



HOUSE OF LORDS

Select Committee on the Constitution

5th Report of Session 2010–11

The Government's Constitutional Reform Programme

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Select Committee on the Constitution

The Constitution Committee is appointed by the House of Lords in each session with the following terms of reference:

To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

Current Membership

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

Declaration of Interests

A full list of Members' interests can be found in the Register of Lords' Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm>

Professor Adam Tomkins, Legal Adviser, is a Member of and unpaid Ad Hoc Legal Adviser to Republic.

Publications

All publications of the Committee are available on the internet at:

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Committee Staff

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The Government's Constitutional Reform Programme

1. On 7 June the Deputy Prime Minister, the Rt Hon Nick Clegg MP, set out the new Government's programme for constitutional and political reform.¹ In response to questions asked by the Committee, the Deputy Prime Minister submitted a memorandum to the Committee and on 21 July the Committee heard oral evidence on the reform programme from Professor Robert Blackburn, Professor Robert Hazell and Mr Peter Riddell.
2. On 13 October we held our first annual evidence session with the Deputy Prime Minister.
3. The memorandum and transcripts of the two sessions are reproduced here, for the information of the House.

¹ HC Deb 7 June 2010 col 38

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE GOVERNMENT'S
CONSTITUTIONAL REFORM PROGRAMME

WEDNESDAY 21 JULY 2010

Present	Crickhowell, L	Pannick, L
	Falkner of Margravine, B	Powell of Bayswater, L
	Irvine of Lairg, L	Rodgers of Quarry Bank, L
	Jay of Paddington, B (Chairman)	Shaw of Northstead, L
	Norton of Louth, L	

Memorandum by the Deputy Prime Minister and the Minister for Political and Constitutional Reform

The government has set out an ambitious programme for political renewal, transferring power away from the executive to make parliament more powerful, and away from parliament to make people more powerful.

That programme includes giving people a say over the voting system for the House of Commons, equalising constituency size and reducing the number of MPs, removing the ability of the Prime Minister to set the date of an election for party-political advantage, introducing a power of recall for MPs guilty of serious wrongdoing, tackling party funding, taking forward reform of the House of Lords, implementing the Wright Committee recommendations, and taking steps to give people more power to shape parliamentary business, speeding up the implementation of individual voter registration, and increasing transparency in lobbying, including through a statutory register.

The Committee has asked for comments on some areas of the government's programme of reform, which are set out below.

UNDERLYING PRINCIPLES

The Committee asked about the role of the Deputy Prime Minister in the constitution, as well as his role in this government. There is no set or binding role for the Deputy Prime Minister within the British constitution. The role of the current Deputy Prime Minister will be different from that of previous recent holders of the post, in particular because this is a Coalition Government.

The current Government is the first coalition government we have had in 60 years. The role of the Deputy Prime Minister reflects his position as the leader of a party within the coalition. He supports the Prime Minister in the oversight of the full range of government policy and initiatives. As Chair of the Cabinet Sub-Committee on Home Affairs he has particular responsibility for coordinating domestic policy and within government the Deputy Prime Minister is responsible for the programme of political and constitutional reform.

The responsibilities of the Deputy Prime Minister in relation to political and constitutional reform were set out by the Prime Minister in his written ministerial statement of 2 June. They are:

“Introducing fixed-term Parliaments.

Legislating to hold a referendum on the alternative vote system for the House of Commons and to create fewer and more equal sized constituents.

Supporting people with disabilities to become MPs.

Introducing a power for people to recall their MP.

Developing proposals for a wholly or mainly elected second Chamber.

Speeding up implementation of individual voter registration.

Considering the ‘West Lothian question’.

Introducing a statutory register of lobbyists.

Reforming party funding.

Supporting all postal primaries.

The Deputy Prime Minister will also have policy responsibility for the Electoral Commission, Boundary Commission and Independent Parliamentary Standards Authority.”

The Committee has expressed an interest in the rationale for deciding which responsibilities have been transferred from the Ministry of Justice to the Deputy Prime Minister. The rationale for the division of responsibilities between the Deputy Prime Minister and the Secretary of State for Justice is that the Deputy Prime Minister has taken responsibility for all those matters which directly affect Parliament and elections. This includes the business as usual aspects of those policy areas as well as reform proposals.

Matters which are more closely related to the Justice system, such as the Courts and judiciary, human rights and the dossiers of the Justice and Home Affairs Council remain with the Justice Secretary. However, in his role as Deputy Prime Minister and Chair of the Home Affairs Cabinet Committee the Deputy Prime Minister has oversight of the whole range of domestic policy.

The Committee were also interested in the principle behind the Coalition Government's programme of reform. The overwhelming objective behind the programme is to restore the people's faith in their politics and their politicians. The reforms are designed to end governments which hoard power, to create a parliament which looks outwards rather than inward, and to tackle the widespread disengagement amongst people who feel locked out of the decisions that affect their everyday lives.

FIXED TERM PARLIAMENTS

Fixed term Parliaments will provide stability for the country, as it will be known from the beginning of the Parliament the expected date of dissolution. There will not be the current and constant speculation during the fourth year of a Parliament as to whether there will be an election. Nor will there be the sort of destabilising speculation there was in the autumns of 1978 or 2007 where the Prime Minister was believed to be contemplating calling an election but in the end did not do so.

The key element of the proposals is the transfer from the Prime Minister to the House of Commons of the power to decide on the timing of a dissolution. This is of course separate from confidence, and the proposals will not affect the power of the House of Commons to pass a vote of no confidence in the Government which can still be passed with a simple majority. That will still be an important part of the way the Commons holds the government to account.

Five years is the length which our present legislation provides for. It is the current maximum length of a Parliament under the Septennial Act 1715. The Coalition Government believes that five years strikes the right balance between allowing a Government to deliver its programme and ensuring that it remains accountable to the electorate.

The Government's proposals suggest a figure for the passing of a dissolution motion which would need the support of the majority of the House but would be very unlikely for any Government to deliver unilaterally. No post-war government has had a majority of two-thirds.

If we are to introduce fixed term Parliaments there must be a mechanism to deal with the situation where a government has lost the confidence of the House of Commons and no alternative government can be found. Having to engineer a declaration of no confidence in order to agree to a dissolution everyone wants would simply bring the system into disrepute. We are proposing that there should be a period of up to 14 days in which the search for an alternative government can take place. If no such government can be formed, then dissolution will follow. This will deal with the theoretical possibility of a limbo in which a Government could not command the confidence of the House, but the House refused to dissolve Parliament.

At no point have the Coalition Government ever proposed altering the arrangements for a vote of no-confidence in the Government.

The legislation will give legal effect to a vote of no-confidence, but will not seek to define a vote of no confidence on the face of the bill.

In practice there is little doubt about what constitutes a motion of no confidence in a Government, and there is no need to limit the flexibility of Parliament unnecessarily. Even if a Government were to command a majority theoretically sufficient to carry a motion of no confidence for its own advantage, there would be limited advantage in it doing so. The Government would immediately lose the ability to do anything other than essential business. Voters would draw their own conclusions, and their judgement will be the ultimate sanction against possible abuse of the system.

HOUSE OF LORDS REFORM

The Deputy Prime Minister chairs a Committee on House of Lords reform, composed of members from all three major political parties as well as from both Houses. The Committee is charged with producing a draft bill, including proposals for a mainly or wholly elected second chamber on the basis of proportional representation. This will be subject to pre-legislative scrutiny by, it is hoped, a joint committee of both Houses. The bill will provide a proper focus for debate and decision, and allow all sides to have their say. It will then be for the Government to take a decision on introducing legislation.

The House of Lords plays a vital role in holding the Executive to account and challenging the House of Commons to reflect and reconsider. The current House performs its work well but lacks democratic authority. The present view of the Government is that the House should continue to have the powers that it currently holds. The basic relationship between the two Houses, as set out in the Parliament Acts 1911 and 1949, should remain the same.

The cross-party Committee will be looking at the issue of how members arrive in the second chamber, rather than what they do when they get there, on which the Government believes there is no need for change. The British people must be allowed to elect those who make the laws of the land; the second chamber needs to be much more representative of the people it serves. To this end, as stated in the coalition agreement, we propose that members of the second chamber will be elected through proportional representation.

The House of Lords Constitution Committee has expressed some concern about the transition between the current system and a wholly or mainly elected second chamber. There is expertise and knowledge amongst current members of the House of Lords. We need to use that in the move to a wholly or mainly elected second chamber so the cross-party Committee will be asked to make proposals for a transitional period where existing members and newly elected or appointed members would work together. The draft Bill will include details of the transition.

In the interim, the process for appointments to the House of Lords will remain as currently ie the Prime Minister will decide numbers taking account of representation in the House. It would be premature to discuss timing of the next list and proposed numbers for the Parties, but contrary to media reports, there will not be hundreds. As we said in the coalition agreement, appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election.

REFERENDUM ON THE ELECTORAL SYSTEM

The agreement to hold a referendum on the Alternative Vote was a central plank of the Coalition's Programme for Government, and it will allow voters a real and significant choice over the way MPs are elected to the House of Commons. By giving people a choice over their electoral system, we give that system a new legitimacy.

The government is offering a choice between AV and First Past the Post, both systems which retain the constituency link between Members of Parliament and the people they represent.

It has been suggested that the referendum campaign, where each of the coalition member parties will support a different outcome, will adversely affect the cohesion of the Coalition Government. However, both parties in the coalition agreement accept that the best way to make the coalition work is to be completely frank about different opinions on policies.

Some have suggested that our chosen referendum date of 5 May 2011 will either cause confusion to voters or create problems with the administration of the poll. But the combination of elections is not unusual—Members of Parliament were elected recently in a poll which was combined with local elections in many parts of the country. It is disrespectful to the voting public to assume they cannot distinguish between the different subject or election. It is also very important that combining the referendum with other polls saves money—an estimated £17 million. One of the greatest responsibilities of any government, and particularly one in power at this time, is the efficient spending of public funds.

PRE-LEGISLATIVE SCRUTINY

Given the extremely tight timetable required to hold a referendum next year and implement any changes before the next general election, it has not been possible to publish a draft bill on the referendum or fixed-term parliaments for pre-legislative scrutiny. Both of these bills are constitutional; all stages will be taken on the floor in the House of Commons, and there will be adequate opportunity both Houses to debate it.

In the case of the House of Lords reform bill, the government hopes that the opportunity for pre-legislative scrutiny will allow significant discussion and analysis of the proposals by both Houses. The government hopes that there will be substantial agreement in both Houses on the measures proposed in the draft legislation as a result of this scrutiny.

19 July 2010

Examination of Witnesses

Witnesses: PROFESSOR ROBERT BLACKBURN, Professor of Constitutional Law, King's College London, PROFESSOR ROBERT HAZELL, Director, Constitution Unit, University College London, and MR PETER RIDDELL, Senior Fellow, Institute for Government, and Chair, Hansard Society, examined.

Q1 Chairman: Good morning. Thank you all very much for coming. I would ask you briefly to introduce yourselves and then I will explain a little about the Committee's programme and how we see ourselves looking at the legislation—which is likely to come to us rather later in the autumn than in the Commons. Peter Riddell, perhaps you would start. *Mr Riddell:* I used to be a journalist—until three weeks ago. I was, before, a Senior Fellow of the Institute for Government, where I am now spending more time. I Chair the Hansard Society—and have done for three years—which is very involved in these issues. Those are the relevant things to the inquiry today.

Professor Hazell: I am Professor Robert Hazell. I am Professor of Government and the Constitution at University College London, and Director of the Constitution Unit in the Department of Political Science at UCL.

Professor Blackburn: I am Robert Blackburn. I am Professor of Constitutional Law at King's College London. My background and qualifications are in law and political science and contemporary history. I have written and edited about 20 books on constitutional affairs and have a special interest in this subject matter, particularly fixed-term parliaments and dissolution affairs which in fact was the subject of my doctorate. Perhaps I can say that I feel a little nervous about appearing before the Committee, particularly with such a distinguished and learned membership. I will be submitting some written evidence in due course, and, of course, if any of the Members of the Committee would like to meet me individually, I would be very happy to see them.

Q2 Chairman: Thank you very much. This, as you know, is a reconstituted Committee; it is not like the Political and Constitutional Reform Committee in the Commons, which is a new Committee which has specific reference to the legislation which has been introduced by the Coalition Government and is shadowing the Deputy Prime Minister's policy brief. We are encharged with the scrutiny of all public bills which come before the House of Lords in terms of their constitutional relevance, but we have decided that we want to do a policy inquiry into fixed-term

parliaments. This will not be the same as some of the other inquiries in which some of you, I know, Peter and Robert Hazell, have been involved before, which is a longer-term policy review. It will be almost in the sense of an enhanced scrutiny of the bill, but as the bill is being introduced in the Commons before the summer recess there will not be much opportunity in the Commons for there to be an inquiry involving evidence taking or witnesses, et cetera. We will be hearing from the Deputy Prime Minister in the second meeting of this Committee, which will be in October, in the new session, when we will have a chance to look in some detail at the second reading proceedings which will by then have taken place in the Commons, but we thought it was very valuable at this stage to talk to you about the overall concept of the constitutional change which is proposed by the Coalition Government, particularly as Professor Hazell has pointed out in this very helpful document—which I think some of the Committee have only seen this morning—that the agenda for constitutional reform is very broad-brush and broadly organised. We will be, as you have already noted, Professor Blackburn, calling for written evidence. The timetable on that is for written evidence to be submitted by the end of September. If we may, we will probably be calling on you again with specific questions in relation to specific legislation when we have seen it and we have seen the preliminary proceedings in the House of Commons when it comes to our evidence sessions in October and the beginning of November. We rather suspect, given that the bill will have its proceedings in the Commons on the floor in committee, that it will be slightly longer than we would normally expect for the bill to come here. It may not come here until the end of November, but we shall see how that develops. In the interim, as I say, we thought it would be very relevant and helpful to Members of the Committee to get your overview of the potential constitutional changes that are being proposed from various different angles. This is obviously a general session. We would expect, if we may, to keep you until about midday, and then we will return on more specific things later. Perhaps, particularly given your overview, Professor Hazell, I could start by asking you which, of all the general points that have been

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made on constitutional and political change by the Coalition Government, you think the most significant is, and what you feel its impact will be and whether it may be successful.

Professor Hazell: I think there are several which are significant: the bill for fixed-term parliaments that you have already mentioned; the proposed referendum on the voting system for a change to the alternative vote; the proposed reduction in the size of the House of Commons; and, of course, the plans for further reform to this House with a draft bill to be introduced, to be published roughly at the end of the year, on plans for a wholly or partly elected second chamber.

Q3 Chairman: Do you think they are all equal in terms of their significance?

Professor Hazell: Having enumerated them, I think the last—the plans for a wholly elected second chamber—is a bigger constitutional change than the first three that I mentioned.

Q4 Chairman: In that context, we thought it was interesting that the Deputy Prime Minister kindly supplied us with a note of points that he wanted to raise, which I believe you have seen. One of those which struck us was that, in the context of that very significant constitutional change, the House of Lords powers and responsibilities would, in his view, remain the same as they are today. Does that strike you as interesting?

Professor Hazell: Yes, but that is consonant with the policy of previous governments. Of course, the legitimacy of the House of Lords, if it were elected, might change and its willingness to exercise its quite significant powers might change, but the formal powers would remain the same, and I have no problem with that.

Q5 Lord Pannick: Do you think it is realistic to think that a wholly elected or even a mainly elected House would adopt the same conventions or deference to the views of the Commons as it does now?

Professor Hazell: We would need to wait and see. But in political institutions there is something that political scientists rather grandly call path dependency, which in plain English is that political institutions quite often tend to carry on largely as they did before, and I would expect quite a lot of the conventions and traditions of this House to continue, especially if, as I understand is proposed, the existing Members would continue during the overlapping period as the elected Members joined the House.

Q6 Chairman: Would you expect that to be a relatively short period?

Professor Hazell: We know that the proposals are likely to be for staggered elections in thirds, with a new tranche arriving every four or five years, depending, obviously, on legislation on fixed-term parliaments and if the elections to this chamber are at the same time as general elections, and so I think it is likely to be a period of 15 years or so.

Mr Riddell: Taking up the point, I think it will start out with that intention—going back to the Cunningham Committee of many years ago about preserving the conventions—but the behaviour will change. Having a wholly or partially elected House, if it is 80 per cent, where the cross-benchers remain and so on, it is bound to change, because behaviour will change in that way, but I agree with Robert Hazell that it is going to be gradual. But there are so many ambiguities. I was re-reading this morning the Leader of the Lords' speech in the debate on 29 June, which is full of ambiguities about grandfathering and what does it mean and how long is it going to be and so on. It is bound to have an effect on that. There is no way it cannot do so. When there is a clash, say, on a civil liberties issue, that will happen however much the conventions are defined.

Q7 Chairman: On that general point, given what Robert Hazell said about perhaps House of Lords reform being the most significant of the Government's proposed constitutional changes, what view do any of you have about the relative chances of success within this Parliament?

Mr Riddell: It all depends on the cohesion of the Coalition in the other place, whether there is the will to push through. After all, the earliest date a bill can be introduced is the autumn of next year.

Q8 Chairman: Exactly.

Mr Riddell: We will have to see how politically cohesive the Coalition is at that stage, I think is the answer to that. It is also dependent on attitudes here and so on. I would not put it more than 60:40 that the legislation will be through by the end of this Parliament on that, because of all the problems which have occurred, substantially over the last 99 years, on this. Could I add two other significant issues on the constitutional agenda? One is the proposal for the recall of MPs, which I think is very significant indeed. It is supposed to be very tightly defined, but I think that is potentially a very important one. The second is the discussions—and it is no more than discussions—on the future of the Human Rights Act and British Bill of Rights. That could be extremely important indeed. At present, this has been slightly kicked into the long grass because of the political priorities of both the Justice Secretary and the Attorney, but that could be very significant as well.

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Chairman: Lord Norton, you wanted to raise some points about the underlying principles, as it were, of this wide agenda.

Q9 Lord Norton of Louth: Indeed. Perhaps I should declare an interest, since I am on the Council for the Hansard Society and sits on the Advisory Unit of the Constitution Unit before I put the question. You have seen the document from the Deputy Prime Minister. There is a section on underlying principles, but most of that is devoted to the role of the Deputy Prime Minister. There are only two sentences that address the principles underlying the coalition agreement. What would you discern as the basic principles that govern this programme? Is there a discernible principle or underlying set of principles?

Professor Hazell: I think there are. Before I published the report that I submitted to the Committee about the constitutional reform agenda of the new Coalition Government, I published, earlier this year, a similar briefing on the Conservative agenda for constitutional reform. In that, in an early chapter, I tried to distil what I understood to be the principles driving the Conservatives' proposals. My purpose in publishing that earlier report before the election was to bring out that the Conservative Party themselves had a very big agenda for constitutional reform. No-one should suppose that the new Coalition Government has this big constitutional reform programme simply because it is a Liberal Democrat agenda. It is not. It is a genuinely combined agenda. The principles driving the Conservative agenda I identified as four: decentralisation; stronger accountability (tighter accountability of the Executive to Parliament but also of the Executive and Parliament to the people); greater transparency; and, running through it all, a distrust of big government. One can probably, without too much distortion, read in those principles to a lot of the Liberal Democrat constitutional proposals as well.

Mr Riddell: I agree with that. I think there is a sense of looking for coherence where there is not necessarily any coherence. If one looks back to the parallel with 1997, a lot of the proposals which the Blair Government produced came from various different interest groups: the Scots having their argument, a rather complicated argument in Wales—as Lord Crickhowell will appreciate—and then the Human Rights Act and Freedom of Information. With some of the agenda, it came from wholly different sources. It is rather like the Queen's speech when people try to put a theme in, which is normally nonsense because they come from different interests. Whilst I do not disagree with what Robert Hazell has said, I think one can go a bit too far in assuming coherence, because there are different sources. Recall comes from one reason, the Human Rights Act comes from another factor, the House of

Lords has been around for ever, and so on and so forth. While I agree you can increase your accountability, also some of the issues have constitutional implications but are essentially political—a lot of decentralisation agenda, for example.

Professor Blackburn: There have been several questions there which I have not been able to respond to. Very quickly, perhaps I could catch up. Amongst the major issues that were mentioned—electoral reform, the House of Lords, fixed-term parliaments—it is difficult to compare them relatively but I think all of them are extremely important in their different ways. One underlying issue that I think is really quite important about the whole programme is the process by which it is proceeding. Looking back over the last ten years or so, process has been a constant problem in constitutional reform. Looking at what is going on now and what is proposed, first of all: what is the rush about fixed-term parliaments? This is a really very important reform. I do not think the Government necessarily needs to legislate to cement the coalition together. Certainly at the moment there is sufficient glue, goodwill and other factors to keep the coalition together, but it is clearly one of the factors that is driving it. Another problem of process that I have relates to the referendum. Why is Parliament not resolving the question of what is the best alternative electoral system to first past the post, and then putting that to a referendum? Why are the people being asked to decide? It seems to me that this is one of the worst ways of using a referendum—about which I have reservations in any case. If there is going to be a referendum—under which the politicians do not want to make up their minds on it so they are going to push it on to the electorate to make up their minds for them—then why not offer the full range of electoral systems? It seems to me, for example, that the supplementary vote has distinct advantages over the alternative vote, and why should not proportional representation be there as well? I think that is a problem of process. The last Government, with great respect to one or two Members who were closely involved, I think was a case study in how not to do constitutional reform relating to the House of Lords. It went all over the place. There needs to be some concentration on exactly how the programme is going to proceed and a good proper method for going forward. If the Committee came forward with some recommendations on this I think it would be extremely valuable. I think the impact of the Committee's reports is enhanced—from the outside anyway—by seeing how it ties in with the other Committees. Considering the way in which Select Committees operated in the last Parliament, why was the Public Administration Committee involved

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in the House of Lords reform? Why was the Constitution Committee not involved in the House of Lords reform? And of course, there is now the Commons Political and Constitutional Reform Committee. Joined-upness in parliamentary scrutiny would be welcome. Very briefly, on the role of the Lords I fear that I may be in a minority, but it seems to me that the role and functions of the House of Lords are extremely important. Politicians and political leaders have played down the significance of this. My own view is that the role and powers of the House of Lords or the second chamber should be enhanced. I think there are great difficulties, particularly with separation of powers issues between the Executive and legislature and then the House of Commons. In a sense, the greater the vested interest in some managerial outcome for the Government, the more likely the measure is going to be driven through the House of Commons on a three-line whip. I think there is a very important role for the second chamber to play on matters that affect the fundamentals of the country, not just constitutional matters—though certainly that would be one of them—but matters which I would say affect the soul of the nation. Although this is a minority view at the moment, I think there is a quiet voice that feels that the second chamber has some important role to play in protecting matters that affect the fundamentals of the nation. On principles, Mr Clegg has said that his overwhelming objective is to restore people's faith in their politics and their politicians. Liberal Democrats, of course, have a longstanding comprehensive programme of constitutional reform. This is part of it, so clearly there is some well-thought out plan behind the whole thing, but the way in which it is proceeding at the moment is clearly driven by political self-interest. The catalyst for fixed-term parliaments has been political self-interest and obviously the catalyst for AV and the referendum is political self-interest. It is difficult to see some coherence behind the principles involved then. Finally, the main problem in people's disengagement with politics is an issue of political leadership. I do not think we need to change our institutions so much as somehow provide a better quality of political leadership that is in tune with popular opinion.

Chairman: Thank you. Professor Blackburn, on your point about process, I do not know if you have read the Committee's final report but even those who were Members of the Party of the last Government signed on to the report which said that this was no way to do constitutional reform in the context of one of the previous bills, so I think we would plead not guilty to that.

Q10 Lord Crickhowell: There was a remark from Professor Blackburn about the rush and that enables me to ask the question here that I was going

to ask when we got on to fixed term parliaments and it was a question we would have put to the Deputy Prime Minister had we been able to interview him, as we had hoped, before the House rose and will put to him when we see him in October. Surely the Fixed-Term Parliaments Bill is absolutely key example of a bill that will have pre-legislative scrutiny. Not only is it not going to have pre-legislative scrutiny, as I understand it, it is not going to have the formal examination by the new committee structure in the other Place which one might have expected. It is going straight on to the floor of the House and, as I observed a little earlier to colleagues, as those of us who were in the other Place know, Members of Parliament may be informed or not be informed about the issues they raise in the committee stage, but of course what is missing is the opportunity to take evidence and have evidence-based consideration. In view of the fact that the only form of pre-legislative scrutiny looks as if it is going to be exercised by this Committee in parallel with what is happening in Parliament, would you like to say a little more about this as to the need for pre-legislative scrutiny of these very important measures?

Professor Blackburn: I have a few general observations. First, I absolutely agree on this particular issue that there are some complexities which are not readily easily intelligible. You can see that when the announcement was made right at the outset there was this great confusion between confidence motions and dissolution motions. There is confusion, I think, about using legislation over matters that should more properly be in standing orders. This particular bill is something that needs very careful thought because it can have a huge impact on general elections. Let us not forget, of course, that a general election really is the main political event in our democracy. We are determining not just the life and the composition of the House of Commons but also of the Executive, so it is a very important subject which should not really be rushed.

Q11 Chairman: Do either of the two of you want to add anything?

Professor Hazell: Just two points, if I may. The fixed-term parliaments' proposal is not driven simply by party self-interest. It is worth remembering that it was also in the manifesto of the Labour Party at the last election. But that leads me into a broader point. I entirely share Professor Blackburn's concerns about the rush, and on this issue there is the potential for trying to develop all-party support for the legislation about fixed-term parliaments, given that there was support from more than one party in the election campaign. I understand that the new Select Committee on Political and Constitutional Reform in the House of Commons may be planning

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to do very quick pre-legislative scrutiny over the summer, if the bill is published before the summer recess, so there may be pre-legislative scrutiny but it may be rather cursory because of this rushed timetable. But there is value also, I think, in waiting to see some other elements in the package. Professor Blackburn referred to the complexities. One of the most important issues to resolve is how to create a safety valve, a power of mid-term dissolution, and I think we can expect that, in part, that might be codified in the draft Cabinet manual of which we saw an early draft chapter before the election. I understand the Cabinet Office may be planning to publish the whole of the draft Cabinet manual in September, and it may be important to look at the bill alongside sections of the Cabinet manual.

Mr Riddell: I would entirely agree with the gist of what Lord Crickhowell said. Certainly there is a long history of trying to rush constitutional measures. Referring to the Chair's comments about the Constitutional Reform Bill, which was a hotch-potch: some desirable things became law but it was a mess and no-one pretends it was anything else. Absolutely, in principle, and the problem with your Commons equivalent Committee, if I may so describe Graham Allen's Committee, is, as Robert Hazell says, the speed of pushing through the legislation. I think it is thoroughly undesirable to do that, because I do not think there is a hurry. The one thing I would mention, which has disappeared so far, is that in the coalition agreement it said that the resolution would be before the Commons at the earliest opportunity for defining the length of the current Parliament. Nothing has happened on that¹. There are a number of obvious reasons why nothing has happened, because it is very difficult to do, but that underlines the need for proper pre-legislative scrutiny, the fact that the Government over the last two months has not done so.

Q12 Lord Crickhowell: One quick follow-up point on the same matter, when we come on to House of Lords reform, incidentally Peter Morel gave some general comments about it. Of course there is a fundamental difference between the Liberal Democrats and the Conservatives. The Liberal Democrats have had a policy going back for decades and the Conservatives are almost entirely divided on the issue, which is why it was not a high priority before the Coalition Government was formed in David Cameron's programme. But the first opportunity there will be to examine outside in the open the proposals for House of Lords reform is when you come to the pre-legislative scrutiny phase. There is going to be, therefore, considerable attention paid as to how the Joint Committee on Pre-Legislative Scrutiny is formed, because it surely

needs to represent the very varied views on this issue and not simply be put together by the Whips Office or however so that it produces a pre-ordained report.

Mr Riddell: If I could echo that, one of my little pleasures in life is contrasting the tone adopted by the Deputy Prime Minister and the tone adopted by the Leader of your House. They do seem at times to come from different planets on this issue. Indeed, the Leader of the House was very candid in the debate on 29 June when he exactly said, as you have said, Lord Crickhowell, that if there had been a Tory Government this would not have been a high priority. I observe the tensions between backbenchers and frontbenchers in each party on this. The joint committee is going to be a backbench committee anyway, but the make-up of it will be particularly difficult.

Q13 Lord Rodgers of Quarry Bank: We would like an assessment from each of you about the significance and importance of a fixed-term parliament. I have to add, if I may, that between the Chartists in 1848, or whenever it was, and this general election, I had not thought at all about the idea of a fixed parliament and I was far from convinced at all. I think what we have always had is a period of about a year and a half after a general election to live down the manifesto and a year and a half before the next general election trying to win the next election, and there is only a short period in between where you get good government. It seems to me that if we have a fixed parliament we will simply have a stable period for perhaps six months longer. How can we really believe that it adds stability significantly in political terms, not in academic backgrounds, not in what happens elsewhere, but in Parliament? Will it happen? Will it be more stable? Will it be better government?

Professor Hazell: I do support the principle of fixed-term parliaments and I salute the Government for proposing to give up what has been a very significant element of prime ministerial power; namely, to choose the date of the next election at a time to suit the governing party's electoral advantage. I think you should all recognise that it is, potentially, a very big sacrifice of Executive and prime ministerial power. There are, I think, three important issues to be resolved in terms of the policy. The first is what length the fixed term should be—and we know the new Government has proposed five years. I think in international and comparative terms, that is a long fixed term. Just starting with the Westminster world, in those other Westminster parliaments which have gone for a fixed term, they have all gone for four years. We have gone for four years for the devolved assemblies in Scotland, Wales and Northern Ireland. The

¹ This is covered in the bill published after this hearing.

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parliaments in Australia and New Zealand have a maximum of three years, but they do not have a fixed term. On the length of a parliament, another issue which I think has not been sufficiently considered is how the fixed date for general elections would fit alongside the electoral cycle for other elections. The Government has proposed that the next general election should be in May 2015; but in May 2015 we already know there will be elections to the devolved assemblies in Scotland, Wales and Northern Ireland. If general elections continue to be held in May, there will, from time to time, be an overlap with the electoral cycle for elections to the European Parliament, held in June every five years. Although they would not be on the same date, the election campaigns would effectively overlap. I do not think it is very desirable to hold general elections at the same time as either devolved assembly elections or European elections. There would be a solution if the Government were willing to consider it, which would be, if they want fixed terms, to propose a general election date in the autumn. We have sometimes had general elections in October and that would avoid any clash. The second issue is how to regulate the Royal Prerogative, which at the moment is the power by which Parliament is dissolved, and we wait to see what the bill will say about the prerogative power of dissolution. That leads into the third issue, which I have mentioned already: the need for a safety valve and a power of mid-term dissolution. The Government, as Professor Blackburn has said, has already got into some trouble with their proposal for a 55 per cent threshold, since increased to 67 per cent, if the Government should want to initiate a dissolution, compared with the simple majority requirement if there is a no-confidence motion. I am still slightly puzzled why the Government sees the need for a dual threshold, depending on whether the dissolution procedure is initiated by the opposition, through a no-confidence motion, or the government of the day. I have not completed my inquiries on this, but so far I know of no parliament in Europe where they have a dual threshold.

Q14 Lord Rodgers of Quarry Bank: You have not really answered the question: how will it make government better? You have talked about mechanisms and matters of timetable.

Mr Riddell: If it makes it harder for prime ministers to dissolve parliament, which is what it is really all about—I regard it as, essentially, about that—it will lead to probably slightly longer parliaments than we have now. That, in your description of how parliaments operate can lead to a period of greater stability for taking long-term decisions. I am not entirely convinced by it, but that is the rationale for doing it: that you have a longer period of stability

for taking difficult and unpopular decisions. To my mind, the effect of the proposal is essentially to make it harder for a prime minister to dissolve parliament. That is what you are doing by creating the higher threshold for a mid term, by saying that if you do something, an artificial vote of no confidence, you pay a penalty for it. That is effectively what is implied in it, and it therefore makes it more difficult to dissolve parliament in the way we are used to prime ministers doing. If it makes it more difficult, we may have longer parliaments and therefore longer to take tough decisions.

Q15 Lord Rodgers of Quarry Bank: And so government will be better.

Mr Riddell: One hopes.

Q16 Chairman: On this specific point, you have written interestingly, Professor Blackburn, about the distinction between a vote of confidence in a government and a vote of confidence in a prime minister. That has interested some of us on the Committee. I do not know if you want to comment on that particular point.

Professor Blackburn: I think the point is that you want to have different resolutions or different mechanisms to achieve different results. At the moment we have this one mechanism: the no-confidence motion. It does both things, if you like—although the prime minister has a choice as to whether to resign or whether to call a general election. It seems to me that, as part of this scheme, if you are going to have fixed-term parliaments—and there is more I can say about the general scheme later on, if you would like—the key thing is to have some mechanism for triggering a dissolution where under the House of Commons controls the decision.

Chairman: Lord Crickhowell, did you want to come in on that specific point about the distinction between the confidence in the government and the prime minister?

Q17 Lord Crickhowell: I was not coming in quite so early on it, but, yes. It was a very interesting point in the paper that we read. In one of your commentaries on the draft bill and so on you made the distinction which I had not really recognised before between a vote of confidence in the government and a vote of confidence in the prime minister. There is an important distinction there. Perhaps we will come back to the question of what actually constitutes a vote of confidence in the government, which is not, I think, entirely straightforward, but clearly prime ministers may change in entirely different circumstances. While on a vote of confidence in the government some of us feel that then the government goes straight away—

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and you would probably have to have seven days for a wash up—I do not quite see why in the draft you need 14 days to see if anyone else can form a government, because surely that is only in the interests of the minority party, which presumably would have brought down the government. The majority party is unlikely to be able to form a government in the longer period, but if a prime minister is defeated, say because a new one has come in for perfectly normal reasons, clearly there has to be a timetable. Would you like to elaborate on the distinction between the two?

Professor Blackburn: If you have seen my Parliamentary Assembly Bill, as I called it, yes, I used the terminology of confidence motions, distinguishing between one in the prime minister and one in the government. The most likely scenario is that you would have a no-confidence motion expressed in the prime minister and that prime minister would then put forward a motion in the House asking for the confidence in the government which if defeated would cause a dissolution. It would be up to the House to decide whether they wanted a general election or a change of government. Does that answer your question?

Q18 Lord Crickhowell: I do see a distinction between a government that loses a no-confidence motion—and I declare an interest as a minister who became a minister after the Callaghan Government had lost a crucial motion by one vote—then it seems to me you go straight to a general election and anything else seems to me to be almost inconceivable. But I do see that if a prime minister goes for one reason or another, looking back over the reasons why prime ministers have changed, you need a period, possibly, of time to see whether a new prime minister is capable of forming a government. There does seem to me to be a distinction here which needs to be covered, presumably, in the legislation.

Mr Riddell: The key issue underlying the proposal on fixed-term parliaments is that Parliament itself will vote for dissolution of Parliament. In many cases, this is completely uncontentious. Remember, Gordon Brown originally floated the idea of Parliament voting on dissolution in his proposals of the end of June 2007. It was the first thing he did when he became Prime Minister. In his first statement he did float that idea, and it went nowhere. Parliament would vote to dissolve itself. That strikes me as the key point about it. Also, as a symmetry here, there ought to be an inauguration vote. In practice the Queen's Speech debate is the vote which proves whether a government can operate. If you go back, for example, to this May, the votes on the Queen's Speech were in June, so you could have had a period of four to five weeks after the election before we were absolutely certain

that the Coalition Government had the confidence of the House of Commons. I think it should be—exactly what happened in Scotland and Wales—that, after the Presiding Officer or Speaker is elected, a new prime minister should have an inauguration vote. And the symmetry to that is a dissolution vote at the end of Parliament. It transfers to the House of Commons the votes on approving a prime minister and then dissolving the parliament—which I think is also a protection for the monarchy, but that is a separate and longer-term issue.

Professor Blackburn: Although, in principle, I think there is something to be said for that, I think you need to be quite careful that the whole reform is not sunk by trying to achieve too much. One problem I have with the government's fixed-term parliaments proposal as a whole is that it is a good idea but it has been taken too far.

Q19 Chairman: Too far in what you have heard so far from the Deputy Prime Minister?

Professor Blackburn: Yes. I think there needs to be a looser structure and it needs to be kept more in tune with existing Westminster culture. Then it will work best. To slightly digress, I think there is a great danger of going around the world looking at the 101 different ways in which electoral timing systems operate and thinking that you can cherry pick which you think is the best model, because you have to choose a system that suits our own indigenous structure. I think we should use our own brain power to work out what is the best system for us, taking into account the human nature and psychological factors that operate within this institution.

Chairman: I am not sure the empirical scientists would agree with you. Lord Pannick, you have been trying to get in. I am so sorry.

Q20 Lord Pannick: I have two matters, if I may. Can I be very clear that I have correctly understood all three of you to think that, leaving aside political expediency, there is no justification for rushing through the Fixed-Term Parliaments Bill and preventing proper pre-legislation scrutiny? I think that is what you are saying. If it is not, please say so.

Mr Riddell: Yes.

Professor Blackburn: Absolutely.

Professor Hazell: I strongly agree.

Q21 Lord Pannick: Thank you. There is another and more substantive matter. Could I just ask you about a matter that Professor Hazell touched upon, which is the proposed mechanism for early dissolution in the event of a two-thirds majority? Plainly, the opposition are not going to use that mechanism: they are going to go for a vote of no

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confidence. It is only going to be the government, I assume, who are going to use this mechanism. In what circumstances is it appropriate for a government to seek to use that mechanism, particularly a government that tells us that it believes in fixed-term parliaments? You either believe in fixed-term parliaments or you do not. Or is that too simplistic?

Professor Hazell: As I have indicated, I am still puzzling myself to understand the rationale for what I called, in shorthand, the dual threshold. Why should it be a much higher threshold if it is the government which seeks to initiate a dissolution? We do know from comparative experience that in other countries where it is made difficult to have a mid-term dissolution, the government sometimes circumvents that difficulty by engineering a vote of no confidence in itself. A recent example is Germany: Chancellor Schroeder—and I think the year was 2007, but I stand to be corrected on the date. If you try to construct artificial rules, eventually, in parliaments, the majority tend to hold sway and find a way round. Instinctively, I would prefer it to be a simple majority either way. I agree strongly with what Professor Blackburn said about working with the grain of our own indigenous institutions at Westminster. The model, of course, that the Government points to is the legislation for Scotland, Wales and Northern Ireland, where the provision is for a two-thirds majority before Parliament can dissolve itself. But, as yet, that is untested, in that there have been no mid-term dissolutions by that route.

Professor Blackburn: I think fixed terms are a good idea but I do not think that means that we need to be frightened of general elections. Setting the threshold at two-thirds I think is too high. There are some technical problems with that as well. There is no other voting that requires this type of special majority at the moment, so you are in new chartered territory. There will be unintended consequences. It is going to set a precedent for other types of vote as well. Anyway, if you are going to have some special majority voting, it should be done through standing orders. You do not want to put it in legislation, because then you open the possibility of judicial review. What exactly is two-thirds? If you are going to deal with this in the legislation, you will have to start defining it very closely. One thing I do think about constitutional measures is that they should actually be intelligible. A lot of recent constitutional reform legislation is almost impossible to read, even if you are a lawyer. Avoiding ifs and buts and definition clauses is a good idea. I think a normal voting rule for a dissolution vote is best. And if you want to have a special majority, then the Commons can think of that at a later date and change standing orders accordingly.

Chairman: We will obviously return to this when we see the exact terms of the bill and what emerges in the course of the debate in the Commons on second reading. You have all said this is still, in a sense, a rather fluid situation. I do not know if any Member of the Committee wants to raise any other general point. Lord Powell.

Q22 Lord Powell of Bayswater: I have a quick comment on Peter Riddell's point that longer parliaments are more stable. I am not really sure that stands up to scrutiny.

Mr Riddell: Could be.

Q23 Lord Powell of Bayswater: The fifth year of any governments which have gone a fifth year, have usually been disastrous.

Mr Riddell: That is because, under the current system, governments which are successful always go after four years; governments in trouble go to a fifth year in—you will recall—the hope that something will turn up.

Q24 Lord Powell of Bayswater: You are making my point for me!

Mr Riddell: Yes.

Q25 Lord Powell of Bayswater: Second, the tactical advantage which prime ministers gain from being able to set the election date is greatly exaggerated. If you look through the calendar to try to find dates for elections, the number of days you can designate for an election is remarkably small. By the time you have eliminated non-traditional months, Easter periods, bank holiday periods, Jewish holidays and so on, you usually end up with about four Thursdays in a year, at the most, which you could actually set for an election. My question really, whilst still on fixed-term parliaments, is this question of the traditional powers of no confidence and the Government saying they will be put into law. Do you think you can define a traditional vote of no confidence in law satisfactorily? Or is it just like a camel, that you will recognise it when you see it?

Professor Hazell: My reading of the very useful paper that the Deputy Prime Minister submitted to this Committee is that they are now not proposing to define in law what is a vote of no confidence. There is, incidentally, a terribly useful analysis by the House of Commons library of confidence motions going back for the last century or more, with a detailed appendix of every confidence motion that there has been, including its wording, and I commend that to the Committee staff and legal advisers.

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Mr Riddell: I think is it the elephant thing: we do know what it looks like. Lord Powell lived through a number of happy examples of that in 1992–93. We all knew in the July of 1993 what was a confidence issue and what was not. It was absolutely clear what would have brought down the Major Government and what would not have done on that score. I think the discussion will produce a more precise definition. I think the key question is: can you distinguish that from a dissolution vote? That, in practice, will be the key thing when legislation appears.

Professor Hazell: I agree.

Q26 Chairman: We will obviously return to the detail of this and if we can call upon your time again to be more specific when we have the terms of the bill in front of us, that would be enormously helpful. Could we move on both to the referendum issue and the general discussion which we did start on earlier in the session, and also to the House of Lords reform. I think you said 60:40 Professor Hazell.

Mr Riddell: I said 60:40.

Q27 Chairman: I am sorry, it was Peter Riddell. I thought that was a slightly optimistic end to the spread bet.

Mr Riddell: We are early in the Parliament, so it is a time for optimism!

Q28 Chairman: One of the things which has, of course, been proposed and is mentioned again in the Deputy Prime Minister's paper to us is the question about the interim appointments to the House of Lords. An issue has arisen, which I do not know whether any of you have a view on, in terms of constitutional propriety. It has been a growing convention that the Government in the House of Lords does not have a majority. In the present situation, the Government does have a majority—at least in the strict numerical sense. Does that, do you think, affect the question of balance of appointments? What does it say about the present situation in terms of the capacity of the Lords actually to revise?

Mr Riddell: I think the problem is that the formula as enunciated in the coalition agreement is nonsense, because it implies a massive ratchet, and I think there is a conflict—with which all of you are very familiar—with the views of Members of the House of Commons who have knowledge of here. It was put to me by one of your distinguished colleagues in this House that perhaps people in Downing Street think the House of Lords is like the Tardis: that you can get an endless number of people in here without affecting it or without realising that there are one or two problems with mass creations, as is occurring. It is

literally nonsense, because, if you interpret it as stated, you create a massive ratchet which every time there is a change of power would massively increase the size of the House. Unless you have retirement—which is an issue, I know, being explored by Lord Hunt—it is completely unworkable. I think all regard these things in practice as generalised aspirations of the governing side: at least the main governing party should be larger than the main opposition party. But it certainly never took account of what is happening now.

Q29 Chairman: That, I think, is the point.

Mr Riddell: My view is that one should regard this as as much a political matter as a constitutional matter and the practicalities of managing a house. If take it literally, it is meaningless and it is unworkable.

Professor Hazell: The important thing is that the new Government has accepted the principle first laid down by the previous Government that, so long as the House of Lords does remain all appointed, no single party should seek a majority and that it should follow a proportionality principle—proportional to the votes cast at the last general election—in making new appointments. And the House of Lords is already in its composition rather more proportional than the House of Commons. In the paper which I submitted to the Committee there is a chapter on Lords reform with a section about interim appointments, in which I tried to work through how the new Government might seek, over time, to rebalance the numbers in this chamber, moving towards greater proportionality. I see, My Lord Chairman, you are looking for the paper.

Q30 Chairman: Yes, I was trying to find the reference.

Professor Hazell: Page 32 has a table. Rather to my surprise, I concluded that it could, over the next five years, achieve significant rebalancing because of the attrition rate in the House of Lords through death. But even more to my surprise, I worked out that the Liberal Democrat benches on the Government side are most in need of replenishment. I think there needs to be, on current figures, a net increase in Lib Dem peers of about 55 but of Conservative peers of only a dozen or so. On the Labour benches there needs to be a net decrease of 67. That reinforces the point that Peter Riddell is making that, unless this Place is to get more and more crowded, there is an urgent need for provision for retirement or resignation.

Q31 Chairman: Professor Blackburn, do you have any points on this?

Professor Blackburn: There clearly is a case for some rebalancing in terms of proportionality, but I suppose I am a bit wary about trying to improve things as they

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are at the moment. In contrast with my view that the fixed-term parliaments proposal should be slowed down, I think the House of Lords reform proposals should be sped up. After all, this has been subject to discussions across parties for a very long time now. I am a bit wary of institutionalising a proper system on an interim basis. I think things need to get going to solve out the long-term, permanent basis. There has been enough talk and now is the time for action. In the meantime, it seems to me that there needs to be restricted appointments because the House is getting very large.

Q32 Lord Norton of Louth: I am just going to pick up on Professor Hazell's point, because the figures relate to the three main parties. What is the position of other parties—not least the claim that, in the interim, new appointments should reflect voting at the last election, which presumably would encompass parties other than the main parties?

Professor Hazell: That is an omission from my paper. Forgive me; I was trying to keep it relatively simple.

Q33 Lord Norton of Louth: I was thinking of the problem from the Government's point of view.

Professor Hazell: Yes.

Q34 Chairman: One of the points that you make on that is, for example, that there would be a number of members from the British National Party who would be appointed on that basis.

Mr Riddell: You could apply a threshold, of course. There is a way round that, which is to apply a threshold of votes cast. That would exclude that. I do not think that is an insuperable problem. I think the essential problem is one of practicality, of the size of the House now. I have always felt that when one looks at the nominal membership of each party, it is a totally misleading statistic. It is not like the Commons, in that not all members of all groups are active. Before people die, there is normally a period when they are inactive members. Each party has that. That is why I think that to apply a rigid formula is misleading. You have to look at the age profiles. That also goes for political cycles, because parties in power create more peers for their own party. The peers of Lord Crickhowell's generation are now rather older and there was an older generation before them. Those who were ministers in the Thatcher and Major Governments are of a particular generation, then earlier than that there were those from the Wilson and Callaghan Governments and so on, and now we are seeing it from the Blair and Brown Governments. It changes in generation. You have to take account of the age profiles in this. It is basically a crude political matter—which seems to be how it is being viewed, fairly shrewdly, by the Leader of this House—rather

than applying a rigid formula. It is aspiration, rather than proportionality.

Q35 Baroness Falkner of Margravine: In response to that last comment of yours, presumably the best way in the current system to deal with that would be only to reward the party that has been out of power for about 100 years to keep it pure.

Mr Riddell: No, no, no. Absolutely wrong. You are misinterpreting what I am saying. I am saying that to look at it in crude terms of numbers who take the whip is a misleading thing because that does not reflect activity. I am saying you have to have balance for all the parties and therefore it is going to be a bit crude and rough and ready.

Lord Crickhowell: There is an added difficulty about correcting any imbalances, because the first thing that happens after an election is that they get worse. You have dissolution honours, and so you have floods of members of the previous government coming in before the new government has any chance to really get its members in. You only have to look at the seating arrangements at the House at the moment to see that we are faced with a major, major problem.

Chairman: That may be a suggestion to support Professor Blackburn's view that we should press ahead with the proposals which may or may not be forthcoming, but I leave that controversy to yet another session. Lord Rodgers, when we turned to the referendum issue, which was the other general point we wanted to return to, you wanted to raise a general point of principle on that.

Q36 Lord Rodgers of Quarry Bank: Thank you, My Lord Chairman. The last national referendum of this kind, of course, was 1975 on Europe. This is a historical view, I suppose, and not talking about the substance but about the mechanism, if you like, but what are the lessons you think from 1975, looking back to the bill, to the legislation at that time, and to anything else? On the face of it, if you find the bill which went through both Houses, I think, in the early part of 1975, you could take out "Common Market" or the equivalent and replace it with "referendum". It should be a fairly easy procedure. I recognise the need for scrutiny but, strictly speaking, once the Government have decided that they want you to have a referendum, they could already have produced a bill, if I am right, and scrutiny could have begun now.

Professor Hazell: May I make one point about a big difference between 1975 and now and that is that now referendums are regulated by an Act of Parliament, the Political Parties, Elections and Referendums Act 2000. In 1975, the referendum was conducted largely under rules devised by Patrick Nairne, then a senior official in the Cabinet Office, but we now have the advantage of a statutory framework with the Electoral Commission as the body regulating the

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conduct of the referendum, and under the 2000 Act the Electoral Commission has power to designate umbrella bodies on each side of the campaign and also to give them funding. I think we are in a much better place in terms of the regulatory framework for a referendum than in 1975 when the government had to rather quickly make up some rules to ensure that the referendum was fair.

Mr Riddell: Up to a point I would agree with Professor Hazell. Of course the Government does still nominate the date or rather the bill will nominate the date. That is an extremely important factor in that because, whilst there is greater fairness in terms of financial regulation and regulation by the Electoral Commission, and that is absolutely true, there are two crucial aspects: one, whether it is a simple majority of those voting or whether there should be a threshold (as with the 1979 Scottish referendum), and the timing of the referendum is still a messy compromise between what the Government via legislation does and what the Electoral Commission can do.

Professor Blackburn: One lesson from 1975 is that it did not end the debate and I suspect that this referendum will not end the debate either, particularly if other electoral systems are not included in the referendum.

Chairman: Lady Falkner, you wanted to raise a point about the timing in relation to other elections. It was raised on the floor of the House of Lords yesterday. Lord Shaw too.

Lord Shaw of Northstead: This is an important matter that has been raised, the question of timing. I take the view—and I do not know whether you would agree with this—that referenda should always come after due consideration of the subject by the House of Commons. The timing is far too quick unless that has happened. The important thing is: is it confusing? Is it interfering with the true purpose of the referendum if it takes place at the same time as a general election? This is the great thing that people have been worrying about.

Q37 Chairman: Or the election to any of the devolved parliaments.

Mr Riddell: Do you mean the referendum on the same date as a general election or other elections?

Q38 Chairman: Yes.

Mr Riddell: Absolutely. I think the report of this Committee in the last Parliament was absolutely dead on on that. I think it is a confusion. Also, as a Londoner, there will be no other elections next May, and that applies to some other limited parts of England. That will undoubtedly affect turnout. I think there is a differential turnout problem, there is a confusion problem, and I think it should be on a

separate day. I think that is something where it is perfectly reasonable for some amendment.

Professor Blackburn: I do not feel strongly about it, personally. I would not be confused about what I was voting for on that particular day. I would be inclined to take advice from the Electoral Commission on this issue as to what their view was. I can see there is some administrative convenience in having them on the same day and that is a factor to take into account. I do not think it is a major issue.

Professor Hazell: I agree. I have no problem with the referendum being held on the same day as other elections. I think there are three arguments in favour of that. One is that it is good for turnout. A referendum on the electoral system on a standalone date risks having a very low turnout indeed—so low as to possibly question the legitimacy of the result, whichever way it goes. Second, holding a referendum on the same day as other elections does help to reduce expenditure. Third, in other countries referendums on the voting system have been held at the same time as elections. Most recently in two Canadian provinces, in Ontario and in British Columbia, they have had a referendum on whether to change from first past the post to a proportional voting system, and in both cases I think it is right that the referendum was held at the same time as elections to the provincial legislature.

Chairman: We were having a discussion amongst Members of the Committee before you arrived about the different interpretations that seem to have been taken about the position in Scotland. Lady Falkner, do you want to take the view that you did?

Q39 Baroness Falkner of Margravine: There is a view that the Act that established devolved assembly in Scotland did not provide for elections and referendums to take place on the same day and the Advocate General for Scotland was asked a question yesterday about whether there was a legislative conflict about that. He seemed to imply that there was a technical issue, not that there was agreement between the Scotland Office and the Justice Department or the Office of the Deputy Prime Minister in how they might deal with that; in other words, that it was not a political issue, it was a technical issue. Would any of you care to comment on that?

Professor Hazell: There is clearly a technical issue in terms of this question of whether voters are likely to be confused. One technical form of confusion is whether, when presented with multiple ballot papers, voters find it harder to fill in each ballot paper correctly. Professor Blackburn can help me here—he is a much greater expert on elections than I am—but I think the 2007 elections to the Scottish Parliament were held on the same date as local government elections in Scotland.

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Mr Riddell: And the first ones under STV in Scotland.

Professor Hazell: Yes. There was a high number of spoilt ballot papers but, ironically, I think the highest number of spoilt ballot papers were for the elections being held on that day under first past the post. People had forgotten how to mark a ballot paper with a cross, when they had marked other ballot papers “1, 2, 3”. For myself, if there is a referendum ballot paper on that day, and normally for a referendum you indicate “Yes” or “No”, I do not think voters would have much difficulty in marking a referendum ballot paper correct.

Q40 Chairman: Lady Falkner has the Hansard in front of her, but I think the real issue is whether or not there was actually a legal prohibition against holding it on the referendum and on the elections to the Scottish Parliament in terms of the Scotland Act.

Professor Hazell: That seems a slightly odd concern, because if there is any worry we know there will have to be legislation—

Q41 Chairman: That is exactly the point.

Professor Hazell: —by Westminster authorising the referendum, and that legislation can deal with this difficulty if, indeed, there is one.

Q42 Chairman: If the Scottish Parliament are so minded to go along with that, presumably.

Professor Hazell: Yes, and we then get into the convention that Westminster seeks consent, et cetera, but ultimately, as we all know, Westminster can override.

Q43 Lord Norton of Louth: To pick up on what Professor Hazell was saying about turnout, you have indicated that if it was independent of an election of candidates, there could be an extraordinarily low turnout, which you were suggesting might actually raise the question of legitimacy of the exercise. What would the bar be, would you say, and should there be a formal bar in terms of a threshold requirement?

Professor Hazell: For myself, I do not think there should be a formal bar but, speculating, suppose the turnout was only 20 per cent (half what it normally is in local government elections) and suppose the referendum were carried with 12 per cent voting “Yes” and eight per cent voting “No”, Peter, as a former press commentator, how would you write *The Times* editorial the next day on the legitimacy of that result?

Mr Riddell: Indeed. I would also say that will occur anyway under the May 5 proposals from London and those areas not voting. I would safely predict, even if one takes account of turnout in London compared with other parts of the country, that issue will arise

anyway. I am wary of formal thresholds on that point, but there is certainly a legitimacy point. There will be a separate later vote on putting the AV into force. That would certainly raise questions about that, I think, if the turnout was so derisory and if, say, there was a very close result.

Professor Blackburn: I would be wary of having a threshold. This is a consultative referendum and it is up to the House of Commons to interpret the results as it wishes.

Q44 Lord Norton of Louth: Could I bring the whole thing back to my original question about the underlying principles and motivation. Given that, how does that relate to that, both in terms of if people really are not interested and if they are given a very restricted choice: This is first past the post (or AV) and that is it.

Professor Blackburn: This comes back to what I said earlier on. This is, in my view, a failure of political judgment. Most people expect politicians elected into office to be deciding this type of issue. They are the people who are very enthusiastic or very excited about the subject, whereas most people are not particularly interested in the subject and they do not feel particularly well qualified to cast a judgment on it.

Mr Riddell: There is a further irony, of course. As the Deputy Prime Minister said in evidence to the Commons Political and Constitutional Reform Committee last week, of course, it is not his preferred option, AV. The whole subject is full of these ironies. Essentially, it is the result of a political deal, and one could not view it in any more elevated terms than that.

Q45 Lord Rodgers of Quarry Bank: May I go back to a factual point which Professor Hazell mentioned, the 2000 Act and the difference. I thought you were saying, in effect, that the Electoral Commission now takes over the service that Patrick Nairne performed at that time. As far as the bill itself, it is a government bill and, presumably, it is drafted by the civil servants, so what is the role of the Commission itself?

Professor Hazell: It is a government bill and the bill will have appended to it the draft referendum question. The Electoral Commission has a very important role in advising Parliament about what is called in the 2000 Act the “intelligibility of the question” but in the past the Electoral Commission has indicated that they would take a fairly broad view of what is meant by intelligibility, in effect to include fairness. One of the things that the Electoral Commission does as soon as they know the wording of the proposed question is to test it using focus groups, and they can then produce a report from that exercise to say how intelligible the question is. I assume it is within the powers of the Commission to

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propose an alternative question, if they wish to, if they think that the proposed question is not intelligible.

Mr Riddell: This has already been used, Lord Rodgers, in the North East referendum—the one which was heavily defeated on regional government, where they had to approve the question and there was quite an issue on that at the time.

Lord Crickhowell: It is being used at this very moment on the Welsh question, which is about to come back and allow the Welsh people to decide whether they go down the Scottish route or not.

Chairman: Lord Shaw.

Lord Shaw of Northstead: I was hoping that we could move on to the role of the House of Lords, My Lord Chairman.

Chairman: I am afraid we are jumping around all over the place, so please do, yes.

Q46 Lord Shaw of Northstead: The one point that interests me is what role you regard the House of Lords having? How can elected Members to the House of Lords fail to be just a replica of the House of Commons—probably those who have failed to get in there?

Professor Blackburn: The stronger the House of Lords in terms of its functions and powers, the stronger the case for elections. If the House of Lords is simply going to replicate what the House of Commons does and have no distinctive business of its own, the arguments for elections are much weaker, I think. At the moment I think the function of the Lords as a revising chamber, useful but not actually essential, fits with an appointed chamber. But my view is that the House of Lords should have enhanced powers and functions, as I have already mentioned, over certain types of business. In other words, there should be a distinction in public roles and business between the Commons and the House of Lords. The House of Commons is good at scrutinising very directly ministers, and its main function is dealing with social and economic policy. It seems to me that the second chamber should have a specially important role: its primary or key business should be dealing with matters affecting the fundamentals of the country—improving the constitution, and other matters such as treaty making and possibly education policy, et cetera—and it should have enhanced powers over these subjects. The Labour manifesto back in 1992 suggested that the Lords should have extended powers of up to five years over certain designated types of constitutional bill. If it does have those enhanced powers, the arguments for electing them become much stronger. Incidentally, there is nothing, of course, to stop existing Members of the House of Lords from standing for election or being on party lists.

Q47 Lord Powell of Bayswater: To come back on that last point first, is it the Government's intention, do you think, to legislate on the powers and conventions of the House of Lords? Or do you think it will just assume they remain unchanged and leave the Lords to fight for its role in the future?

Professor Blackburn: I think governments of all complexions have no vested interest in advancing the powers of the second chamber. They are regarded as a nuisance in getting their legislation through. I fear pressure to enhance the roles and functions and powers of the House of Lords will have to come from a different source.

Q48 Lord Norton of Louth: Do you think they will legislate even for no change, or specifically in legislation attempt to say, "There shall be no change in the House of Lords"?

Professor Blackburn: My guess is that they will just not touch on the powers and function at all. They will leave the Parliament Acts exactly as they are.

Mr Riddell: That goes back to Lord Pannick's question at the beginning, that it will be resultant change that will produce the pressures of change. In order to get legislation through, albeit having been too optimistic or pessimistic, or however you analyse it, I think they will not mention it because that makes it certain that legislation would fail.

Q49 Lord Powell of Bayswater: Clearly, the alternative vote appears to be almost nobody's preferred choice. I suppose as the minimal change it has the maximum chances of getting anywhere. Is there anything in international experience which convinces you of the intrinsic advantages of the AV system over first past the post?

Professor Hazell: It is one of the many ironies about the proposed referendum on AV that it is a relatively small change. Nobody knows for certain how elections would go under AV, because it depends on how voters would cast their second and third preferences, but people who have attempted to model it suggest that the overall result would be relatively little different. Replaying the last election under AV, the Electoral Reform Society suggest that it might have made a difference of plus or minus 20 seats to the Conservative Party, who would have lost about 20 seats, and for the Lib Dems, who might have gained about 20 seats. That brings us back to the difficulty of getting a respectable turnout if the referendum were a standalone event. If people understood that they were being asked to vote for a change which is seemingly so slight, how many would bother to turn out? I think there would be a welter of argument and counterargument about the properties of AV and whether or not it is proportional and whether or not it would lead to permanent hung parliaments, et cetera, which would leave many

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voters thoroughly confused, and, again, if confused I think some of them might be inclined to stay at home or to vote no. You asked specifically about other parliaments. There is one other Westminster parliament where the lower chamber is elected by AV and that is the House of Representatives in Australia. The AV elections there normally deliver single party majorities, thus making the point that AV is not a proportional system.

Professor Blackburn: I think the impact of AV will be fairly marginal, and what worries me, particularly looking at international experience, is that it will not end the debate about electoral reform. There are dangers in changing the electoral system regularly because it makes it much easier for a government to come in and then change the electoral system to suit its own political advantage. We can see that in many countries around the world, that they change the electoral system to suit themselves at the drop of a hat. One strength and weakness of the British constitution has been its inertia to change, but once you start the ball rolling it is quite difficult to stop it.

Mr Riddell: There is very interesting evidence from France and Italy in the 1980s and 1990s, to pick Professor Blackburn's point up, where the electoral system has moved back and forward entirely depending on political advantage and who had a majority in various chambers. There is weltering confusion in Italy at the present on that point. I think the difficulty is that it is a political deal which produced it. Professor Blackburn is absolutely right that, ideally, you should offer wider options, or at least the politicians should decide on the wider options, but that is not where we are. I agree with him entirely. Indeed, if you look at what the Deputy Prime Minister said, he has simply said: AV is the only thing on the table now, but if you get AV, in five years time we will try for something else.

Q50 Lord Irvine of Lairg: Can I ask each of you the same question. What, if any, value in your view, would an elected House of Lords add to the elected House of Commons in relation to the legislative process?

Professor Blackburn: As things stand at the moment, as I have already said, with the type of rationale for the second chamber being that it is a revising chamber, that it does not perform any distinctive function that the House of Commons cannot do, and that it has a pool of expertise, I think the composition works well for the function it performs. I myself, as I have said several times today, would like to see the role of the House of Lords extended. The stronger the powers, the stronger the case for elections, because power must be accountable. It is in terms of the democratic credibility of a second chamber that is exercising real political power that the case for an elected chamber rests.

Lord Irvine of Lairg: But my question was not premised on an addition to the powers in the House of Lords. My question, indeed, was implicitly premised on the same powers continuing. What would you answer to my question be then?

Q51 Chairman: Which seems to be what is being suggested.

Professor Blackburn: I think the answer is still one in terms of credibility. I think in terms of performance, and what the House of Lords performs at the moment, I am not sure that there would be much improvement in its function.

Q52 Lord Irvine of Lairg: But if you had an elected House of Lords, you would not have the same people in the House of Lords.

Professor Blackburn: It would be very important for the parties in fielding candidates, or independents, to recognise that this is a different type of job requiring different types of skills and to field their candidates accordingly. It would be very important, I think, for a new mindset to take root that there is a different type of job being performed in the second chamber in choosing the personnel.

Professor Hazell: The difference, I think, would be that the House of Lords might perceive itself and be perceived to be more legitimate because of election, and it might, therefore, be more willing to exercise more frequently the powers that it does have. One of its great strengths is in the time and careful effort devoted to scrutinising legislation. It is not widely known, but all of you will know, that the House of Lords amends legislation against the wishes of the government much more frequently in the House of Commons. Under the last Government, in the three administrations from 1997 to 2010 the Government was defeated only five times in the House of Commons, three times on bills. In this House the Government was defeated over 500 times. This House is a very significant amender of legislation, but you will know that when those bills go back to the Commons a Lords defeat is often reversed. Research done by my colleague Dr Meg Russell, looking at the following Lords amendments and seeing what happens to them when they go back to the other Place, suggests that, on average, in only about four cases out of ten does the Lords amendment stick. If the House did feel more assertive as a result of being elected, it might want to face down the Commons rather more often, and then there might more often be harder games of ping-pong between the two chambers on legislation.

Mr Riddell: The problem I find in it is: who would be in the Lords after election? That is the key issue. That is why, in a sense, it is not just the principle of election, it is the method of election: how you ensure there are not the same type of people as there are in the

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Commons. That, to my mind, is the fundamental issue. I would see an elected House. I agree entirely with what Robert Hazell has said on being more assertive. I also see minuses: minuses in terms of expertise—not just the scrutiny of legislation, which is obviously important—but also the committee system, which has not been mentioned. Your network of committees would be, to my mind, less effective and less respected if you had elections, unless you got a method of election which ensured there was a different balance of people from the parties. Leave aside the cross-benchers, which is a special issue, but even from the parties different people are normally elected. The one caveat I would add, which I think is absolutely central and has been central to the debate here, is that, in order to sustain a primary appointed House, various changes have to occur. As in Lord Steel's bill, to make that sustainable, that has to happen to make the position there. At the present, I think—and I have thought for some time—how does it produce different people from the Commons? If it produces the same people as in the Commons, it is a minus.

Chairman: Thank you very much indeed. As I can see from the indications of colleagues around the table who would like to continue the discussion probably well into the afternoon, these are all matters which we shall return to, obviously in much more detail, when we are scrutinising the bill. At the risk of suggesting to you that you all spend all of your time talking to Select Committees in either House, because I understand, as you said at the beginning, you are also going to be speaking to the Commons Committee before the session ends, we would very much like, if we may, to intrude on your time further in the autumn when we do get further on in the legislative process, when we will be discussing these things, as I have said, in much detail. As you will have seen, this morning was intended to be a very generalised, broadly-based discussion, and I am afraid I have not been enormously disciplined in channelling the strands of argument, but you have all been immensely flexible and obviously authoritative in how you have responded and that has been very helpful to us. Thank you very much indeed. We look forward to seeing you again in the autumn.

WEDNESDAY 13 OCTOBER 2010

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

Examination of Witness

Witness: RT HON NICK CLEGG MP [Deputy Prime Minister].

Q53 The Chairman: Good morning everyone and good morning Deputy Prime Minister. Thank you very much for coming to the Constitution Committee. As you know, we hope that this is going to be the beginning of a regular series of conversations between the Committee and you, because, as you said in your memorandum to us, for which many thanks, you have described your programme for political renewal as ambitious. We are very grateful for the memorandum setting that out. We are particularly pleased that you were able to come on a Wednesday morning, which as we all know is Prime Minister's Questions day. We recognise that you will have to leave at about 10 to 12. We have a rather ambitious timetable in that time, so if we may we will plunge straight into some questions that we wanted to raise with you. We would like to look at both the strategy and the principles behind your programme of constitutional renewal, touch on the two Bills that you have already introduced into the House of Commons and spend some time on the House of Lords as well. If I may, I would like to start straight away. As I said earlier, noble Lords will have read your helpful memorandum to us that you sent earlier. What do you identify as the principles of your constitutional reform proposals and how do you respond to those criticisms that have been made in the other House that they are piecemeal—the word “cherrypicking” has been used—and have been introduced to Parliament without adequate preparation and prior consultation?

Nick Clegg: First, thank you very much for allowing me to appear before you today. I think everybody agrees that these issues are of great significance, so the experience and insight of this Committee will be invaluable to us as we further develop and refine, and we hope strengthen and improve, the proposals that we have published already and are set to publish in the future. So I am really very grateful for this opportunity. You asked for a description of the principles of our approach. I think the starting point is quite simply that there is a gap between the nature of British society and the character, design and architecture of the political institutions that are

supposed to represent and reflect that society. What do I mean by that? I hope that everybody would accept that some very significant social, demographic, economic and cultural changes have occurred in recent decades that have made British society less diffident and deferential in its character, its politics much less rigid and class-based than it used to be—the old tribal affiliations and loyalties of community and family with party have dissolved and broken down. The spread of information technology has empowered people to gain access to information that previously was not available in the way that it is now. People have become used to exercising their rights as consumers in a much more demanding way than has previously been the case. As citizens, there is a much greater emphasis on empowerment, on control and on people being able to shape their own choices in their own way. Those very profound cultural and social changes in our view must be reflected in the way in which the political institutions that represent, reflect and seek to impact on society are organised. I hope most people would accept that there are features of our present political arrangements that are secretive or centralised, in which people do not necessarily feel that their voices or views are properly represented. We have arrangements in our electoral system that, with other forces, have led to a growing trend of mass abstention, with people in a sense absenting themselves from the political process altogether. The 2001 and 2005 general elections were the first times that more people did not vote than voted for the winning party. We have inadequate and still unreformed party funding arrangements. The House of Lords debate has been raging for a century or so now. It is not directly accountable to people. In other words, there is a gap. Now, that gap of course was dramatised in a manner that I do not think anyone could have expected at the time of the expenses scandal. That, of course, had its genesis in some very particular and specific issues to do with the administration of expenses by MPs, but I think it reveals something wider and bigger, which is a loss of public faith in the way in which our political

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institutions reflect and express their views and articulate them in a representative democracy. What we are seeking to do, very simply, is to start trying to close that gap. That is why there is an emphasis in everything that we are proposing on greater accountability in the manner in which we conduct ourselves and the way in which politics is conducted, greater legitimacy in the political institutions that seek to represent people, and breaking up excessive concentrations of power and secrecy. Whether it is the power of recall, whether it is fixed-term Parliaments, whether it is giving people the right to have a say over the electoral system, whether it is pushing forward with House of Lords reform, whether it is reforming party funding, all those things together represent a significant step towards greater legitimacy, greater accountability and greater openness in the way in which our politics is conducted. Do they individually or collectively represent a perfectly formed constitutional moment? No, I accept that there is always messiness on the edges of these things, and it is worth emphasising, on many of the proposals that we are making, yes they are controversial and yes they are big, but many of them also go very much with the grain of debates that have been raging for a very long time. All three parties committed themselves unambiguously to House of Lords reform at the last general election. It is a debate we have been having for 100 years. We will return later during the Session to the details and so on, but there can be no doubt about the continuity of that strand of thinking. Two of the three main parties at the last general election advocated fixed-term Parliaments. Again, that is something that has been debated for a long time. The Alternative Vote system, which I hope people will have the ability to express their views on in a referendum, was first debated and voted on over 100 years ago in Westminster. So there is a mix of revolution and evolution, of change and stability, of change and continuity. It might not look entirely neat if you try to map it out in a pristine way, but collectively it represents a very significant step towards closing that dangerous gap between the changes in society and the lack of reform or changes in our political institutions. Sorry I have gone on a little bit at length, but I think it was important.

The Chairman: No, that is very helpful. The argument that you are making is that the evolution of these issues enables you to introduce things fairly rapidly.

Q54 Lord Rodgers of Quarry Bank: Deputy Prime Minister, in the first paragraph of your paper you refer to the transfer of power from the Executive to Parliament and from Parliament to the people. But is it not the case that this is no such movement at all? If we have fixed-term Parliaments, power will move away, because there will be less access for voters. For example, since 1945 I think we have had 18 general

elections. If we have a five-year Government, we shall have 14 over the same period, so people will have much less opportunity. Is it not a rather cosy arrangement? It is very interesting that there will be no Second Reading vote against. Members of Parliament will now feel a degree of security for five years. Is that desirable and is it not rather contrary to the argument? As a very short supplement, if I may, one of the other possibilities—I am really asking whether it was considered—is given that we have moved very much to a presidential system, when you change your Prime Minister you almost change your President. Would it not have been possible, or did you discuss it at that time, to have a general election after a change of Prime Minister, as we had, for example, when Mr Brown succeeded, and it has happened on many other occasions? Would it not be better now to have general elections once the Prime Minister has been changed?

Nick Clegg: Let us go back, if I may just for a minute, to first principles on this Fixed-term Parliaments Bill. What are we trying to do? We are seeking to remove from the Executive and from the Prime Minister of the day the ability to play politics with the timing of the election. That is the basic motive of this. Governments have been distorted, paralysed, hobbled and handicapped over and over again by the capricious manner in which Prime Ministers have played cat and mouse with the British people and with the Legislature about when elections should be held. We saw it most recently in 2007. That is debilitating to good government; it destroys good government. It is humiliating to the Legislature and the Parliament. It makes a complete mockery of the relationship between the Legislature and the Executive. And in public policy terms, it certainly prevents difficult, long-term decisions being taken, because everything is refracted through that short-term objective. We are trying to take that power away. This would be the first Prime Minister who deprived himself of that margin of manoeuvre, that freedom of movement. If you count up over the last several decades, by my count there were 17 elections, but I defer to you if there were 18 elections. By the way, I note that I think about 10 of those Parliaments since the war were over four years in length. Of the last five Parliaments, three have been five-year Parliaments. It is a combination of providing a length of time, five years, with which people are familiar and which allows Governments at least four of those five years—maybe not the last year—to get on and govern properly for the benefit of the country, together with taking away from the Executive the ability to capriciously time the election for nothing more than political self-interest. That provides a degree of stability and transparency to the political system which outweighs the self-evident fact that if you did that over a period of time, people would be

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voting less frequently. How can I put this? I do not think there is a scientific link between frequency of elections and quality of Government. I do not want to create a diplomatic incident here, but if one were to look at other democratic systems elsewhere in Europe where we have had a rash of elections, often many of them in one calendar year, it is not necessarily an indication of an improved quality of governance. Do I think that changing the Prime Minister should automatically lead to general election? I hope the arrangements that we will put in place will make it nigh impossible for a Government to trigger a general election for its own purposes. It could go through the farce of trying to engineer a no confidence vote in itself, but I think it would be rumbled by the people pretty quickly if it sought to do that. It really is up to Parliament to decide. If it felt that it did not have confidence and it wanted to allow the people to have a say at the point at which a new person became Prime Minister, it is entirely free to do so under the existing no confidence provisions, which we have never advocated touching in any way.

Q55 Lord Norton of Louth: Just on your written submission and the basic principles, you say that the basic goal of the changes is to restore faith in politics. I am wondering about the link between that and the proposals themselves, not least in terms of the evidence base for them. To what extent is it your hope that this will have that effect, or is there an evidence base to the proposals that are brought forward?

Nick Clegg: The evidence base is of course as much one of judgment as it is of empirical data. Yes, it is an unambiguous judgment on our part that reducing the power of the Executive, seeking to boost the power of the Legislature, making the Legislatures more directly accountable to people, making the manner in which political parties operate and fund themselves more transparent, giving people the right to recall or sack their MPs if they have been shown to commit any serious wrongdoing, collectively introduces the mechanisms by which people can exercise greater control over politicians. Whether people will then do that, whether they will, in a sense, take up that invitation—well, horses and water spring to mind. We can only do so much to make sure that our politics is reformed in a way that would allow a revitalisation of political faith in politics, which I think has significantly withered on the vine in recent years.

Q56 Lord Norton of Louth: I just wondered how much the fixed-term Parliaments proposal fits into the list that you just gave. You left that out.

Nick Clegg: I think in terms also of diminishing the prerogative of the Executive, which is of course what fixed-term Parliaments do.

Q57 Lord Norton of Louth: Indeed, I am just thinking, in relation to restoring faith in politics, whether that would have an impact on the people out there, which is essentially what you are getting at.

Nick Clegg: My own view, and of course there is always a degree of subjective judgment about this, is that people were in a state of despair in 2007, when they did not know when the general election was going to be. There was this constant shadow boxing—is he going to call it or is he not going to call it? Everyone knew that the whole country was on tenterhooks for one person to decide, for reasons that were self-evidently, unsurprisingly and, if you like, understandably driven by political self-interest. I take it as a given that that erodes public trust in politics

Q58 Lord Norton of Louth: Was there not at the time a desire for an election? What is now being said is that you will not have one and you will have to wait the fixed term.

Nick Clegg: I accept of course there are circumstances in which the desire for a general election, to press the reset button, is so great that something needs to happen. That is why the Bill is very clear that there are two mechanisms to do that. One is the conventional, existing power of no confidence by a simple majority and then—no doubt we will debate this—a period of 14 days during which a Government can be re-formed and confirmed by Parliament or a general election is triggered. The other is a very high threshold, set at two-thirds—we initially proposed 55 per cent, as you will no doubt remember—for a power of dissolution. We have set it very high precisely to avoid any suspicion that any Government of the day could basically fall on its own sword in order to bring us back to square one and have elections timed to suit the Executive of the day. If that pressure builds up, there are mechanisms that would allow that to unfold.

The Chairman: I think your answer to Lord Norton's first question suggested that you were proceeding on the basis of judgment rather than evidence. That brings us to the whole question of public consultation on these measures and pre-legislative scrutiny. I think a number of members of the Committee have questions they would like to put to you on that.

Q59 Lord Pannick: Deputy Prime Minister, the House of Commons Political and Constitutional Reform Committee strongly criticised you for not publishing the Bill in draft for pre-legislative scrutiny.

Nick Clegg: Which one?

Lord Pannick: The Fixed-term Parliaments Bill. How does that promote public confidence in Parliament? How does it promote accountability and legitimacy—the aims that you refer to—not to publish in draft? What is the rush?

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Nick Clegg: First, we did look at alternative mechanisms by which we could make a commitment to holding the election in 2015 and then having a more leisurely approach towards legislating to establish that on a continuing principle. For various reasons, we were given the strong advice that this would create a limbo situation with, in effect, a non-binding, non-statutory commitment to the 2015 date and that it was better to proceed towards legislation straight off. So we did look at alternatives and we consulted widely with all the institutions that have a constitutional role in all this. It was very strongly felt in various quarters that we needed to proceed with legislation and there was not an interim step that would allow us to create that space. So it was not for want of trying to schedule it differently. Secondly, the principle of fixed-term Parliaments has been argued and made over a very long period. It was argued and made formally by two of the three main parties that stood at the last general election. The outgoing Prime Minister, Gordon Brown, made the case in favour of fixed-term Parliaments in very trenchant terms in his latter stages as Prime Minister. So it is not a new issue of principle; it has not been sprung on people new. Of course, what matters now is the degree of scrutiny that it is subject to as the legislation passes through both Houses. On that we are very clear. We want to make sure that it is subject to the greatest possible scrutiny, which it rightly deserves. I think that balance between the constraints that we are operating under, the precedents set by the extensive arguments about the virtues of fixed-term Parliaments, the overt political case made by the majority of political parties, including in their manifestoes at the last general election, combined with the opportunities we have in both Houses to subject to scrutiny as it passes the Bill through at various stages, I would like to believe that all those things put together are reasonable and are certainly not evading proper scrutiny and review.

Q60 Lord Pannick: What are these constraints that require urgency? The coalition has a very healthy majority. It believes that there should be a five-year Parliament, unless you all fall out. There is simply no urgency.

Nick Clegg: Dare I say, I feel that people are slightly pointing in different directions on this. Part of the reason why we are being urged to get on with it is that people say, "Well, we don't trust you. You can say that you're going to have an election in 2015, but you might fall out or you might decide that you want to time the election for your own purposes. I slightly feel that we are in a cleft stick on this one. I think broadly speaking there is a fairly strong cross-party consensus in favour of fixed-term Parliaments, if one looks at the response from the Committee on Constitutional

Affairs in the House of Commons and so on, notwithstanding the reservations about process. If we were to say that we were going to informally commit to having a fixed-term Parliament but not introduce it in a belt-and-braces fashion until later, I would probably be sitting here answering questions such as, "Well, hang on a minute, aren't you going to end up breaking the very rules that you are piously declaring lie behind the Fixed-term Parliaments Bill?" We are trying to strike the right balance, which is to get on with it and to show that we believe in this for ourselves as much as for any succeeding Governments, and to create the space and time necessary for the scrutiny that you quite rightly said a measure like this deserves.

Q61 Lord Goldsmith: Could I press a little further on that? The question is why you should not make a declaration—not necessarily an informal declaration of the intention to remain for five years; it could be a very strong and formal declaration by the Prime Minister. As you have quite rightly explained, the present system is such that if the Prime Minister chooses not to declare an election for five years, unless there is a vote of no confidence that is what is going to happen. I do not see why, if the Prime Minister had said that in a formal way—if he had gone back on it, that would have said a lot about his credibility, I suppose—that would not have been sufficient to give the coalition the security it needs, while allowing adequate time for the people and Parliament to debate these fundamental changes about fixed-term Parliaments.

Nick Clegg: It is partly because one is making claims on not just the prerogatives and powers of the Prime Minister, but also the role of the Monarch in deciding when elections are triggered. One is treading on relatively sensitive ground for that reason among others. Therefore, an informal understanding would leave a great deal of ambiguity on issues of constitutional significance. The judgment that was reached, which I think was the right one, was that it was better to try and get this right in a binding fashion, not evading scrutiny in any way, given that, as I said, there is a fairly strong case already made politically that this is a desirable measure. If no party had advocated fixed-term Parliaments in the past, if the previous Prime Minister had not expressed his strong support for it, if we had not been debating it for decades, if it was not common practice in many other democracies, I accept that it would have been so out of the blue that one would have needed to find different ways of starting to walk before one runs on this. But I think the case has been made more solidly than your question implies. One is by definition making claims and alterations to the prerogatives that exist not just for the Prime Minister but also for

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other very important parts of our constitution. It was therefore felt better to do this formally through the front door rather than informally through the back door.

Q62 Baroness Falkner of Margravine: Would not a declaration of intent, rather than the route that you have chosen, which is to put a Bill on the table, have also resulted in endless speculation, as we saw last night, about whether it will stick or not, creating an element of instability? Was your aim not only to lead by example, but also to build some stability into a new system that people were not familiar with?

Nick Clegg: As I say, we really looked at this. I will be very open with you. It was my original intention that that would be the better way to proceed. Firstly, we did not entirely appreciate the knock-on effects on different parts of our constitutional arrangements, which created understandable nervousness that one is then consigning everybody, not just this Government and this Prime Minister, but everybody else involved, into a slightly ambiguous territory, which made many people feel uncomfortable. There are also the political realities that I mentioned earlier, which is that had we done that, there is no doubt in my mind that we would now be accused of trying to have our cake and eat it, of talking about fixed-term Parliaments but not seeking to make it binding on ourselves. But that was not the major consideration. The major consideration was the need, given the high degree of political support for this measure, to do it properly and thoroughly rather than doing it through a halfway house first.

Q63 Lord Hart of Chilton: It became apparent that a five-year fixed term would result in a clash with elections to the devolved institutions in 2015 and then every 20 years thereafter. Mark Harper stated in the Second Reading debate that the Government intends to continue its dialogue with the devolved Assemblies. How is this dialogue getting on?

Nick Clegg: Well, I have recently been in Edinburgh, Cardiff and Belfast and met with all the leaders of the devolved Administrations and with the Presiding Officers in two of the devolved Assemblies. It is worth pointing out, incidentally, that that coincidence of devolved elections and a general election in 2015 could very well have occurred anyway, regardless of who was in power now and whether they had fixed-term Parliaments. If the new Government, let us say of a different political composition and not tabling a Fixed-term Parliaments Bill, had none the less decided to run its full term, you would have had that coincidence. In a strange kind of way, it sounds as though I am trying to eke virtue out of a difficult situation, but the good thing is that we are identifying this up front. In other circumstances you would have this coincidence, but

in a much more unplanned way. We have now identified that there is this coincidence. I accept as a matter of principle that there is a material difference between the coincidence of two elections to two Legislatures that produce two Executives and the coincidence, for instance, of local or devolved elections with a simple yes or no referendum question. I am sure we will come to that separately during our deliberations. The former is more complex. The latter is more straightforward, because the yes/no answer to a referendum question is a much more separable issue. There is undoubtedly some potential for overlap and some degree of confusion if one has two elections for Legislatures on the same day. We are consulting people and trying to see whether there are workable or desirable alternatives. The clash or duplication of elections was kind of baked in the cake one way or another anyway; it is just a question of whether people think that the issue is big enough that we need to take remedial action. As you say, under the current arrangements it would occur every 20 years. The discussions are still ongoing on whether that is an acceptable coincidence or one that needs to be avoided.

Q64 Lord Hart of Chilton: When do you think these discussions are going to reach a conclusion?

Nick Clegg: I hope fairly soon, for the simple reason that I do not think that it would be right to ask people to vote next May in the devolved elections without knowing, bluntly, what they are voting for. So I think we need to get on with this. As I say, over the last few weeks I have visited all the devolved Assemblies and discussions are ongoing. There are no easy answers, as there rarely are on these things. Each proposed solution that I have looked at presents all sorts of dilemmas of its own, but we are actively looking at these different options.

The Chairman: As you say, we will come back to the immediate question of the referendums clash when we come in a few minutes to the Parliamentary Voting Systems and Constituencies Bill.

Q65 Lord Norton of Louth: We have dealt with the principle of fixed-term Parliaments, but there is also the issue of the actual term itself. You have opted for five years rather than four and have said that that flows with some of the founding texts of our unwritten constitution. I wonder what those texts are. I also wonder about the principle, relating to what you were saying earlier. Could you not argue that people might have more faith in Parliament if they had an opportunity to vote for it every four years rather than every five years?

Nick Clegg: Again, you are going to find this exasperating if you want empirical evidence, but these are not scientific matters. I find it very difficult, *prima facie*, to assume that four is better than five. I

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defer to you, because I suspect that you know the text much better than I do, but if one looks at the 1911 Act it is certainly written into that. I accept there are slightly overblown claims about the Septennial Act, but let us not go down that route. As I say, I think there is a pattern of five-year Parliaments, at least recently. Certainly, since the war there has been a pattern of Parliaments lasting. As I said, I think 10 of the 17 or 18 since the war have lasted more than four years. Of the last five Parliaments, I think three of them have been for five years. The last Parliament was five years. I think there is another consideration that we have touched on in the context of the fixed-term Parliament discussions earlier, which is that, given the tendency for Governments to be somewhat hamstrung and paralysed for a considerable period before a general election is held—at least a year or so before a general election, matters are overshadowed by pure politicking rather than good governance—in terms of good governance you are in practice talking about a Government that can get on and do difficult things, and heaven knows I know about doing difficult things this week above all other weeks, for about four years. Do I think four years is an unreasonable period for Government to get on and govern in the national interest before it starts turning its mind to the little matter of whether it can get re-elected? I think that is a reasonable balance to strike. If one goes to four years, one is talking about a three-year period in which Governments are not blighted by their own sense of mortality, if I can put it like that. That strikes me as a rather short period. For all of those factors, we have tended to settle on five years.

Q66 Lord Norton of Louth: I can see the argument about balance—governance against popular desire to vote more frequently—but would there not be a case, coming back to the earlier point, for consulting on this to see what people think? There may be a preference to return to the Triennial Act. Should you not consult and see what people think would be the optimum length?

Nick Clegg: As I said, during the passage of the Bill I am sure this issue will come up. It has already come up a great deal. People will no doubt marshal their own evidence to support one claim or another. I would equally question, empirically if you like, that people are straining at the bit to vote in elections more frequently. I accept the political reality that there are circumstances that have nothing to do with timing or with three, four or five years, but are to do with events, mishaps, catastrophes, recessions or scandals, when you get pressure and people want a line drawn under a Government and a chance to start again. If that reaches a critical point, there are provisions in the Bill that would allow the Legislature—not the Executive, crucially—to give

expression to that pressure. That is the right way round. I have never met anyone who says to me, “Well, I kind of like voting every four years.” I am being facetious, but I think it is more driven by whether circumstances are such that people feel that the Government has lost its way to such a degree that it has lost public confidence. If that is the case, then their representatives, MPs in the House of Commons, can trigger a vote of no confidence.

The Chairman: Did you want to ask a further question about no confidence votes, Lord Norton? I think Lord Hart felt his question had been answered.

Lord Hart of Chilton: No, I think it was.

Q67 Lord Norton of Louth: This follows on from what you were just saying, because there is a provision in the Bill to trigger a vote of no confidence and a potential dissolution motion. On the no confidence provision, how confident are you on the encompassing nature of the way the Bill is drawn. There is a difference between a vote of no confidence, a vote of confidence that is lost and, say, the Government saying on the Second Reading of the European Communities Bill, “If we lose this, the Government goes.” Would those cases be encompassed by the Bill?

Nick Clegg: I think this is a really important area and it is a classic example of where we could perhaps work away at the Bill if necessary, to strengthen or clarify it. We have tried to provide clarity in the Bill. I do not have the verbatim words, but we have referred to the passing of a no confidence motion. The implication of your question is what that means for motions that are not carried and therefore express a lack of confidence. I start from the point that we want to try to provide as much clarity as possible about what a no confidence motion and process looks like, but equally it is for the House and the Speaker to make his and its own determinations about what they consider to be a motion of no confidence. In a sense, we have provided the tramlines in this draft Bill, but at the same time, I clearly want to retain as much flexibility and autonomy as possible for the House to decide for itself how it then interprets that. That is exactly the kind of thing that now needs to come out in the scrutiny that the Bill will receive.

Q68 Lord Norton of Louth: The other aspect to it is the linking provision in terms of a dissolution motion. Do you think the Bill is sufficiently well drawn to prevent circumstances, which you occasionally get elsewhere, where a Government might try to engineer its own demise in order to trigger an election?

Nick Clegg: So far I have found it quite difficult to think of means by which you could legislate to stop Governments committing harakiri. The purpose of

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the Bill is to prevent or diminish the ability of the Government of the day to play politics with the timing of the election. My own view, in terms of practical politics, is that if a Government sought to do that it would be so transparent and so self-evidently grubby and self-serving that it would not do that Government any good at all. The final court of opinion, of course, is what the electorate would do, and I think they would be very unforgiving. The German case is often cited. I think it was Chancellor Schröder; I cannot remember what year it was. I am not sure of the exact parallels. Can you exclude the theoretical possibility? I think it is pretty difficult to do that. Can you exclude it in practical political terms? I think you pretty well nigh can.

Q69 Lord Norton of Louth: I agree. The Bill is drawn to prevent the German case. You have put that hurdle in, but you moved from 55 per cent to two-thirds. What was the rationale for that?

Nick Clegg: The rationale was that at first, quite understandably, there was a lot of anxiety and suspicion that this would allow this coalition Government to determine the timing of the election. I was very clear that we needed to remove that beyond any doubt. Two-thirds is a threshold used in other Legislatures. I think I am right in saying that it is in the Scotland Act, which was passed by the previous Government when they established fixed terms for the Scottish Parliament. So it is not without precedent, which I thought was useful. People will be familiar with it. I freely admit that if one wants to play the mind game of imagining circumstances in which a Parliament would collectively decide, across party lines, it would self-evidently be rare. I can just imagine circumstances in which there is such a sense of crisis in the country, or such a haemorrhaging of legitimacy in the whole political class—the expenses scandal, plus, plus—that there is a collective decision that we cannot carry on with this and we have got to start again. It is for those kinds of exceptional circumstances that that provision has been drafted.

The Chairman: Thank you. I think we are going to have another opportunity for the Committee to meet Mark Harper, specifically on this Bill, in a few weeks. I hope we will be able to return to some of the points that Committee members have raised. I think we should now turn to the other Bill, the Parliamentary Voting system and Constituencies Bill.

Q70 Lord Crickhowell: Deputy Prime Minister, I return again to the question of consultation and pre-legislative scrutiny. The Commons Political and Constitutional Reform Committee last week produced one of the most critical reports by a Select Committee that I have read in a very long time. It centred on this point. Its criticism was not so much

about whether you were discussing something that other people had been discussing for a very long time, or whether the general principle was right, but that successful legislation, particularly constitutional legislation, is dependent on detail. The Committee identified a string of points on detail that it suggested had not been adequately thought through and consulted on. We have had a report from the Electoral Commission saying that it needs six months to prepare the electorate for the referendum vote, but now it seems wildly improbable, particularly in the light of the issues raised by the Select Committee, that a Bill can be got through this House and completed without significant changes by 5 November. That raises one issue. The committee also identified, in the Welsh context, a situation that as far as I know—and I take an interest in the affairs of Wales—has not been consulted about or discussed, and of which people are hardly aware. I refer to the fact that the Bill will reduce the number of Welsh Members of Parliament by more than a quarter, while the reduction in the rest of the country is just over 7 per cent. That will have devastating consequences for the nature of the Welsh seats, and for whether they connect in any way with historical or social groupings. Apparently you overlooked a rather important requirement that you will have to change. At the moment, the seats have to coincide with the seats for the Welsh Assembly. That change certainly will need making. The Committee report suggests that you will have to change the 10 per cent discretion on size and geography and, among other crucial points, it states that if you reduce the number of Members of Parliament without reducing the payroll vote, you are increasing the power of the Executive and weakening the power of Parliament. These are all fundamental constitutional issues. Why are we not having the kind of widespread consultation that the Select Committee in the other place thinks is highly desirable?

Nick Clegg: I will take each of the detailed points quickly and in turn. As you rightly said, they are all important. I will start with the fundamental issue of pre-legislative scrutiny. I am very open about this. If we want to introduce these changes before the next general election, we must move fairly rapidly in order not only to hold a referendum but also to allow the boundary commissioners to do their work according to the timetable set in the Bill. They are due to report in 2013, in time for parties to select their candidates so that we can then hold the elections of 2015 on redrawn boundaries, and possibly, if the referendum is successful, on the alternative vote as well. So there was retrospective time pressure that was very difficult to escape from. Secondly, we have been very keen to address all of these detailed points—and I will come to all of them—in the discussions on the Floor of the House. Because of the constitutional significance of the Bill, it is being read in Committee on the Floor of

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the House and it has received—as I saw myself yesterday, and with the votes that were held—very substantial scrutiny. I will take the points that you mentioned in reverse order. On the issue of the number of Ministers, the suggestion is that if you cut the number of MPs from 652 to 600, which is a cut of just shy of 7.7 per cent, you should have a 7.7 per cent, or at least a commensurate, cut in the number of people who are on the government payroll. There is a strong argument that says you must look at this and adapt the number of people who are on the government payroll so that you do not get a lopsided imbalance between those on the payroll and those holding them to account. I totally accept that. It is something that I am very keen to work on and it is an issue for the next Government, not for this one, so we have a bit of time. There are lots of different ways to do it and we are open to suggestions and amendments. The issue of principle is one that we do not contest in any way. You mentioned 10 per cent. I think that you were referring to the fact that the boundary changes will be made with a variation of 5 per cent on either side of the ideal quota. By the way, it is worth remembering that 218 of the existing 650 seats already meet that quota. Already, more than a third of the seats are comfortably within it. Sometimes people make breathless allegations about the boundary review, as if it is an act of constitutional vandalism. Already, a third of MPs are comfortably within the quota. Many of the allegations are somewhat synthetic. None the less, we consulted with the boundary commissioners in great detail and they were unambiguous. We set the figure at 5 per cent because they said: “If you set it at any less than 5 per cent, we will not be able to use ward boundaries as the building blocks for our boundary review, and if you want us to do it by”—I forget the exact date—“October or December 2013, we must be able to use wards as the continued building blocks of constituency boundaries. We can do that to within 5 per cent on either side of the threshold”. So this was not capricious. We have spent a lot of time talking to boundary commissioners and they have confirmed that in their view it is doable. On the issue of Welsh representation, we are moving to decouple the link between the number of MPs and the number of Assembly seats. We have already recognised that problem and are moving to decouple the link, because clearly it would be unacceptable to retain it if there was a significant drop. The issue in Wales, and across the board, comes down to one of principle. Do people think that the number of votes in the constituency impacts on the value of those votes? I think that they do. It was the Chartists who first campaigned for equal value for equal votes. It was a great progressive cause. The argument was that it was wrong that in the mandate given to people who are representing the public, somehow your vote is worth

more in one place than it is in others. I do not have a good head for numbers, but the variations are striking and wholly unacceptable. A constituency on one side of London may have roughly 60,000 electors and another one just a few miles away may have 85,000. In Wales, because of history and all sorts of reasons, there is a particularly marked overrepresentation. Wales has 40 seats at the moment. One either works on the basis of the principle of trying to equalise constituencies so that, broadly speaking, votes are valued in the same way across the whole of the United Kingdom, or one does not. I admit that that is a principle that one either agrees with or does not, but if one does, it is very difficult to escape the conclusion that there will need to be changes in the number of Westminster seats for Wales. You asked finally about the about the Electoral Commission. We would not have proceeded with this—it would have been deeply irresponsible—if we had felt that we would be putting the Electoral Commission in an impossible position by asking it to deliver a referendum in May. It has indicated that if we proceed as we hope to, it is not a statutory rule that Royal Assent must be received six months before the referendum, and it can start giving guidance to returning officers and others who will be responsible for the conduct of the referendum from about six months before the referendum will be held. The Commission is confident that that is manageable. As you know, it has issued a report saying that the combination is possible. There are risks—we are trying to mitigate them and are working with the Commission to do so—but it is manageable.

Q71 Lord Crickhowell: I will not pursue the points in detail, but I have one final question about the rush. You have explained that you want to get this through, and say a change to equal constituencies is desirable. You say a third will not be affected, but I will read the comments of the Select Committee of the other place. “The review the Government is proposing will mean that every prospective parliamentary candidate, current Members of the House included, will not know until 18 months before a general election in 2015 what the boundaries will be of the constituency they intend to contest, or if indeed they will have a constituency to contest”. In every constituency they will have to reconstitute the associations and organisations and create them afresh. Surely that is hardly the way to close the gap between society and political institutions, which at the beginning of this meeting you said was your objective.

Nick Clegg: It is precisely for that reason that we are proceeding backwards. We accept that anyone who has stood for Parliament, myself included, knows that the longer the period of time that one has to

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work in the community that one seeks to represent, the better. We have tried to make this happen in a way that is both manageable and proper, but also as quickly as possible, precisely to make sure that the 18-month period referred to by the Committee's report is not shortened any further. I refer to the 18-month period from the point at which the candidates know the final shape of their constituencies for the general election. That is exactly the case I am trying to make. There are real constraints at the other end of this process, if one works backwards from 2015, which not unreasonably have led us to the conclusion that we must move forward. I will make one further point. Yes, boundaries will be redrawn, and no doubt in some places—although it is up to the boundary commissioners to decide this—some of the changes will be extensive. But in many other parts of our nations it will be a not wholly unfamiliar process for MPs such as myself who are constantly subjected to boundary changes. We have a system that we are not altering in any way. Independent boundary commissioners arrive at their own independent views. The shrill accusations of gerrymandering are wide of the mark. The Government are not going to do this; it is the independent boundary commissioners. All that we are asking is this. At the moment, the boundary commissioners have a series of criteria that they need to meet in their work. The criteria are listed in legislation. They must have regard to community relations, to community cohesion, to history, to the character of an area, to the disruption that might be caused and to an equal status for votes up and down the country. All that we are doing is taking one criterion that already exists and saying that all the other criteria need to be pursued with a view to meeting that. Sometimes people forget that the criterion already exists: we are just giving it a degree of primacy that presently it does not enjoy in the work of the boundary commissioners.

Q72 Lord Goldsmith: Deputy Prime Minister, I will ask you one more question about the timing of the referendum. Given the timing issues that we have in this committee, I will be specific in my question. You are well aware not just of the issues that the Electoral Commission has raised, but also of the concerns expressed by the Scottish First Minister, the Welsh Assembly and others about the coincidence of having elections there on the same day as the referendum. Given that your fundamental aim is to increase the confidence of people in politics and in the political process, although others say that it is possible for people to keep the two issues separate and still a vote on the same day, why take the risk of having the votes on the same day? Have you considered moving the referendum vote to another day, and if you have, what is the reason for not doing so?

Nick Clegg: My first point may sound glib, but it is not intended to be. Whatever date you pick, someone will disagree with it and claim that it is a breach of faith. Some people just do not like this referendum. They will come up with a thousand and one reasons why the date or something else is wrong. There is only a limited amount that one can do to counter the infinite reasons that people will give for saying that it should not occur. On the issue of the date, I fundamentally disagree with the premise that it is somehow wrong to ask people to tick a box to say yes or no to a very straightforward question when they are already being invited to vote. Roughly half of the people who were elected to the House of Commons in the 2010 general election were elected at a time when there were local elections on the same day. Over time, we constantly have referenda and elections that coincide. I will turn it round and ask people what possible justification there is for spending around £30 million of additional public money on holding the referendum on another date when my experience is that many people would accept the convenience of being asked to take a judgment on this wholly separate and discrete issue at a time when they are voting in local elections. Some 84 per cent of people in England, and everybody in the devolved nations, will be entitled to vote next May anyway. Of course I understand the politics of this: it is a great way for people to score points and catch headlines. But the issue of substance is whether there is something fundamentally wrong in principle in asking people to do two things rather than one. For the life of me I have never understood that. To put it bluntly, it is disrespectful to people to assume that it is too complex to ask them to vote on a referendum on the same day as they are being invited to vote anyway.

Lord Goldsmith: It was the Electoral Commission that first raised this question. You may be right to point the political finger at others.

Nick Clegg: To be fair to the Electoral Commission, it previously said that there was a case for coincidence, but that it should be handled and prepared properly, and judged on a case-by-case basis. When the Commission looked into the evidence from around the world for its own report, it changed its position. Initially it was more antagonistic. As you well know, there was a very unhappy experience in the Scottish elections in 2007.

The Chairman: The incidence of spoilt ballot papers increased by 6.5 per cent.

Nick Clegg: Yes, but as the subsequent research and analysis by the Electoral Commission and others showed, the particular problem there was the extraordinary complexity of the ballot papers for the local elections, which were physically very difficult to handle and extraordinarily difficult to understand. What we are proposing to do in May is wholly different. It will be a very short question with a simple

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yes or no box. We have looked very carefully at the report produced after the difficulties in 2007, and none of the difficulties identified—this has been confirmed by the Electoral Commission—prevails for the coincidence that we hope will occur in May.

Q73 Lord Pannick: Deputy Prime Minister, you emphasise the need to focus on principle and substance. Is there any principled justification for confining the referendum question to a choice between first past the post and the alternative vote, and for giving people no say on whether they might prefer a system of proportional representation?

Nick Clegg: We could have a separate debate on the virtues of electoral systems going by this or that acronym. I have always been open about the fact that there are other systems for which one can make a compelling case. But at the end of the day it is important in a referendum to present people with a clear choice, rather than with a multiple choice question. That is what we are seeking to do. All the experience is that referendums are best conducted, and most easily understood by people, if there is a simple choice between two alternatives that requires a simple yes or no answer. It does not at all detract from the wider case for other forms of electoral reform. I lead a party that has long campaigned for a different variant of electoral reform. For all sorts of obvious reasons, the alternative vote is the alternative that was arrived at in negotiations between the two coalition parties, and indeed was the one option presented by the Labour Party in its manifesto at the last general election. So there is an obvious head of steam in favour of that being the alternative presented to people. You asked about the issue of principle. Can I call this a principle? It is certainly a pragmatic principle that in a referendum it is best if one keeps the question simple, clean and not susceptible to—

Q74 Lord Pannick: What about two questions? “Do you want change?” and “If so, do you prefer A or B?”

Nick Clegg: My view on that variant is that the first question, “Do you want change?”, is self-evidently implicit in the answer to the second. I suppose that it would accommodate people who say, “Yes, I want a change, but not this particular change”. But then they would end up voting against the proposed change in any event, so you would arrive at the same outcome.

The Chairman: Thank you. We turn now to House of Lords reform.

Q75 Lord Irvine of Lairg: Deputy Prime Minister, today the House of Lords is essentially an appointed legislative Chamber. Do you agree that as such it

brings a unique mix of expertise and experience to the revision and critical evaluation of proposed legislation?

Nick Clegg: Undoubtedly it does, but it lacks democratic authority. While one might seek to try to separate those issues, as I sought to explain earlier, we now inhabit a political and social culture that is less tolerant of experience and insight, considerable though clearly it is, without greater legitimacy. The bar of legitimacy has been set much higher than it was 100 years ago when this was first being debated.

Q76 Lord Irvine of Lairg: I will focus on what we agree about. You accept that in today's appointed House of Lords there are Members with vast experience—as businessmen, farmers, lawyers, accountants, academics, scientists, faith leaders, doctors, nurses, trade unionists, former civil servants, former Cabinet Ministers, local government leaders, former heads of the armed services, to name but some. I appreciate that you have a point about democratic legitimacy, but do you agree that the House of Lords, as is, brings huge collective experience to the benefit of Parliament as a whole?

Nick Clegg: That is undoubtedly the case. The question is, how can one make sure that that experience, expertise and wisdom is made available to decision-makers in government and in legislatures if arrangements were to change? I do not accept the premise that if we were to proceed with reform of the House of Lords, as committed to by all political parties, somehow all of that experience would disappear like a puff of smoke. Good government is only ever good if it draws on wisdom and experience. I also note, pragmatically, that this is one reason why in the transition arrangements for reforming the House of Lords, it is essential to keep that experience and expertise, so there must be generous and thoughtful transition arrangements which will ensure that the experience is not dispensed with overnight and that there will be perhaps long periods of time during which it will still exist during the handover between one configuration and the next.

Q77 Lord Irvine of Lairg: I follow that, but let us suppose that the House of Lords were to become wholly or mainly elected. Do you accept that it would then cease to provide that unique benefit to Parliament derived from its collective experience?

Nick Clegg: Actually I do not accept the premise that if someone is elected, their experience, wisdom, insight and intelligence are somehow, as night follows day, of a different quality to those of others. Of course I accept that if one is elected, there are political pressures that can lead to short-termism and decision-making that is understandably driven through the prism of the need to retain public

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support. Where we probably start to part company, gently and in as civilised a manner as possible, is over the idea that something is either this or that—that all experience and wisdom will be lost from how a Government or legislature acts if one includes more directly elected legitimacy, or that those who are directly elected somehow are not capable of either drawing on their experience or possessing it in their own right. Dare I say that there are also Members of the House of Commons who in their own right have considerable experience in law, the military services and academia?

Q78 Lord Shaw of Northstead: Is the revising character of this Chamber its primary purpose at the moment, or are there other important features that are required? If one looks at the wisdom that is already in the revising Chamber, can one believe that most Members of the House of Lords, or people in similar positions, would be prepared to stand for elections? Is it not inevitable that almost certainly future elected Members of the House of Lords will be people who have failed to get into the House of Commons?

Nick Clegg: When one looks at bicameral systems around the world, of which there are many examples, there is only one other example in the developed world of a second Chamber that is wholly appointed. That is in Canada. All other bicameral systems are either wholly or largely elected. All bicameral systems struggle with the dilemma of making sure that the second Chamber does not become an echo chamber for the politics of the lower House. There are a number of ways in which bicameral systems over a long period of time have insulated and insured themselves against that. It can depend on the term of office or the timing and manner of elections. The mandate can be very different. If one looks at the Bundestag and the Bundesrat, or the Senate and Congress, there are discernible, visible and easily understood differences of mandate and character in bicameral systems that we should seek not just to emulate but to retain, because that is one of the great virtues of the division of labour between the two Chambers at the moment.

Q79 Lord Shaw of Northstead: Does that mean that the electoral system adopted in the House of Commons would be repeated in elections to the House of Lords, or will there be another system? Will the same voting system be used?

Nick Clegg: We committed in the coalition agreement for this Government to advocate elections to the House of Lords based on a proportional system, such that the Chamber is proportionally reflective of British society. Interestingly, those people in the Conservative Party who are otherwise antagonistic to proportional electoral systems for the House of

Commons have argued that the Commons, because of the constituency link and the creation of the Executive, is in a different position and that therefore having different electoral systems make sense. Again, that is consistent with bicameral systems elsewhere in the world. There are different electoral systems and different timings of mandates, and very quickly the public come to regard the two groups of elected politicians not as inferior or superior but genuinely as of different quality and character, which is what we have already. Looking at bicameral systems elsewhere, I genuinely think we can retain this with a wholly or largely elected upper House.

Q80 Lord Shaw of Northstead: Do you feel that our duties should go wider than they do at present, when we are largely a revising chamber?

Nick Clegg: The functions of restraining, reviewing and scrutinising the Government of the day, and acting as a counterbalance and a check on the work of the House of Commons, in broad terms are what we should seek to retain. But we should add greater legitimacy and democratic authority.

Q81 Lord Pannick: Deputy Prime Minister, do you accept that Cross-Benchers play a valuable and distinctive role in the House of Lords? If you do, will you assure us that when your proposals are brought forward, they will preserve a place for Cross-Benchers in the House of Lords?

Nick Clegg: Self-evidently, Cross-Benchers play a very valuable role in the present arrangements. Clearly, if one were to move to a wholly elected House of Lords, that assurance would not be possible. It would be possible only if one had a largely elected House of Lords. That is precisely the kind of debate that I hope the Joint Committee that will be established to scrutinise the Bill when we publish it will be able to explore in considerable detail.

Q82 Lord Pannick: Do you have a view on this that you are willing to share with us?

Nick Clegg: My view, as a starting principle, is that a wholly elected House is the best way forward. I am only repeating something that I have said for a very long time. But I am equally aware that if one looks at the debate on House of Lords reform over not just decades but a century, one reason why progress often has not been made—the chair is more familiar than I am, for example, with the events of 1998, when reform was promised and we were told that it would lead seamlessly to the next, bigger reform—is that we make the best the enemy of the good. While I have my own principled views that democratic legitimacy is best secured through a wholly elected House of Lords, equally I understand that people have different points of view that must be listened to and debated. I do not want to create ideological rigidity.

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I want to see reform proceed as much as possible on a cross-party and consensual basis. That is my personal view, but I realise that idealism often bumps up against pragmatism—in political reform as in other areas of life.

Q83 Baroness Falkner of Margravine: I will stay with the issue of independent Peers, the Cross-Benchers. In the current Committee that you have established with the three political parties looking at House of Lords reform, there is no presence of independent Peers. Earlier you mentioned the word “generous”. Why did you not feel that it would be right to include them in these conversations from the outset? My other question refers to what was discussed earlier about expertise in the House of Lords. Do you accept that in the changes you envisage, there would be a greater impetus on the political parties to have a broad array of skills and experience behind them, and that a proportional system would facilitate the task, so that it would be possible to have a diverse House of Lords in terms of expertise and skills through the list system if we had a reformed Chamber?

Nick Clegg: On the first point, the feeling was that the key thing to do was to get a Bill out there and make sure that it was subject to the fullest degree of scrutiny, including of course by Cross-Benchers. It is not for the Government to say this, but my hope is that a Joint Committee will be established that will take the time that it believes is necessary to subject the Bill to examination. The Bill gets the ball rolling. Given that all three political parties at the last general election unambiguously supported Lords reform, it seemed only right that in order to get the ball rolling, the parties should agree on what Bill they felt was appropriate, and then other parties—in the different sense of the word, and including Cross-Benchers—would have unalloyed rights of scrutiny in the Joint Committee. That is exactly how we will proceed. I hope that that strikes the right balance between fulfilling the clear political momentum on House of Lords reform from all political parties, getting a product that we can look at and wrestle with rather than repeating the familiar pattern of talking about it in abstract year after year, and making sure that it is subject to meaningful scrutiny. I hope that we have struck the right balance. If we were to proceed, as I hope we will, towards a House of Lords wholly or largely elected on a proportional system, one could envisage the unfamiliar prospect that the House of Lords would be considered to be more representative of contemporary Britain than the House of Commons. It would be a magnificent act of leapfrogging by one House over the other.

Q84 Lord Irvine of Lairg: Let me be the first to acknowledge the magnificence of that, Deputy Prime Minister. In the questions I put to you earlier, I was

not suggesting that the House of Lords was a unique repository of experience and wisdom. On the contrary, I accept that the House of Commons has these qualities in very substantial measure. That brings me to a key question. What value to the existing legislative process would an elected House of Lords add to the elected House of Commons?

Nick Clegg: It would mean that the function of restraint, overview and scrutiny would enjoy a degree of democratic authority that currently it does not. It would reinforce rather than weaken, diminish or undermine the extraordinarily important role that the House of Lords already deploys.

Q85 Lord Irvine of Lairg: Why not simply have a unicameral system and spare the country in these dire times the cost of two elected Chambers?

Nick Clegg: People are used to a bicameral system. They like the idea, as you rightly implied and we agreed, that in the House of Lords one has a House that is not subject or susceptible to the same venal day-to-day political pressures as people at the other end of corridor, and that is able to provide a degree of perspective, restraint and scrutiny that otherwise would not exist.

Q86 Lord Irvine of Lairg: What realistic assurance can you offer that an elected House of Lords would be able to fulfil the functions that you imply are provided less well by the existing elected House of Commons?

Nick Clegg: Let me be clear: I am describing the fundamental virtue of a bicameral system—I do not believe in unicameral representative democracy—which is that it introduces additional checks and balances to the way in which the Executive behaves, and the way in which lower Houses behave. This is a desirable thing in the democracy. I start from the premise that a bicameral system is a good thing for those reasons. Our bicameral system would be significantly strengthened if the second Chamber, the upper House, had the democratic authority that it lacks. In answer to the earlier question, the devil is in the detail. It is so important in terms of mandate, electoral system, period of office and so on that one has something that is utterly distinct from the lower House. If what we end up with is just a poor cousin of the House of Commons, that would be a woeful outcome. It is not beyond our wit, and it is something that is common to bicameral systems elsewhere in the developed world, to avoid that danger.

Q87 Lord Irvine of Lairg: The Chairman rightly has her eyes on the hands of the clock. I will ask just one short question. If there is great hostility in the House of Lords to the legislation that is eventually brought forward, and it is voted down by the House of Lords,

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will the coalition Government contemplate using the Parliament Act to get it through?

Nick Clegg: It is far too premature to speculate about the use of a blunderbuss—

Q88 Lord Irvine of Lairg: Why?

Nick Clegg: Because we are at the early stages of a debate, of which this is part. I hope that the debate will become richer and deeper over time. Scrutiny from the Joint Committee will be extraordinarily important. We should all recognise that this is something that the country has been debating for around a century. The last general election was unique in that it was the first time that all political parties were unambiguous in stating that House of Lords reform should proceed. I hope that we can proceed on as consensual a basis as possible, rather than immediately speculating on the use of blunderbuss alternatives.

Q89 Lord Irvine of Lairg: But if consensus is not achieved, are you ruling out the use of the Parliament Act?

Nick Clegg: The Bill has not even been produced and the arguments are still at an early stage. I am an optimist—I have to be in my line of work—and I genuinely believe that the arguments that we in the coalition Government are deploying are strong. I hope that today I have given some intimation that we want to pursue those arguments reasonably and not in a dogmatic or rigid fashion, and that therefore over time we will arrive at greater agreement than many people often assume.

The Chairman: Deputy Prime Minister, we can assure you that the debate will become, in your words, richer and deeper. We thank you very much for your time. You have covered an enormous amount of ground and given us a great deal of help. We look forward to future conversations of this kind with you.

Nick Clegg: Thank you very much.
