



# HOUSE OF LORDS

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**The Select Committee on Constitution**

Inquiry on

## **CONSTITUTIONAL IMPLICATIONS OF COALITION GOVERNMENT**

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*Questions 1 - 13*

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Witnesses: Professor Lord Norton of Louth and Lord Donoghue

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### Members present

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

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### Witnesses

**Professor Lord Norton of Louth and Lord Donoughue**

**Q1 The Chairman:** Good morning to our first witnesses in this inquiry. We are delighted to see you both here; thank you for coming. I think you know the broad areas that we wish to discuss, because we have circulated possible questions and Lord Norton was very kindly part of our private seminar on this in July. I understand that both of our witnesses would like to make brief opening statements, which may clear some of the ground. We have already read Lord Donoughue's article on the Lib-Lab pact which he kindly sent us, which has been described by members of the committee as ranging from "entreating" to "grumpy". We look forward to hearing your further comments on that and the general historical perspective, which you have described so well. Perhaps I could begin with Lord Norton and your brief statement.

**Lord Norton of Louth:** It is not so much a statement as that I thought it would be helpful to make a point of context, within which we could then have a discussion about the consequences of coalition for our constitutional arrangements. Although we have had coalitions before, we are presently in a unique circumstance in terms of how the coalition came about. This is the first time that we have had a coalition that has been the product of the arithmetic of the general election, where parties have had to come together to form a minimal ruling coalition. We have not been in that circumstance before; we have had

coalitions, but where one party has been dominant and could have governed on its own. So there have been other reasons why coalitions have been formed. That has certain implications in the present circumstances for our constitutional arrangements which were not there before.

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

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

The disadvantages of a coalition do not have to be set out, because we live with them. You have the non-accountability of the coalition agreement, the fudge of policy decisions, the muddle of policy execution and the mediocrity of certain people who get into government who would not be in government if we did not have a coalition. I have in mind the Secretary of State for Energy and Climate Change, who will preside over the blackouts et cetera that lie ahead of us. Accepting a coalition as the natural response to a hung Parliament entrenches that fudge, muddle and mediocrity within government, damages the coherence

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

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

coalition is only one of at least three options that are available after a hung Parliament. In my view, it is the last resort.

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

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

You then have two other changes, which derive from the coalition making statutory changes in the form of the Fixed-term Parliaments Act 2011. One of those is in relation to maintaining the confidence of the House: the Prime Minister cannot now announce that

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

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

and 58% of the seats—it appears to be a more proportional result than has been the case with a single-party government. I notice that Lord Norton disagrees with that. Perhaps he would like to come in on that.

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

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

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

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

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

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



framework enables that to occur? We would perhaps want to avoid the problems that we saw in 2010, where people were not used to doing it and where there was pressure to reach an agreement quickly, so you came up with an agreed document but a document that, in some respects, showed signs of being rushed.

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

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

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

**Lord Donoghue:** I agree with everything that Lord Norton has said.

**Q5 Lord Lang of Monkton:** I would like to follow up on collective responsibility but preface it with a comment and perhaps a question or two to Lord Donoghue about his opening remarks. I have great sympathy with his aspiration for how the situation should be dealt with in a hung Parliament. I think it is fair to say that, at the time of the last election,

there was an overwhelming obligation, in all parts of Parliament, to provide a firm government, because of the economic crisis. Against that background it is absolutely understandable that the choice of the coalition was the one that was taken. But that led to the need to put together and sustain in power a government of parties of different views. All kinds of things get bruised—there is a sort of force majeure that comes into play and a lot of conventions get overridden or, as I say, bruised. One of them is collective responsibility. Lord Donoughue, you referred to the attractions of flexibility in your answer to an earlier question, but the Government have possibly carried flexibility to extremes, to the extent that words almost mean what they want them to mean when they come to suspending collective responsibility here, there, to this person or that person, up to a point and so on. To try to get something out of this morass, what would you recommend should be done to set down some sort of convention, or basis of judgment and activity, in terms of handling the doctrine of collective responsibility for the future? I ask Lord Norton as well.

**Lord Donoughue:** To me, these conventions are bendable anyway. There is a reference in your question to a doctrine. When I was in central government, and even when I was teaching the subject, I was not very aware of tight doctrines. It seems to me—my friend here is a much greater expert than me—that the unwritten constitution has always been fairly bendable and that you adjust it to the needs of government but that conventions were a very helpful guide. It has not troubled me too much that the Government have bent conventions from a purist's point of view. It seems to me that the downside is that it gives an impression of confusion and incoherence, as if they were inevitably playing it a bit on the hoof as they went along; which is what you need to do to some extent, as has already been indicated. For a start, if there is going to be a coalition, you need to spend much more time after the election negotiating and discussing it. Having done that, any so-called coalition agreement should then be presented to Parliament, voted on and be open to amendment.

From that point of view it would be, to use the term lightly, more democratic. I do not see how you can preserve collective responsibility within a coalition. You have the kind of situation we have currently, whereby members of the Cabinet basically attack one another in public. I do not think that is helpful to good, firm and coherent government. That is why I would much rather have a minority government or an understanding pact, which makes sure that you have less of that. From 1977 to 1978, you had agreements to disagree but you did not have public denunciations by one group of the other group. They had an understanding and if they wished to go separately, as they did on one or two issues, they did and that was understood. It did not create the confusion that one has in the present situation, where one does not quite know who is running the Government. I like to have a Prime Minister who sets the lead and negotiates it with his colleagues. When he has an agreement, you know that that is what the executive is doing. I do not like the idea of people with no experience having one foot in Downing Street and being able to veto what the main party has decided it wishes to do.

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

**Lord Norton of Louth:** First, I agree with Lord Lang's opening point. He is absolutely right to stress the economic circumstances. It was the electoral arithmetic plus the conditions in which we found ourselves that provided the real incentives for creating a coalition. In other circumstances, there may not be the same imperative for crafting a coalition. In this context, the Liberal Democrats could not really afford not to go into coalition, given the economic circumstances. On the point about conventions, I agree with Lord Donoughue that conventions are conventions. There have been three occasions when the convention itself was suspended prior to this year, when it was simply ignored. What can one do about it in the context of a coalition? It strikes me that, in so far as you can plan for such an event, it

would form part of the agreement between the parties. Do not forget that in the coalition agreement, there is an acceptance that, on tuition fees, the parties may operate differently in terms of voting. In so far as one is agreeing particular measures, there might be an agreement. It would be explicit that, in that particular context, there is an agreement between the parties that the convention would be suspended. That might be the way forward but that is as far as one could take it. It is a convention, and events may suddenly arise which were not anticipated in any agreement, but you could try at least to formalise it a little more so that it is not just suddenly ignored. A convention is a convention and conventions are developed in order to make sure that the system works. Essentially, it is relating the political reality to the constitutional formality. That is the value of them.

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

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

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

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

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

**Q7 Lord Crickhowell:** Some quite firm things are said about collective responsibility in the *Cabinet Manual* and they could be strengthened. Lord Lang referred, I think, to two papers that we have received in the recent past: one from Dr Andrew Blick and one from Dr Stephen Barber. They make specific proposals. Dr Barber comments in one paragraph: "Collective responsibility cannot be suspended very frequently, impulsively or unilaterally. Decisions to suspend collective responsibility must be made formally by the Prime Minister and his or her deputy, ahead of a vote or campaign and formal notice given to Parliament". Dr Blick says: "They should be adopted by Cabinet as a whole, so that at least the departure

from collective responsibility is in a sense a collective act". You could develop some rules whereby any breaches you have are announced in advance. Parliament could perhaps have an opportunity to debate the decision to do it but you would not just announce, "Oh, we've decided and this is what is going to happen", impulsively and almost on the spur of the moment.

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

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

**Lord Norton of Louth:** Yes.

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

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

**Lord Donoghue:** A small point: in the 1975 referendum on our membership of the Europe Community, it was discussed and the decision was formally taken to abandon collective responsibility and to allow parts of the Cabinet to campaign one way and parts to campaign

another. That did work but worked for the reasons that I think you are implying, because it was done formally, openly, collectively and for a specific item for a specific time.

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

**The Chairman:** But not in Parliament

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

**The Chairman:** Yes.

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

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

**The Chairman:** Could we return to the broader points that you both mentioned—but which we have not developed because we have got on to the very interesting question of collective responsibility—about democratic legitimacy and the responsibility to the electorate? Lord Hart.

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

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

**Lord Donoghue:** I agree absolutely with the point you make. For me, the basic criticism of what has happened is that parties went into the last election with manifestos. We know voters do not vote for everything and are not aware of everything but they are not what we are being governed by. We are being governed by a coalition agreement that was not submitted to the electorate, so it does not have that kind of democratic legitimacy. It also becomes a factor in the subsequent agreement, when people do not enforce or introduce parts of their manifesto because they say the other side will not put up with it or will veto it and so forth. I am sure you will focus on that in your report. Although I do not like



coalitions, I accept there will be circumstances in which they will come about—and the kind of pact or understanding that I favour is a loose form of coalition—and this is a major disadvantage. Putting the agreement to Parliament and allowing it to vote on the agreement and amend it would legitimise it to some extent, but I still feel it is a far from an ideal arrangement. It will also have an impact on the construction of manifestos because parties will construct their manifestos with two parts: one will be the red lines that “we must have” while the other will be tradeable. The electorate may not be completely aware of those two aspects.

**Lord Hart of Chilton:** As a result of this being cobbled together very quickly, a raft of constitutional proposals came forward without any consultation which, in some people’s views, would have wasted a lot of money and a lot of parliamentary time to no purpose.

**Lord Donoghue:** Absolutely. My main hostility to the coalition is to that undemocratic aspect of it.

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

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

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

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

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

**Lord Irvine of Lairg:** That is well understood.

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

**Lord Irvine of Lairg:** Before Lord Norton of Louth comes in, I just want to add one supplementary to my question. Let us suppose that my question assumes correctly where the practical politics lie and that the parties of the likely coalition—I know that is abhorrent to you Lord Donoughue—might negotiate provisions in their manifestos in broadly similar terms. Would that not also have the beneficial effect that the Salisbury–Addison convention should then, by rational extension, apply as it does today in relation to the manifesto of a

single party that wins an election? By analogy, would it apply to the common objectives expressed in some detail in the manifestos of the two coalition parties?

**Lord Norton of Louth:** I will start on the first point and come on to Salisbury–Addison. It occurs to me that the answer, in terms of how the parties would respond, is the duck analogy. By that, I mean that on the surface they would have their manifesto saying, “We are fighting as single party, we fight to win and this is our programme”. Below the surface, there could be an awful lot of activity going on in anticipation—

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

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

On Salisbury–Addison, I suppose there are two points. One is the conundrum of what you do if the policy is in the manifesto of one of the parties to the coalition and the other is in the main opposition party’s manifesto, of which we have had an example in the current

Parliament. The other point is that we have gone beyond Salisbury–Addison in the sense that the House of Lords now tends to accept that, if the House of Commons has approved a bill, we are not going to divide against it or vote it down on second reading. That has become so well established—and the House has largely abided by it—that I think it would be a case of following what the Commons has agreed. The House would then focus on what it currently focuses on, and does rather well, which is the detail of the legislation. There are problems for the House in terms of coalition but I do not think they are necessarily the problems of legislation coming forward that has been approved by the House of Commons.

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

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

**Lord Donoghue:** No.

**Q10 Baroness Falkner of Margravine:** I want to go back, Professor Norton, to your views on democratic legitimacy. Although I understand where you are coming from in terms of our constitutional system in the United Kingdom—first past the post and so on—your comments that the electorate would not have any means at the end of the Parliament of “punishing” a party or of being able to distinguish which party was responsible for what slightly surprises me. I would have thought that, in today’s world, when all these

disagreements are made very public, almost instantly, the electorate are canny enough to work out which party has which belief and which party does not. I can give you a current example and ask you to comment in the light of that.

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

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

exceptions but it does not seem to be unusual. My key point is about collective responsibility of the government for government.

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

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

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

that were clearly rushed, such as constitutional issues, which were perhaps not always that well informed. There may be recognition that it will take longer, if necessary, to reach agreement, and you could delay Parliament sitting and so on. I do not think that it creates insurmountable problems if we accept it could take a little longer in order to reach agreement and have a new government.

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

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

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

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

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

**Lord Norton of Louth:** I suspect that the answer to the third question is the same as the answer to the first, in the sense that, if there is some agreement, one would expect it to be published should it be subject to a vote of the Commons. However, I am not sure what that would achieve, as the key point is whether the Government maintains the confidence of the Commons, which relates more to your second question. If you like, there might be a case for saying that there should be a confidence vote once the new government are formed in those circumstances. The Fixed-term Parliaments Act 2011 provides that if the Government lose a vote of confidence, they have to get the confidence of the House within 14 days. One might do something similar if you were going down that path. Whether it is necessary is another question. When a government are formed, they are Her Majesty's Government. They will bring measures before Parliament and it is then for Parliament to decide what to do with those measures.

Even if it was accepted that there should be a vote on, say, a coalition agreement, I would be inclined to say that that should not extend to the Lords. I would have thought that the role of the Lords is to debate and advise—rather like on decisions of war, we are not there to conflict with the Commons on such issues. However, we are well-placed to discuss the matters and that would be entirely appropriate .

**Lord Donoughue:** I agree that it is a question for the Commons. If there was a looser pact or understanding, it would be written out—the five points were written out in 1977—and that would be put to the Commons. If that was voted on and approved, that would assist the Lords on Lord Irvine's important question about the Salisbury–Addison convention. We would accept that as a basis on which to view our powers to reject or not. It would certainly assist the openness and democracy of the process if any understanding was written out, put to the Commons and approved. In 1977 it was not in that sense, but it was in the



sense that the Conservative vote of no confidence, which was tabled in advance of the understanding, was defeated. The understanding was the basis of that defeat.

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

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

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

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

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

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

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

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

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

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

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

desirable course. The more one can protect against it the better, but I am not sure you can do it through a formal constitutional route.

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

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

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

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

**The Chairman:** Thank you very much. Does any other member of the committee want to pursue any point? I am not going to raise this enormous hare at this point in the

proceedings, but Lord Donoughue mentioned the stock markets. I am concerned about this. We have talked about democratic legitimacy and of course we are back to the situation of the government being formed by the markets, which I think is an interesting issue to pursue, but not this morning. I am very grateful to you, Lord Donoughue and Lord Norton. It has been a valuable session and has started us off in a splendidly energetic way. Many thanks for your time and your valuable thoughts.