Queen’s private secretary to gather information and to make sure, with the top civil servants that the process worked smoothly.

11. The implication is that the incumbent Prime Minister should remain in office until it is clear who can lead a government which can be sustained in the House of Commons. That is to allow time for negotiations to take place. The 2010 experience showed that this can work and that urgent business of government can be carried out on a caretaker basis. Five days is a very short period by comparison with Continental experience and, if no single party gains an overall majority in May 2015, the 2010 precedent should allow some leeway for negotiations to take place. Of course, a Prime Minister can resign at any time. If Gordon Brown had resigned on the Friday after polling, then David Cameron, as the leader of the largest single party, though without an overall majority, would have been asked to form a government. He could immediately have said he would have formed a minority government, as Harold Wilson did in March 1974 after Edward Heath’s failure to do a deal with the Liberals. But since Mr Cameron had already put the coalition option into play by his offer to the Liberal Democrats, he would presumably have said his acceptance of office was provisional, depending on the outcome of negotiations. Overall, what happened, with Mr Brown staying in office over the weekend, was a much better option since it allowed the main options for forming a government to be discussed.

12. That suggests that a better formula, to be considered by the Constitution Committee, and to be incorporated in the Cabinet Manual, would be that, while an incumbent Prime Minister has the right to resign at any time, and, equally, the right to remain until Parliament meets, the expectation is that he or she would remain in office until it is clear who can command a Commons majority. Expectation balances the right/duty dilemma. This issue needs to be addressed well before the start of the 2015 election campaign.

9 December 2013
Rt Hon. Baroness Royall of Blaisdon and Rt Hon. Lord Falconer of Thoroton—Oral Evidence (QQ 121-131)

Transcript to be found under Rt Hon. Lord Falconer of Thoroton
Q74 The Chairman: Good morning and welcome. Thank you very much for giving up the time to attend. We are this morning continuing our inquiry into the constitutional implications of coalition government through the lens of the House of Lords’s interests and the concerns that we have discovered by talking to witnesses, which we felt you were both in a position to comment on. We are being broadcast, so I think it is worth, if you would not mind for the purposes of the broadcast, identifying yourself when you first speak.

If I could start off with a general question: from your experience of being in government during the coalition, do you think that the UK’s constitutional conventions have adapted well to that form of government? We have heard voices on different sides of that argument, and there seems to be some academic persuasion that the constitution is sufficiently flexible that it can deal with any form of government. I wonder what your experience suggests, Lord Strathclyde.

Lord Strathclyde: Lord Chairman, I am Lord Strathclyde and I was Leader of the House of Lords until just under a year ago. May I begin by thanking you very much for giving me this opportunity to speak on this subject? It is a particular privilege because this is the first time
that I have spoken or given evidence to a committee without being a minister, and therefore I am devoid of briefing papers and of briefings. I come entirely unencumbered.

The Chairman: I think that is why we are so intrigued to hear what you have to say.

Lord Strathclyde: A former Leader uncut—so thank you very much. Your question is: has the constitution managed to hold up with the coalition? The broad answer to that is yes.

The Chairman: Obviously we have not had revolution and rioting in the streets about the Government at least, but how flexible do you think it has to be before it becomes really rather ridiculous?

Lord Strathclyde: I think it has worked incredibly well. None of us were anticipating—when I say “none of us”, I was not anticipating—being the Leader of the House in a coalition. I was expecting to be the Leader of the House with a small majority in the House of Commons and that my life in the Lords would be extremely difficult. In the event, having a coalition, apart from some difficulties and awkwardnesses, broadly speaking, made the job in the Lords marginally easier, although the House of Lords adjusted in order to take coalition into account and remained as effective as it always has been.

Are there any constitutional implications of this? Broadly speaking, I do not think so. I can think of certain things that changed. I suspect you may want to talk about collective responsibility during this meeting. Let me give you one example: the Government’s response to the Leveson Inquiry where, for the first time, and in the past, I would have said that this was impossible but it proved to be possible, we had two responses from the front bench, from the dispatch box—one from me as Leader of the House, and one from Lord McNally as Deputy Leader of the House—making subtle differences in the responses. Nobody particularly complained, even though it looked very odd. It is one example where the constitution of the country and the way it works in the House of Lords was flexible enough to accept innovation. That is a great strength of the constitutional arrangements in this country.

Q75 The Chairman: Would that become a permanent innovation if we went back to majority government?

Lord Strathclyde: No.

The Chairman: You could not envisage that.

Lord Strathclyde: I do not think, in a single-party government, you could have two ministers from the same party taking different lines. Therefore, we have developed a slightly looser definition of collective responsibility, partly because of the political ambitions of different parties, partly because of the way the different parties are structured. What the general public make of it I do not know. I expect we will find out at the next general election.

Lord Shutt of Greetland: I am David Shutt, Lord Shutt of Greetland, former Liberal Democrat Chief Whip and Deputy Chief Whip of the coalition from 13 May 2010. I never spent a lot of time worrying about constitutional implications. It is quite right that your committee does, but it was a matter of getting on with the job. As I understand it, you want to know about governance and, yes, all of a sudden I had two other jobs: Deputy Chief Whip of the coalition and the constitutional position of Captain of the Queen’s Bodyguard of
the Yeomen of the Guard. My first assumption was that you do not change anything fast in any arrangements. However, the first news was that we had no Cranborne money—speaking as the Liberal Democrat Chief Whip. It had gone. We had some idea that it might return; there was a similar arrangement in Scotland. Even though our party at that time was in coalition or had been in coalition, they had retained some state money. That rumour hung around for a couple of months, but it did not come to pass that there were any resources. I took the view, and indeed it was the party's position, that we had to hold our whips' office team together. It was clear that the glue of the whips' office and the part it played in the Liberal Democrat office in the House of Lords had to be retained. I believe that the House authorities presumed that somehow it would cease to function, that we would cope with the Government Whips' Office and that would be it; it would somehow evaporate. It was clear to me that a strong, independent and confident party was the best way to support the coalition. Therefore, we did need that. I was fortunate in that people saw that point and, therefore, there has been substantial tithing in order that we have been able to retain our whips' office.

Even though I had responsibilities in connection with Northern Ireland and, for the first six months, with DCMS, acting as the second man on transport, and all the long days of attendance, for me the real job was enabling others in the sizeable Liberal Democrat team to play their proper role in the House, in government, and to retain their strength.

Q76 Lord Powell of Bayswater: I wanted to come back on Lord Strathclyde’s comments at the beginning. Accepting that the constitutional arrangements we have are pretty flexible and that it was perfectly possible to preserve propriety as over the Leveson report by some skilled performances at the dispatch box, do you not think that, actually, we have seen a considerable change in our constitutional conventions over the last three years? Taking collective responsibility and the breaches of that, of varying degrees of significance, and add in the Fixed-term Parliaments Act, 2011 it is actually a pretty different scene. Is it going to be possible to turn the clock back if we are back in single-party government? It is not easy to do that. I know that Parliament can decide to do whatever it wants but, in the real world, it is quite difficult to overturn practice that, by then, would have endured for five years.

Lord Strathclyde: I do not think anything that I said necessarily contradicts what Lord Powell has just said. Yes, there have been changes in some of our constitutional conventions, but they are sufficiently elastic to spring back and one of the key conventions will do that—on collective responsibility. It is not that collective responsibility is broken; there are government bills that all members of the Government support. What is slightly different is the process that builds up to that, when different parties take different views.

The Fixed-term Parliaments Act 2011 is very different. I am not sure that that necessarily changed because of the coalition; people had been talking about fixed-term parliaments for a very long time. Whether it is wise or not again remains to be seen. From a personal point of view, I would not have gone down the road of fixed-term parliaments, but it is what we now have. It will be up to the next Parliament to decide whether to revert to the old system.

May I refer to one thing that Lord Powell has reminded me of? In the first couple of days of the formulation of the coalition, I went to Number 10 and was invited by the Prime Minister to become Leader of the House of Lords, which I was very happy to accept. When I asked how many Liberal Democrats I should cater for on the front bench, if that is the right word, I was told that I did not need to worry about any Liberal Democrats, because the Deputy Prime Minister said he was relaxed and did not need any in the House of Lords. This came as a surprise to me and I asked again, “Are you sure about this?” and he said yes. I said, “It is
impossible to run a coalition across government in the House of Lords if there are no Liberal Democrats on the front bench. It is going to fall apart very quickly and it is very difficult to go back.” The Prime Minister said, “We’ll have another go with the Deputy Prime Minister.” It transpired, as I found out some days later, that the Deputy Prime Minister was not anti the House of Lords in any way, but he assumed, because of the highly federalised system within the Liberal Democrats, that the Liberal Democrats in the House of Lords would sort things out for themselves with me directly, forgetting the important and constitutional role of the Prime Minister being able to appoint his or her own ministers.

The Chairman: Does that suggest, Lord Strathclyde, that in general there was very little understanding or appreciation, as the coalition was formed, of the role and significance of the House of Lords?

Lord Strathclyde: Yes. I tried to put that right very quickly. I first of all insisted that there were proper senior ministers in the House of Lords—Lord McNally, the Liberal Democrat Leader of the Lords, and Lord Shutt as Chief Whip, playing those roles and being paid, incidentally. We have a far bigger front bench now in the House of Lords than we did before. Many of them are unpaid, which I regret. Also, something that I think is important is that we have far fewer Ministers of State in the House of Lords than we have had in previous governments. I had hoped during the course of this Parliament that there would be some adjustment to that, but that has not yet taken place.

Q77 Lord Crickhowell: Are two things not fairly clear from what has been said by Lord Strathclyde and what has happened? One is that the power of the Prime Minister has been reduced as a result of the coalition government. I will come to that later when we discuss the legislative programme. The other thing, rather curiously and unexpectedly, is that the role of the House of Lords has been strengthened. Because of the difficulty of getting the legislative programme through and agreed in its final form in the Commons, it has become more difficult, not easier; the job has come to the House of Lords, where great chunks of legislation—we have a classic example before us at the moment—are almost entirely rewritten in the House of Lords. The House of Lords now is probably more important constitutionally than it was under single-party government. Am I right or wrong in that?

Lord Strathclyde: Partly. I think a coalition was less of a shock in the House of Lords than it was in the House of Commons, because no government in the last 50 years has had a majority in the House of Lords. We have always operated in a much looser way when it comes to government. We have approached the setting of legislation by agreement; governments are used to losing divisions in the House of Lords that could be resignation issues in the House of Commons. We approached having a coalition in a rather different way and, of course, during the years that we were in Opposition, the Conservative party and the Liberal Democrats became used to working together, because that was the only time when we effectively defeated the Labour Government; it was also the time when winning had maximum power. The Conservative opposition beating the Labour Government was of no great interest, but when it was an alliance of Crossbenchers, Liberal Democrats and Conservatives it packed a bigger punch.

Has the House of Lords become stronger? Lord Crickhowell, you make a very good and broader point about the scrutiny of legislation. I put this down partly to being generational. At the last election, there was a greater influx of new MPs than there has been for very many years, many of whom lacked the skills and possibly the interest in detailed evaluation of legislation. You only have to look around here to former ministers and distinguished lawyers
at the most senior level. In the House of Lords we have expertise and knowledge that the House of Commons does not. As legislation has become more complicated—this is a process that has continued over the last 30 or 40 years—the House of Commons has done their job less well. Paradoxically, the House of Lords has done its job rather better, which has allowed the House of Commons sometimes to pass legislation with it scarcely touching the sides. That has allowed the House of Lords to develop its role of revision and scrutiny, which I think it does very effectively.

**Lord Shutt of Greetland:** One of the features that was not mentioned was the guillotine in the House of Commons, that we do not have. That gives us that opportunity and I do not think there has been any lessening of that opportunity in the coalition years.

**Q78 Lord Lester of Herne Hill:** First, may I say to Lord Strathclyde that, as a backbench Liberal Democrat, the way that you handled the coalition from the beginning I thought was admirable? I agree with what you said. It is worth recalling how unprepared we were in some ways for coalition. I am sure that Lord Shutt will recall this; we did not know where to sit. We were not used to being in government anyway, but then we sat with the bishops. There was all that stuff about which part of the House and how the architecture could be adapted.

Secondly, as Lord Shutt has said, we suddenly found our whips’ office was threatened and we had not thought that through. Thirdly, we had the problem as a backbencher of having ministers in the party who were also meant to be leading the party, and all the tensions that came upon them. Lord Shutt had a difficult job in dealing with those problems, so it is worth recalling how unprepared in that sense we were, but how miraculous it was that we managed to muddle through.

**Lord Strathclyde:** Not only was it a physical lack of preparation—where to sit and what happened to the whips’ office—but also there was more psychological lack of preparation. This is not meant to sound in the least bit disobligeing to Liberal Democrats, but I do not think many Liberal Democrats became Liberal Democrats in the last 30 years in the expectation that they would be in government—quite the contrary. Therefore, they had created a political practice of being permanently in Opposition. Suddenly having to support and defend rather than attack and pull apart; many of your colleagues, Lord Lester, found that quite difficult.

On this question of the whips’ office, I completely understand what Lord Shutt was saying. We debated it on many occasions, but constitutionally the Liberal Democrats were a party of government, and therefore all the structures of government—the role of the Cabinet Office, the Government Whips’ Office—were designed to take over. Sometimes, Lord Shutt and his team acted though they had their own private army. A very good private army they were too, but they could not accept opposition funds and be part of government at the same time. It was something that the Liberal Democrats had to resolve internally, which ultimately they managed to do in a most satisfactory way, so they could still keep their identity. I think they were primarily worried about losing their identity as Liberal Democrats—they did not—as well as being able to play a full part in government.

**The Chairman:** We should pursue some of the specifics about the House of Lords’s role and some of the conventions that apply to the House of Lords. Lord Cullen, do you want to start on that?
Lord Cullen of Whitekirk: I have a question about coalition agreements. Some witnesses have suggested that coalition agreements should be brought before the House of Commons as a programme for a period of five years, and be voted on by the House of Commons. You may or may not have views about that idea but, if it were to come to pass, would there be a role for the House of Lords and, if so, what would that role be?

Lord Shutt of Greetland: I do not see that there would, frankly. The reason that there is a coalition Government is because there was an election, and that election was to a place called the House of Commons. I can see the argument for them having a view on that. There was no election to the House of Lords; life just carried on and, therefore, that is the issue.

Lord Strathclyde: I agree. I do not think there is a role for the House of Lords. We already debate the Gracious Speech at the start of each session of Parliament. We have four or five days’ debate. That is quite enough on broad legislative aspirations. The House of Lords is best on specifics and that is what we want to concentrate on. As to the House of Commons, they must do whatever they want. Given that the Government are created by the party or parties that control the House of Commons, I would have thought it would be a given that, once they had agreed the official document, the coalition agreement, the House of Commons would agree it, otherwise it would lead to a certain amount of chaos.

The Chairman: We must raise the question of the Salisbury/Addison convention and then move on to the general questions about the legislative programme. What is your understanding of the relevance in 2013 of the Salisbury/Addison convention?

Lord Strathclyde: The Salisbury/Addison convention is a strong and important cornerstone of the relationship between the two Houses, the relationship between an unelected, appointed house, and an elected house. It has withstood the test of time although, if you want to get into the details, there have been one or two dangers in the course of this Parliament.

The Chairman: Perhaps you could illustrate that with an example.

Lord Strathclyde: Let me give you an example. There was the extremely important Health and Social Care Bill. It was controversial, it was long and it was complicated, but it had the agreement of the two parties in coalition. It had the agreement of the House of Commons but, when it came to the House of Lords, there was an attempt to throw it out at second reading. I thought that was a breach of the Salisbury convention. Then there was an attempt to deny it a third reading. This was an attempt of the House of Lords to say bluntly, “We are not prepared to debate this issue any more.” I cannot think of a more flagrant example of an attempt by the second chamber to break this important convention, so I very much regretted that that took place. Health is an important issue, but it is not one of those fundamental constitutional issues on which the House of Lords, I can imagine, might wish to break the Salisbury convention. The convention is very important; it should still apply. While in the past people have talked about their manifestos, over time, we have slightly moved on from just manifestos. The House of Lords should always retain the right to suggest amendments to the House of Commons, that is an important role, but what we should not do is throw out important pieces of legislation, which have passed the House of Commons, in their entirety.
Lord Shutt of Greetland: I have never spent a lot of time losing sleep on whether we were abiding by the convention called Salisbury/Addison. I believe the major feature about that convention, which my predecessors did not sign up to, is about the House of Lords taking on the elected House in a serious way. We all know how we have got to points where there have been debates—I can remember it under the last Government—where we have had our say and had our say again, and we had to accept what the elected House had said. I recall it time after time when some of us wanted to have another go. That is the major feature about this convention, us saying, “We have to call it a day now,” in terms of taking on the elected House.

Lord Strathclyde: There is a very good, entirely pragmatic reason for the House of Lords not continually to challenge the House of Commons on major legislation, because eventually the House of Commons will tire of this and then we will find not our composition changing, but our powers reduced. That would be a very dangerous step for the House of Lords, and indeed for the way the parliamentary process works.

Baroness Wheatcroft: I wondered, Lord Shutt, if you particularly could say anything about how difficult it is to maintain party discipline in the minority party in a coalition. You talked about maintaining your separate whips’ office, but there were occasions when it did appear that the whips’ office was having difficulties.

Lord Shutt of Greetland: Of course it is difficult. The whole business of government is difficult. My answer was, if there are problems, you have a meeting. If there are still problems, you have another meeting. We had lots of meetings. In those first two years we had difficult and tough decisions to make on bills. The way that we found was to have meetings and, ultimately, you then still might have people who cannot accept positions. We also often were told that there were specific items where there really had been ding-dong fights in the Commons and, eventually, a deal had been done. It would be very unhelpful if we took a view so that that fight had to take place again in the Commons. Yes, it was difficult, but we managed.

Baroness Wheatcroft: I wonder whether Lord Strathclyde could say how that impacted on the working of the coalition from his point of view.

Lord Strathclyde: I think Lord Shutt put it extremely well. The Lib Dem way was to meet and then have further meetings and further meetings, and sometimes I would come along and join these meetings. I had a great insight into the thought process of Liberal Democrats. The Conservative party, from that point of view, was an easier animal to deal with. Many of our backbenchers had ministerial experience; many of them had been in the Cabinet and many had been MPs, so they understood the internal compromises that we all make as politicians in agreeing a programme. Sometimes the Liberal Democrats found that more difficult, so Lord Shutt had a really tough job in getting his people to agree. Overwhelmingly they did. He did a tough job, but he did an extremely good job. He and Lord McNally had a much more complicated job with their backbenchers than I did. My job tended to be to ask, “Why are we doing this? Is it because the Liberal Democrats have demanded it?” If the answer was yes, it was because of the good of the coalition and the process of government we signed up to.

Baroness Wheatcroft: If I might take that issue of compromise one stage further, to what extent were you aware of ministers agreeing to legislate in one direction if they were also
allowed then to please the other half of the coalition by legislating in another direction? “I will swap you this bill for that bill.”

**Lord Strathclyde:** You mean, “Were there deals done like that?”

**Baroness Wheatcroft:** Yes: to what extent?

**Lord Strathclyde:** Yes inevitably, right across the board. I suppose the most obvious one was the legislation of which I still bear the scars on my back: the AV referendum and the redistribution of parliamentary seats. That is an example of where we stretched to breaking point the conventions of the House and how we conduct business. It was clearly a blue and yellow bill. Half of it was what we thought was right and half of it was something that the Liberal Democrats had yearned for, for years: the opportunity for the British people to have a choice on the electoral system.

**Baroness Wheatcroft:** That was a very public trade, but I am intrigued to probe how many private trades there might have been.

**Lord Strathclyde:** The answer is yes, of course. Within the process of legislation, there are always different ministers who will bring different things to bear. They will say, “We’d like to have a bit more on this. This will help us in the House of Commons. It will help us in the House of Lords.” I do not think that is so different from what happens in single-party government. There are trades between departments, between ministers, sometimes political trades. “We would like to do this, but we cannot do it now.”

**The Chairman:** Two of your political colleagues around the committee table who have government experience want to pursue that. First Lord Crickhowell and then Lord Lang.

**Q82 Lord Crickhowell:** On trades, one minister with a particularly onerous responsibility at the present time, with a quite controversial area of policy, said to me that he thought one consequence of coalition has been the necessity to bring forward any really important and controversial measures sooner than was necessary in a one-party government. You had to seize the moment. The party that had prepared better to introduce its legislative programme would get its programme under way, because it became much more difficult as you went on. The phrase “accepting positions” becomes more difficult as you approach the next general election and people begin to take up their own positions. Do you agree with that analysis? It has a side effect that has led to this committee frequently criticising the legislative programme, because sometimes it has meant that the legislative programme has come through rather ill prepared—hence the need for major revision. Do you think it has an effect? You have to get the important stuff quickly or you do not get it at all.

**Lord Strathclyde:** It is a good observation and a fair criticism. The fair criticism is that early on in a Parliament, particularly in the life of a new government—it does not really matter who that government is—the legislation is always rougher than perhaps it should be if we waited a year. Unless you expect a new government to come in and do very little in its first year, which is politically impractical, then it is hard to see how we solve that, apart from ensuring that we have the right systems of scrutiny and revision as legislation proceeds.

**On the question of doing controversial stuff early, I do agree with that. A lot of people predicted in May 2010 this coalition would fall apart in the autumn of 2013, about now, as the parties prepare for the general election. What is interesting is that there is no sign of**
that. The two parties are as committed to the coalition as they ever were and, therefore, we can see that this Parliament will continue in coalition until the very end. There may be lots of good political reasons why that should be, but what will also happen is it will become harder for the parties to agree on issues that they think will affect and have a negative impact on them. Let me give you an example. It would be very difficult to have done the student fee legislation 18 months before a general election. It was very tough doing it after the last general election, and I think it is a credit to the Liberal Democrats that they felt they had the strength to do it.

**Q83 Lord Lang of Monkton:** Lord Strathclyde, your reference to AV aroused my interest. The effect that it had on the boundaries bill seemed, to many people, quite above and beyond the nature of the debate about coalition government, a constitutional outrage whereby one individual within the Government was able to frustrate legislation that had passed through both Houses of Parliament. At the coalition level, do you feel that may have happened because the Lord President of the Council, whose duty it was to trigger the activity under that Act, was the leader of the Liberal Democrats and therefore a senior partner in the coalition, and therefore untouchable, or was there some other factor at play? Do you think there is any way in which the situation could be prevented from arising in future, in a coalition?

**Lord Strathclyde:** It was an outrage. Whether it was a constitutional outrage or not, I will let the committee decide, but it was extraordinary behaviour. We had come to this agreement in the coalition agreement that was published. It was completely understood what was going on: there would be a referendum and then the Boundary Commission would work on a fairer system of equalisation of parliamentary seats and a reduction in the number of seats from 650 to 600, which I find very uncontroversial. That is not what everybody thought, but it is certainly what I was thought.

To see this stymied, pulling the rug away from us at the last moment, almost on a parliamentary ploy of not agreeing the final stage, the statutory instrument that would be able to trigger the Boundary Commission, was a terrible and dirty trick. I am trying to find the right words to describe it; “dirty trick” does not quite emphasise it strongly enough. Why did they do it? They blamed the House of Lords, which was monstrous, because the House of Lords Reform Bill fell apart in the House of Commons. The House of Commons, having agreed the bill—over 75% of the House of Commons voted for it—could not agree a programme motion. That was not the Conservative party’s fault; that was the Labour party’s fault. It was to do with the opposition. To blame the collapse of reform on the House of Lords was unfair. The real reason was, I suspect, that the Liberal Democrats looked at the maths; they got their clever people to look at it. They wanted the incumbency in the next election and they decided they could not do it. Why did the Prime Minister accept that? I think he had no choice. The Leader of the Liberal Democrats basically said, “I’m not going to support you. There is nothing I can do to support you.”

**The Chairman:** That is a constitutional outrage, is it not?

**Lord Strathclyde:** It is a pragmatic fact of life. Eventually, within a government, if part of the government says, “We will not support you in securing a majority in the House of Commons to pass whatever it is,” then you have to decide how to deal with that. David Cameron, as Prime Minister, had a choice, “Am I going to have a general election? Am I going to take this to the people or not?” Rightly, he did not, but he had probably relied in good faith on the Liberal Democrats to stick to their original agreement.

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Lord Lang of Monkton: In a single-party government, if a minister tried to behave like that he would be dismissed. That is the point I was getting at. Is there some way in which one can anticipate such a deadlock in the future and make provision for it, in any future coalition agreement?

Lord Strathclyde: I wonder if that is quite right. There must have been instances in a single-party government where a very senior and powerful minister has disagreed with a particular policy and said, “If you carry on like this, I will not be able to stay in your government,” and the policy has changed and the minister has remained. That must have happened. Lord Hennessy of Nympsfield is not here, but I am sure he would give us plenty of examples of where that had happened. This was a slightly more public break of an agreement. In a way, the difference was that there had been this public agreement in the coalition to do these two parts of legislation. We had worked very hard to get it through Parliament. We believed in ourselves as Conservatives that, by giving the referendum, we would get the reduction in the number of MPs. When that changed that was a shattering blow.

Lord Shutt of Greetland: As has been indicated, things happen, and the Deputy Prime Minister, the leader of our party, took the view that we had been ratted on as far as Lords reform was concerned. Whether it is right or wrong—the decision he made on the boundaries—the interesting thing is that was not a decision made in this House, and it was not a decision that troubled us in terms of working through the coalition in this House.

Q84 Lord Lexden: May I ask both of you, in the light of your experience, how you feel about the distribution of ministers and whips between the two parties in the Lords? Also, Lord Strathclyde, you made reference to lack of ministers of state. It might be helpful to have a little more on that. Finally, in these conditions, what is your view about there being one peer in the Cabinet? Is it your view that in most circumstances that would suffice or do you feel there could be a case for having more than one member of the House of Lords in the Cabinet, in the coalition Government?

Lord Strathclyde: I am loath to sound like a shop steward, a particularly awkward shop steward. By the way, I completely understand the problems in the House of Commons, the difficulties that the Prime Minister has, the Deputy Prime Minister, the chief whips and so on in the House of Commons in dividing up the cake to give posts to those MPs who want it, who deserve it, who need it, posts for the sake of the coalition. In a way, we paid the price for that by having fewer paid ministers. Baroness Warsi also attends Cabinet, so, with me, there are two round the table. It was not long ago that the Labour party in government had four ministers sitting in Cabinet as secretaries of state. Maybe that says something more about the House of Commons than the House of Lords, but it was strengthening for the House of Lords, and I think that we have, therefore, lost some of that influence in the core of the government machine.

I have already said that I thought that the distribution of ministerial posts in the House of Lords was not as effective as it might have been. It would have been good to see more Ministers of State. Indeed, it would have been good to see more Liberal Democrats in government, but that would have meant a reduction in Liberal Democrats in the House of Commons; perhaps that was a price that the Deputy Prime Minister was unwilling to pay.

Lord Shutt of Greetland: I agree that the numbers in the Lords are thin, and I expected that, as time went on, it would change. In one sense it has changed, in that we got Baroness
Kramer recently appointed as a Minister for Transport. So it is changing, but I thought on day one it was very thin. There is a big difference between being a whip and being a minister of state in a department and having real influence in a department, and yet as a whip having to carry legislation in this place but not having your feet really rooted in a department. We have suffered from that.

**Lord Strathclyde:** We brought Liberal Democrats on to the front bench, formally, as Lords in Waiting, but they were unpaid and they were whips. I do not think the House has ever appreciated the workload that is put on these individuals, who do an extraordinary job; they do it very well and for little thanks and gratitude, but maybe that is not why they go into politics.

**The Chairman:** And no salary, as you pointed out.

**Lord Strathclyde:** And no salary, yes.

**The Chairman:** Lord Adonis has arrived. We welcome Lord Adonis, but we must pursue this question of the Fixed-term Parliaments Act 2011, if we may, for a few minutes.

**Q85 Lord Lang of Monkton:** Lord Strathclyde has indicated his general view of that legislation, I assume within the context of constitutional pressures in the longer term. Looking at it from the House of Lords’s point of view, it creates a rather routine and essentially sterile annual ritual, instead of one that is variable in the context of a sudden general election, which might have taken place in the past. Does this weaken the capacity of the Lords to gain concessions due the pressure of time to get legislation through in a wash-up before a general election?

**Lord Strathclyde:** It is a very good question. Until we have tried it, I am not sure what the answer will be. In theory, there should be no wash-up; the Government should have brought forward legislation in a timely manner, passed by the House of Commons, and we should be able to agree it by a month or five weeks before general election day, which will be the first Thursday in May 2015. I wonder if it will be quite as clean as that. Anyway, this is the law of unintended consequences. By having a fixed date, you do not know what is going to happen. There may be a terrorist outrage or an economic issue that requires legislation—not emergency legislation but legislation—to be done relatively quickly in the winter before a general election. I suspect there may still need to be a wash-up period. The essence of the wash-up period—this is the important thing—is it is done entirely by agreement. This is not a government strong-arming the House of Lords. It only works because the government and the opposition have got together and have agreed what should be passed and what should not. The difficulty is that we delete a lot of legislation. It is the speed, the process and perhaps the consultation that should take place between other interested parties, such as Crossbenchers, as well as backbenchers of all parties, which is probably going to concentrate minds in this Parliament.

**Q86 The Chairman:** Is there any question that members of the committee feel we have not addressed that they would like to raise with Lord Strathclyde or Lord Shutt? Do either of you feel that there are things we have ignored or points that you felt were important that we have not covered?
Lord Strathclyde: During the course of this discussion, which has been very interesting, what has come to me is that there are little quirks, touch points and areas of tension, between coalition, between how governments in coalition and the Houses of Parliament work. Overall, we have made this coalition work and we have made it work rather well. I do not know whether there will be a coalition after the general election but, if a second coalition is created, I think it will probably be done differently and possibly better. If it is not, we will revert to a stronger and perhaps better understood system of government under a single party.

The Chairman: That suggests that you regard the coalition, as it has stood and—as you say, it has survived—as something of a temporary fix for a particular situation, which was not necessarily advantageous or which as individual party members you would have welcomed.

Lord Strathclyde: May I pray in aid a country that is used to having coalitions, like Germany? They have taken for ever trying to form a government. We are used to a system of pragmatic governments. The coalition and how it was set up demonstrated how we do that. I do not think we want to move away from that. I would not want an entirely formulaic approach to setting up a coalition. We developed a system; it may not be the one that we have next time, but it pretty much served the interests of people and Parliament alike.

The Chairman: You would agree then with the Prime Minister, who recently said that a coalition government was not in the long-term interests of the United Kingdom.

Lord Strathclyde: I have never been an advocate of coalition government. I can see all the reasons of lack of clarity, transparency, deals done behind closed doors, coalition agreements and so on, which are not necessarily the best way forward. Where the people have created the conditions, through the election, of a coalition, I think it is the responsibility of serious politicians to take up that challenge. Nick Clegg, David Cameron and many others took up that challenge, and they delivered something we ought to be proud of.

Q87 Lord Lester of Herne Hill: It is right, is it not, that it is not a choice between coalition government and majority single government, because there are always coalition governments in one sense going on under our system? We would not have got the Equality Act 2010 through without the dedicated and disciplined support of the Liberal Democrats in opposition, for example. We would not have got the Forced Marriage (Civil Protection) Act 2007 through unless there was political cross-dressing between the Liberal Democrats and Labour, at that time. Is it not a bit artificial to make this rigid distinction between the two systems, when you need, especially in the Lords, political cross-dressing?

Lord Strathclyde: Over the last 100 years, we have seen the development of modern political parties. We are used to coalitions being created within political parties, which then present to the electorate. On this occasion, we did it the other way round and we created the coalition and the alliance after the election, rather than before.

Lord Shutt of Greetland: I served 25 years in local government. In most of that time, no party was in complete control. We had a variety of ways of coping with that and we learned how to cope. The great thing about that was that more people understood how, in that case, the local authority works. I think with coalition more people now understand how government works. I suspect that some things will not go back, because more people know about how things work and you cannot put the thing back in the box. I believe we have
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coped well. One of the features has been very good personal relations between the people—I speak particularly from the whips’ and Leader’s offices as far as that—and no false falling out. I never knew when I would have to fall out properly, so we certainly did not have any false falling out. I think that, certainly in my time, it worked quite well.

Lord Hart of Chilton: An observation: we will only really know what the public thinks of what has happened in the last five years at the next election.

Lord Strathclyde: It is a very good observation. I agree.

The Chairman: An observation on which we may conclude. Thank you both very much for an illuminating session, which has been very helpful to our thinking, particularly about the House of Lords and coalition. I am grateful for the time you have given. Thank you, Lord Strathclyde, for making your debut appearance before a select committee as backbencher. Lord Shutt, thank you for altering arrangements with the committee you chair so you could take part this morning. Thank you very much.
Transcript to be found under Lord Morgan
Lord Stephen, Mr Ieuan Wyn Jones, Rt Hon. Lord McConnell of Glenscorrodale and Rt Hon. Rhodri Morgan —Oral Evidence (QQ 100-110)

Transcript to be found under Mr Ieuan Wyn Jones
Rt Hon. Lord Strathclyde, CH and Rt Hon. Lord Shutt of Greetland, OBE—Oral Evidence (QQ 74-87)

Rt Hon. Lord Strathclyde, CH and Rt Hon. Lord Shutt of Greetland, OBE—Oral Evidence (QQ 74-87)

Transcript to be found under Rt Hon. Lord Shutt of Greetland, OBE
Transcript to be found under Dr Ruth Fox
Mr Barry Winetrobe, Honorary Research Associate, Constitution Unit, UCL—Supplementary written evidence

Introduction

1. As I did not provide written evidence in advance of my appearance before the Committee on 16 October, I wish to take up the Committee’s offer of providing a supplementary submission, to mention two issues which I had hoped to raise at the session but was unable to do so due to time constraints. In both cases, I hope the Committee will consider these points in preparing its report.

Role of core Civil Service in government formation negotiations

2. There seems to be a general consensus that the core Civil Service should be the lead facilitator of any government formation negotiations, especially after an election producing a ‘hung parliament’. However, having read accounts of the 2010 episode and the 1999 and 2003 Scottish devolution examples, I hope the Committee will address the appropriateness of this consensus, rather than simply adopt it. There has been some concern expressed at perceptions that, in May 2010, senior officials’ advice was motivated by concerns at financial markets’ reaction to governmental uncertainty.8 In 2003, senior Scottish officials seemed to take a relatively active part in the negotiations, including helping draft the final agreement.9

3. It may be that there are other bodies who may be able to fulfil necessary negotiation facilitation functions as effectively as the core Civil Service, but without raising any negative perceptions affecting existing constitutional proprieties about the role of the Civil Service. For various reasons, ‘high’ constitutional bodies such as the UK Parliament, the UK Supreme Court or Buckingham Palace would not seem to be appropriate. However, it may not take too great a leap to imagine that the Electoral Commission could act as negotiation facilitator, a role that, arguably, is a logical and practical extension of its existing remit and purpose.

‘Validation’ or ‘ratification’ of a government’s formation and any written agreements

4. There has been much discussion, including in the 16 October evidence session, of various devices for securing some form of validation or ratification of the outcome of government formation negotiations, especially where a coalition results from a ‘hung parliament’ election. These typically include parliamentary processes such as a debate and vote on any written agreements, or a prime ministerial ‘investiture vote’. The idea seems to be some form of nod, however symbolically and indirect, towards public adoption of the outcome of an election in which they participated, based on a theory that elections produce parliaments which then produce governments.

5. However, during the 16 October evidence session, there seemed to be some consensus among the Committee that representative democracy nowadays has to take greater account of growing public expectations, and ability, to participate

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9 Ben Seyd, Coalition Governance in Scotland and Wales, May 2004, p14; Sir J Elvidge, Northern Exposure: lessons from the first twelve years of devolved government in Scotland, 2011, pp14-17, esp the idea of a ‘negotiation support team’.
proactively in their governance. For example, resort to referendums is now, for good or ill, more acceptable as a constitutional and political option in particular situations. Initiatives such as ‘e-petitions’ and the proposed ‘MP recall’ are other examples. Yet, through the new fixed term parliaments law in particular, direct public participation in government formation is, if anything, reduced due to the likelihood of longer intervals between general elections.

6. The public may feel they are entitled to a more direct say in government formation - especially after a ‘hung parliament’ election outcome - than watching their elected representatives ratify a deal, ‘stitched up’ amongst some of them, for a government which was not on offer during the campaign. Notwithstanding genuine issues of timing, and the risks of prolonging periods of uncertainty, it is not impossible to envisage ways of consulting the public, whether by a second general election or by a referendum endorsing the new administration. I hope the Committee will feel that the public deserve to have this issue given some consideration in its deliberations and subsequent report.

21 October 2013