HOUSE OF COMMONS

# Political and Constitutional Reform Committee

## Oral evidence: Fixed-term Parliaments: the final year of a Parliament, HC 976

## Thursday 6 February 2014

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Watch the meeting

Members present: Mr Graham Allen (Chair); Mr Jeremy Browne; Mr Christopher Chope; Tracey Crouch; Mark Durkan; Robert Neill; Chris Ruane.

Questions 43-91

*Witness:* **Lord O'Donnell GCB**, former Cabinet Secretary.

**Q1 Chair:** Welcome to the Committee this morning, everyone, and particularly Gus, Lord O'Donnell. We are very pleased to see you with us. Did you want to make an opening statement, anything to kick us off, or would you like to jump straight into questions?

***Lord O'Donnell***: Just to say I am delighted to be here and delighted you are looking at this subject. I think it is really important and I am very happy to go straight into your questions.

**Chair:** I should have said immediately that we are here to talk about the fixed-term Parliament and to look particularly at the last full known year of a Parliament, which is going to come up, a unique occasion, hopefully not the only occasion. But we all have to think a little bit more deeply about how we use that full year productively. No doubt there will still be the knockabout 28-day campaign at the end, but are there things that we can use this very valuable, precise chunk of time for?

**Q2 Mr Browne:** Good morning. From your point of view, or the point of view of the civil service or the governance of the country, are fixed-term Parliaments a good idea? From a parliamentary candidate's point of view, you do at least know when your day of reckoning is going to arrive rather than it being a guessing game. Does that apply to the civil service as well?

***Lord O'Donnell***: I have to now talk in my personal capacity—I give that caveat.

**Mr Browne:** Yes, from your experience.

***Lord O'Donnell***: My experience is that one of the great things about fixed-term Parliaments is that they provide certainty. The obvious point is that they provide certainty about the election date. There were some pundits saying that the Coalition Government would last only three weeks, three months; they were wrong. We do have that certainty and I think that is a good thing. If you are trying to assess how fixed-term Parliaments work, it would be a bit like asking a six-months

pregnant woman, "How did the childbirth process go?" We have not had one single fixed-term Parliament yet, so we need that caveat. We also need the caveat that two things are happening at the same time. We have a fixed-term Parliament and we have coalition, so the two things interact.

With those caveats, my view is always that you want Parliament and Government to look long term. In the old days Governments would try to go early in the fourth year. That was the normal thing and if you did have a year 5, it was a horrible year 5 because it was a time when the Government, by definition, was hanging on hoping that something would turn up. We have the best part of an extra year and we have that certainty, and that is an element of fairness in terms of taking some power away from the incumbent to choose a date, so I think there is a fairness element. There is a long-term element, which is good. In general I would say it is a good thing for the British public.

**Q3 Mr Browne:** For example, we have the Budget next month that will be looking at financial year 2014-15. Presumably, from the Treasury's perspective it is quite nice to know that this is not just an exercise in fiction, because there is going to be a general election called within weeks of the Budget, and that this Government will, one assumes, preside over the 2014-15 financial year.

***Lord O'Donnell***: That is exactly right. If you look back to, say, the Budget we had pre-election in 2010, it was clear that that was just a pre-election Budget. Those sorts of budgets tend to be about trying to define position and clear water between the governing party and the Opposition. This time the 2014-15 Budget is real, so that is an extra one.

**Q4 Mr Browne:** It was widely reported that the two coalition parties were both worried that the other would pull the plug on the arrangement and therefore a fixed-term Parliament suited them both. Everyone was set to agree on a four-year fixed-term Parliament until the Chancellor said, "Why not make it five?" Do you have a view of whether four or five is a better length of time? The Americans have four, the French now have five, so there is not a right or wrong, but I observe that football world cups and Olympic Games and American presidential elections come round in four-year cycles, not five-year cycles.

***Lord O'Donnell***: Personally, I am always of the view that it is great to have Governments think long term, so I like longer rather than—

**Mr Browne:** Get rid of elections altogether.

***Lord O'Donnell***: It is a trade-off. We like elections to be at very long intervals when we have a Government we like and we like them to be at short intervals when we have a Government we would like to get shot off, so there is a trade-off there. But personally I am for a little bit longer because I think of the time it takes for big reforms to come through. If you are going to do them properly with the planning and not rush them, then five years is better than four years.

**Q5 Mr Browne:** You said, and it strikes me as completely right, that there is a danger of tangling up in our minds that we have a coalition Government as well as a fixed-term Parliament, but that you thought an attribute of fixed-term Parliaments was stability and a greater degree of certainty at election dates. Let me put to you as a possible alternative that, were the Lib Dems to walk out of the Government today—I would disapprove, I would be arguing against that happening—you would end up in this limbo. This is what some constitutionalists think who fear that this is an alien imposition on our organically-derived constitutional arrangements and that we would be left with a 14-month limbo period, where everyone knew that this Parliament had reached its "natural end" and yet the fixed-term Parliament has stopped that from happening. I suppose the point I am making is could you foresee a

scenario where the fifth year, under the Fixed-term Parliaments Act, was even more of a limbo year than it was in, say, 1992 or 1997 or 2010?

***Lord O'Donnell***: It is hard to imagine because hopefully they will look—we have experience of fixed-term Parliaments and coalitions in lots of other countries. The Institute for Government did a very good session with some evidence from Germany, Sweden and the Netherlands where they looked at these things. I think the Lib Dems will have noticed that if the smaller party walks out, it does not bode well for the prospects of the smaller party in the election that follows, so I think they will be aware of those precedents. My feeling is that there is quite a lot of stability built into that system and it will keep going. Obviously if things are completely falling apart between the two parties it might break down, but then of course there would need to be a vote of no confidence.

There is an interesting thing that will come up possibly at the next election, which if I were in my old job I would be worrying about now. It is a slightly different issue, which is that we didn't do much work on minority Government, a supply and confidence arrangement; we did a little bit. You can imagine that being a rather more attractive prospect, because last time the economic context was quite negative. We were in a recession and it was clear you were going to have to make some really tough decisions on the deficit, and probably you were not going to increase your popularity in 12 to 18 months. This time round the economy is in a recovery stage. It might well convince some politicians that going into minority and in 12 to 18 months the economy will be better, "We, as a minority Government, will get the credit for that, therefore why don't we do that and then when the time is right—"

**Mr Browne:** Like Labour in 1964 and 1966, the temptation would be to have—

***Lord O'Donnell***: The temptation would be to go again. Then, of course, fixed-term Parliaments would be an issue, so how do you exit, how do you create that election after 12 to 18 months? Obviously you have to generate a no-confidence vote, so you have to vote not only no confidence in yourselves but get someone else to support you.

**Q6 Mr Browne:** I don't want to completely trample all over everybody else's subjects. I am already doing that, but this is my final question. I appreciate this is the first example but, given that Governments should in theory be operating on a bit less of a hand-to-mouth existence and be able to think about the five years as a whole, do you think that the Government, and for that matter the civil service, has taken full advantage of that? I will give you an example of the Department I was in, the Foreign Office. One assumes that the Foreign Secretary will spend the entire five years in post. There is a lot of stability in a Department like that. You could take a view that this is a great opportunity in foreign policy development terms to take advantage of the stability of a five-year period. That must be the major upside of fixed-term Parliaments. Do you think that has been realised or not fully realised?

***Lord O'Donnell***: I think it comes back to the fact we have two things happening at the same time. Coalition has had a strong impact on stability of tenure for Secretaries of State because of the difficulties of party balance and the like. It would be difficult to put it down to fixed-term Parliaments. I think people are assuming that from day one there was always going to be a fixed-term Parliament. Actually, we did not know there was going to be a fixed-term Parliament. There were all sorts of constitutional suggestions—House of Lords reform, voting reform, boundary changes—and mostly we do not have those but we do have fixed-term Parliaments. So it was not clear from the start that that would be the case. In that sense, no, on day one we didn't plan as much as we would.

I think the stability has been helpful. You can look at certain areas, and Royal Mail would be a classic example where we still have had a large number of Ministers, even under this stable system,

dealing with the whole privatisation issue of Royal Mail. It is not as bad as when we had nine Pensions Ministers in five years, so the stability is better and I think that is a good thing in general. The fact that we have had one Foreign Secretary to run a foreign policy is a very good thing. Civil servants like that because you have stability; you can plan for the longer term; they get to know the Department well and you get to understand them and what their objectives are.

**Q7 Tracey Crouch:** Can I follow up on the comments that you made about minority Government and planning for minority Government? Is it not the case that fixed-term Parliament legislation is not binding on any future Parliament, so could it be that the legislation is overturned? It would be in the interests of all parties, the minority Government, who may wish to call a snap election at a point of popularity, as well as Opposition parties.

***Lord O'Donnell***: Absolutely true. You cannot bind future Parliaments, but I think the issue is that the legislation is there so it would require you to pass new legislation to change it. That would lead to a public debate about why you are doing that.

**Q8 Robert Neill:** Sorry I missed the beginning of your comments, Sir Gus. I will blame Southeastern trains, but it is not the RMT for once. At least they are running, that is something.

***Lord O'Donnell***: We had a long walk this morning, I can tell you.

**Robert Neill:** I think we all did. I was interested in your point about stability, because I suppose I was, at least briefly, a very minor beneficiary of that for a couple of years. Is it the fixed-term Parliament that has brought stability or is the reality that it is the constraint of coalition?

***Lord O'Donnell***: This was what I was saying at the start. In the whole of this session we have two things. It is a classic statistical problem, two things happening at exactly the same time. We have fixed-term Parliaments and coalition. I think if you had not had fixed-term Parliaments, coalition of itself would have increased stability, no question about that, because of the problems of party balance and all the rest of it. We should not go back over past history, but there were occasions in the past when a Secretary of State did something that might have resulted in their resignation, which in the end resulted in a change of the machinery of government. Responsibilities were moved from one Department to another. So it has definitely added to stability but I think fixed-term Parliaments have as well and, until we have a situation where we have one without the other, we will not be able to separate the two effects out very well.

**Q9 Robert Neill:** I think that is right. There is obviously the possibility that a Prime Minister who likes to shuffle the pack a lot, for party management reasons dare I say, simply has five years to do it if he has an overall majority rather than four—in fact, arguably, he could do so with greater impunity.

***Lord O'Donnell***: He could, but the one thing that will change is that they will have had the experience of this past Parliament, and I think people are starting to say, "Isn't it a good thing that we had that Secretary of State there for a longer time?" I think that will change the mood.

**Chair:** Just to throw in, even from a Member of Parliament's point of view, if you are working on something and you are campaigning on something, nothing is more destructive than you have built up a relationship with a Minister, you have educated, in a sense, a Minister on your campaigning, and then they are off and you start all over again. Dare I say that was my experience under the previous regime but has not been my experience under the current one?

**Q10 Mark Durkan:** Jeremy touched on some of the issues in relation to financial scoping, but if we are going into the final year of a Parliament do you think that creates an added opportunity for planning in respect of the next spending review? Just how feasible is it to initiate real preparatory work ahead of the general election? I am asking that not just from the point of view of the Government, both the political Government—Ministers—and the permanent Government, the civil service, but also of Parliament. In this discussion we have talked a lot about the implications of a fixed-term Parliament for Government, both the political Government and the permanent Government, but not so much about the impact on Parliament as Parliament.

***Lord O'Donnell***: If you look back to the last years of the John Major regime, there was an issue about the difficulty of getting legislation through because of whether there was a parliamentary majority. It might be that, with the combination of coalition and fixed-term Parliament, the amount of legislation you can do is reduced somewhat. There will inevitably be a move, and I have talked about this before, of parties differentiating themselves as you approach an election. You might get somewhat less legislation. The fact that there is less legislation to my mind creates quite a number of opportunities. First of all, it is to emphasise implementation of those things that you have done. Quite often, I think Governments overdo legislation and don't think, "Okay, here are the four things we really need to do. Let's do them well and let's do them carefully. Let's implement them and let's deliver and get the results."

The second thing, as I think you hinted at, is that there are some big long-term issues. We have an ageing population. There are some serious long-term issues and it would be good for that debate to take place at this time. Parliament might be able to stand back and say, "Let's think about these long-term issues: climate change, ageing, the growth of dementia, mental health issues, how we manage childhood obesity". There are a lot of big issues. They are not necessarily ones where I think the parties are coming at them from a different point of view, but it would be nice to get the evidence base out there and to get people talking about the What Works bodies that the Government have set up, which I commend them for. Get the evidence base out there. Let's have some debate about how we tackle these big issues for society. Then I think the parties will come to their own views about what are the serious policies they want to implement and those can be in their manifestos.

I am living in this world where I hope we will get a more informed, more evidence-based debate because of the time that we will get.

**Q11 Mark Durkan:** But it would take a degree of deliberate co-ordination across parties and within the infrastructure of Parliament in terms of committees or whatever to say that we are going to use the extra thinking space, the extra deliberation space of a fixed-term, five-year Parliament to look beyond the immediate cut and thrust of some of the issues, and look at major issues like the pensions challenge, caring for an ageing and rising population and some of the other issues that you have raised, and of course the challenge of doing things across Government for early-years intervention. Those are huge things that we all say are good and we like what we think is happening elsewhere but it is very hard to get the commitment and the space to do that here.

Do you have any thoughts about how Parliament could allow itself to be at least a platform for some of that thinking? Given the circumstances where we know there are many experienced parliamentarians who say they are going to leave, will be leaving, giving up their particular roles, there is experience and insight there that maybe could be deployed in the context of a fixed-term Parliament.

***Lord O'Donnell***: Indeed. The obvious point about having a fixed date does make a big difference. You think of the analogy of the Scottish independence referendum. There is a fixed date we know,

18 September I think, so you have time for there to be lots of serious debates about the issues. Mark Carney can go up there and talk about the whole currency set of issues. You can talk about how you allocate out the debt. You can talk about what the powers should be. I think you can get a big informed debate and it is then the responsibility of various key players to stand out and start talking about those sorts of issues. As you say, experienced parliamentarians have an opportunity now and Parliament gives them a platform, both in the Commons and the Lords, to start setting out, "I think the challenges for the next five, 10 years are the following. Here are the kinds of issues we should be debating and here are my proposed solutions to those." I think that is something Parliament could spend a lot of time on. In the other place—am I allowed to call it the House of Lords?—we had a debate about the future of the civil service; Martha Lane Fox had a debate about the internet and the implications of that for the future. I can see both Houses starting to spend a bit more time thinking about these long-term issues. As you say, the more experienced parliamentarians standing back a bit, particularly those who are stepping down, will have a lot of credibility in saying, "This is not about party politics. This is about how we should be governed and what the big issues are."

**Q12 Mark Durkan:** Beyond the issues in terms of the policy challenges, any proposals to do with policy challenges are going to cost and give rise to issues of financial scoping and planning. If we know the date of the next election and therefore we have a long run-in—so it was the old short campaign and long campaign and we know it is now a long, long campaign—in the current context, the credibility of spending plans are going to be a major issue. Do you think, in that context, there is a role for anybody, whether it be the Office of Budget Responsibility or anyone else, basically to measure party manifestos for weighted costing?

***Lord O'Donnell***: Yes, very clearly. I like the system in the Netherlands. They check out and cost all the policies. I think there is a very strong case for an independent body. It could be the OBR, it could be the Institute for Fiscal Studies. We shouldn't worry too much about who it is, but someone independently just trying as objectively as possible to say, "Here are the costings of these policies" or, "This policy is so vague we can't cost it", which is sometimes the case.

**Q13 Mark Durkan:** Do you think it would be possible to structure that without embroiling the independent body itself into the party political crossfire?

***Lord O'Donnell***: Whoever that independent body is needs to be a robust body that we all stand back and say, "They are going to say things that we won't like, whichever party we are, but we accept that they methodologically are trying to live by the same values as the civil service, be honest and objective and to do it with independence, impartially and with integrity". We have bodies that I think have that high credibility and it would be a good case to use them.

**Q14 Mark Durkan:** If they have shown in advance what their method of appraisal and analysis is going to be, people can say that they interpreted it differently, they came out with a bias or they discounted or did not discount. That is helpful.

***Lord O'Donnell***: Yes, most certainly.

**Q15 Robert Neill:** Thinking about spending reviews, local government people always used to come to me and say that even three years is too short a period to give certainty, and the business sector would say more. If we are moving into fixed-term Parliaments, subject to the caveat that you

can't bind your successors, is there a logic to saying that we should seek to align the spending review period with the period of the fixed-term Parliament?

***Lord O'Donnell***: There is a strong logic to that because when a Government of whatever persuasion comes in, you would like to have a spending review then, just as we had in 2010 with a new Government coming in, looking again afresh at all the options. To be honest, I would like them to take a little bit more time than we did last time, and I think that would be possible in a context where the economy is in a somewhat better position, and thinking through, "Let's do this and that is for the Parliament". The Permanent Secretary to the Treasury in me says, "Yes, but", and you would have to have a "but" there that would be, "What if the economy doesn't turn out as expected?" You would need some caveats, but there would be a plan and you would try to lay out the contingencies: if growth turns out slower than we thought, here is the kind of things we do. If it turns out higher than the OBR are predicting, these are the kinds of things we would think about.

If you have a five-year plan, the sorts of things that we are talking about, the investments and the reforms, generally take that sort of time to see through. I think it would be a very good thing. I remember the times when we had annual bilaterals and if something went wrong, the only thing you could do was put a stop to capital programmes. I remember a complete halt to the hospital building programme back in the 1980s, I think. I am all for a longer-term planning system, if we can, subject to the fact that as you go further out, your economic forecasts are obviously subject to much wider margins of error.

**Q16 Robert Neill:** I understand. I may be stretching the fixed-term Parliament issue a bit, but I think that last point is a very good one. It does seem to me there is a real risk, and it happens right across the piece, in local government too, that you raid the capital to prop up the revenue. I get the sense that that is a disincentive to private sector investment sometimes in joint programmes and so on. Is there anything whereby we could use the sort of mechanisms we have talked about, whether a fixed-term Parliament, the five-year spending review and so, where the logical thing would be to be the same as a business? You have a much longer capital plan, the same as you have your five-year revenue plan. Should we be finding some mechanisms where we could have a much longer capital plan, subject again to some caveats?

***Lord O'Donnell***: Indeed. I think the first part of that, which was very important, was having the capital-current split. That was made under the previous Administration and it has carried through under the current Administration. When people are talking about their deficit plans, they are talking about current balances. I think you can have a separate capital programme. If you look at things like Crossrail, HS2, future airports, all those kind of issues are very long-term capital programmes, and it can be done. The planning for the Olympics is a classic case. These were long-term things. It was planned across an election, which in the event had a change of Administration, yet it was done. So, we can do these things but it would be good to try to reinforce long-termism.

**Q17 Chair:** Politics and the media want something quick. Isn't this setting the framework for a change in our politics, where we can be honest with the public and say, "Actually, this is going to take a long time. You aren't going to see stuff immediately but you can benchmark us over a five-year or possibly—as Bob suggested on capital—10-year programme"? Is this possibly going to help restore a little bit more faith in politics?

***Lord O'Donnell***: I would like to think so. It would also come with being clear about evaluations. There are lots of projects that we know are hugely worthwhile and quite often get delayed for short-termism reasons. It is a no-brainer that we should be reallocating money from the physical health budget to the mental health budget. If people have, say, issues of depression and we give

them more of the therapies we know work, like cognitive behavioural therapy, instead of them being on expensive disability benefits, staying at home with their personal status and self-esteem going down, probably being over-prescribed antidepressants, and we get really effective therapies that would take them off benefits and get them into work, start paying taxes, that is fantastic for the deficit. That requires a small amount of money upfront on training and a lot of reallocation of commissioning of our health services. There are some fantastic programmes.

When you said that this is going to be expensive, there are quite a lot of things we can do that are not that expensive. The change of the default on the pensions did not cost anything. The equivalent you would have had to spend—and I haven't quite worked out the numbers on this—as a subsidy to saving for pensions would have been many millions, if not billions, to get the change that came about just by switching a default.

**Q18 Chair:** You mentioned the potential for a big debate. If I can take that away from the financial stuff for now—because I know we are going to come back to that, and Chris has a couple of questions on the interaction of the civil service with the Opposition—and look at policy issues, it is not apparent immediately who might hold the ring on that. There is not an Office of Budget Responsibility-type organisation on policy or an IFS. Who might hold the ring on that? The Government might have a responsibility for a year's worth of debate. It may be the Liaison Committee of the Select Committees in Parliament trying to do something like this or even the Backbench Business Committee. Could it be the media, the BBC? Who might hold the ring on the big debate on the issues running up to a general election when you know you have a year before that general election? The civil service are a bit sensitive about doing that.

***Lord O'Donnell***: Yes. The civil service are working for the elected Government, and we might come back to more issues about that. Who is in the best position to try to get that sort of objective debate? First of all, you need to determine what constitutes success for the Government. It is easy to do that if the Government has laid out what its success was. Before he became Prime Minister, David Cameron made it absolutely clear that what was success for him was improving wellbeing, not GDP. I think there is a lot to be said for someone standing back and saying, "How successful have we been in improving individuals' life satisfaction? Are we on the route to more sustainability? Have we improved the constitution? Have we improved the lot of children?" It is a broad area. That is the debate I would say we should have. There is a little bit about the economy but it is mostly—who should do it is the interesting question. I don't think we have a body set up that is broad enough to be doing that sort of thing at the moment. It would have to be something new.

**Q19 Chair:** In a sense you are looking back, Gus. I don't want a trial of was the Government a success or not, even in its own terms. What I am trying to look at is a future policy. How can we all engage over the next year, including the public but above all Parliament, to select a side in these things, on what the next spending review might look like, given it is going to be a difficult one with further austerity, it seems? What will the pensions provision look like? How will all parties move forward on some of the issues you raised about early intervention and so on? You could develop a consensus on much of that. There will still remain issues of debate on some of it but, looking forward, you can develop a consensus on some of it. How do we get there? That is a great prize, isn't it, to involve the public in politics once again?

***Lord O'Donnell***: It is a huge prize. I share your view that one of the issues we have to grapple with is people's lack of interest in politics in general. I am very aware that when they asked the 18 to 24-year-olds whether they voted last time, the majority said they didn't. We have to get people interested. It could be the Liaison Committee, things like that. I think what is needed is some

independent body going through all this and presenting the evidence and the options. I did suggest we have something that I called the Office of Taxpayer Responsibility, which might be an independent body that would look at these big issues. In a sense, I am completely with you and I would criticise Parliament for this. We spend a lot of time on ex-post accountability issues. The PAC is always saying, "You should have done it this way, you should have done it that way". Fine, but how much better to do a bit of ex-ante stuff. How much better to say, "Let's think about what is the right thing to do it and do it in advance, and establish the timetable and the process to ensure that it stays on track". I think that if an Office of Taxpayer Responsibility was set up it could do that sort of thing. It would need to be a bit like the IFS but much broader.

**Q20 Chair:** We have the National Audit Office with 900 accountants doing very good work but, as you say, sometimes backward looking. They may be a part of the answer on this. We would need to explore that.

***Lord O'Donnell***: They could be, but they would have to have a complete culture change to be ex-ante rather than ex-post.

**Q21 Chris Ruane:** I apologise, I had an important phone call to go to. I totally agree with what you have been saying. There are certain areas where you can depoliticise issues. Care of the elderly is one. National security is the obvious one. Graham mentioned very young children, infants, where the long-term studies show for £1 invested here, £7 is saved there. Mental health is another one, and wellbeing, I totally agree with you. Can you think of any other areas where we could be looking at more consensual politics? I have mentioned four there. Are there any other areas where we could have more consensus?

***Lord O'Donnell***: I had hopes we might do party financing, but we have not got there. You mentioned ageing, something like the Dilnot report. Another way into this sort of thing is to get an independent reviewer who everybody expects to do this. We put Howard Davies up to do the airports, but I am not sure that has been greeted in the way that you would want those independent reviewers to be greeted. I would say the whole obesity agenda is a very big part of what we should be looking at and—this is a global thing—inequality. We know that there is a whole set of issues following on from globalisation that we need to think about. I would probably put in, "How do we ensure that we are a highly productive nation?" These would be long-term views of the economy.

**Chair:** We need to think about the mechanism, and we all have our own little shopping list. I certainly have. The mechanism could free that potential for a national debate.

**Q22 Tracey Crouch:** I am going to disagree with you. It is all very nice to think that we would be here in the last year of the Parliament discussing, in consensual terms, future long-term policy on issues, but the simple truth is that we are here to legislate. I think that many colleagues would not be in the Chamber discussing these big issues, as worthy as they might be, because we are in the run-up to a general election. That in turn could have quite a negative impact on Parliament and the perception of Parliament, because already we are accused of having empty Chambers and so on. Would it not be a better way to look at these long-term issues by having more draft legislation discussed in Parliament? That way we are still looking at it from a technical, legislative perspective rather than a wider, let's all be nice to each other kind of policy debate?

***Lord O'Donnell***: I guess here I am quite influenced by being in the other place, the House of Lords. You said that we are here to legislate. I like to think that Parliament is about a lot more than just legislating.

**Q23 Tracey Crouch:** It certainly is, but you have a civil service that you used to run that also would be thinking a lot about policy. If we are thinking about it, and we are the elected Members, what role would there be for the civil service?

***Lord O'Donnell***: Giving advice to specifically the elected Government and the whole implementation process. You say we are about legislation. I wish you were much more about not just legislation but thinking about policy and implementation, and not just thinking you have done your job because you have passed a bit of legislation and thrown it across to us in the Lords who say, "There are all these things that you didn't talk about at all".

**Q24 Tracey Crouch:** That is a debate about how we legislate in Parliament and I don't disagree with you on that.

***Lord O'Donnell***: Good.

**Tracey Crouch:** That leads to another question, which is that we have not yet had the legislative programme for the last year of Parliament announced. Do you think that there is a risk that the year could be wasted because the coalition Government can't agree on any legislative programme?

***Lord O'Donnell***: Again, I think my biases will come out here. When I look at policy issues, legislation as the answer to a policy issue comes quite a long way down my list of preferences for the best way to tackle a policy problem. When you put something into primary legislation, it is very clunky. First, the legislation may not be well geared to what you are trying to achieve and, secondly, the circumstances change and in 12 months' time you wish you had not legislated in that way. There are lots of ways of improving policy that do not involve legislation.

Having said that, if you are going to legislate—and obviously there are lots of areas where legislation makes a lot of sense—I think pre-legislative scrutiny is generally a very good thing and we need to think about that more. I am in favour of draft legislative programmes in general. You mentioned about getting agreement with the coalition this time. Probably. That means the legislative programme will be smaller but it will contain the heart of things on which they can both agree. If that is smaller, let's make it higher quality, and by definition it is more cross-party because it has them both on board. It may be a smaller number, but they may be better.

**Q25 Tracey Crouch:** What happens to morale in Departments that don't have anything contained within the legislative programme? What do they do for the whole year?

***Lord O'Donnell***: They love it. Joy. The Foreign Office hardly ever has legislation. Do you think they go around saying, "Oh, it is dreadful for my career"? I do think it is an important part of a civil servant's career and experience to have managed a Bill through Parliament. You learn an enormous amount through that. You learn a lot about Parliament, which otherwise can be a problem. Many times I have had discussions with my colleagues in the diplomatic service and they don't quite get that Parliament exists sometimes. They are kind of in that world. You must have had exactly the same.

**Mr Browne:** Not from where you are but, yes. I was a Home Office Minister and a Foreign Office Minister and the contrast is very striking. At the Foreign Office, Parliament might as well not exist

a lot of the time, because the rest of the world is still doing its thing, whereas the Home Office is like a school. It runs when Parliament is sitting and it goes into a more dormant mode when Parliament is not sitting.

***Lord O'Donnell***: I would be critical of the Home Office in that sense. If you look back over the last 10 years at the number of crime Bills we have had, a number have not even been implemented. I would say there is far too much legislation there and a lot of it is for political reasons, "We want to be here because we want to create some dividing lines". There is an enormous amount that civil servants could do in terms of preparing policies, thinking about all this new stuff that is going to come out, I hope, from the What Works people, trying to get Ministers thinking about how they could have different approaches to policy, not least all the behaviour change stuff. I mentioned the pensions one. These are fantastic things. That was a little bit of legislation, but quite often a lot of them involve no legislation at all. Some of the brilliant things they are doing in the nudge unit at DWP about getting people back to work more quickly are not legislative changes. They are ways in which we implement and persuade people that work is for them and they can do it.

**Q26 Tracey Crouch:** To what extent do you think the legislative programming has been improved or worsened or actually not affected at all by the Fixed-term Parliaments Act?

***Lord O'Donnell***: Going back to the point about Budgets, we have an extra real Budget and hence a Finance Bill going with that. I don't think people have exploited it to the full, because we didn't know we were going to have a fixed-term Parliament right from the start. You would have a new situation where post the next election—it could be a single party, it could be a coalition—they will know that unless they change the legislation, there is a fixed-term Parliament. Just as we were talking about a spending review programme for five years, they could have a view about the five-year legislative programme. It is hard to plan that far ahead, but they could have a view about those changes that need legislation quickly and the other ones where they can do things, set things up in shadow form, say, and legislate later, and have a vague idea at least of how you would manage the legislative programme through the five years. Almost by definition, year 5 is a lighter year legislatively than year 1.

**Q27 Tracey Crouch:** But theoretically we should not need to rush through any of the legislation that is going to be announced in the forthcoming Queen's Speech. Some of us in this House are very envious of the pace of legislative scrutiny in the House of Lords and would like a lot more time to scrutinise legislation, and indeed to receive it back and have time to scrutinise it. Are you saying that technically or theoretically in this last year of a fixed-term Parliament we should not have to rush through the legislation?

***Lord O'Donnell***: My guess, and it is a guess, is that the politics of coalition will be such that the Queen's Speech will be a bit lighter, the legislative programme will be lighter and therefore there will be more time. I think that will be a good thing. Better quality legislation is good for all of us.

**Q28 Chair:** The death of the wash-up, the infamous ditching of lots of Bills that are still in process as you reach the end of a parliamentary term; can we plan that out?

***Lord O'Donnell***: I would not have had the Constitutional Reform and Governance Act were it not for the wash-up, which was fantastic in terms of finally doing something that Northcote and Trevelyan had suggested a mere 150-odd years ago, so I can't be completely anti the wash-up. But, yes, in principle.

**Q29 Chair:** Why was that created by the concept of a wash-up?

***Lord O'Donnell***: It wouldn't have got through. That came through in the wash-up.

**Q30 Chair:** It came through but it could have been blocked by any one dissenting voice at wash-up.

***Lord O'Donnell***: Absolutely. All I am saying is that, if we had not had wash-up and if everything just died, we wouldn't have had that.

**Q31 Chair:** You rescued a few things but we can name a number of others. Back again is relationship education and all those things that were within minutes of passing but then died and are still sadly interred.

***Lord O'Donnell***: Yes, and it is a complete waste of everybody's time if both Houses have worked on legislation and it approaches the end and then, boom, it has gone. Now we know the final day, hopefully we will not be wasting our time on things that both Houses will work on and then it will just fade away unless it is rescued at wash-up.

**Q32 Chair:** It would seem impossible for Roy Stone, who runs the agenda of the House of Commons, to have on his battle board five criminal justice Bills, one for every year of Parliament. He would surely have to impose a discipline and say, "You are going to get two. We think they are going to be here. This gives you time to do pre-leg to get it right the first time rather than keep coming back." I am just making a point on behalf of Parliament that I think Parliament can be a key beneficiary of the fixed term and not just the civil service and good government.

***Lord O'Donnell***: Yes. I completely agree with that.

**Q33 Chris Ruane:** Now that we know the date of the next Parliament, it could be a positive in that the access of Opposition parties to civil servants could be planned and formalised much better. When we looked at it in 2011, the then political Minister for Political and Constitutional Reform said, "It is still the Prime Minister's prerogative to arrange for Opposition access to the civil service in what historically has been in the last 18 months or so. It is for him now to make that arrangement for a new fixed-term Parliament." What do you think is a sensible timeframe for contact between the Opposition and the civil service?

***Lord O'Donnell***: It is not for me to contradict the Minister, but when the Minister said 18 months there, I think that referred to the end of a five-year term. In general it was not 18 months; mostly it was three months. At the end of year 4, Prime Ministers would say, "You can now engage with the Opposition", so all you had was that period from January to May. You did not have 18 months. Unusually, when it did go to five years, you ended up having 18 months but in general, when it was the normal four years, it was about three months. It is the Prime Minister's prerogative; that is absolutely right. Personally I hope the convention will come through that we can now be a bit more formal about this. My suggestion would be that we go for a year and we say, "Let's start this process on 7 May 2014". At the moment that is for the Prime Minister. Prime Ministers have agreed that there will be that engagement but it is varied in length. It is the kind of thing that if everybody agreed you could put into the Cabinet Manual.

**Q34 Chris Ruane:** Why a year? Why not 18 months or six months? Why a year? A nice round figure?

***Lord O'Donnell***: The reason I am saying a year is that my experience of the 18 months is that it was very hard to get the Opposition engaged 18 months before. They didn't want to talk very much. When you have just three months, it is very rushed and they are getting into that campaigning mode all the time so you don't have their attention. So I would say a year. It is a judgment call, but I would say a year is about right.

**Q35 Chris Ruane:** What type of help could the civil service give an Opposition, a potential Government?

***Lord O'Donnell***: Traditionally, the convention is that you are very much in listening mode. When you go and talk to an Opposition party or parties you listen to their ideas, particularly if they have issues about machinery of government changes—"We want to abolish this Department, merge these two"—and you can talk to them about the mechanics of that. What you can do is quite restricted. You certainly can't offer policy advice under our current convention. I think there is something to be said for allowing that to go a little bit further. If somebody comes to you with a suggestion based on some costings that you think are wildly out or they come up with an idea that you happen to know violates some EU directives, you are in a difficult position as to precisely how far you go. At the moment, it is a grey area as to how far each Permanent Secretary goes when they have their engagement with the Opposition. A bit more clarity would help.

**Q36 Tracey Crouch:** Do you think it makes it more or less important or more or less difficult to have conversations with the Opposition, given the potential for a minority Government?

***Lord O'Donnell***: Potential for a minority Government?

**Tracey Crouch:** Yes.

***Lord O'Donnell***: No, I don't think so necessarily.

**Q37 Tracey Crouch:** You don't think the potential for a minority Government makes any difference whatsoever when having conversations with the Opposition in this formal context?

***Lord O'Donnell***: No, I don't think so. I think the tricky issue we have is that at the moment we have two parties in Government and one Opposition party. When you are in Government, you have access to the civil service and all sorts of things happening, so I think there is an issue. My distinguished predecessor Robin Butler suggested that we should therefore start thinking seriously about whether the civil service should brief the Opposition and give advice to the Opposition. I worry about that in terms of keeping the nature of the civil service as being democratically there to advise the Government, not Opposition, but I think there is an issue. We generated this system when it was one Government party and two Opposition parties and it has changed. We still have this issue, which I keep throwing out as a question that I would love your Committee to answer—and I have said this to the House of Lords Constitution Committee—I am very worried that if we get to a situation next time where there is a Labour-Lib Dem coalition, what do we do about the papers of the previous Administration? It is a very important question because—

**Chris Ruane:** What is the answer?

***Lord O'Donnell***: That is the reason I keep putting it out. It is a bit like the West Lothian question. If I had an answer I would say. One solution to this is that we just drop the convention of papers prepared for one Government not being seen by the next Government. I think that has serious implications. I don't like that idea, but you imagine if we did have a Lab-Lib coalition next time, the Lib Dems have all the past papers. They can ask to see their past papers, but Labour can't and they are in Government together. How is that going to work? I think we do have a very serious issue. I keep raising this question because I do not have a good answer.

**Chair:** We will have a think about it.

***Lord O'Donnell***: I hope that you will solve this one.

**Q38 Chair:** Chris's questions were mainly about the Opposition. Should we finesse this and talk about political parties? Not least because of the coalition but even in normal circumstances, can't political parties rather than those with the express title of "the Opposition" enter some arrangements? One could imagine right now that the Conservative Party and the Lib Dem Party might wish to engage because it does not know the outcome of a general election. It may want to test a number of things. Should there not be a slightly wider net cast than just the Opposition?

***Lord O'Donnell***: If you were to say it is going to be done for parties, there are two issues there. We have decided that our convention is that the civil service is there to serve the elected Government of the day. They serve the parties in government. That is a very strong convention and there are lots of merits to it. You would be changing that convention. If you get a set of civil servants who go off and brief or advise other parties, there is an issue about whether the Government will still trust them. I think that is a problem.

The second issue you need to sort out is how you are going to determine how you treat all the parties. There will be some parties that do not have any seats in Parliament and yet are doing well in opinion polls. What do you do with them? This is going to be a big issue for that sort of area, but the other thing that I think next time we need to learn from last time's experience is the whole question about TV debates. At the moment, there is a system that sorts out who is involved in TV debates, which is basically the three main political parties talking to the television companies. In the US it is very different. They have independent bodies thinking about how this should be set up. There is a very strong case and I have always been of the view that you solve problems by trying to sort them out before you get into the heat of battle, as it were. Try to sort out now what we are going to do about televised debates for the next election. Should Parliament have some role in this? Should there be someone like the Hansard Society, for example, that would say, "Here are the rules about who should be involved in a debate"? I would not want to go down the US system—they have very, very strict rules about these things—but at least the question of what constitutes a requirement for someone being involved in those debates. At the moment, that is a very private conversation between television companies and the three main political parties. Is that right? Is that good for democracy? I am not sure.

**Q39 Chair:** We will look at that and, of course, if we are having, as we now do have, presidential TV debates, the possibility of involving the electors in directly electing their chief political figure rather than doing it via an electoral college of Members of Parliament. That is a bigger issue and I will bring myself to order immediately.

***Lord O'Donnell***: Very big issue.

**Q40 Mr Chope:** Can I bring you back to the themes that you have been discussing and ask you whether you think that the manifest impotence of the current Government, as exemplified in recent weeks, is caused by the coalition or by the Fixed-term Parliaments Act?

**Chair:** Yes or no?

***Lord O'Donnell***: That is a kind of "beating your wife" question, isn't it? I would say the issue about this Government is that people thought coalition Government would be the lowest common denominator; they would not be able to do things. If you look at health reform, welfare reform, education reform, deficit reduction, whatever you may think about these policies, coalition has not led to passive Government. It has led to very strong, reforming Government. I always said this from day one: they are at their most cohesive and as they approach 7 May 2015 it is going to be on a path like that. We are on that path and this is entirely as predicted. I think you will, therefore, see not as much legislation coming through and a period where hopefully they will concentrate on implementing the issues they already have in train: massive reforms in health, welfare, education and the like.

**Q41 Mr Chope:** Isn't the impotence exemplified by, for example, our relationship with the European Union? The Prime Minister wants to have a fundamental renegotiation of our relationship with the European Union. The Deputy Prime Minister does not want that. As a result, the Government is not negotiating with the European Union at all. The European Union would not be prepared to negotiate with the Government because we are within a year of a general election. Meanwhile, in your House when it was debating the EU Referendum Bill, some quite wise and experienced people were saying that, if you are going to have a referendum at the end of 2017, you need to start negotiating now rather than leaving it until after May 2015. Isn't that an example of the impact of both coalition and the fixed-term Parliament on the Government's inability to be able to take action internationally on one of the most important issues for the British people? You refer to the issue of obesity as being a big issue for the British people. Frankly, my constituents do not talk much to me about obesity. They talk about obese Government, bureaucracy, the size of the population, the fact that Parliament is unable to determine its own future because of interference from the European Union, the lunacy of human rights, and so on. The fact that you are talking about obesity as being a big issue, I try to bring you back to what the people see as a big issue, and one of those big issues, accepted by the Prime Minister, is our future relationship with the European Union, which is completely paralysed both by the coalition and by having a fixed-term Parliament.

***Lord O'Donnell***: I suppose as a Cross Bench Member of the Lords, I feel that it is my job in many ways to say to people there are important issues. You may not be talking about them, but child obesity is a hugely important issue. If you are not talking about it, you should be.

On your question about the EU, it takes two to tango. If you want to negotiate, you have to negotiate with someone. If that person does not want to negotiate with you because they are not sure that you are going to be the same person that they are going to negotiate with after the election, it is going to be very hard to have meaningful negotiation. These things take a lot of time, I agree with the Members of the Lords who were saying that, but I think it will be very hard to get into meaningful negotiations pre the general election simply because they are waiting to see who wins the election.

**Q42 Mr Chope:** You are making my point for me. In fact, would it not be much better to have a general election now so that these uncertainties can be resolved and the big issues, whether the Conservatives win or not, at least our European partners and the British people would know whether a renegotiated arrangement with the European Union was going to happen or not and we could get on

with discussing it now rather than leave it until June 2015 with all the attendant uncertainty. There are a whole lot of other issues that people are concerned about: human rights, immigration, our relationship with the European Court of Human Rights, and things like that. Would it not be much better now to have an early general election, like we did in so many years when we had strong Governments, whether it was in 1983 or 1987 or 2005 or 2001? Why are you, in effect, saying you think it is a bad idea to have an early general election so that we can get a strong Government with a new mandate?

***Lord O'Donnell***: What I am saying is the issues you raise, like membership of the EU, are, I think we would both agree, fundamental, important, long-term issues for the country. Therefore, I am not in a hurry, to be honest. I think the more time we have to debate that issue the better. It is a very serious and important issue. Breaking the Fixed-term Parliaments Act for me would not be sensible. In general, I would say before every election you can point and say, "There are big issues facing the country." Does that mean we should suddenly rush to have an election? If in year one after the 2015 election, say in 2016, there is a big set of issues that we had not expected, would we necessarily move to an election? No. It is quite important that we have a system of Parliament where we give a Government a reasonable amount of time to govern and then the people can decide what they want next. So, four or five years, personally I favour five years, but the kinds of things you are talking about are all very big, important issues.

**Q43 Mr Chope:** You think that Mr Blair made a mistake in calling a general election after four years in 2001 and again in 2005? You would have preferred him to go on for five years? Surely, the reason he called an early general election was because the Government had run out of steam and authority and he wanted a fresh mandate.

***Lord O'Donnell***: Absolutely not. I am afraid I am a bit more cynical than that. I think he called an election because he thought he could win it then, and he did. That is the whole point about the difference between giving the power to call an election to the incumbent versus Parliament deciding that it is going to be on a fixed date. Personally, I am in the Parliament camp and saying let us have this as a fixed term, not to give this very strong, I think, bias towards incumbents to be able to choose the date.

**Q44 Mr Chope:** You are quite content about the prospect that our Government is going to be seen internationally as unable to take any effective long-term decisions for the next 14 or 15 months on these big issues that I have been referring to and which you agree are important issues? You say let us have a long-term negotiation with the European Union, but say we have a new Government starting in May 2015, those negotiations could, according to a Member of your House who spoke in the debate about a fortnight ago, take three or four years. Then you would have a potential referendum and then you would have to implement the results of the referendum. All that would take an enormous amount of time. Surely we should start on that process sooner rather than later.

***Lord O'Donnell***: The whole question about membership of the EU, I think we both agree, will affect the economic performance and the life of everybody in this country for the next 50 years. It is a huge issue. I think we should take our time and do it sensibly. If we are in a stage where we are negotiating with them, you would want to allow that process to have enough time for the negotiation to be a real negotiation as opposed to one that is just for show.

**Q45 Mr Chope:** In the context of public disillusionment, you share our view I think that there is a lot of public disillusionment with politics.

***Lord O'Donnell***: Yes.

**Mr Chope:** My view is that quite a lot of that is associated with Government seeming to be impotent. At the moment, we have a situation where the Government itself is seen as increasingly divided, with a Prime Minister being criticised by the Deputy Prime Minister and vice versa, and a lot of policy areas being hotly disputed, resulting in paralysis. This just creates more disillusionment, doesn't it, among the electorate? Shouldn't the electorate be given the opportunity to pronounce upon what they want to have as a new Government now rather than have to wait for another 14 months?

***Lord O'Donnell***: No, because I disagree with your analysis. You are saying that suddenly the public are getting disillusioned. Well, the long-term decline trend in the share of both the two main parties is very clear. The long-term decline in membership of political parties is very clear. All the main parties, if you add up all of your membership, is less than the Royal Society for the Protection of Birds. We have to do something about getting people more engaged in politics. It is not about the last year. This has been a trend for a very long time. Your point about Parliament I do not accept. I think there is a very serious issue here, but it has been going on for 10 or 15 years. That is something we really need to engage people in, particularly the young who are very disillusioned with politics.

**Q46 Chair:** Lord O'Donnell, we had a very productive first year or so, you will recall, around the issue of the Cabinet Manual and we are very grateful for that appearing in the public domain. Now you have left your role as Cabinet Secretary, you may feel a little freer even than you were in those days to tell us how you feel that topic and issue might progress. Do you think there is room for further changes; a review; a change in its status? How do you view it now looking back?

***Lord O'Donnell***: Right. I would very much hope that post the next general election the party coming in—because it is obviously the creature at the moment of the Executive—would take the opportunity to review the Cabinet Manual. There are a number of areas where I would say it could be updated. For example, we will have been through a coalition Government. What have we learned? Mr Chope was talking about those areas where the parties have been disagreeing. We have moved on from a world where we have collective responsibility and everyone saying the same thing. We are in a world where there are agreements to disagree. Should we have something that is a little bit more formal about how, during a coalition period, agreements to disagree work with collective Cabinet responsibility?

Secondly, there may be some other lessons that have emerged about the coalition that we need to think through about committee structures and the like. Could some of the innovations that I think have been very successful by this Government, like the National Security Council, be reflected there? I would personally like to see some work on the things we were talking about in terms of improving legislation, but we will see.

Finally, are there some lessons from the whole fixed-term Parliament? We have had a big constitutional reform agenda and I personally regret that some of those reforms have bitten the dust. Coming back to the disillusionment, one reason why I think the public have a genuine right to be disillusioned is that their vote does not count the same. It is not one person's vote counts the same in our democracy. It really depends where you live. There is a postcode lottery. That is not a good thing for democracy in my view.

**Q47 Chair:** Do you think that the Cabinet Manual should remain the property of the Executive? It obviously emerges from the Executive, but is there a role for Parliament to be involved? Could there be a draft, if you like, produced that could be debated by committees like ourselves and perhaps improved in the process of redrafting?

***Lord O'Donnell***: In many ways, we were stealing with pride from New Zealand. My objective when I was Cabinet Secretary and head of the civil service was to produce a Cabinet Manual because I thought that took us a long way forward. Given that I was a civil servant working with the Government and the Prime Minister approved, the only vehicle that I had was a Government vehicle, so the Government produced that. The spirit of what I was trying to do I think was exemplified by the fact that pre the last election, we took a draft of the key chapter dealing with hung Parliaments and I gave evidence on that draft chapter to the Justice Committee. Now, I am very much of the view that it would strengthen the process to bring Parliament into it. For example, if there were a new Cabinet Manual drawn up by the Government post the next election with the changes, whoever that Government might be, they could go to the various relevant Select Committees with that new version in draft and there could be a discussion, just as there was with the Justice Select Committee, about that particular point. Obviously, the system we have at the minute, the Government would then respond to those points and it would still be a Government document. It is for you as Parliament to decide whether you want a parliamentary document. That is entirely in your hands.

**Q48 Chair:** But the very fact that we would in your scenario have been engaged in a debate and we would be talking about it would make it a quite small step to then make it statutory and have it as something that all parties agree is an appropriate way for the Executive to conduct itself in its relationship with the legislature, the judiciary and the rest of our democratic framework.

***Lord O'Donnell***: I certainly think that the Cabinet Manual was strengthened a lot by the fact that we were able to take these parts of it to Parliament and get views from Parliament. I can imagine there being a parliamentary debate on a draft Cabinet Manual, which would allow the whole of Parliament to say, "We think this is a good idea."

**Q49 Chair:** Gus, I know you have to get back to the Second Chamber fairly quickly. One very last one from me because you did mention the coalition making. In the context of the Cabinet Manual, do you think that it proved its worth at that point? Do you think a lot of review is necessary around that? Do you think it needs to be updated in the light of that not just immediate experience but the five years of coalition making?

***Lord O'Donnell***: I think it is worth remembering people think there was a Cabinet Manual pre the last election. There was one draft chapter. That was it. Getting it out since then has improved matters. Some people might say it is the Janet and John, if I remember rightly, but it is there. There is a set of issues that I would certainly like to see resolved. I have mentioned some. For example, the whole issue about war powers is still not quite there yet. The role of Parliament in that is very important. Yes, I think it should be revised in the light of what has been a very unusual experience, the first time we have had a coalition and the first time we have had a fixed-term Parliament. There clearly will be some lessons. We have had some constitutional changes that Parliament has passed during the last five years, so yes, it does need to be updated, and yes, I think we could definitely engage with Parliament in terms of getting their views about any potential changes. But it is not for me.

**Chair:** Gus, thank you very much. You are helping make it for us and we will produce a report. Hopefully we will produce the report before the last year of a fixed-term Parliament, if we get our report together before May, and we will be able to make that contribution to the debate and not least be informed by your very helpful and wise remarks this morning. Thank you for attending.

***Lord O'Donnell***: Thank you very much.