



HOUSE OF LORDS

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Inquiry on
FIXED-TERM PARLIAMENTS

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Witnesses: Professor Vernon Bogdanor and Dr Ruth Fox

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Members present

Baroness Jay of Paddington (Chairman)
 Lord Crickhowell
 Baroness Falkner of Margravine
 Lord Goldsmith
 Lord Hart of Chilton
 Lord Irvine of Lairg
 Lord Norton of Louth
 Lord Pannick
 Lord Renton of Mount Harry
 Lord Rodgers of Quarry Bank
 Lord Shaw of Northstead

Examination of Witnesses

Witnesses: **Professor Vernon Bogdanor** [Research Professor, King's College London], and
Dr Ruth Fox, [Director Parliament and Government Programme, Hansard Society].

Q82 The Chairman: Good morning, and thank you both very much for coming. As I said when we met outside, we have approximately one hour for this session, in which we obviously need to get through a great deal of material.

Thank you both for your background papers, which are very helpful indeed. As you will be aware—you are both old hands at this process—this session is being recorded so everything will be on the record and we will conduct the business from the start as a recorded session. I know that we have an understanding about the publication of the paper submitted by Professor Bogdanor—I was about to say Lord Bogdanor, so excuse me for that—but we understand that point. Given that you have both kindly already provided written remarks, I do not know whether either of you want to make opening statements. Perhaps for the record you could introduce yourselves.

Vernon Bogdanor: I am Vernon Bogdanor. I am a research professor at King's College London.

Ruth Fox: I am Dr Ruth Fox. I am Director of the Parliament and Government Programme at the Hansard Society.

Q83 The Chairman: Thank you. I will kick off by asking you both—from your written submissions, I think that you have slightly different views on this—what you see as the potential advantages and disadvantages of having a fixed-term Parliament. I was rather interested in Professor Bogdanor's remarks in paragraph 22 of his paper, where he says, "it is not clear to me that it would make a beneficial difference."

Vernon Bogdanor: Let me begin by saying how glad I am that the Committee is considering this very important constitutional issue. As is well known, the proposal for fixed-term Parliaments was in the Liberal Democrats election manifesto—and, I think, in the Labour Party manifesto—and its first manifestation then occurred in the coalition agreement, where the proposal was not given a constitutional status but was just a suggestion that the coalition would not dissolve itself without the support of both parties. I think that that proposal raised no constitutional issues, but the Fixed-term Parliaments Bill seeks to introduce an important change in the constitution.

I think it fair to say that one reason why the fixed-term Parliaments proposal was included in the election manifestos of two parties was as a reaction to the expenses problem. A number of constitutional proposals were produced in response to that issue, some of which were perhaps ill thought out. My first reaction was that such a proposal is a somewhat perverse response to the expenses scandal, because the main popular concern about expenses was that there ought to be more popular control over Members of Parliament, who had become perhaps too insulated from public opinion. Proposals such as the recall of MPs were designed to deal with that. However, the fixed-term Parliaments proposal would achieve the opposite effect, because it would tend to insulate Members of Parliament from popular pressures. That seems to me a point worth noting.

Another point worth noting is whether the constitution should be changed in this rather hurried way without very much discussion. As I say in my written submission, the only Western European country with a parliamentary system that has a pure fixed-term Parliament is Norway. Any change to that system in Norway requires that one first produce a proposal and then, following a general election, secure a two-thirds majority on it. That is, of course, very different from our own procedures.

It may be that we need a change in our constitutional rules or a change in our constitution in general if, as is possible, we are moving away from a period of having a single-party majority government, which has been the norm since the war but was not the norm before the war or between the wars, when we had minority governments and coalitions. It is possible that we may be moving towards a multi-party system. If that is the case, we will have regular hung Parliaments and it may be that we should develop new constitutional rules. However, I am not clear that the current proposal is the way to do that. I cannot see that the proposals that have been produced, which are fairly ambiguous in some ways, will necessarily provide much in the way of improvement.

The Chairman: We will certainly come back to the process of achieving constitutional change. However, I want to ask Dr Fox first for her overview on fixed-term Parliaments, however those might have been introduced.

Ruth Fox: Building on Vernon Bogdanor's point about the fixed-term Parliaments proposal being a response to the broader political crisis post the expenses issue, I would endorse that and point out that many of the constitutional, political and parliamentary reforms that have been proposed have had very little to do with resolving the expenses crisis. The link between the two issues has been somewhat tenuous. Certainly, looking at priorities of the public for political and constitutional reform—as I highlight in my written submission to the

Committee—I think that our annual *Audit of Political Engagement* study suggests that there is little public interest in addressing fixed-term Parliaments as a priority.

On the general principle of fixed-term Parliaments, I think that there is something to be said for introducing a restraint on the prerogative power and on the ability of a partisan Prime Minister to fix the date of the election. However, I am not sure that moving to a system in which Parliaments are generally fixed for a four or five-year period means that having an earlier election is necessarily a bad thing. I do not think that having an earlier general election needs to be seen as axiomatically a bad thing. My problem with the Bill—and with the approach that has been taken to a large extent—is that, in some ways, the proposal is a missed opportunity because it focuses the mind very much on the end of the term and on ways to bring about an early dissolution if such a thing is required. However, a term has both a beginning and an end. If the Bill had been handled differently with a different timescale to allow for greater consideration, an awful lot more could have been done to address some of the planning and timetabling issues that having a fixed term would enable us to fix. Having that planning capacity would enable us to address some of the issues that arise at the beginning of the term. The current Bill does not do that.

The Chairman: Thank you. Lord Rodgers wants to pursue the question about the process of introducing the proposal.

Q84 Lord Rodgers of Quarry Bank: If I may, I would like to look back at the history of the issue and at previous practice. In paragraph 3 of his written submission, Professor Bogdanor suggests why the coalition might have dreamt up—although he does not use that phrase—the idea of introducing fixed-term Parliaments. Will he say a word or two about the history of that? When the proposal suddenly popped up, I assumed that it had been discussed frequently in the past, but I cannot remember that. I have never read manifestos,

but I do not think that it has featured in many manifestos in the past. Some history on that would be helpful.

In the same context—again, this is not mentioned in the written submission, so I may be putting words in his mouth—the coalition argues that we should move from the Executive to Parliament and from Parliament to people. The written submission points out that there have been 18 Parliaments since 1945. If we had had fixed-term Parliaments of five years, we would only have had 14. How would that be reconciled?

I have a further specific two questions, if I am allowed, the first of which is on the consequences of having fixed-term Parliaments. Given the reference in Professor Bogdanor's paper to "hypothetical circumstances", I wonder if we had had a fixed-term Parliament in 1950 or 1951—it is very difficult to tell, of course, but the submission reflects on this—what would have happened at that time. As the paper says, the early dissolution in 1951 was a very unusual case in that Attlee resigned and gave up. If a Prime Minister gave up in that way, could an early general election happen?

My second question, if I may, is on the reference that the written submission makes to Prime Ministers seeking a "personal mandate". Why do we not have a fixed—that is, obliged—personal mandate and always have an election whenever a Prime Minister changes? As the submission points out, there may be a change not only of individuals but of policies, which may undergo very significant changes. Why do we not have a new Parliament when we change Prime Minister?

Vernon Bogdanor: There were a number of questions there, which I will do my best to answer.

On the history of the proposals for fixed-term Parliaments, I understand that the Liberal Democrats have long taken the view that there should be fixed-term Parliaments, which they see as a corollary of the proportional representation that they have favoured for a long time.

Of course, the issue came up in immediate form after the general election because the Liberal Democrats were naturally worried that, if they entered into a coalition with the Conservatives, a Conservative Prime Minister might dissolve the coalition at an unwelcome time for the Liberal Democrats in the hope that the Conservatives could then win an absolute majority. Therefore, part of the coalition agreement was that Parliament could be dissolved only if 55 per cent of the MPs agreed, which in practice would require the agreement of both the Conservative and Liberal Democrat MPs, because if the Liberal Democrats switched to a different coalition, the Liberal Democrats and the Labour Party would not be able to achieve the necessary 55 per cent. In effect, the coalition agreement gave the Liberal Democrats and the Conservatives the choice of when to dissolve Parliament and included an assurance to the Liberal Democrats that the coalition could not be dissolved against their wishes. However, after various criticisms, that became transmuted into the form in which it now appears in the Bill. That is the history of it.

On the issue of the 1950-51 Parliament, which raises a very fundamental question, I think that Attlee took the view that the Parliament was not viable. He had a majority of six, I think, and his position had been weakened by the resignation of two Cabinet Ministers, Aneurin Bevan and Harold Wilson, who disagreed with the spring 1951 budget. He dissolved the Parliament in the hope, obviously, that he would get a working majority, but he was doubtless aware that he might be defeated. With a fixed-term Parliament, it is not clear that he could have done that. Therefore, such a lame-duck Parliament and government would have had to have hobbled on. That is the danger of provisions that would make it more difficult to dissolve Parliament. I believe that this is a fundamental point: the more difficult it is to dissolve Parliament, the more likely it is that there will be a lame-duck government, which, even if it can survive in Parliament, cannot govern very effectively. I think that that was the problem in 1951.

On the question of having a personal mandate, I think that that issue arose among the public—not quite a majority of the public but nearly a majority—when Gordon Brown replaced Tony Blair as Prime Minister in 2007. I do not think that the issue arose when John Major replaced Margaret Thatcher in 1990 or when James Callaghan replaced Harold Wilson in 1976. Perhaps the issue arose in 2007 because our politics has become more presidential than it was. People seem to think that the colour of a government depends much more on the Prime Minister than was the case formerly. It is interesting to note that shortly before the election, David Cameron put forward a proposal similar to what Lord Rodgers has suggested when he said that such a Prime Minister ought to be required to go to the country within six months of taking office. Of course, there is no provision in the Bill for that suggestion, which is a different proposal, but I think that the suggestion is well worth considering.

Another issue, of course, was that some people thought that the Labour Party might do better under a different Prime Minister from Gordon Brown between 2007 and 2010, but they were deterred from securing that change because it was argued that, if there is to be a second non-elected Prime Minister within the same Parliament, one really ought to go to the country to get approval for it. That has never happened in the 20th century, apart from during the odd conditions of wartime in 1940, when there was a second change of Prime Minister in the same Parliament. However, if we are moving into a hung Parliament situation, it is much more likely that we will get a change of Prime Minister within the same Parliament. As I said, a deterrent to changing the leader of the Labour Party was the idea that the Government would have to go to the country immediately, perhaps at a time when the Labour Party was not very popular. I think that the proposal about a new Prime Minister seeking a mandate should have much further consideration.

Q85 Lord Rodgers of Quarry Bank: I have a further brief question on the pre-history of the proposal. In effect, until the past six months, has there been no serious constitutional discussion on fixed-term Parliaments over the past, say, 50 years or more?

Vernon Bogdanor: That is right. Primarily, the proposal has been made by the Liberal Democrats, which has been the minority party, and the idea has been associated with proportional representation, which has not really been at the forefront of the political agenda.

Ruth Fox: I slightly disagree with that. The Liberal Democrats have been at the forefront in promoting the proposal, but my understanding is—I do not have the dates to hand—that the proposal has been in the Labour Party manifesto previously. I do not think that the proposal appeared in the 1997 manifesto, but it has appeared previously. I think that I am also right in saying that the idea was an aspect of major study of the Plant commission in the late 1980s or early 1990s. Therefore, fixed-term Parliaments has been a running issue in Labour Party discussions, although it did not make it into Labour's constitutional programme when the party was in government. I understand that the Labour Party is supportive of the idea in principle. The Conservative Party has previously resisted the proposal, although, as Vernon Bogdanor has alluded to, David Cameron expressed an interest in the constitutional position of the Prime Minister in the context of the politics of the previous Parliament.

Q86 Baroness Falkner of Margravine: In addition to what Dr Fox has said, there have also been private members' bills on the subject in Parliament. For example, Dr Tony Wright was not a Liberal Democrat. He was a senior constitutional expert.

I seek a bit of clarification. As I understand the Liberal Democrats' policy, the fixed-term Parliaments proposal was not tied into proportional representation as closely as has been suggested by Professor Bogdanor. As I saw it, there was a constitutional bundle, of which fixed-term Parliaments was one aspect. On that basis, there has been an unbundling and a

take-what-you-like or take-what-is-feasible approach has been taken. Of course, there is also movement towards a different electoral system.

Vernon Bogdanor: Of course I accept that point, but the notion of a fixed-term Parliament takes on a very different character in the context of proportional representation. That is why I think that analogies from Norway and Germany are not terribly relevant. With proportional representation, a dissolution offers much less advantage because it is very unlikely that someone would win an overall majority. Overall majorities are not very likely with proportional representation—for example, there has never been a party with an overall majority in the Scottish Parliament—so the advantage to be gained from an early dissolution is much less. With a majoritarian system, such as our current first-past-the-post system or even possibly the alternative vote system, there may be much greater advantage to be gained from a dissolution. I think that the idea takes on a different colouring with proportional representation.

The Chairman: That brings us to the question of the length of time of the fixed-term Parliament.

Q87 Lord Renton of Mount Harry: Dr Fox's evidence on behalf of the Hansard Society makes the following point very strongly: "Parliaments which have lasted into a fifth year have tended to be ones where the Government has, in reality, run out of steam but is waiting on the turn of events". Speaking as someone who, in the House of Commons over many years, saw both four-year and five-year Parliaments, I confess that I take a totally different view. With a four-year Parliament, the Government start worrying about the election at the end of the third year and already start to think at that time about which bills should be introduced in the third year and which should be kept until the fourth year that might be attractive to the electorate and do the party some good at the last moment. For that reason as much as any, I would go—probably contrary to many of my colleagues around the table—

with a fixed five years. In the third of its five years, a Government will feel absolutely safe and will introduce bills that it knows will be difficult and unpopular and it need not start worrying about the election and about introducing popular bills and so forth for another year. I think that that is a very valid argument for having a fixed five-year Parliament. Your comments, please.

Ruth Fox: On the length of the term, my preference is for four years. Since 1945, there have been a number of Parliaments of four years and of five years, as well as a number that have been for four and a half years. I do not get too hung up on the issue. I take that point, which arises from experience in government, but I suspect that the perception from outside would probably be somewhat different. I also think that the issue probably matters less than it would have done 20 years ago because, to all intents and purposes, we live in the age of the permanent campaign. Election campaigns do not kick off just a month before the election date in the way that might have been the case 20, 30 or 40 years ago. The nature of campaigning has changed and the nature of how parties approach those things has changed, so I think that the issue is possibly less important.

I think that there has been a consensus around terms of four years. For example, the history—I refer to previous private members' bills, the Plant commission and so on—suggests a general consensus around four-year terms. In addition, other parliamentary systems around the world tend to have a term of four years rather than five. To my mind, the deciding factor, in the event of a split in political opinion over whether the term should be of four years or five, is the danger that people might perceive five years as being in the partisan interests of the current Government, because of what the Government want to achieve in getting through their economic measures and establishing stability and so on. There is a risk that, if there is no political consensus on the issue, the length of the term could become a driving point for future reform of the legislation and would actually create

the opportunity for Members to revisit the issue quite quickly. My preference would be that such constitutional matters should be introduced on a consensual basis, so that we do not create those strategic driving points to which Members can keep coming back to the issue for further revision.

I am not too hung up on the length of the term—there are pros and cons either way—as it comes down to a matter of preference. However, for those reasons, I would go for four years.

The Chairman: Professor Bogdanor, do you want to add anything?

Vernon Bogdanor: No, I share Dr Fox's view.

Q88 Lord Renton of Mount Harry: I want to ask about one other point first. Does the availability of information on the internet make a difference? With the internet, it is very much easier for the ordinary citizen to find out what is happening. I am not necessarily saying that that makes a five-year Parliament more likely than a four-year Parliament. I am interested in your view about how the internet will affect, for example, what constituents think about their MP.

Ruth Fox: The question probably ought to be put to my colleague who is head of the digital democracy programme at the Hansard Society—he would be able to advise better than I can—but I would not overstate the influence of the internet on politics, elections and so on. Parliament's website is very good, but who it reaches is perhaps an issue. The reality is that that most people still get their political news via the TV, newspapers and so on. In a sense, one problem that we will come up against in responding to the attitudes of the public is that the media and communications mechanisms are driving a very personalised and therefore presidential style or approach to politics, which requires a robust chief executive leader figure at the head. That might come increasingly in collision with the realities of parliamentary politics in an age of hung Parliaments. Culturally and politically, there is the

potential for clash there. I do not think that the internet and other media mechanisms necessarily provide ways in which that can be resolved.

The Chairman: Coming back to the present Bill and the proposal for five-year terms, we have received evidence about issues such as the clash of dates. I think that Lord Crickhowell wants to ask about that.

Q89 Lord Crickhowell: Before I ask my two questions on that issue, I must say that the most important issue from all the evidence that I have heard so far is the point that is raised in the final paragraph of Professor Bogdanor's paper, which asks whether the proposal will make Government more answerable to the people. Professor Bogdanor cites the example of the Attlee Government; in previous witness sessions, I have cited the event that made me a Minister in 1979, following the defeat, by one vote, of the Callaghan Administration. Callaghan immediately said, "I am going to have an election". Under the Fixed-term Parliaments Bill, we will have 14 days for someone to try to cobble together an alternative. One pictures deals being done with the Irish or the Welsh or the Scots, in various combinations, to allow a weaker government—of the kind to which Professor Bogdanor refers in Attlee's situation—to soldier on without allowing the people to have their say. To me, the simple issue with the Bill is that it could weaken, rather than strengthen, the role of the people.

Vernon Bogdanor: Yes, I very much agree with those comments. In the event of a hung Parliament, there can be a conflict between two principles: the principle of parliamentary government whereby the government is accountable to Parliament and the principle of democracy whereby a government is accountable to the people. Normally, in the single-party majority governments that we have had since the war, those principles coincide. Where there is a conflict—my perspective is very similar to Lord Crickhowell's—I think that

accountability to the people should be the prime factor. We ought to be careful before doing anything that weakens the ability of a government to govern effectively.

Q90 Lord Crickhowell: Thank you. That strengthens the view that I have been forming throughout. Let me come to my specific question.

A five-year term will result in a clash with the elections of the devolved Administrations in 2015 and every 20 years thereafter. That is an interesting clash in respect of involving the people. Certainly, the view of the devolved Administrations is that discussion of their performance, their record and their policies will be overwhelmed by the arguments about the national situation. Is it desirable to separate those out to deal with that linkage?

Ruth Fox: Ideally, yes. The danger is that we could end up in a situation in which—although to put the matter in perspective, this would happen only every 20 years—a number of different elections take place on different dates within the same year. Although I am all in favour of accountability to the public, I am not sure that the public would be terribly in favour of having to go to the polls for a general election, for a Scottish Parliament election and for Scottish local elections. Clearly, some political and administrative difficulties could arise. The electoral returning officers have already made clear that, from their perspective, running two elections on the same day with different timetables and different constituencies would cause some problems.

Another issue is how the Scottish Parliament and the Scottish people perceive the respect that this place has, and that the Government has, for the devolved settlement. I have difficulties with some solutions that have been suggested. For example, it has been suggested that the general election date could be moved to October, but I am not convinced that that is a great idea. I cannot claim any credit for this, but I know—from chairing a fringe meeting at the Scottish National Party conference in Perth a couple of weeks ago—that Professor John Curtice has suggested that the issue of respect for the Scottish Parliament elections,

which has come up in the context both of this Bill and of the Parliamentary Voting System and Constituencies Bill, could be dealt with by allowing the Scottish Parliament to agree to the general election date that the Bill proposes if, in return, the Scottish Parliament could hold the Scottish Parliament elections on a date of its choosing. At the moment, under the Scotland Act 1998, the date of Scottish Parliament elections is determined by Westminster. A small amendment could be made to the Bill to insert a new clause amending the Scotland Act to enable the Scottish Parliament to determine the date of its elections. Professor John Curtice made a fairly compelling case that the Scottish Parliament elections could be moved to October because of the nature of that Parliament's arrangements. Given that the Scottish Parliament elections in May can be followed by a period of up to 28 days for the formation of a government, and given that the school holidays—and, therefore, the recess dates—are earlier, there is currently a very constrained period before the summer recess.

Lord Renton of Mount Harry: It is snowing in Scotland by October.

Ruth Fox: Well, there seemed to be some enthusiasm for the proposal. However, that would require an amendment to the Scotland Act. There are pros and cons either way. At some point, there will be a clash of elections unless the dates are separated out.

Q91 Lord Crickhowell: Professor Bogdanor, do you have a view?

Vernon Bogdanor: I agree very much with what Dr Fox has said. I do not feel as strongly as she does that we should not have general elections in October, if that is what people opt for. When general elections have coincided with local government elections, some people in local government have welcomed that because it means that turnout for the local government elections is higher than it would be otherwise.

Q92 Lord Crickhowell: That takes us very neatly to my next question. The proposal is that the general election should have a fixed date of the first Thursday in May, which we would all need to get used to. Is that a good idea? I have not worked this out, but would an

election in May followed by a summer recess have some practical implications for Government, given that MPs need to go into a long period of recess before they come back? What are the pros and cons of having a fixed election date of the first Thursday in May?

Q93 Vernon Bogdanor: The premise behind the question, if I may say so, is that the Bill is the Fixed-term Parliaments Bill, but the title is really a misnomer. If in a particular Parliament—I admit that this is unlikely—there is a two-thirds vote in favour of dissolution or a vote of no confidence, the cycle would be upset unless the Swedish system is adopted, as in Scotland, whereby such an election is deemed an extraordinary general election so that the five-year cycle is still maintained. There is some ambiguity about whether that is what should be achieved. The title “Fixed-term Parliaments Bill” is a misnomer—I do not know what would be a good title—as that would mean that, as in Norway, the Parliament simply could not be dissolved at any time. As I said, Norway is the only country in Western Europe that has that.

Q94 The Chairman: An additional question is whether the Bill is a normal piece of legislation that does not bind a future Parliament.

Vernon Bogdanor: Indeed. My understanding is that the legislation could be repealed by a simple majority. I do not know whether the constitutional Lords would agree with that. Otherwise, one could presumably repeal the legislation in two stages by first repealing the requirement for the two-thirds majority for dissolution and then dissolving by simple majority. I cannot believe that in practice the legislation would necessarily bind another Parliament.

Q95 Lord Crickhowell: The present Government have extended the current session until Easter 2012. Do you have any comment on the constitutional implications of that?

Ruth Fox: On the sessional arrangements, I am quite relaxed about that. Scrutiny is needed when there is a tidal wave of legislation as a result of the pressure of cut-off. As we do not

have a culture of sessional carryover—although carryover is available to the Government, it has not happened on the scale anticipated—there is a sense that legislation is rammed through because of the sessional cut-off. Enabling better planning and longer-term thinking would be one advantage of having fixed-term Parliaments, so I have no problem with facilitating that. Clearly, moving to a five-year timeframe would require some regularisation of the sessional pattern.

Clearly, the first Queen's Speech is important, but there is an argument to be had about whether successive Queen's Speeches are an effective tool for scrutinising the Government's legislative programme, given that the Government will bring forward legislation that was not in the Queen's Speech. In addition, we know from our research that Government will often treat the Queen's Speech simply as a communications tool to establish a narrative about the Government, with the actual legislation in the speech being to some extent secondary. Certainly, in research that we did last year, in which Lord Norton was involved, we heard tales from special advisers that a Government department that did not have legislation in the Queen's Speech was called up and told, "Where is your bill? You must have a bill in the Queen's Speech". It then had to create a bill.

In terms of good planning, of good approaches to legislation and of improving the quality of law, I think that there are some advantages to what the Government have suggested. I would be quite radical and ask why we need to have a sessional approach. Why do we not take the approach of, say, Scotland, where the session runs through?

Vernon Bogdanor: If I may, let me say that the constitution and procedures of Parliament do not belong to any particular political party or government, and it is not clear that they should be altered in this way. There is a great contrast between the constitutional reforms after 1997, which were by no means the product of consensus in the sense that all parties agreed with them but had been the product of a long period of debate and discussion. Partly

that was because the Labour Party had been so long in opposition, but even after that there was a long period of gestation before the proposals reached the statute book. The one case in which that did not happen was the Constitutional Reform Bill of 2005, but there were nevertheless many amendments made to the original provisions precisely because they were criticised as being knee-jerk proposals. In my judgment—I hope that I am not making a party-political point here—the procedure of constitutional reform after 1997 was a much better thought-out procedure than some of the things that we are seeing today.

The Chairman: Could I just go back to Dr Fox's point about the extension of the session? Some of the implications in terms of the House of Lords are the ability to use the Parliament Act.

Ruth Fox: I accept that. That would need to be resolved. It goes to Vernon's point about the fact that these matters do not belong to one political party and the need for greater consideration. In a critique of the Government from an administrative point of view, in a position of improving the quality of law, there are some advantages to the longer session. But I take the point that, in terms of how these things are developed and thought-out, there needs to be a more consensual approach. The fact that the Government announced the changes in the sessional arrangements much later than when they announced the Bill suggested an ad hoc and ill thought-out approach to the consequences of what they had brought forward initially.

They had not thought it through at the beginning and set it all out. If you chart from the summer the way in which they have brought forward various announcements on how things have changed about this legislation, that reflects the fact that it is ad hoc and ill thought-out and goes to the point that there ought to have been pre-legislative scrutiny. There ought to have been a much more extended timetable given the implications and consequences that would arise. Parliament Act implications would obviously have to come into that.

The Chairman: We have briefly touched on the safety valve mechanism of early dissolution, but do you want to pursue that, Lord Pannick?

Q96 Lord Pannick: Can I follow up on Professor Bogdanor's point that the title of the Bill is a misnomer? Can I ask you both about the purpose of the two-thirds provision for early elections? Plainly, if the opposition wish to secure an early election, they will use a 50% +1 mechanism, which is easy to achieve. If we believe in fixed-term Parliaments, and I appreciate that we may not for all the reasons that Professor Bogdanor has eloquently given, is it really right that the government should be able to secure an early election when they retain the confidence of Parliament?

Vernon Bogdanor: The two-thirds provision allows a government with a landslide majority, like the National Government of 1931, to secure an election whenever they like. I cannot see why a government with a landslide should have that extra privilege. It seems very peculiar that a normal government, if you call it that, cannot dissolve when it likes, but the National Government of 1931 could dissolve when they wished.

The argument against a government dissolving when they wished to do so is that they can somehow manipulate the economy or choose a favourable moment when they are doing well in the opinion polls to go to the country early. As I said in my evidence, that has arguably occurred on six occasions since the war. On one, in 1970, the Government miscalculated and lost the election. On the other five occasions it is difficult to argue that, even if the Government had gone on to the end of their term, they would have been defeated, though obviously that is a matter of speculative judgment.

In my view, that disadvantage to dissolving early is outweighed by the serious disadvantages of a fixed-term Parliament, which prevents Prime Ministers leading a government in an unviable Parliament from going to the country, which prevents a newly chosen Prime Minister between Parliaments from going to the country, which prevents a Prime Minister

who has a new policy for which he may seek a mandate from going to the country. Most importantly of all, because we could be moving into that situation with our hung Parliaments, it means that coalitions can change in the middle of a Parliament without the people being allowed to pronounce on that.

There is an argument that the people have said that the present coalition was not endorsed by the voters in the election. They had no chance to endorse it. The voters might be even more annoyed if at some time the Liberal Democrats decide to join with the Labour Party to form a different coalition which, again, the voters under these proposals would have no chance of endorsing.

In my judgment, the balance of argument is against fixed-term Parliaments. The disadvantage of our current system is that it allows Prime Ministers to choose a moment for dissolution, but the benefits that it gives the Prime Minister are exaggerated and the disadvantages of fixed-term Parliaments are much greater than the disadvantages of our current system. I hope that that meets the point that you were seeking to clarify.

The Chairman: We then move on from the dissolution point to the vote of confidence point.

Q97 Lord Renton of Mount Harry: This is a totally fascinating conversation. You just said that you actually prefer not to have fixed-term Parliaments, but something else. Having been in the Commons for quite a long time, one realises that it all depends on the Prime Minister and the team around him, because the strength of feeling at that point is so great.

We come to Clause 2 and the second safety valve. What you think about that? Is there a danger of it being manipulated by governments seeking to bring about an early election, as occurred in Germany in 2005, for instance? How can that be prevented? I doubt that it can be prevented.

Vernon Bogdanor: I doubt that it can be prevented. Governments have dissolved early in that way in Germany on three occasions. In 2005, it was the only occasion when the Government miscalculated because they called an early election and lost. On the other two occasions, it worked and the Government won the election.

Q98 Lord Renton of Mount Harry: You were quite right in saying that the Labour Government miscalculated in 1970. They certainly expected to win and didn't.

Vernon Bogdanor: It is difficult to prevent the manipulation, but you can make it less advantageous by adopting what you might call the Swedish or Scottish model, by which any election that comes about between terms is an extraordinary general election and does not affect the timetable. In Sweden, you have four-year elections. If there is an election between then it does not affect the cycle, and that is the case in Scotland. As I said earlier, the advantage of calling an early election is much less in a proportional system than in the system that we have.

The Chairman: Lord Hart, I think you were concerned about early dissolution.

Q99 Lord Hart of Chilton: Let us assume that we have a fixed-term Parliament and there is a dissolution. There will either be a dissolution on a vote of no confidence or on the two-thirds vote. This question, which you touched on earlier, relates to what the subsequent term should be. Should it be the rump of what is left or should we reset the clock and have another five-year term, or whatever the fixed term is?

Vernon Bogdanor: That depends on what you think the advantages of fixed-term Parliaments are and your own judgment of the balance of advantage. If you are sympathetic to fixed-term Parliaments, you will say that the clock should not be reset. If, like me, you are not very sympathetic, you would say that the clock should be reset.

Q100 Lord Goldsmith: I want to press a little on the 14 days. Professor Bogdanor, you have said something about this already. There are two extreme situations about what

happens during the 14 days. One is that the government of the day manage to do a bit more in terms of offers of jobs, promises or deals on policies and therefore get back to a position where broadly the same government can come back in and get a no confidence vote reversed, as it were. That would work under the Act, so we would not have a dissolution. The other extreme is that that can't be done, and you have an entirely different grouping—Liberal Democrats and Labour or whatever it may be—producing an entirely different coalition that the people have not voted for. How does that fit within the concept that this is all designed partly to give more power back to the people?

Vernon Bogdanor: I don't think that it does fit with that idea. I share Lord Crickhowell's earlier reservations about the 14-day clause. My understanding is that if the government are defeated on a vote of confidence they can only be a caretaker government until they have parliamentary confidence again, if they secure it, and therefore could not undertake controversial measures. Of course, it means that for 14 days you do not have an effective government while parliamentary manoeuvring is going on to see if some alternative combination is possible. I much prefer the situation, as in 1979, when James Callaghan was defeated on a vote of confidence. He immediately said, "We will take our case to the country and let the country decide".

Under the current situation, it is possible for an alternative government to be found in those circumstances. That happened in 1924, when the first Macdonald minority Labour Government were defeated. The King's private secretary enquired of the other parliamentary leaders whether they were prepared to form a government and only when he was told that they weren't was a dissolution granted. If they had been, that alternative would have been perfectly possible under our present situation and present constitution.

Q101 Lord Goldsmith: Thank you. Can I just pursue the question of what happens in those 14 days? Dr Fox, you say that during that period the same constitutional convention

should apply as in the run-up to an election. What would you see happening during that 14 days in terms of government managing to operate?

Vernon Bogdanor: My understanding of our system is that if a government has lost the confidence of Parliament, they can only undertake non-controversial matters. Anything that has any controversial flavour must be agreed with the opposition.

The Chairman: A purdah requirement.

Vernon Bogdanor: Precisely.

Ruth Fox: I agree that that is the constitutional convention, but this is where we may rub up against some potential difficulties vis-à-vis the constitutional status of the *Cabinet Manual*. Chapter 6 of the *Cabinet Manual*, which was published in draft form before the election, makes clear that convention, but there is no reference to that in terms of what would happen in the event of an early dissolution or this 14-day scenario. In my view, if that is going to be the operational document in government and Whitehall, the *Cabinet Manual* will have to be amended very clearly to that effect.

In practice, yes, the caretaker convention should apply. What would that mean? The government could not sign large financial contracts or make major public appointments. In the five-day period after the general election in May, Alistair Darling went to the ECOFIN meeting about the Greek economic situation and Lord Adonis consulted the Opposition about air traffic control problems. There would have to be inter-party consultation about any decisions that Ministers felt they had to take in order to manage what was deemed to be essential business. All non-essential business would effectively be put on hold. It needs to be clarified in the *Cabinet Manual*.

Q102 Lord Pannick: Do you think that the Bill needs to define more precisely what is a vote of no confidence? For example, does it cover defeat on the Queen's Speech, defeat on

a matter that the government have designated a question of confidence or do you understand it only to apply to an express motion of no confidence?

Vernon Bogdanor: I suppose it is always possible for a government, when defeated on a major issue—the Budget, for example—to demand a vote of confidence from Parliament. That is what John Major did in 1993, when defeated, I think, on the social chapter of the Maastricht Treaty. He then demanded a vote of no confidence, which he secured. That would always clarify.

The Chairman: A vote of confidence.

Vernon Bogdanor: Yes, a vote of confidence.

Q103 Lord Pannick: Does it cover a motion of confidence? It says here, a motion of no confidence.

Ruth Fox: That is the difficulty. How do you define a confidence motion in the sense that there is no formal definition of it? It depends on political context. It is one of those things where you know it when you see it. The wording of the Bill very clearly defines it as no confidence. Therefore, it is hard to see how the government would bring forward a motion of no confidence in themselves. I do not know enough procedurally about whether this would be possible, but a government back-bencher could bring forward a motion of no confidence in their own government, but that would seem perverse.

The wording of the Bill suggests that it would come only from the opposition. The danger of the situation is that if the Queen's Speech, the Budget or the second reading of a manifesto bill were perceived to be an issue of confidence, and then a no confidence vote came forward. It would not necessarily come from the opposition because it might be in their political interest to maintain the perception of a lame duck government for an extended period.

Q104 The Chairman: Professor Bogdanor, do you want to comment on the constructive no confidence arrangements in Germany?

Vernon Bogdanor: Yes. It seems to me not very helpful and has been used on two occasions in Germany for purposes quite different from those imagined by the founding fathers of the German constitution. The constructive vote of no confidence provides that you cannot simply have a no confidence vote in the government, but that a no confidence vote in the government must propose an alternative Prime Minister. The purpose of that was to meet the situation that occurred at the end of the Weimar Republic, particularly after 1930, when governments were removed by an unholy opposition combination of Nazis and Communists, who themselves would not get together to form a government.

The notion is somewhat confused, because you either have a two-party or bipolar situation in a Parliament, in which case the alternative government is obvious, or you have a multi-party system in which there is no obvious alternative government. In a multi-party system, the effect of the constructive vote of no confidence is to allow a weak government to hobble on when it hasn't got the support of Parliament. In that situation, I prefer that there should be a dissolution of Parliament to let the people decide what the alternative government should be. I don't think it has as much value in Germany as the founding fathers would have hoped, and I don't think it would have much value here either.

Q105 Lord Shaw of Northstead: In the Professor's report, at paragraph 27, he says that the Fixed-term Parliaments Bill, "indicates a conflict between two fundamental principles, the principle of parliamentary government and the principle of democratic government. The former principle provides that parliament shall choose the government, the second that the people should choose the government". I take issue on the subject of the election of the Prime Minister. I can see the point of going to the country if it is a realignment of a multi-party government, but that is very different from a change of leader.

Surely it is right that the people elect Members of Parliament to govern and the party there chooses its own leader. That should be paramount. You should not have to go to the country every time you want to change a leader. Is that not a clear distinction and should it not be drawn in the Bill itself?

Vernon Bogdanor: Your question reflects the constitutional practice until now. That is of course correct. But as I said earlier, there was some feeling in the country—opinion polls suggested that it was not a majority feeling—that Gordon Brown ought to go to the country in 2007, having become leader. That was not felt on previous occasions when, for example, John Major succeeded Margaret Thatcher or James Callaghan succeeded Harold Wilson. It may be that opinion in the country is changing because people feel that we are moving towards a presidential system and that we are voting not for a Labour, Liberal Democrat or Conservative government but for David Cameron, Nick Clegg or Ed Miliband for Prime Minister. This is a difficult matter to resolve, because the mood may be changing.

On the broader point, at every general election since the war except this one and February 1974, the people have voted for a government and Prime Minister. In 2005, they voted for a Labour government led by Tony Blair rather than a Conservative government led by Michael Howard. It is difficult to say the same about the election of 2010. Were you to have a change of coalition government it may be more difficult to say that. There is a difference between a general election that does not yield a majority of a single party and a general election that does yield such a majority.

Q106 Lord Shaw of Northstead: But that is not clear in the Bill.

Vernon Bogdanor: No, indeed.

The Chairman: Lord Norton, would you like to ask about the constitutional Monarchy and the question of the prerogative?

Q107 Lord Norton of Louth: This is really on the power of prorogation, because there is nothing in the Bill. There was the incident in Canada, where prorogation was used to prevent a vote of no confidence occurring. We have been told that that was a one-off and we should not worry about it, but should we worry about it?

Ruth Fox: I don't think you need worry about it in the context of the current Monarch, but you can't know the views of future Monarchs in a scenario 40 or 50 years down the line. It is something that could be addressed. The fear is that you have a no confidence motion and then you have these 14 days. I have issues about where the 14 days came from. I haven't seen anything from the Government that explains exactly how they came up with 14 days, but there we are. In the 14-day period, you have the opportunity for a government to try to be formed and then there would have to be another confidence motion in that government. It seems to me that you could put in the Bill a restraining power to the effect that if a no confidence motion has been approved, in that 14-day scenario that prerogative power could not be applied. You could not use it, so the Monarch would not have the discretionary power to take up the request from the Prime Minister to prorogue. It would not be on the table.

Q108 Lord Norton of Louth: The problem would not necessarily be who the Monarch was, but who the Prime Minister was.

Ruth Fox: Indeed. A combination of both, potentially.

Vernon Bogdanor: In the circumstances outlined by Lord Norton, a wise constitutional Monarch would wait, if asked for prorogation. A wise constitutional monarch would say, "My Prime Minister has the authority to advise me or to ask for a prorogation as long as he has the support of Parliament, but not otherwise".

The Chairman: Does that answer the point that you wanted to make Lord Norton? Was there an additional question on the House of Lords?

Q109 Lord Norton of Louth: Separate from that, do you envisage a role for the House of Lords in any parliamentary fixed term or, for that matter, any early dissolution arrangements?

Vernon Bogdanor: The Wakeham Royal Commission, if I remember rightly, was against any such role for the House of Lords. I'm not sure that it was correct about that. The House of Lords already has a constitutional role in preventing the Commons from extending its own life. The Parliament Act does not apply in such a situation. There might well be one or two other fundamental constitutional provisions that you should not allow a majority in the House of Commons to override. That obviously raises large questions because matters in this Bill would not be the only ones. But it seems to be a matter for consideration whether we need stronger constitutional protection than we have on other matters than simply extending the life of the House of Commons.

Lord Norton of Louth: Presumably, the only role the House would have if this were passed would be an attempt by a future government to amend the legislation. Obviously, the Lords would have a role in the normal legislative process, but that would be it.

The Chairman: In the substantive questions that the Committee indicated that it wanted to talk to you both about, we have probably covered most of the ground. Do other members of the Committee have points that they feel have not been addressed?

Q110 Lord Norton of Louth: I just want to pick up on a point that Professor Bogdanor made in his submission, because it raised an interesting spectre. In paragraph 5, you say at the end: "It is, however, not clear whether the two-thirds provision can bind a future parliament such that if a majority smaller than two-thirds in a future parliament were to vote for dissolution and the Prime Minister then asked for one, the Queen would be entitled to refuse it". That is an issue for constitutional lawyers but it strikes me as quite a profound

issue because you can see what would happen in those circumstances if someone sought to challenge that. Would you like to expand on that?

Vernon Bogdanor: Constitutional lawyers have argued for many years on whether Parliament can bind itself, without reaching any conclusion. I am far too careful. It would be like a bull in a china shop to tread in an area where they have debated this in such a sophisticated manner for so many years without reaching a conclusion. One has to call it a grey area of our constitution, whether Parliament can bind itself by a special majority. It has not happened before.

Q111 Lord Crickhowell: I want to go back to the extension of the session, and something that Dr Fox said about departments being asked to produce bills because they hadn't. I sat for quite a long time under Willie Whitelaw on the Legislation Committee. It was very important, particularly as many of us feel that there is too much legislation. But the pressure there was quite the reverse. It was extremely difficult to come forward with a bill because there were a limited number of bills that you could get into a session. That was rather an important factor. There was another feature, too. Am I not right in thinking that by extending the session, the pressure that this House particularly has towards the end of a session to get legislation altered is removed for quite a lot of bills? Governments have to stop and think towards the end of a session. Amendments get carried by this House that probably would not otherwise get carried. It seems to me that there are some quite significant consequences from this change and I am not at all sure that they have been thought through adequately. Any further comment?

Ruth Fox: I agree. It goes to the heart of the problem with the legislation, the way that it is being pushed through and the timetabling. An awful lot more time and detailed consideration could have been given to it. I said at the beginning that I think there is a missed opportunity in this Bill in thinking through the nature of the term. So much of the focus of the Bill is on

the end of the term—the date of the end of the term and the emergency valve for dissolution. One of the core advantages of having a term is that you can plan and have a longer-term approach. You also need to think about issues right from the beginning of the term. One issue we have not mentioned is that the dissolution power is a prerogative power, but the Bill does not address the summoning power for the date of the first meeting of the Parliament.

You then have issues from that point of how you plan a legislative programme through the various years of that five-year term. It would, in my view, remove the need for wash-up at the end of a Parliament. Obviously, in the event of an early dissolution it wouldn't and things would be pretty much as now, looking at the 1979 scenario for example, but in my view it would remove the need for wash-up. I take your point about there being pressure to get bills into the Queen's Speech from Departments and Ministers. It depends. In Robin Cook's memoirs, he talks about when he became Leader of the House; he looked in the legislative cupboard and it was bare. They very quickly had to come up with legislation. It depends from government to government and on the political context.

The reality is there is too much legislation. It is a tidal wave approach. I think it is unavoidable, whatever parliamentary arrangements you have, that at the beginning of the term you are going to have a lighter legislative workload because parliamentary counsel have to have time to draft legislation properly. The beginning of the term is going to be quite light, but inevitably the middle and the end of the session or Parliament are going to be heavier. It seems to me that if you have some sense of when the end date is, business managers through the usual channels should be required to work backwards from that in planning the legislative programme, either across the term or across the sessions. It should be possible to avoid some of the problems of the tidal wave, banging up against the deadlines and the fact that whole sections of bills go through with very limited scrutiny. If the public were aware of

some of the bills that go through and the amounts of money that are voted on with limited—or sometimes even no—scrutiny, they would be appalled.

Lord Rodgers of Quarry Bank: Are we moving towards an end?

The Chairman: We are, but both you and Lord Renton wanted to make comments.

Q112 Lord Renton of Mount Harry: If I could speak about the wash-up, as an ex-Chief Whip, you have to think of realism rather than totally of idealism. The whole point of the wash-up is to do deals with the other side that enable you to get through bills that would not otherwise get through. It is a remarkable occasion, because suddenly the Whips who were arguing with each other are working together to make certain that bills get through. I don't think you can avoid that element in the running of the House of Commons. It will always be there, because bills will take longer than expected. There are events happening that demand debate which had not been thought about and therefore timetables get, not lost, but very, very squeezed. It is out of that that the wash-up happens. In a way, it is a very good example of parties who are opposing each other working together to get legislation through at the last time. I am not saying it is all properly argued through. The general view is that when an MP turns up and says to the Whip, "What's this all about?" the Whip says, "Don't bother about that; just get into the Yes Lobby." That's life, and I suspect it will go on. It is another element.

Ruth Fox: I accept that there may be instances where some of it may go on because of events arising. You might need legislation that you had not anticipated earlier in the Parliament, or whatever, but we should look at the wash-up at the end of the last Parliament, in March / April. I submitted with our written evidence an article that I and colleague, Matt Korris, had written for Parliamentary Affairs on a quick analysis of the wash-up. I took a fairly pragmatic view on the pros and cons of it, but I don't think in a fixed term you should ever end up in that situation, as the last Parliament did, with bills such as the

Constitutional Reform and Governance Bill and the Digital Economy Bill. There may be instances on the margins where, at the end of the fixed term, there is some pressure and it is not as ideal a situation as you would like, but a fixed-term should eradicate those examples where the government was really stretching the bounds of acceptability, if I can put it politely.

Lord Norton of Louth: I should have declared an interest at the beginning as Director of Studies for the Hansard Society.

The Chairman: Thank you for doing so. Thank you both very much. You have been very generous with your time and this has been a very valuable session. Lord Rodgers would like to make one final point.

Q113 Lord Rodgers of Quarry Bank: We have discussed this very fully. I have already asked about a summary of the balance of merit for a fixed-term Parliament. Could I ask both of you, what is the difference, if any, between a first-past-the-post Parliament, which we have now, and AV, if we find that we have AV or some other form of PR?

Vernon Bogdanor: The alternative vote makes a hung Parliament slightly more likely. At the last election, according to various calculations, it would have given the Liberal Democrats about 20 more seats, primarily at the expense of the Conservatives. So in that sort of situation, a hung Parliament would be more likely.

Lord Rodgers of Quarry Bank: I was really asking for your judgment on the merits of a fixed-term Parliament against those two prospects.

Vernon Bogdanor: If you are moving into an era of hung Parliaments, the issue of fixed-term Parliaments arises for this reason. On the continent, which does not have the alternative vote, but proportional representation, the aim is to persuade or even force the political parties to work together in the way that Lord Renton was describing sometimes occurred in the wash-up period. That is the purpose of the fixed-term Parliament, to alter the culture of

Britain from its current, fairly adversarial culture, if I can put it like that, to a more consensual culture. Countries such as Germany and Norway operate in practice in terms of grand coalitions. Even if they don't have formal grand coalitions, you often have the consent of the opposition for legislation, which obviously isn't necessary here.

Your question about the alternative vote raises a very important general point that, if we are moving into a period of hung Parliaments, there is a big question that perhaps this Committee might consider of how our constitution needs to change to take account of that. I repeat that I think this Bill is not very well thought out. In my judgment, this session has revealed two very important ambiguities in it. One was pointed out by Lord Norton, on whether Parliament can bind itself. The second, pointed out by Lord Hart, was whether the intention is to have an extraordinary general election if you dissolve early, as in Scotland or Sweden, or not. It seems to me that these issues are not yet clarified in the Bill, and perhaps not in the Government's mind. I think they need to be clarified.

Ruth Fox: I don't think I would add anything to that other than to go back to my earlier comments that there is a looming difficulty in terms of the relationship between politicians and the public, and understanding and knowledge of how our political system operates, which is seen partly in the issue about voting on the identity of the Prime Minister. In the context of where we are, whether it is under first past the post or AV, as Vernon has indicated, we are moving into a scenario where hung Parliaments are more likely. We are going to have a clash between the perception that we ought to have a more presidential system, and therefore our constitutional and political arrangements should reflect that, alongside a culture of hung Parliaments, which does not facilitate that. It seems to me that there is a potential major political problem looming on public understanding and engagement around those issues. I simply make a plea that one area that needs to be addressed, and has

not been addressed sufficiently yet, is public understanding and education about these issues—political literacy and so on, which the Hansard Society is very much an exponent of.

The Chairman: Thank you both again. You have been enormously helpful and this has been a very valuable session. I am really grateful to you and thank you, too, for highlighting the ambiguities, as Professor Bogdanor has just expressed them, within the Bill, not least, as I understand it from what you have both said, about the title of the Bill, which is a fairly basic point. I am very grateful indeed for your time and for the written evidence that you have sent to us. Thank you very much indeed for coming.