

HOUSE OF COMMONS

POLITICAL AND CONSTITUTIONAL REFORM COMMITTEE

**THE GOVERNMENT'S VOTING AND PARLIAMENTARY REFORM PROPOSALS:
FIXED-TERM PARLIAMENTS BILL**

TUESDAY 7 SEPTEMBER 2010

DR MALCOLM JACK

PROFESSOR ROBERT BLACKBURN

Evidence heard in Public
Questions 1 - 91

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Oral Evidence

Taken before the Political and Constitutional Reform Committee

on Tuesday 7 September 2010

Members present:

Mr Graham Allen (Chair)

Nick Boles

Mr Christopher Chope

Sheila Gilmore

Simon Hart

Tristram Hunt

Mrs Eleanor Laing

Catherine McKinnell

Sir Peter Soulsby

Mr Andrew Turner

Stephen Williams

Examination of Witness

Witness: Dr Malcolm Jack, Clerk of the House of Commons, gave evidence.

Q1 Chair: Malcolm, welcome. I am sure that everyone-if they do not know you by name-knows you as a figure who flits around the corridor doing good deeds and spreading magic dust on the proceedings of the House of Commons. You are very welcome. Thank you for the paper you have prepared for us.

I am not clear from your evidence whether you think we have a separation of powers in this country or a unitary system where the Government control Parliament. That seems fundamental to some of the things that you are proposing in your document. Where do you stand on that issue?

Dr Jack: First of all, Chairman, I thank you very much for your welcome. I am very happy to be before the Committee in its early days. I am sure that you will do important scrutiny work for the House-and, indeed, already have done.

I think that is a broad and difficult question. We have partial separation. I have always thought the term "separation of powers" is rather misleading. As you know, when Montesquieu used that term in the 18th century, he was thinking of something probably quite inaccurate. What we do have is a separation of the activities of the Houses-of both Houses of Parliament-and the judiciary, and that is the core of the separation that I am talking about in the paper.

Q2 Chair: Do you believe that, where Government may abuse their power, there is no role at all for the judiciary as a separate institution to blow the whistle, if Parliament is the creature of Government and is unable to do so itself?

Dr Jack: There could be such circumstances if we had a written constitution, which, I think, is what you are hinting at. I think it is a matter for Parliament to sort out its affairs with Government, without the interference of the judiciary. I don't think judges should be involved in political decisions taken in the House.

Q3 Chair: On the general principle of five years or four years, many of the witnesses whose evidence we have read indicate that, although we have a five-year term at the moment-there have been two recent examples-it is quite rare to go the full length. If we had four-year Parliaments with provisions to have early general elections, which you seem to be favouring, wouldn't you actually have not four-year Parliaments but often three or possibly two and a half year or even shorter Parliaments? Aren't there, therefore, some strong political consequences, in terms of a Government being able to implement their programme, things that require a length of time not coming to fruition and the media playing an ever larger role in a permanent campaigning environment for Members of Parliament? Isn't it a highly political question that you're delving into?

Dr Jack: Yes, I think it is. It gives me the opportunity to say to the Committee that I am not challenging the principle of fixed-term Parliaments. As Clerk of the House, it would be quite wrong for me to do that. The main purpose of the Bill is to achieve fixed-term Parliaments. What I am saying really is that the method by which it does so-particularly in clause 2, which I am sure we shall come to-in a sense invades the privileges of the House.

In answer to your question, I think you are absolutely right. Whatever fixed term we have, the natural processes will tend to make things come before that time. I think I am right in saying that there are one or two Parliaments, or countries or other constitutions, where there is a fixed-term Parliament and also a minimum term within the fixed term before Parliament can be dissolved. I think the South Africans have that in their constitution. That could be one mechanism. But I reiterate that I am not arguing either for or against fixed-term Parliaments as such.

Q4 Chair: If I can press you further on that, I think you are arguing for both. You are happy to accept that the Government have a right to put forward a proposal for a fixed-term Parliament if they wish, but you are inserting a large number of caveats that actually mean that nothing changes in the system. A Prime Minister could promote a vote of no confidence and a number of other issues, and call an election when he liked, whereas the Prime Minister-to his great credit-has for the first time given away a prerogative power. If we are to have lots of caveats about when that is suspended, we are not going to advance very much at all. We're having our cake and eating it, aren't we?

Dr Jack: Yes, I think it will depend on how that is done. Perhaps as we discuss the matter further, what you are saying could be achieved through the Standing Orders of the House. These matters could still be kept within the House and restricted in the way that you're suggesting.

Q5 Tristram Hunt: Just to pursue that issue, could you lay out the concerns that you have about the threat to exclusive cognisance from the Bill, and particularly the threat, as you see it, of opening up the House to judicial review or to legal challenges?

Dr Jack: Yes. First of all, may I say that the term "exclusive cognisance" doesn't roll off the tongue easily? It is pretty archaic. I think Members will have noticed that in my memorandum I have tried to use the term "jurisdiction", which is a little clearer, rather than "cognisance". We are talking about the exclusive right to settle the way they do their business-to put it crudely. By the way, this is about both Houses, although we are concentrating on the Commons in these matters.

There are very experienced Chairmen on the Committee who have chaired various Committees of the House, and they know that it is the duty of the Chair to enforce the rules of the House as laid down in the Standing Orders. Of course, in the House itself that is entrusted to the Speaker and his Deputies. They maintain those rules of order. We are really talking about the way that the House controls its internal affairs. The most obvious modern example is the Standing Orders, because the

House has now codified the way it deals with its procedures and practices in the Standing Orders. They are not exclusive of course; there is still precedent and practice.

The Standing Orders are the way the House does its business and entrusts, as I said, the Speaker or the Chair of Committees, whoever it is, to interpret them without interference from anyone; no one is able to question the Speaker's rulings outside this place. My belief is that clause 2 of the Bill enables some questioning of those decisions in the courts. It may be that we'll come on to that in greater detail. I'm saying that on this internal jurisdiction-I hope that the Committee will see this and that is why I say I am not disputing the policy objectives of the Bill-I have tried to put forward a way in which I think this can be done within the jurisdiction of the House.

Q6 Tristram Hunt: And your particular concern is the move from what happened to how it happens-the process by which a Parliament is dissolved?

Dr Jack: Yes, that's right, or the two processes in clause 2.

Q7 Tristram Hunt: There's a real concern-you point to the German example-about this being challenged in the court, an election being stalled and consequences from that.

Dr Jack: Yes, that's right; it's that sort of thing. If I can just pluck out one example-no doubt we will come to others in due course-I have one or two little precedents that might interest the Committee. In the matter, for example, of section 2(3), it says that "A certificate under this section is conclusive for all purposes"-that is, the Speaker certifies that one of these two routes has been used. I'm sure that legal members of the Committee will immediately realise that those words are challengeable if the procedures have not been complied with under section 2, so that the piece of paper the Speaker might sign might be regarded as invalid-not a certificate under section 2 of the Act. It is that sort of question that could arise in the courts.

Q8 Mr Chope: These are very fundamental issues. I remember many years ago when I first served on the Procedure Committee, Enoch Powell said that in the absence of a written constitution, the procedures of the House are effectively the constitution of our country. Having regard to that, can you tell us to what extent you have had consultation with the Government about the contents of the Bill, which it seems to many of us is being rushed through? It hasn't been the subject of widespread consultation. Obviously, you, as the Clerk of the House, presented this memorandum to us, which seems to raise quite significant issues. I wonder whether these are issues that you've had the chance to deal with with Government Ministers informally beforehand, and whether they basically rejected your line of argument or whether these are things that don't seem to have been thought about until now.

Dr Jack: I think the short answer, Mr Chope, is that my responsibility is to the House, not to the Government. The Clerk of the House and all the staff here serve the House and not the Government. As I said, it is entirely up to the Government what proposals they bring to the House. It is my duty to advise the House on privilege aspects, as I see it, of those matters. There is some informal consultation, but I don't necessarily think that it is the duty of Government to consult me before introducing legislation of this sort. I think it is a matter for them to consult the House. Whether the House should deal with a Bill like this without having a draft Bill and so on is of course a matter that has been brought up by previous witnesses of yours, and has been discussed publicly.

Q9 Mr Chope: Can I press you on that? You say that it's not the duty of the Government to consult. I wasn't suggesting it was. I was just asking whether the Government had consulted you, because you are part of the House and there is no formal machinery established whereby the Government

can consult the House, particularly since the Leader of the House is a member of the Government. I wonder whether you could be a little bit more forthcoming.

Dr Jack: Well, the answer is yes. There was informal consultation.

Q10 Stephen Williams: I would like to ask the Clerk some questions about the practicalities about the issue of certificates triggering early Dissolutions. As I understand it, there needs to be a 66% or two-thirds majority of the theoretical full membership of the House, which is 650. How will that be interpreted? Does the Bill allow for flexibility when we have a situation where four Members from Northern Ireland choose not to sit here? There may also be vacant seats through death or people being incapacitated in some other way. How can you reach the threshold needed? Is there going to be any sort of variability? Do you think there should be variability, because at the moment, you would need 433 MPs to vote in favour?

Dr Jack: Yes, I'm glad our arithmetic agrees. I did a quick calculation and reached that figure as well. I think the Bill talks about the number of seats in the House, including vacant seats, so there is a fixed number. However, I think your question raises a whole lot of problems of a practical nature. I will just pluck out one of them, which is very fresh because apparently there was a little difficulty last night about a Division-whether certain Members were counted or not. I will pause there-I won't say any more about that. The Bill talks about a motion passed on a Division. There are experienced Members around the Committee table, and they will know that irregularities do occur in Divisions. In fact "Erskine May" has five pages on irregularities in Divisions. They range from mistakes in counting, to Tellers leaving the Lobbies before all Members have gone through-I believe this may have been the case last night. I can see from their expressions that Members have had this experience. There are also minor things, like the ringing of Division bells, and the locking of doors before Members have been able to get into the voting Lobbies. Then there are conventions of the House, which would pose some of these problems. Members are perfectly legitimately able to vote in both Lobbies-that is a practice of the House-in order to cancel out their votes. There is the whole business about nodding through sick Members who are on the precincts. Some of this may sound a bit dramatic, but I think we have to remember that at Dissolution a confidence motion could be a very dramatic occasion. The Government may be in a very tight political situation.

I mentioned that I thought that this would be of interest. I have brought one precedent. I won't bore the Committee with too many precedents, but I couldn't resist this one. This is from 1974 and it's to do with the passage of the Trade Union and Labour Relations Bill. I will read a very short extract from the Journal of that year. "Mr Harold Lever, Member for Manchester Central, acquainted the House, That in the Divisions on Amendments Nos....Trade Union and Labour Relations Bill...he was recorded as having voted with the Noes, but he had to inform the House that he was not within the Precincts of the House at the time of those Divisions and that in consequence his vote ought not to have been so recorded."

You might think, "Well, so what?" But there was a "so what" because the decision on those amendments had been made on casting votes by the Speaker. There had been an equality of votes, and those amendments had been rejected by the Speaker on the principle that, as far as legislation is concerned, he should leave the Bill as it is, as it is decided by a majority. In this case, when Mr Lever came to the House and acquainted the House with this, the whole procedure was declared null and void, including the Third Reading of the Bill. The Bill had to be called back from the House of Lords and the whole process had to happen again. I don't think I need labour the point of what this would mean in terms of no confidence.

Q11 Stephen Williams: Have you had to advise either the Speaker or the Deputy Prime Minister that the Standing Orders of the House may need to be changed—for instance, in terms of the timing of a Division? It always strikes me as odd that you have eight minutes precisely to get inside the voting Lobby, but you can take as long as you like to vote. I just wonder whether it's actually physically possible to get 433 Members through the doors of the Division Lobby within eight minutes, because quite often you're trying to get into the Lobby—people just don't get out of the way—and I just wonder what would happen if the doors were slammed and people were actually queuing to get in. It's a bit like not being allowed to vote at 10 o'clock.

Dr Jack: There have been disputes about the locking of the doors in the past, but I am sure that Committee members are much more experienced than I am in rushing at those doors. There are problems in large Divisions. But I think what I'm actually trying to say is that these problems are resolvable within the House, by the authority of the House, by the authority of the Speaker. If there are these problems, they are soluble. These sorts of problem would become justiciable under clause 2 of the Bill. Someone could argue that the vote of no confidence had not been passed according to the precedent that I have given you.

Q12 Chair: Dr Jack, forgive me for saying this, but it seems all your focus is on a premature Dissolution. Don't you see any advantages for someone in your position to promote the power of Parliament, given that there could be a five-year term? Have you looked, for example, at whether there could—on a five-year term—be much better scrutiny of legislation? There is a whole raft of issues—opportunities, for example, to look at other parts of prerogative powers, which in this instance the Prime Minister is seeking to give away. It seems that you are looking at how this would work if in effect the system carried on. Nominally we have a fixed-term Parliament, but let's just examine the nuts and bolts around a premature Dissolution. Have you a view of what opportunities exist for Parliament if there were to be a serious five-year term, which would enable Parliament to do a large number of other things?

Dr Jack: As I said, Chairman, I don't have a view as Clerk of the House. I shouldn't, really, because this is a matter for the House to determine, and the Bill is before the House; but yes, I can certainly see advantages in a fixed-term Parliament, if that is what you are asking me.

Q13 Chair: Would you consider doing some work in the Clerks Department to prepare for that eventuality?

Dr Jack: Of course, Chairman. If you ask us that, we will certainly do it. Of course.

Q14 Chair: There are things related to Prorogation of Parliament and royal prerogative powers. We will now all enjoy a five-year term, which gives us some consistency and some ability to pursue issues in the longer term—sustainable long-term inquiries rather than fly by night stuff just in case there is going to be an early election. Are there not lots of opportunities, and could we perhaps ask you through your good offices, to explore some of those and actually let Members of Parliament know some of the advantages that would accrue to Parliament in this rather fundamental change of the Executive-legislative relationship?

Dr Jack: Of course, Chairman. Certainly. We can do that.

Chair: That would be very helpful.

Q15 Mrs Laing: I was going to ask, generally, about the confusion or clarity that might arise during the 14-day period if there was going to be a Dissolution. It just occurred to me, when you raised the

issue of the confusion in the Lobbies last night. That is an immediate example. Apparently, a Division bell did not ring and lots of people came running in for the third Division. I have no idea what the result was but we know, within the last 24 hours, that things can go wrong and you do not always have an immediate and definite result if it's likely to be close. You raised the issue of the fact that it is a Member's right to vote in both Lobbies. I ask this question to flag up the possibility of there being utter confusion, because in the Bill, as I understand it, there is provision for a certain percentage—we are talking here about percentages. In the House of Commons we are used to talking about there being either more ayes than noes, or vice versa—that's it. It is a simple 50% of those voting. There are either more or not more and that part is clear. But when you have a percentage, when you have a proportion, it has to be a proportion of a certain number. Now, is it possible that there might be total confusion if some Members were to vote twice, as you just said is their right? Then the number of votes cast in the House of Commons could very easily be far more than the number of Members present to vote. In which case, would that percentage, as expressed in the Bill, be a percentage of the number of Members of Parliament currently sitting in the House, or would it be a percentage of the votes cast on that particular occasion?

Dr Jack: On that matter I think the Bill is pretty clear. It says the "number equal to...two thirds of the number of seats of the House", so it doesn't matter how many people vote or don't vote.

Mrs Laing: Thank you for that answer. I merely ask the question to put it on the record. I put it to you and the world in general that it does matter, because supposing 20 Members voted twice then that would confuse the numbers. But I merely make that point to show that if such a thing were to occur, this Committee thought of it first.

Dr Jack: Very important.

Q16 Mrs Laing: Of course. That brings me on the real issue. The example I have just given may or may not lead to confusion. My real concern is the possible lack of clarity during the 14-day period after a vote of confidence. I suggest that it would be bad for Government, and it would be bad for the country, if there was no clarity about who was actually in government. I wondered if you had anything to say about that part of the Bill and the confusion or clarity that might arise.

Dr Jack: Obviously it is an innovation in our terms, because I think, as all Members recognise, in Westminster there is a sort of impatience—if I can put it that way—to get things decided and done. On the other hand, periods of this sort are written into the constitutions of many other countries—I can see the Chairman nodding—and this is perhaps something we have to get used to. It is certainly a change in our culture, if I can put it that way, that there is a longer period than normal for such a matter to be resolved.

Q17 Tristram Hunt: I was going to pursue the nature of no confidence motions, and whether you are also concerned about a lack of clarity in the Bill as to what would constitute a no confidence motion. There are a number of examples of previous Bills suddenly becoming confidence motions and then Dissolutions. Could you explore those ideas?

Dr Jack: Yes, I think there could be areas of difficulty on this matter. One of them where I think there would not be a difficulty is the straightforward motion that this House has no confidence in Her Majesty's Government. I think it must be pretty clear that that is a confidence motion, however clever a forensic examination of the words might be. So there is one category, I think, that is pretty clear. The Speaker in considering these matters would have no difficulty with that motion.

I think members know that that is not the only kind of no confidence motion. The practice about no confidence is really again, Chairman, echoing a little of what you said at the beginning, a matter for the Government; the Government decide what is confidence and what is not. The Second Reading defeat of a major piece of legislation introduced under manifesto, I think, would probably be regarded as a confidence matter, and possibly the defeat of a Finance Bill implementing a Budget. In the past, these things have been defined as confidence motions: the Second Reading of the European Communities Bill was defined as a confidence matter. Going back in history there have been quite obscure things that Governments have decided should be no confidence. I came across an Adjournment motion that was regarded as a matter of confidence by the Government.

I think that what is a confidence motion—other than the very straightforward one, "There is no confidence in Her Majesty's Government"—is an ambiguous matter. I am being a bit myopic, Chairman, and I know that you are thinking that about clause 2. Those are matters within the House that are easily soluble. The Speaker would simply ask the Government, "Is this a confidence motion or isn't it?", or the Government would announce it. When the matter is before the court, this will lead to arguments.

Q18 Chair: Just on a point of clarification. So, it would be a sensible way forward to specify a form of words that constitutes a confidence motion?

Dr Jack: Yes.

Chair: And nothing else—

Dr Jack: And nothing else, yes.

Chair: It isn't, "We think that might have been the sort of one we had the other day. " No, it's, "It is in the Standing Orders. It is very clear. You must move it in the following terms and sustain the relevant majority."

Dr Jack: Yes. What's happening here, I think, is that the provision of the Bill is, as it were, incorporating the convention without making that clear. It is talking about a no confidence motion, but it is not clear exactly what that means in terms of the convention. I have no doubt, of course, that the Government would prefer that to be the case. The Government would not wish to be pinned down too closely.

Q19 Tristram Hunt: You have outlined a number of problems with this hastily concocted Bill. Is part of the solution, as you see it at the end of your report, simply for elements to be written into the Standing Orders, to solve all these particular problems, to avoid the problems of judicial review and legal interference?

Dr Jack: Yes.

Tristram Hunt: So there is actually a way through; it's just not in this Bill.

Dr Jack: Yes, that is the case, Chairman. That is really what I am saying. You have invited us to look into the advantages of fixed term. It is clause 2 of the Bill; it is the way in which the Bill affects parliamentary privilege. I wonder if I can just slip in that the Government have announced that they intend to produce a draft parliamentary privileges Bill. It therefore seems odd to me that a significant privilege matter is being dealt with in advance of legislation that is coming to the House.

Q20 Chair: But in response to Mr Hunt's question, do you think it is sensible to have an explicit provision in the Standing Orders of the House?

Dr Jack: Yes. The Standing Orders of the House could deal with specific situations. That could indeed translate the requisite majority as well. I agree with Eleanor Laing that the notion of percentages, as opposed to numbers, is rather alien to us. But it could be written into the Standing Order that 433 Members must vote in the affirmative. As you know, Chairman, the closure motion—the motion for a closure in the House that brings debate to an end—needs a specified majority in the affirmative: you have to have 100 Members voting aye. So the notion of a number in the Standing Orders is nothing unusual. It could be put into the Standing Orders.

Q21 Chair: So it seems that we share a view around the table that it should be written. One view is that it could be in the Standing Orders, and another is that it could be in the statute. The advantage of a statute is that the Government must go through what they think is a very long public process of producing a Bill, whereas Standing Orders can be amended by a Government majority in the House, pretty much on a couple of days' notice. These things could therefore be changed despite the view of many parliamentarians, whereas if it is a statute, at least it's out there and we can see what they are up to.

Dr Jack: That is your view, Chairman, yes. [Laughter.]

Chair: I'm sorry—there was a question mark at the end of the statement.

Dr Jack: I thought that you were putting a proposition to me.

Chair: Is that your view?

Dr Jack: There are two ways, yes.

Chair: Do you share that view?

Dr Jack: My view is that these matters should be in the Standing Orders of the House, because they are matters of jurisdiction that should be kept within the House.

Q22 Nick Boles: I am a new boy so I don't know these things and just want to be clear on something. Can even a Standing Order that requires a super majority for a particular kind of motion be changed by a simple majority?

Dr Jack: Yes. Standing Orders are changed by a simple majority, although it is not inconceivable that the Standing Order could contain a provision for a majority to change the Standing Order. But that would be quite an innovation. These would be constitutional Standing Orders that might require—

Q23 Nick Boles: On another related point coming from my ignorance, is there any way of linking? One of the advantages of putting this in legislation is that it will then, of course, have to go through the Lords as well. Is there any way of doing it by Standing Order that somehow makes it necessary to also go through some kind of Standing Order process in the Lords, so that you have a bicameral lock that the legislation provides?

Dr Jack: Not necessarily. These would be motions in the House, so there would not necessarily be a link. That is correct.

Q24 Chair: For colleagues around the table, particularly new ones, Standing Orders are regularly suspended by Government, probably on a daily basis. The 10 o'clock rule is just nodded through as a suspension, so what's in the Standing Orders, unlike the statute, can be altered very rapidly at the whim of someone like the Chief Whip. Is that correct?

Dr Jack: Yes, that is correct, Chairman.

Chair: Back to my list-I am sorry to have left people waiting. Andrew, can I just get a few other people in, because they have been very patient, particularly with me?

Q25 Catherine McKinnell: This relates to the previous point that we discussed. We have highlighted a few issues that would need to be clarified within the Standing Orders in order to eliminate, as far as possible, potential judicial challenge to a decision. But this is not going to take away entirely the issue of handing over exclusive jurisdiction, presumably. We are just trying to whittle down the number of potential challenges that might be brought. I just wanted to ask you, because I presume that you have considered it, about the potential consequences of a judicial challenge to a motion of no confidence of this sort, in order to put a bit of a picture, in practical terms, on what it might mean for the country, the Government and this House if these things were not clarified in the Standing Orders.

Dr Jack: Well, we would be in new waters, I think, if there was such a situation. As I said, there are countries where there are constitutional courts to consider these matters and that is where they would end up-in a Supreme Court. Incidentally, we have a Supreme Court but it has not yet got its teeth into this kind of thing. But, it would be a process by which a High Court would have to decide this. The other thing is that once you are enmeshed in the legal process, you know very well that there are different levels of courts, and different levels of courts come to different decisions-I think that I am right in what I am saying, Chairman, but there are other witnesses who would know more about these things. There was a dispute in the German constitutional court about this very matter, about whether there had been a Dissolution or not. I think that it was in 2005. So, there is a constitutional court that deals with that. But once in the courts, the process would be in their jurisdiction and not in ours, if I can put it that way.

Q26 Catherine McKinnell: And in the meantime, presumably, we are left in a suspended state.

Dr Jack: In the meantime, we would be left in suspension.

Q27 Catherine McKinnell: So, on that basis-apologies Chair, one more question-are you fundamentally opposed to the idea of handing over the rights to exclusive jurisdiction or, if it can be managed through the Standing Orders, is it something that you can see could be managed going forward as a workable solution?

Dr Jack: I think that it could be managed in the Standing Orders at the moment. If we move further along the line towards a written constitution-as I mentioned, we have a privileges Act coming along-then the whole matter can be reviewed in the round, and that is how it should be done. And I might just add, Chairman, that last year you were asking me, when I came, how many Select Committees I had appeared before. There were a number of Joint Committees and Select Committees last year on various aspects of privilege, including very specific matters: bribery on the one hand and the working of the IPSA Bill on the other. Joint Committees and the Justice Committee of this House have said that a piecemeal dabbling with privilege is not a good idea. So, it is not my view, it is the view of Committees of both Houses. The Joint Committee on

Parliamentary Privilege-a Committee of both Houses of Parliament-whose great tome, which was the last authoritative investigation into this matter, I have here, also advocated a comprehensive privileges Act and said that the dabbling with privilege in a piecemeal fashion had been very unsatisfactory in the past.

Q28 Chair: You are raising the bogey of judges coming in and walking down the corridors telling us all what to do, but don't you accept that there are some not only legitimate but essential areas and cases in which the judiciary must defend the rights of the citizen if they are threatened by an over-powerful Executive, even when that over-powerful Executive is in control of the House of Commons?

Dr Jack: Yes, I do, and we have a system of rights in the European courts and so on, and they are extremely important, but they do not impinge upon proceedings in the House of Commons.

Q29 Mr Chope: It seems that what you are concerned about is that we are having a proposal to have a partly written constitution-an incremental written constitution-without actually officially saying that we are tearing up our unwritten constitution, which is, as I said earlier, comprised in the Standing Orders of the House. And, therefore, instead of going along the lines that the Government are saying, these ideas could be incorporated into the Standing Orders in our unwritten constitution. Did the Government ask you to draw up some draft Standing Orders to see whether those draft Standing Orders could meet this objective?

Dr Jack: The short answer is that they did not. I am not challenging the right of the Government to introduce whatever legislation they wish to introduce, but what you have said is indeed my view: these matters should be incorporated in the Standing Orders of the House-clause 2 only. There would still be fixed-term Parliaments.

Q30 Mr Chope: Do you agree with Professor Dawn Oliver that clause 2(2) would permit the incumbent Government to have a vote of no confidence motion passed by their own supporters to secure an early Dissolution?

Dr Jack: There must be ways in which any system could be used. Again, there are examples in the German context where it is alleged-or has been said-that the Government have manoeuvred Dissolutions in the German Parliament. Clearly, any system can be manipulated, but probably other witnesses might be better at answering that sort of thing.

Q31 Mr Chope: When it was challenged in Germany, it was because it had a written constitution. It was challenged in a constitutional court.

Dr Jack: Precisely.

Q32 Mr Chope: We could safeguard against that possibility by our Standing Orders. If it turned out that those Standing Orders were inadequate, we could change them overnight. We could change them without the problem that we would encounter if we had legislation whereby we would have to get the agreement of the other House to change the legislation, even if we wanted to change it in this House. We would be limiting our own powers even more by having legislation.

Dr Jack: Yes, I agree with that.

Q33 Chair: At a tangent on Standing Orders, are you satisfied that this Select Committee has had due opportunity to do its job of pre-legislative scrutiny effectively in terms of the Bill?

Dr Jack: That is a very leading question. Do you want me to answer yes or no? Is that not for the Committee itself and the House to decide?

Q34 Chair: You have been very forthright in giving us your views on the intricacies of how a premature Dissolution can take place. I wondered if you felt on the bigger issue of parliamentary scrutiny that so far this has been a process that you would commend to other Committees.

Dr Jack: I think that the Committee is doing a fantastic job. That is the first thing that I have to say. The second thing, if you press me on this, is that it would have been better for the matters to be dealt with in a draft Bill.

Q35 Chair: Would you concur with the views of the Leader of the House that normally Bills should enjoy a 12-week pre-legislative scrutiny period?

Dr Jack: Yes. I think that pre-legislative scrutiny in this sort of area is really important. As the Committee appreciates, these are complex matters and they need examination. They need outside views as well.

Q36 Chair: Would that view be best founded in the Standing Orders of the House so that, in future, it would just be a standard part of Bill making, like a Second Reading and a Committee stage, so that we could enjoy the possibility of proposing changes or improvements to Bills?

Dr Jack: I think that such a Standing Order would fall into the category of those that you said were suspended frequently. Governments would be very reluctant to be tied down in their legislative programme to that extent, but I share the sentiment.

Q37 Mr Turner: I think we have established that the Commons could do this on its own and that the Lords need not have a view. May the Lords have a view on imposing this procedure, without the current proposed legislation?

Dr Jack: To achieve the fixed-term Parliament part, we need a Bill. That Bill, of course, goes to the House of Lords as well and must go through all the usual stages. But I think that this matter could be dealt with in Standing Orders. There would have to be a peg in the Bill, but the peg would relate to the Standing Orders of the House of Commons only. I don't think the Lords need be involved in that, but it would have to pass the Bill, of course.

Q38 Mr Turner: Right. These are just two or three random thoughts, not in any particular sequence. We've agreed that the Supreme Court, under any system with legal intervention, could almost inevitably control or attempt to control what the House has done. I take it therefore that the European Union could also, with a sort of further legislation, take over what the Supreme Court has decided to tell us to do. Is that correct?

Dr Jack: Yes. I think there would be various avenues of legal challenge, and I think it's the business of courts to apply the law to individual cases; that is what courts do. There could be various challenges in the different jurisdictions. The European Court has entertained cases that British courts would not look at, in terms of parliamentary privilege. That may be a good thing or a bad thing, but it has done so. That's an additional avenue, if you like. There are various legal avenues that could be explored.

Q39 Mr Turner: Earlier today, you pointed to some clause and said "they do not impinge"-those were your words. I wasn't quite sure what you meant. I think it was with reference to clause 2, but beyond that, I'm not clear what you meant.

Dr Jack: I'm just trying to think back to what part of the discussion we were having. Was it that if these provisions were in Standing Orders, they would not impinge on legal proceedings, whereas if they were in the Bill, they would?

Mr Turner: I can't remember either, but thank you for that attempt.

Q40 Sir Peter Soulsby: Can I just return to the question of your obvious and powerful arguments for using Standing Orders rather than legislation to govern the mechanism for early Dissolution? The concern that the Chairman and others have expressed is the ease with which Standing Orders can be suspended. Is there any precedent for finding ways of making it more difficult to suspend particular Standing Orders?

Dr Jack: That's a very interesting question. I think that there could be ways of building in some sort of relative majority or something like that. We have discovered a precedent-quite an old one, I have to admit-where a decision could only be taken relative to a certain number under a Standing Order. In principle, I don't see why it can't be done. I have to admit-I would be silly if I didn't-that it would be creating a distinct type of Standing Order, which was qualified in some way.

Q41 Sir Peter Soulsby: But obviously the concern is the ease with which Governments can, with a very simple majority, often at the whim of the Whips, suspend or change Standing Orders.

Dr Jack: Basically, Standing Orders can contain whatever the House wishes to contain in them.

Q42 Sir Peter Soulsby: So there could, in principle, be some form of lock that would be difficult to undo.

Dr Jack: Yes. There could be.

Q43 Chair: As Enoch Powell didn't say, if we don't have a written constitution, we have to go by Standing Orders, which themselves are a constitution that can be suspended by the Executive at will.

I have a rather detailed question, which is about some of the things for which I may have been a little critical of you-the minutiae. I am going to get into the minutiae. If the House adjourns, or you promote the Adjournment of the House to avoid a Dissolution motion, there is no redress. Let's say the Government feel they are in a bit of a crisis in July-we'll adjourn the House-and that gives you three or four months' grace to try and pull together a coalition, to try and pass an emergency economic package or get over some scandal in the Government. Have you considered that, and is one way to circumvent that abuse to give power to the Speaker to recall the House rather than the Government acting through the Speaker to recall the House?

Dr Jack: I know, Chairman, that this is one of your favourite subjects-recall of the House.

Chair: Only for the last 20 years.

Dr Jack: Certainly, that would avert that sort of situation. Actually, an example springs to my mind. I think exactly what you've said has happened in Canada, where Parliament was prorogued by the

Government in order to put things off. They didn't want an election and they didn't want to face a confidence motion. That's exactly what has happened.

Q44 Chair: Is that not a wrinkle we ought to be looking at as the Bill proceeds through the House-how to block that possibility?

Dr Jack: I know, as I said, that you are committed to that subject, yes.

Q45 Chair: Thank you, Sir Humphrey.

My second detailed question flips the equation right over, which is the Government-effectively the Prime Minister-retaining the right under royal prerogative to prorogue the House. Similarly, do you think we can play this game of chess to try to stop that happening if it is the will of the House that a Dissolution takes place?

Dr Jack: Again, that brings to mind the Canadian example, because I think in Canada the position is that some of this sort of provision is contained in their constitutional arrangements, but the Governor General has retained the prerogative to dissolve, so they are in a kind of uneasy situation where there is both a fixed arrangement and an unfixable arrangement-I think that's what you're getting at-to eliminate that. The Bill itself eliminates the royal prerogative in this area. The Standing Order arrangement for these provisions could be the only way in which such a thing could happen.

Q46 Chair: Would those be two items that you would consider looking at as you look at perhaps enhancing Parliament's role in such circumstances?

Dr Jack: Yes, of course.

Q47 Mrs Laing: I have a very brief question, again for the sake of clarification. Is it correct that in effect this Bill is only really determining the date of the next general election, because immediately upon the election of a new Parliament the Bill could be immediately repealed? Would we then go back to what is now the status quo?

Dr Jack: I think you are asking the question, can Parliament be bound? The answer is no. Any Parliament can repeal any previous enactment.

Q48 Mrs Laing: So it would not be wrong to say that the real effect of the Bill is to determine the date of the next general election, and in fact it really doesn't have a further reach.

Dr Jack: That is literally what it does. It just determines the date 7 May 2015.

Q49 Chair: If it is not repealed-to take Mrs Laing's point a little further-it stays on the statute book, but it is otiose.

Dr Jack: Yes. I would defer to others' more detailed knowledge of the Bill, but presumably-

Chair: I think it probably does, thereafter, under clause 1(3), so it would continue unless repealed, as do all statutes.

Dr Jack: Yes, that's right.

Q50 Mrs Laing: For the sake of clarity, am I right in thinking that there is nothing in this Bill that would prevent it, or could possibly prevent it, from being repealed by a one-clause Bill in June 2015? Therefore, what this Bill actually does is determine the date of the next general election, and really nothing further?

Dr Jack: There is no reason why the provisions of this Bill could not be repealed.

Chair: Which is the same with all statutes.

Dr Jack: Yes, which is the same with all statutes.

Chair: Unless they are given the sort of bulwark that I think Mr Boles and Mr Chope alluded to, of the Second Chamber requiring the consent of the Second Chamber to pass this sort of law, through the 1911 Act. There is a possibility of entrenchment but obviously, as you said, not as a written constitution.

Dr Jack: Yes.

Q51 Nick Boles: Just a quick follow-up on this point, so that I understand. Of course, that is true, isn't it, of all statutes?

Dr Jack: Yes, it is.

Q52 Nick Boles: But the way our informal constitution works is that there are certain things that become entrenched because of the way in which they were brought about and the general mood around them. Am I right in thinking that if the Government had a big majority and really wanted to they could repeal or massively amend the Parliament Act?

Dr Jack: Yes, of course.

Q53 Nick Boles: But there is a sense that they couldn't; that they could, but couldn't. The question is then a more vague and informal one. Does this become seen as a constitutional measure, which it would be inappropriate for a party-a Government with a majority-to change arbitrarily, or not? What determines that?

Dr Jack: Those are matters of convention in our system. If you had a written constitution they would be defined. There are countries where these things are defined but in our case it would be a convention. It would be hard to imagine, for example, any Government introducing a Bill to repeal the Bill of Rights of 1689, but they could in theory. So it is convention.

Chair: They could come in and abolish 50 Members of Parliament, for example.

Catherine McKinnell: Or change to a four-year term.

Q54 Mr Chope: This Bill is unusual in that it is seeking to introduce a fixed-term Parliament for the Parliament that has already started. In that respect it is completely different from what happened in Scotland. Indeed, it is not necessary to have a Bill to determine the date of the next general election, when the Prime Minister has already announced it and he has the prerogative power to determine that. Would you think, Dr Jack, that it might be more appropriate for this Bill to deal with fixed-term Parliaments from after this Parliament-in other words, the next Parliament and subsequent

Parliaments-so that we could have proper consultation and debate about it, bearing in mind that it is not necessary to have this Bill to fix the date of the next general election?

Dr Jack: I have to be careful, Chairman. I think you have already got me to commit myself to the fact that I would have preferred a preliminary stage, shall we say, to the Bill-a draft Bill. I think you are really asking me to answer a political question, which is not for me to answer.

Q55 Mr Chope: Not asking a political question, can I ask you a precedent question? Are you aware of any other precedent, anywhere in the world, for a Parliament deciding during the course of its own Parliament that it is going to introduce a constraint upon the length of that Parliament; in other words, introduce a fixed Parliament during the course of that Parliament?

Dr Jack: I don't think I am qualified to answer that. My knowledge pertains mostly to this Parliament.

Chair: Professor Blackburn may be able to enlighten us, if we give him a little bit of notice by raising this issue.

Q56 Mr Turner: Let us say that, on 6 November, the Queen's Speech fails to get passed. There would be a fortnight's delay and then there would be a general election, which would presumably take place on 24 December. That would be the date in the future when the next five years was up. Is that true, or does it go back to the normal 5 May?

Chair: I think there is a degree of discretion to pass it.

Dr Jack: Yes, I think there is a degree of discretion of two months in the Bill.

Mr Turner: Is it a month either way?

Chair: I think we can look that up.

Dr Jack, thank you very much. You have been as urbane as always.

Dr Jack: Thank you.

Chair: We have totally failed to provoke you in any way.

Dr Jack: I am very sorry about that, Chairman.

Q57 Chair: We completely failed to get you to answer political questions, which is not your role. Would you like to make a one-minute closing statement?

Dr Jack: I don't think so, Chairman. I think we have had a pretty good bash around the thing and I hope my view has been fairly clear. I would just say in summary that I think that clause 2 raises practical problems also for the Speaker, or challenges to what the Speaker does, that are very easily dealt with within the House if those matters are kept in the Standing Orders. By putting them in statute, you are opening them to challenge in the courts. That is really the nub of my difficulty with just the privilege effect, particularly, as I said, in advance of a privileges Act. I don't see the hurry to do that.

Chair: We look forward to receiving your other paper.

Dr Jack: Thank you very much, Chairman, and good luck with your work.

Examination of Witness

Witness: Professor Robert Blackburn, Professor of Constitutional Law, King's College London, gave evidence.

Q58 Chair: Welcome, Professor Blackburn. I'm sorry that we have overrun by a couple of minutes, but we can make that good if we get to 12 o'clock. I was remiss-Mr Hunt and Mrs Laing put me right-so it might be helpful if you just take a few minutes to introduce your remarks and your paper to give a refresher to colleagues around the table.

Professor Blackburn: Thank you, Chairman, and thank you for inviting me to speak to you today.

In the written paper that I sent in advance, I just gave a few thoughts. This is a fairly complex legal, constitutional and political issue, and I am not sure that I managed to digest all those implications of the Bill. You yourselves are in the process of doing that.

The point I tried to make by historically looking at the genesis of this Bill was that it is, I think, fairly clear that it is driven by the political self-interest of the coalition Government. They want to fix the lifetime of this Government-not the Parliament, but the Government-and I explain that in various ways. It is clear what the advantage is, both to the Conservative party leadership and the Liberal Democrat leadership, of fixing this arrangement for five years. The Liberal Democrats want to be sure that the Conservative leadership would not cut and run in the same way that a minority Administration with an informal pact with the Liberal Democrats in Parliament might-as in 1974, although there wasn't a pact then-without some assurance. The other side of the coin, of course, is that the Conservatives have some guarantee that the Liberal Democrats won't change their mind.

This is particularly important in the present financial climate whereby some fairly unpopular measures are going to have to be taken, such as public expenditure cuts and raising taxation. So it is to the advantage of the Government to help to implement their financial programme and hopefully, from their own point of view, come out the other side restoring some popularity before they meet the electorate again.

That leads me to the conclusion that there is a confusion of purpose behind this Bill between, on the one hand, dealing with the immediate situation, or crisis, in the coalition Government, and, on the other-this should be the main purpose of the Bill-reforming the law relating to election timing. I think it's a shame that they are not being dealt with in two different processes; they very easily could be dealt with in two separate processes.

I very briefly touched on the consequences of the Bill, which I could say more about later. I have also put forward what would probably be my own preference for a fixed-term Parliament arrangement, but I hasten to add that I think that there is no perfect model that can be taken for election timing. There are a number of different schemes that would work, and perhaps we will discuss those later.

If one took some of the conclusions from what Dr Jack has just been saying, I think, for example, that you could adopt a much more minimalist reform, which would solve some of the main mischiefs. Perhaps I should also say that I think that in approaching this Bill, as it does have quite a lot of consequences and aspects to it, one obviously needs to be clear about what you think the main

purposes are. What is it you are trying to achieve through this legislation and what are the main mischiefs that you are trying to resolve? There might not necessarily be consensus about that.

In my own view, the guiding principle or purpose behind reform of election timing should be to do something about curbing the excessive power that a Prime Minister has had over the general election date. That is the main objective. There are other things that would be desirable as well, such as ensuring that the monarchy doesn't get drawn into politics, which would be damaging, I think, to the institution itself, and could very well end up with the result that one political party was seriously upset about the outcome. Later on, we might look at some historical episodes that show how that could arise again in the future. I think that's all I should say for now.

Q59 Chair: On a point of history, while of course there is a current political situation-as there always is-and that has been a trigger, none the less all parties at various points have been committed to fixed terms. I'm thinking back: the Labour party was certainly committed to that under its leader Neil Kinnock, and I know that on occasions stuff has been approved through the policy-making process through the Labour party on a fixed-term Parliament. Of course there have to be the right political circumstances for something like this to happen, but none the less there's a long history of people proposing changes in the relationship between the Executive and the legislature, of which this is one part.

Professor Blackburn: I think that's right. The idea of fixed-term Parliaments has slowly gathered momentum over the last 20 years, and it is quite striking that there does seem to be a virtual consensus that something ought to be done about election timing, and that the Prime Minister has an excessive amount of power over the issue. But, of course, the devil is in the detail of exactly how you draft a fixed-term arrangement. So, yes, I absolutely agree with that.

Q60 Mrs Laing: Can we call on your knowledge of similar legislatures in other countries to examine the issue of the actual term of a fixed-term Parliament? In practice, during the past 70 or 80 years, in normal times, Parliaments have generally tended in this country to last for four years rather than five, although of course there have been different arrangements. In some parts of the world, Australia, for example-I might be wrong-there is a three-year term, although Australia at the moment is an interesting example perhaps of how not to construct a constitution, and how not to call an election for political purposes. Is there a body of evidence of which we ought to be aware that would suggest three, four or five years or some other term of Parliament?

Professor Blackburn: My feeling on that is, no, generally speaking. One can look around the world, and there are 101 different ways of organising election timing. I think one has to evaluate this proposal within our own indigenous political and constitutional circumstances. I don't think there is a lot to be gained by going around the world, shopping around looking for the best scheme. The other thing is that you can hardly find two schemes that are identical. They are all slightly different. They all have slightly different nuances attached to them as well. Even within the Commonwealth where there might be a Governor General, the position of a Governor General is not the same as a monarch, so the relative powers are slightly different. Some fixed terms relate to where there is a separation of powers, as in America of course. But there are, as you suggested, three and, probably most commonly, four-year terms. There are three-year terms in Australia and New Zealand, as you say. There are some five-year terms as well, such as in the National Assembly in France, but they have a president and a different system of Government. It is useful looking back on how long our own terms have been in the last 100 years or so. While we can take an average-the average does in fact come out almost exactly at four years-of course, the range has fluctuated depending on particular circumstances.

Q61 Chair: But it would be true to say, wouldn't it, that most western democracies have fixed terms for their legislature and their Executive?

Professor Blackburn: Yes. Most. Quite a few systems have floating dates.

Q62 Chair: None the less, there are provisions that are not normally used for extraordinary circumstances. If the President of the United States is indisposed, there are means by which-for example, in the Nixon presidency-handovers can take place, but those are for extraordinary circumstances rather than a way of getting round having a president for four years or whatever.

Professor Blackburn: Absolutely, and of course in our own system we have the extraordinary process of a no confidence motion. There is no good reason why, in the past, Parliament couldn't have served its full term, but it has suited the Executive, particularly over the last 100 years, to keep the machinery of Dissolution well-oiled by using it on every occasion.

Q63 Simon Hart: Both my questions have been answered, but I will think up a third one instead. We are looking at a five-year fixed term. In a paragraph, why should we vote against that when the opportunity comes next week?

Professor Blackburn: A judgment has to be made by yourselves as to what the right balance is between giving a Government a sufficiently long period of time to carry out their programme for office and, on the other hand, having a mechanism for accountability and responsibility to the electorate. My own feeling is that in this country five years is held to be a very long time. If you think back to five-year terms in the past, the last year of every one has been pretty awful. I think everybody has felt, "For God's sake let's have an election", and usually it redounds badly on the Government as well.

Q64 Chair: Is that because it is the last year, or because it is the fifth year? Won't there be a last year in a four-year Parliament which would be pretty awful?

Professor Blackburn: There is a combination of both. I am not so sure, actually, that-this might confuse the issue-seven years is the time when people start getting fed up and want a change. A seven year rule is better in terms of-

Simon Hart: I thought that that applied to marriage rather than Parliament.

Professor Blackburn: I think there might be something in that.

Chair: Is this an evidence-based scientific view, Professor Blackburn? Is this your opinion?-[Laughter.]

Professor Blackburn: That might also explain why Governments tend to win their second terms. If you look back at elections, it is the incumbency that usually wins a general election-even more so under a system where they can determine the election date themselves.

Q65 Simon Hart: I rather support your view that it is not much good going round the world to try and pick decent examples. We had a debate yesterday about whether Papua New Guinea was a shining example of what was under discussion, so it doesn't always work very well. Surely there must be some examples we can call upon which help us come to a decision about whether fixing the term, if you like, at the maximum-which is what we are doing next week-is a more desirous route than fixing it perhaps at what has tended to be the average, which is four years.

Professor Blackburn: I am not sure that you can. You can look at particular examples, but the political equation will always be different. Relative size and strength between the Government and the Opposition-all these are variables. It really comes down to a question of how strong you want Government to be and how strong you want the mechanism for accountability to the electorate to be. Things would be different if we had a separate Executive of course.

If we had a separate Executive, the arguments for having much more frequent elections would be much stronger-the Chartists' idea of annual Parliaments could even come into play. I have to say that I think that there is some irony in the fact that one of the big issues that has troubled the political class over the past few years-over the past 10 years I think-is disengagement from politics. How can we promote greater popular participation in politics? The irony in the proposal is that it makes elections less frequent.

Q66 Chair: We are not confusing media participation in politics with grass-roots activism in politics, are we? They may wish to have an election every year because it's great fun and you can take strips off anybody.

Professor Blackburn: For most people, the one occasion when they participate in the political process is a general election. I say "most people" because, of course, the turnouts for other electoral processes are pretty low. This is an incredibly important issue on which legislation is being introduced. It really is the main political event of our democracy; it determines not just the composition of our representatives in Parliament, the legislature, but the composition of the Executive-in one Act. It is a really important issue.

Q67 Sheila Gilmore: Having read a lot of these papers, I wondered if, in fact, the difference between the impact of having fixed terms and not having fixed terms is slightly exaggerated, or whether it changes the mindset. For example, there seem to be ways in which, certainly in some countries and Governments, despite there being a fixed term, elections can come along relatively frequently or can be encouraged, in one way or another, to happen. Equally, the politics of early elections-the argument that the Prime Minister can use it as a lever over his own party-still exists to some extent within the fixed-term arrangement, but maybe in a slightly different way in Scotland.

In the current Scottish Parliament, it appears that no one has wanted to trigger that kind of vote of confidence, and, to some extent, that still gives the First Minister the power to say, "If you rock the boat, we'll have an election", and people don't want that. Is this not more about the political context than the legal one?

Professor Blackburn: I think that's right. I don't think we should get too hung up on ensuring that there isn't a general election within the fixed term. General elections aren't necessarily a bad thing. My own feeling is that the Bill as drafted sets the threshold too high; it's too long and too difficult to have a Dissolution. Personally, I'd prefer a more straightforward Bill that goes slightly more with the grain of our system of voting in the House of Commons, as well as that reflected in the alternative scheme that I put to you.

Q68 Sheila Gilmore: In terms of making it simpler, do you therefore argue that even if it could be triggered more easily, the political realities are that that will happen only when there is a real need for it? The political parties themselves don't necessarily want to defeat a Government just for the sake of it. That has very much been the context in Scotland, certainly in the three years since the previous Scottish Parliament election. Arguably, the Government might have been overthrown, but no one has wanted to do it.

Professor Blackburn: Absolutely, I think that there is no tradition of manipulating the power of Dissolution for party purposes in Scotland yet, whereas there has been a tradition of that over here.

Q69 Tristram Hunt: The Committee notes your advocacy of four rather than five years and your comments about the political agenda behind the Bill. I just wanted to tease out a couple of things, first, the very interesting idea that this takes away what you call the facility, and what others might call the prerogative, of the Prime Minister to make an appeal to the people. So one goes from making something an issue of confidence-dissolving a Parliament and having an election on an issue, be it a war or a major piece of legislation-and moves towards referendum politics. Can you tease out that idea?

Professor Blackburn: I think, historically, the idea of an appeal to the people has been one of the main justifications for the prerogative of Dissolution. As you all know, it has tended not to be a very useful weapon for the Prime Minister; it has tended to be counter-productive. Even when there was an appeal to the people over the House of Lords back in 1910, the Asquith majority went down. Of course, it also backfired famously with Edward Heath in 1974. But yes, it is there, and it is useful. If there is some issue or principle on which a Prime Minister specifically wants the backing of the people, it is a useful mechanism for an issue of confidence: a vote of confidence in the Government that they are doing a good job and that we trust them with this particular issue. It raises the whole issue of the desirability of referendums. I have strong reservations about referendums, but if one was enthusiastic about them and thought people should be consulted much more about them, we would have to go down the route of having many more referendums outside our Dissolution arrangement.

Q70 Tristram Hunt: The other element you suggested is rather than reducing the power of the sovereign, which it does in Dissolution affairs, it could heighten the power of the monarch in terms of appointments during prolonged hung Parliaments. How would that work?

Professor Blackburn: I think this is an interesting issue. It was an interesting issue in the May 2010 general election as well. There is a bit of a story behind all this, some of which has taken place behind closed doors. You all know that in the past when there has been a hung Parliament, it was dealt with slightly differently. With what happened in 1974, the convention was much clearer that the incumbent Prime Minister had the first opportunity to form an Administration. So Edward Heath entertained Jeremy Thorpe at 10 Downing street to have negotiations about that. The monarchy was in the background, of course. You can look at other situations going back where the monarchy has been quite heavily involved in Dissolution or Government formation issues.

I suppose 1931 is the most famous example to remind ourselves of where the monarchy played the leading role in what happened. From 1929 to 1931 there was a minority Labour Administration. There was the Wall street crash and the financial crisis. The American bankers, J P Morgan, were threatening to call in the loan that the British Government had with them unless effectively public expenditure cuts were made and agreed by the Cabinet. The Labour Cabinet could not agree on those cuts, so Ramsay MacDonald went to see King George V and informed him about all this. King George V returned from Balmoral, as I recall, in the summer with a slight crisis mentality. Normally, what would have happened in this type of situation is that either there would have been a general election, or MacDonald would have resigned and Stanley Baldwin, the leader of the Conservative party, would have taken over. Baldwin, as commonly was the case with Stanley Baldwin, was on a yacht in the Mediterranean somewhere and wasn't around. The King started brokering what should happen in those circumstances, consulting Sir John Simon, the Liberals and so on. He more or less put together the national Government, reappointing Ramsay MacDonald as

Prime Minister with the Conservatives joining in. Stanley Baldwin was quite happy to go along with that because the national Government would be implementing unpopular public expenditure cuts, yet there was a Labour figure fronting them. The Labour party, which knew absolutely nothing about the negotiations, were outraged and expelled MacDonald, Philip Snowden and a few others from the Labour party. That was regarded by some as a palace coup, but it just shows what can happen. The monarch was playing a very leading role in Government formation.

Times have changed since then, but we should not be lulled into a false sense of security by the fact that, on the throne over the past 50 years, we have had a monarch who has been an absolute model of constitutional propriety. She has had absolutely no problems in suppressing her private views for her public duties. In the future, different personalities will be on the throne who will be more interventionist-minded. The whole idea behind having an hereditary Head of State is that we do not know what human nature will throw up. We need to have some constitutional machinery to deal with the position of a Head of State and, by the same token, to deal with exercising the royal powers of Government formation, the appointment of a Prime Minister and Dissolution until the law is changed.

Q71 Tristram Hunt: My final question is about your own model for what should happen, the idea of the permanent Parliament. An early election is followed by another term of Parliament, which makes up the length of the Parliament as it were. Have I got that right?

Professor Blackburn: I always feel rather uneasy during the election campaign. There is no Parliament in existence for about five weeks. There might not be an emergency, but there could be a terrorist outrage or an environmental disaster, and no Parliament would be in existence. Of course, the Government could carry on. It might be a small matter, but it would be more logical if we were trying to construct a good electoral and constitutional process for Parliament to be kept in continuous existence. Of course, it would go into recess and adjourn during the election campaign, but it could be recalled by the Speaker at any time if a national crisis or disaster had to be dealt with.

You are a professional historian, so perhaps I can digress. To answer the question in a slightly different way, it helps to have an historical perspective when evaluating the current system. The basis of our system of election timing is the relationship between the Crown and Parliament. The Crown is the ultimate authority in the state and, historically, Parliament came into existence, was summoned and dissolved as the personal creature of the Crown. As a result of the 17th century constitutional conflict, Parliament was very concerned that it should be brought into existence and, during the written constitutions in the interregnum-fascinating documents to look at-there was great concern with making sure that Parliament was summoned.

Particularly as a result of King Charles II and his extraordinary long period of 17 years without convening a Parliament, the Triennial Act came into existence so that a Parliament could be summoned within three years and last for no longer than three years. There was then the Septennial Act to deal with that in 1716. In the 20th century, as we moved into the modern era, the rather archaic system of election timing has been manipulated by the Prime Minister. We must remind ourselves that, in the 19th century, Parliaments were expected to last their full term. If we look at 19th century constitutional text, there was an idea that Parliament could be dissolved only in certain constitutional situations, such as if there was a conflict between both Houses, a Representation of the People Act had just been passed, if there was a division in the Cabinet or whatever.

In the 20th century, all those conventions disappeared and we have just been left really with a naked power of a Prime Minister basically manipulating the power of Dissolution for some advantage in

the electoral outcome. That is also seen to some extent in the way in which the public announcement of the general election is made, which has evolved interestingly-going back to Dr Jack's point about Standing Orders. In the first half of the 20th century, the Prime Minister usually announced a general election in the House of Commons. That was normally accompanied by a motion being put forward to give precedence to Government business for the remainder of the Session. Asquith and Ramsay MacDonald did this and one or two other Prime Ministers did as well.

Since the second world war, Standing Orders have been changed to give automatic precedence to Government business, so in the wash-up period, as it were, the Government have automatic precedence anyway. But then that was replaced by the Prime Minister just putting out a press release and MPs feeling somewhat disgruntled that they were hearing the news of their own demise in the same way as everybody else, through the media. More recently, John Major turned it into a photo opportunity in 1992 outside No. 10 Downing street, and in 1997 Tony Blair took that one stage further to a photo opportunity in a schoolroom-if you remember-in south London.

It is useful, I think, to have a historical perspective on this whole scheme of arrangement, and it would be better really, in an ideal world, to start again and not be starting from the point of view of having the royal prerogative controlling the summoning and Dissolution of Parliament. But you are talking here, I think, about a written or codified constitution. That would work best in that arrangement. The German Bundestag has a system not dissimilar to this, whereby it is kept in more or less permanent existence, but there are fixed periods between the election dates.

Q72 Chair: So the Government continue come what may, whereas Parliament is unstable in that it finishes and restarts again, really at the behest of the Executive. So, you're suggesting that Parliament should have a degree of continuity and stability, punctuated by only general elections-that it has a life of its own.

Professor Blackburn: Absolutely. A point I make in my written evidence also, is that there are much wider issues to consider. In looking at constitutional reform more generally and being joined up, where does reform of the House of Lords fit into this electoral cycle? If you have a permanent Parliament, it makes it much easier to set up a system of elections in the second Chamber. I think that will probably emerge as the preferred option, whereby there is rotating membership or elections at different times, so that you do not have a new House being elected all at the same time.

Q73 Mrs Laing: I was going to come on to another subject, but just to continue this idea about the permanent Parliament, you have prompted me to consider the other side of a Member of Parliament's duties, and that is our pastoral duties in our constituencies. You rightly said that Government goes on and there is no possibility for scrutiny or holding to account because there is no Parliament here in the House of Commons, but, of course, Members of Parliament have pastoral duties towards their constituents. It is a strange situation that for a month or more, a Member of Parliament has to say to constituents, "I'm not your Member of Parliament. I hope I might be in another few weeks, but I'm not just now." If one is dealing with a difficult personal case for someone, of course you don't stop doing it because there is a general election. If somebody is in difficulties, you keep helping them. Have you considered that side of a permanent Parliament?

Professor Blackburn: No, I haven't. I think it's a very good point. I think that you should continue with your constituency duties at the same time as electioneering.

Q74 Mrs Laing: Thank you. On to the other matter, which is the balance of power between the legislature and the Executive, the Deputy Prime Minister has said, on the record several times, that he believes that the proposals he has put forward in this Bill effectively "strengthen the power of the

House". Do they, in fact, strengthen the power of the House, given that, at present, on a simple majority of Members of Parliament, the Government can be defeated on a vote of confidence, and that will no longer be the case? Does that strengthen the position of the House?

Professor Blackburn: I'm not sure that it does. I feel that I need to still reflect upon all the implications of the Bill regarding that. My feeling is that it certainly curtails the power of the Prime Minister to control the election date, so it does something to place some limitation on the power of the Executive. I'm not sure about the extent to which it enhances the power of the House of Commons.

Q75 Mr Chope: Does it enhance the power of the House of Commons at all?

Professor Blackburn: I am not sure that it does. Of course, one has to take into account the influence of the party Whips and the extent to which party Back Benchers will follow the wishes of party leaders. I am not sure that it does.

Q76 Mr Chope: May I ask you the question I raised earlier with Dr Jack about what's happening with this Bill? Parliament's already begun and we are now legislating to have this Parliament with a fixed date. In Scotland, there were proposals for a fixed-term Parliament, which were then legislated on, and then that applied to subsequent Parliaments. Are you aware of any precedent whereby a Parliament has decided, after it has already been elected, to change the terms of engagement?

Professor Blackburn: I heard you ask that question. I am afraid that my knowledge of foreign legislatures doesn't extend to a specific example of that, although I could go back and try and consult my reference books to find out. I would imagine that there are quite a few examples of that happening. Of course, the British Parliament extended its own life in the Septennial Act, so I would not be surprised if there were examples. I don't think this is an extraordinary thing to do.

Q77 Mr Chope: What about the idea that the Bill could be amended to have fixed terms of seven years?

Professor Blackburn: Yes, if later on Parliament wants to change the scheme of arrangement, it can certainly do so.

Q78 Mr Chope: You are saying in your paper that you would be in favour of just a simple majority being sufficient to trigger a general election and a Dissolution?

Professor Blackburn: Yes.

Q79 Mr Chope: That appeals to me, simplistically. How would that work in a hung Parliament?

Professor Blackburn: The scheme of arrangement I had was that the Prime Minister would not be able to call a general election in the same way that Harold Wilson did in 1974, unless other non-governing party Members supported the resolution. So the Prime Minister couldn't call a snap election just to increase his majority. Otherwise the scheme would work as at present, I suppose. What I suggest in my scheme was that you could have a constructive motion of no confidence, whereby you could actually present the alternative Government as well.

Q80 Chair: On the question that a number of colleagues have raised about the balance between Executive and legislature, it may be that the legislature per se hasn't got a paragraph where it says,

"And this is really strengthening Parliament", but I would have thought that defining a prime ministerial power for the first time ever legitimately inhibits the Executive to an extent, and therefore, in the balance of things, Parliament in that equation is slightly stronger. Would that be true?

Professor Blackburn: Yes. I think that's probably right. In my paper, I pointed out that the reform removes not only the tactical advantage of a Prime Minister, but what I call a sort of penal power that a Prime Minister has over his colleagues by threatening a Dissolution if they don't support him. To that extent also I think it extends the power of his parliamentary colleagues.

Q81 Chair: We always tend to look for the things that might go wrong if there's any change, and we're a bit cautious. The Clerk produced a very good paper outlining some of the potential difficulties, but we've asked him to go away-I don't know if you were in the room at the time-and also mention one or two of the positive things. Obviously, having a full five-year session to implement a programme is not only useful for the Executive. In terms of scrutiny, having five years' worth of Select Committees and elected members and Chairs who would be able to set out a programme for five years so that perhaps we would not need to rush a couple of very important Bills on to the Floor on virtually day one, but have a measured programme over five years, are just some of the possible advantages for the legislature in conducting its business more effectively. Are there others that spring to mind, or do you accept that they are in fact useful advantages of a fixed term?

Professor Blackburn: As I said earlier, I think that there is a balance to be struck. There are arguments for five years, particularly in terms of planning. If that can also be combined with a culture-

Chair: Sorry, I've confused the issue by talking about a five-year term. What are the advantages of fixed terms, which could be four or five years?

Professor Blackburn: Well, I think the advantage is also one of planning. I will be interested to see if the super-majority procedure goes through. That would make it very difficult for the Prime Minister to call a Dissolution himself. If there was just a simple majority, which is what I have suggested that I would prefer, I would hope that that would be accompanied by some new culture or some expectation that a Prime Minister won't call snap elections for no good reason.

Q82 Chair: Finally, do you know of any other western democracy that has initiated a written constitution and said, "We think the Prime Minister should have the power to decide when the legislature meets and when elections take place"?

Professor Blackburn: No.

Mrs Laing: There's a surprise.

Q83 Mr Turner: I have two questions. First, you said that, in the 19th century, there were particular reasons for which you could call an election, and otherwise not, I assume. In the 20th century, almost the reverse has apparently been true. When did it change?

Professor Blackburn: It was a gradual process. There is a similar debate that there used to be a convention-it was thought, anyway; perhaps it was theory and not so much practice-that it was very much a Cabinet decision, a collegiate decision. But, as Lloyd George promoted a much more Executive-minded, president-orientated chief executive-a stronger form of government-perhaps it

went with the requirement in the early part of the 20th century that we needed a stronger Executive, because we were running a much larger enterprise with the welfare state, the interventionist state, not to mention dealing with the huge war effort between 1914 and 1918. I think that all those tendencies somehow elevated his position, and that they elevated his position vis-à-vis his Cabinet colleagues. So I think that the control over the power of Dissolution has gone hand in hand with the whole process or transition from Cabinet government to prime ministerial government that has taken place over the course of the 20th century.

Q84 Mr Turner: Secondly, we are rather talking as if everyone had a break when they had an election, but in the United States there is no such thing. There are four-yearly periods for the President, but two-yearly ones for the Congressmen and six-yearly, broken into three and therefore two-yearly for a third, for Senate. Why should we not have such a system here? After all, when I lived in Oxfordshire, it had a four-yearly term, but Oxford city council had three separate years for each ward. Why aren't we thinking of those?

Professor Blackburn: You mean different terms for the two Houses, or-

Mr Turner: No, I was thinking that, let's say, a fifth of the House of Commons shall retire each year.

Professor Blackburn: That's quite a radical proposal. It would have a major impact on Government formation; you may find that the Government suddenly lost their majority. It would lead to a fairly unstable form of government perhaps, but, so be it, if Parliament should be the determining factor in these matters. Such a system would, again, throw the whole process of Government formation into high relief. Linking it back to the question earlier-which I didn't entirely answer-in 2010 the Cabinet Office took a lead in facilitating the inter-party negotiations. There had been a draft Cabinet manual prepared by the Cabinet Secretary that came into operation, and the previous conventions were slightly modified. I think that that did have a subtle impact on the outcome of the negotiations, but we can only conjecture upon it.

One interesting psychological change was that 10 Downing Street was no longer the forum for negotiations, it was the Cabinet Office. That might be a good thing. Exactly who is going to be brokering this very important decision as to who is to be Prime Minister and which inter-party negotiations or which combination is going to prevail? It needs to be thought about very carefully. Is it going to be the Cabinet Secretary or the monarch? Do you revert to the incumbent Prime Minister playing a key role or should the Speaker play an enhanced role? Those factors need to be thought about very carefully. Similarly, note the idea of a confirmatory vote, which is attached to the no confidence procedure in the Bill. As I said in my written evidence, I think that this is going to give rise to the query, "If you have a confirmatory vote then, should there be a confirmatory vote in the House of Commons when a new Prime Minister is appointed every time?" That would be the key issue to come out of what you have suggested.

Q85 Nick Boles: Why are you so opposed to the super majority? Surely, the point is to stop-given that we have this merging of the Executive and Parliament in our system-a Prime Minister who has won a majority at the previous election of the House of Commons from whipping a Dissolution motion. That is a good thing. What is wrong with it?

Professor Blackburn: I am not so opposed to it; I am a pragmatist, and I am just stating my preference. I am instinctively concerned about introducing a super majority. This is an unprecedented procedure. We haven't had this before. In what other circumstances might it be used? It would be a precedent for later on perhaps. I think a simple majority does the trick, and it

goes with the grain of our parliamentary tradition in which our culture works at the moment. It means that if the House of Commons thinks that there should be a general election, there should be a general election. I bet it is not an unwelcome prospect, why should you make it so difficult? Taking away the power of the Prime Minister to control the election debate unilaterally and arbitrarily, and making it subject to the House of Commons-thereby having to carry his colleagues with him and a majority in the House in a minority Government or coalition situations-would be my preferred way forward.

Q86 Nick Boles: Are you not then denying that there is any value in distinguishing between constitutional matters, which should require more than the level of support of normal matters of Government business? Certainly, is it not the case that most countries in the world feel that there should be greater protection for constitutional measures, so that they cannot be changed by the whim of a Prime Minister who happens to have a majority of five?

Professor Blackburn: Yes, but you are talking about special procedures to change the constitution.

Q87 Nick Boles: Isn't moving an election forward for no reason, when your Government are perfectly functioning and capable, not a constitutional change?

Professor Blackburn: I see them as different. I think this is a political decision. I don't think general elections are necessarily unwelcome. If there is a majority feeling in the House that there should be a general election for a good reason-

Nick Boles: Like we could increase our majority.

Professor Blackburn: The Prime Minister is going to have to come down to the House, and give the reasons and articulate why he wants a general election. If the Opposition think he is just cutting and running because he is ahead in public opinion polls, they will say that. The electorate can then decide whether they think the Prime Minister has behaved properly, or has brought an election unnecessarily in advance and should suffer the consequences. I think there is a cultural aspect to it as well.

Nick Boles: An unnecessarily conservative view.

Q88 Chair: I think the cultural aspect is very important. Again, because we have 100 years of history behind us of Prime Ministers doing this, we are looking at it from the point of view of how the Prime Minister could wangle his way around a fixed term, which is an open and clear commitment from the current Administration. Culturally, however, it would be viewed with great disdain if someone wanted to manipulate the system that the House had agreed, which I think was in manifestos-I am not too sure about that-and which has become the way we do things. People would cry foul if other people sought to play around with the rules. You would move to a different cultural view of what the political norm was. Have I got that right?

Professor Blackburn: I would anticipate that to be the case. In your discussion with Dr Jack, I think it came out that any system can be manipulated by the Executive. I can foresee that the no confidence mechanism could be manipulated by getting someone else to table a motion through abstentions or whatever, and then possibly even manipulating the power of Prorogation to put off an alternative Government being confirmed within the 14-day period. Anyone who is manipulating a system as blatantly as that would suffer the consequences eventually. I hope that the new legislation will, possibly with amendments, bring in a new constitutional hygiene, as it were, into the whole process related to general election timing.

Q89 Mr Chope: You mentioned earlier the possible interaction of the Fixed-term Parliaments Bill with an elected second Chamber. Do you think the fact that we haven't yet got a draft Bill for the second Chamber, but we're being expected to vote on this without being able to look at the two together, is a disadvantage? Would it not be much better to be able to look at the whole of this issue at one time? Are there not implications with, depending on what was to happen to the other Chamber, having a mid-term election-for want of a better expression-which would give the other Chamber a massive majority against what would be the elected Government in this Chamber?

Professor Blackburn: Yes. All my academic colleagues and I think, "For heaven's sake, what is going on with reform of the House of Lords? How long will it be put off for?" Again, there is obviously some party-political thing about the whole business. Yes, it needs to be dealt with in conjunction with the other part of the legislature. However, I can see that in practical terms it is difficult to get through some constitutional reforms, and perhaps they sometimes need to be driven through to get one change done. I think we've reached the stage, particularly after the wide number of constitutional reforms taking place over the last 12 years or so, at which a much more joined-up approach to constitutional reform is necessary. That may require some co-operation between Select Committees to take a coherent view of what's going on and join up the different parts of the constitutional structure to introduce something that I don't think will be so much a radical reforming measure, but will bring some stability and coherence to the way forward.

Q90 Sheila Gilmore: I have a couple of questions about what you said. Would you think that in fact, by creating fixed-term Parliaments for Scotland and the Welsh Assembly, it has created a culture change and an expectation that it would be exceptional? I would like your comment on that.

One of the practical issues that has arisen out of the particular suggestion for five years-I know it doesn't happen every time-has been the fact that immediately, the first time that we have this new situation, we have a conjuncture of the Scottish and Welsh elections, unless something is done to move them apart. That is something that people feel quite strongly about, particularly in Scotland. The fear is that the politics in the Scottish Parliament will be subsumed in this. An effort to keep them quite separate might be valuable.

Professor Blackburn: I agree. I think the success of the devolved Assemblies has had a subtle impact on the political culture generally within the country, and has some effect down here as well. I was struck, during the election that brought Alex Salmond to power, by the fact that when the Scottish National party got just one more seat than the Labour party, everyone assumed that Alex Salmond was going to be First Minister. I wondered later on whether that had some impact on the outcome of the 2010 election, whereby there was a much stronger expectation that David Cameron, because he had got more seats, would be Prime Minister and whether that influenced Nick Clegg himself. I think that there is an organic interplay between the cultures between the different legislative assemblies.

Q91 Chair: If there are no more questions from colleagues, would Professor Blackburn like to have a minute to conclude?

Professor Blackburn: I would like to wish you well in your scrutiny of the Bill. Like Dr Jack, I would like to have seen this in a draft Bill. I think it is very difficult for you to perform your job of reporting to the House with such extraordinary short notice. I think this is a major reform that requires some gestation period, thinking through all its implications very carefully and separating out the different objects that are being desired. There are a few issues that we have not mentioned today, which I think need to be tidied up. If elections are going to be in May, how will that affect

the annual parliamentary cycle? Are we always going to have a long period between May and the following November? You are going to have to readjust that. It seems to also settle the argument that has been running for some time about whether general elections should be at the weekend as part of promoting greater participation and greater turnout in elections. It seems to have been decided that it has to be Thursday.

There are a lot of little and large consequences of the Bill, and I wish you well in your scrutiny. Thank you for inviting me.

Chair: Professor Blackburn, thank you very much indeed. Thank you, colleagues.