HOUSE OF COMMONS

Joint Committee on the Fixed-term Parliaments Act

Oral evidence: Review of the Fixed-term Parliaments Act, HC 1046

Thursday 28 January 2021

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Watch the meeting

Members present: Lord McLoughlin (Chair); Lord Beith; Aaron Bell; Chris Bryant; Jackie Doyle-Price; Dame Angela Eagle; Maria Eagle; Mr Robert Goodwill; Lord Grocott; Lord Jay of Ewelme; Baroness Lawrence of Clarendon; Alan Mak; Lord Mancroft; Mrs Maria Miller; John Spellar; Alexander Stafford; Mr Shailesh Vara; Craig Whittaker.

Questions 220 - 282

Witnesses: **Lord Hennessy of Nympsfield**, and **Professor Robert Hazell**, Professor of Government and the Constitution, University College London (UCL), gave evidence.

Examination of witnesses

Q220 **Chair:** Welcome to the Joint Committee on the Fixed-term Parliaments Act. This morning, we are taking evidence from Lord Hennessy and Professor Robert Hazell to continue our examination of the consequences of the Fixed-term Parliaments Act and the Government's proposals for its replacement. Professor Hennessy, you asked to make an opening statement. Would you like to do that?

Lord Hennessy: That is very kind, Chairman. Not having put in a paper to the Committee, to clear my mind for this morning's session I wrote down a list of the tasks that seemed to me to have been placed upon you as Parliament's scrutineers of and advisers on the draft Bill. I hope this isn't presumptuous—if it is, you will forgive me, I hope—but I have framed it in terms of what a PhD student of mine, working on a thesis on the FTPA and its fate in, say, the 2040s, might draw out as significant about this particular piece of constitutional crafting. He or she would see it, I think, as embracing the need: first, to find a blend of predictability and flexibility in the new arrangements, with a bias towards dispute resolution at times that are likely to be characterised by a high degree of political inflammation; secondly, to reinforce a high level of personal conduct on the part of the key players—the so-called "good chaps" theory—thirdly, to find a high degree of consensus about the utility and desirability of the new measures to boost their durability, a point strongly made by the House of Lords Constitution Committee, of which I am a member; fourthly, to find a means of avoiding the placing of excessive personal power in the hands of an incumbent Prime Minister; fifthly, to find a way of suffusing all proposed arrangements and procedures with what the Constitution Committee called the "cardinal principle" that the sovereign neither is politicised nor appears

to be politicised by the operation of said arrangements; sixthly, to maximise the chances of the new dispensation providing arrangements for all political seasons, to permit the durability of the resulting settlement, thereby avoiding the risk of its being sculpted to fit a particular moment, need or contingency, because what emerges, as Robert Hazell and Meg Russell have said in their written evidence, will be one of the fundamental constitutional texts of the United Kingdom; and, finally, to ensure that whatever settlement is reached is as comprehensible as possible, in terms of its purposes and operation, to the electorate.

That, Chairman, is quite a stretching set of tests, and it buttresses my belief that you cannot merely repeal the FTPA and sink back with a soothing sigh on to the soft cushions of the conventions and assumptions that for so long had been our country's way of handling such matters.

Professor Hazell: Lord Chairman, may I just add three sentences?

Q221 **Chair:** Thank you. Robert, if you want to add a few comments, feel free.

Professor Hazell: I have watched all the Committee's previous evidence sessions, in particular the masterclass you had last week from Anne Twomey and Professor Phillipe Lagassé. It is pretty clear that the Government's draft repeal Bill is seriously defective; almost all your witnesses have been agreed on that.

Rather than add to their criticisms, or simply repeat them, because I have little to add, I shall try in my responses today not to be critical but to be constructive and to suggest what might go in a more lasting piece of legislation to replace the Fixed-term Parliaments Act.

Chair: Thank you. There have certainly been some very interesting exchanges over the course of the Committee's deliberations. I hope we can reflect that when we come to the report. Maria, would you like to start us off?

Q222 **Mrs Miller:** Thank you, Chair. Thank you, Lord Hennessy and Professor Hazell, for setting out the challenge that we face as a Committee. To start our conversation with you today—thank you so much for agreeing to give evidence to the Committee—could you set out how you understand the conventions on Dissolution and Government formation to have operated prior to the passage of the Fixed-term Parliaments Act? Could I start with Professor Hazell?

Professor Hazell: The conventions on Dissolution and Government formation were helpfully summarised in the draft chapter of "The Cabinet Manual" that was published in February 2010. It is set out in my written evidence submitted with Professor Meg Russell at paragraph 15.

If I may, I will read one paragraph from the draft Cabinet Manual—paragraph 58: "At present, the Prime Minister may request that the Sovereign dissolves Parliament so that an early election takes place. The Sovereign is not bound to accept such a request, although in practice it would only be in very limited circumstances that consideration is likely to be given to the exercise of the reserve power to refuse it, for example when such a request is made very soon after a previous dissolution. In those circumstances, the Sovereign would normally wish to know before granting a second dissolution that those involved in the political process had ascertained that there was no alternative potential government that would be likely to command the confidence of the House of Commons."

That is a very fair and accurate summary of the conventions before the Fixed-term Parliaments Act. Peter Hennessy will recall that he and I were involved at the time with a small group of other experts in advising the Cabinet Office about what the conventions did then amount to. I have nothing to add to that paragraph from the draft Cabinet Manual of February 2010.

Q223 **Mrs Miller:** Thank you, Professor Hazell; that is really clear. Lord Hennessy, would you like to add anything to that?

Lord Hennessy: No, I think that is spot on. I was very struck by the way Robin Butler, in his evidence to you, caught the expectations of the old ways of doing things beautifully, and also by the regret in his voice when he said, about the assumptions of good behaviour, as it were, on the part of all the players, which I mentioned in my opening remarks, that: "There is evidence that Governments these days are less inclined to observe conventions, if those conventions don't suit them, than they would have been in the past."

There was an elegiac element in Robin's evidence to you of a departed or perhaps just departing world, where the "good chaps" theory, as it is called, could prevail.

Robert has been very modest here; he was very crucial at the Ditchley Foundation ahead of the 2010 election in November 2009. He chaired the syndicate, with the Queen's Private Secretary and Alex Allan, who was representing the Cabinet Secretary, and others, that enabled us for the first time to move to what became those paragraphs in "The Cabinet Manual"—to conjure up these assumptions and conventions into a piece of paper that was comprehensive and could be understood by all. It was brokered—I think that is the right term—with Alan Beith's Committee, the Justice Committee that he was then chairing, as I am sure he will remember, just in time for the 2010 election and indeed the hung result of 2010.

But the old assumptions rested very much on the Lascelles letter to *The Times* in May 1950. Thinking back on how much load that letter had to bear, never has *The Times* published a letter of such constitutional significance, pseudonymous though it was. In 1991, 40 years on from the Lascelles letter, I remember thinking what we needed was an updated version of this. With my producer, Simon Coates, we looked at this for a Radio 4 *Analysis* documentary. Robert Armstrong, who had been crucial in these matters as both Cabinet Secretary and the Prime Minister's Principal Private Secretary, spoke for all of the golden triangle, as it is called—the palace, the Cabinet Office and No. 10—about what the assumptions were.

It is a strange world, isn't it? Our country depends—it is marvellous, in a way—on a small letter, the transcript of a Radio 4 documentary, and a paragraph or two put together for the new Cabinet Manual over 45 minutes of a sandwich lunch in the Cabinet Office. It does not strike us as odd, because we live here and have grown up with the system. This is a very serious matter and I am in no way treating it with levity, but there is almost an Ealing comedy element to some of this. I was always struck by the fragility of the previous arrangements, but it became much less fragile as a result of "The Cabinet Manual", particularly once it had been brokered through the Justice Committee. I hope that makes sense.

Q224 **Mrs Miller:** You talk about the importance of the observance of conventions. What could be done to encourage better observance of conventions if this Bill were to pass as it is?

Lord Hennessy: It would take a cunning piece of drafting of Baldrickian proportions to do it, but it would be rather wonderful if somehow you could engineer, as part of your work, the incorporation in the main body of the Bill of the assumptions that are in "The Cabinet Manual" and that are sort of in the "Dissolution Principles", which isn't a very adequate document but has been appended to the draft Bill. It is difficult to get conventions into legislation, particularly if they are about good behaviour. Statutes are all about bad behaviour or criminal behaviour—that is second nature to statutes—but good behaviour, and expectations of it, is very difficult. The incorporation of the Sewel convention into the Scotland Act 2016 is not encouraging about incorporating conventions.

There is another difficulty with this one: it is not written down anywhere. It is a state of mind about good behaviour, rather than a piece of paper. If you wanted to, you would do everybody a great service as a Committee—if you do not mind me saying this, Chair—if you could incorporate those assumptions of good behaviour into the main body of the Bill. But of course, in the end, it all comes down to people and the maps they carry in their minds about what is proper behaviour and what is consistent with past practice and expectation, which is a very tricky thing. It is very hard to pass it off.

Chair: Thank you. Let's go to Lord Grocott.

Q225 **Lord Grocott:** Thank you, Patrick, and welcome to our witnesses. We have heard an awful lot about the Lascelles principles and Cabinet Manuals. But can I distil this—you might think unfairly—to the most fundamental and basic question in all this? Can we envisage circumstances—if so, precisely what are they—in which a monarch would say this to a sitting Prime Minister, the Queen's principal Minister, who in almost all circumstances would be the elected leader of the biggest party in the House of Commons? In what conceivable circumstances can you envisage a monarch being faced with a request from the Prime Minister—not for some random piece of arbitrary power, but to say, "Can we please go to the people for them to sort it out?"—and Her Majesty then legitimately saying, "No, you can't."?

Lord Hennessy: Do you want to go first, Robert?

Professor Hazell: Lord Grocott, your question has quite an important assumption, as you said that the Prime Minister commands the confidence of the House of Commons.

Q226 **Lord Grocott:** I didn't say that. I said it would be the leader of the biggest party in the House of Commons.

Professor Hazell: Please forgive me for mishearing you, because we all know that the constitutional convention that the monarch must follow the advice of the Prime Minister is dependent on that Prime Minister commanding confidence. When the Prime Minister cannot command confidence, or when it is uncertain whether the Prime Minister can command confidence, the Prime Minister's advice is no longer binding on the monarch.

In talking about Dissolution, we are not talking about advice anyway; we are talking about the Prime Minister requesting Dissolution. That was gone into very well in your evidence session last week with Anne Twomey and Philippe Lagassé. There are circumstances in which the monarch will be justified in refusing a Dissolution. They are set out very clearly in

the paragraph from the draft of "The Cabinet Manual", which I read out in my answer to Maria Miller.

In brief, the circumstances are two: if the request for Dissolution was premature, because it was too soon after the previous election; or if, in the existing Parliament, an alternative Government could be formed, which could command confidence. Professor Twomey explained that at some length in your session last week. In effect, a change of Prime Minister was what she described as "a baton change," perhaps within the same governing party.

Professor Twomey also added another circumstance, when she said, "If it was also potentially damaging for an election to be held—perhaps there was a pandemic, a war or an economic crisis—there might be a good reason not to hold an election in those circumstances, and the monarch could refuse a Dissolution, appoint a new Government and let them get on with governing."

Lord Hennessy: Bruce, can I answer your question with a dip into history when it was considered, in relatively recent times, after the inconclusive February '74 election? There was a question then about what would happen if Ted Heath faced the Commons, which was within his rights to do so, and lost a Queen's Speech. If he asked for another Dissolution, the feeling was that he wouldn't get it, because he had already had his election, and the Queen would therefore send for Mr Wilson and give him a chance to form an Administration. If he tried and failed to get a Queen's Speech through, he would get a Dissolution.

The golden triangle of the day—Martin Charteris was the Queen's Private Secretary. He rang up Sir John Wheeler-Bennett in Oxford to see if this was consonant with history. That is the way these things were done in those days. Wheeler-Bennett quoted Arthur Balfour in his memoirs of the 1930s, saying: "No constitution can stand a diet of dissolutions." Therefore, it was checked with the grain of history. There is almost poetry in this, really. That would have been the position if Ted Heath had met Parliament, had gone down on a Queen's Speech and had asked for another Dissolution.

I can never sort this out by talking to people, but what in effect happened was that there was a view conveyed to Harold Wilson indirectly, I think, that it would be better, perhaps, if he could hold on as long as he could—this was after he had accepted the Queen's commission to form a minority Government—before requesting another election. That is exactly what he did, if you remember. He held on until October '74.

So, it is a question of private chats and checking with the grain of history. There was a beautiful choreography to all of this, in the old days, which I am sure Robin Butler was alluding to in his eloquent evidence to you the other day. That was a historical moment when this was considered by the golden triangle of the day, as the way that was best to proceed. Those circumstances are an example of a very rare circumstance in which a monarch would refuse a request for another Dissolution.

Q227 **Lord Grocott:** It is always very helpful, Peter, when there are references to specific circumstances, rather than a broader, almost academic discussion about what conceivably might happen, however unlikely that might be. I certainly remember the February '74 election very well. It is one of many that I lost. The fact that it took the two of you, very eminent witnesses, some considerable time to answer what, on the face of it, is a straightforward question about when Her Majesty will say no to a

Prime Minister, suggests that, should we try to put this into legislation, it would be extraordinarily difficult. I would like your comments on that.

Professor Hazell: Shall I go first? I am sorry it took us a considerable time. I was making just two points. A Dissolution could properly be refused, first, if it was premature, because it followed too soon after the previous election, or secondly, if in the existing Parliament an alternative Government could be formed, which does command confidence. Those are the two limbs in the paragraph of the draft Cabinet Manual, which I read out at the beginning. I don't think, in answer to your question, Lord Grocott, those should be put into statute. I think it is perfectly satisfactory if they are left as a statement of the convention in "The Cabinet Manual".

Lord Hennessy: I think, Bruce, the language of the replacement legislation could help. The "Dissolution Principles" document, which I am sure we will come to at some point, has to make plain in the main body of the Bill that the Prime Minister requests a Dissolution and that the advice given by the principal adviser to the Queen is not, as the palace used to distinguish it, capital A advice that has to be taken in this instance; it is lower-case advice, which the Queen does not have to take. The Queen can talk to whoever she wants about all this and take soundings—not directly; her Private Secretary would do it. But that is the point that needs to be made. The language of the Lascelles principles needs to be conveyed into the statute if you can.

I take Chris Bryant's point about the Lascelles principles in one of your previous sessions when he said that it's quite rare for them to feature in discussions in pubs and clubs. I recognise that. But on the Lascelles principles, or at least two of the three, if you can incorporate them as far as you possibly can into the legislation, or the expectations of the legislation, as well as having them in "The Cabinet Manual", it will be a great service. There is some sloppy drafting in that page of "Dissolution Principles".

If you will allow me, Chair, I was very struck by Chris Bryant's observation about the lack of public heat on this particular question, although on the morning after an inconclusive result, "The Cabinet Manual" suddenly takes on great importance. I remember in 2010, Robert and I, and Peter Riddell and others, were farmed out to be on various bits of the media to be a kind of incarnation of the constitutional assumptions, which was a slightly embarrassing position to be in, and "The Cabinet Manual" became a topic in the pubs and clubs. Indeed, for a few hours they spoke of little else. So there are moments when this goes from being something that you and I both taught as university teachers, Bruce. The hardest lecture of all is to get the students aroused by the constitutional historical lecture, isn't it? But suddenly it can flare into prominence, pre-eminence and great salience, almost out of the blue sky, as it did in the 2010 election, as you remember. That is another very long answer. I am sorry, but there we are

Lord Grocott: Thank you both very much.

Q228 **Chair:** Peter, can I ask whether you think that the golden triangle that you described in February '74 would be as effective today as it was then?

Lord Hennessy: I don't think it would be, because of what Robin Butler said in that very measured way of his the other day. I don't want to be unkind to anybody because it is a tough job being Prime Minister, as it is being monarch and for anybody involved in all of this,

particularly in these difficult times, but there is almost a tin ear these days in certain circles in Whitehall about the sensitivities of all this compared with the old days. Also, there is a natural suspicion in the country we now are of shadowy figures, of whom very few people have heard, getting on the phone to somebody in Oxford to check what the constitution is, and producing a kind of decorous fix while walking round St James's Park on a Saturday morning after an inconclusive election. It is not quite the way we do things these days. We have gone from being a back-of-the-envelope nation to a front of the code or a face of the Bill nation, I think, so those days are quite difficult to reconstruct. But this is in no way to diminish the continuing importance of the golden triangle.

Philip Ziegler invented the name "the golden triangle"—not me. He had a rather good concept that they operated on the basis of "instantly invented precedents", and that was the way it was done. I remember talking to one of the triangles in the run-up to one of the elections that might have been inconclusive in the '90s—probably '92—and I said, "Are you getting ready for this?", and he said, "Well, yes and no, because there is an awful lot you can do between an election being called and its happening. You can always go to the cupboards", which struck me as wonderfully indicative of the way in which the Brits do it. You go to the cupboards and get the files about what happened last time and tweak them a bit to suit current circumstances. I think it is quite hard to persuade people that that is an entirely desirable way of proceeding these days, though, like Robin Butler, I have a certain nostalgia for it myself, because in its strange and mercurial way it did the business, although a high level of anxiety always accompanied it. As Martin Charteris said about 1974, it was a "very dicey weekend". There is a lot of diceyness involved in all that.

Chair: Sorry, Robert, I cut across you. Did you want to come back on that point?

Professor Hazell: Forgive me, it is a very brief point. It is only because the Government wish to revive the prerogative power of Dissolution that we are having this discussion about the old conventions, what they mean, and whether modern-day politicians could be relied upon to observe them. It is possible to devise a replacement Bill that is less reliant on conventions, or indeed not reliant on them at all, but I hope that we will come on to that in discussion further on.

Q229 **Alan Mak:** Thank you, Lord Hennessy and Professor Hazell, for joining us this morning. I want to talk about motions of confidence and matters of confidence, which are both important parts of the Dissolution architecture. Prior to the passage of the Fixed-term Parliaments Act, what in your view constituted a motion of confidence or a matter of confidence?

Lord Hennessy: Again, I think they were the ones where there was pretty strong agreement, whether it be a Queen's Speech, a Budget, a policy that was central to the Government's programme, or a straightforward motion of confidence brought by the Leader of the Opposition. Those, I think, were the four classic occasions when it was expected that these things could arise. The Fixed-term Parliaments Act, which is part of what you are wrestling with, of course brought it down to specific wording and specific contingencies, and it made it in some ways much less clear.

For example—I am sure that we will come on to this—the bit that certainly worried the palace more than anything else about the Fixed-term Parliaments Act was the 14 days in which you might or might not find an alternative Administration. They worried about it as a

kind of howling void in the legislation. It was a specific replacement for those assumptions, but it actually made the position much worse, I think. It was quite easy for all of us to understand what confidence was in the old days, but the Fixed-term Parliaments Act made it particularly difficult, particularly the 14-day provision, which was deeply unsatisfactory.

Professor Hazell: I have nothing to add to the list of matters that Peter Hennessy has given you that would count as issues of confidence. They are the same as the list that was given to you last week by Anne Twomey and Philippe Lagassé. I would add that in my view none of this has changed as a result of the Fixed-term Parliaments Act, save that a formal vote of no confidence is now given statutory form with statutory consequences. In saying that none of this has changed as a result of the Fixed-term Parliaments Act, I refer you to the very impressive reports from the Public Administration and Constitutional Affairs Committee of December 2018 and September 2020.

I will read two paragraphs from the second report, of September of last year. PACAC said: "The issue of confidence is central to the UK's system of parliamentary democracy. The FtPA has not changed this fact, as our predecessor committee clearly set out in its report *The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011*…In this report, PACAC clearly established that the FtPA included a route (section 2(3)) by which a no confidence vote could directly trigger a general election, but this did not replace the pre-existing conventions regarding confidence…This previous conclusion was endorsed by Professor Twomey in her evidence to this inquiry, stating 'it [is] clear the conventions regarding confidence were not dispensed with as a consequence of the application of the Fixed-term Parliaments Act'."

The PACAC report went on to refer to similar evidence from Sir Stephen Laws, saying: "Sir Stephen Laws, who oversaw the drafting of the Act…went on to explain that the Act did nothing to change the precedents surrounding confidence." I am quoting from paragraphs 70, 71 and 72 of the PACAC report of September of last year.

Q230 **Aaron Bell:** In the answer that you just gave Alan, Lord Hennessy, you said that something central to the Government's agenda would be considered a matter of confidence. Clearly, you could make a very strong case that Theresa May's Brexit deal came under that category, even if you do not think David Cameron's military intervention in Syria did. Given what happened in those instances, the Fixed-term Parliaments Act seems to have changed those conventions. Would you agree with that based on your reading of what happened with those votes?

Lord Hennessy: The big debate is whether that circumstance that you all lived through in 2019, particularly in the Commons, was freakish. I have always thought that that was as much the product of the political culture that you were all living and working in as anything else, really. The European question has always vexed this country. It has driven otherwise rational people mad at regular intervals, and it cannot be contained by the left/right structure of our parties, which it has divided from within, meaning that when it comes up in the Commons, it is a kaleidoscopic issue, as well as a great anxiety and heat-inducing issue.

You also had, and I am trying to find careful words here, a Speaker who took an Activist issue of his office—it was almost an imperial speakership, really—and changed the understanding of the Standing Orders. When you put all that in the mix, it was a sort of one-off, freakish occurrence, rather than something that we can expect to be repeated. Of course,

nothing is repeated in quite the same way; there are no iron laws of history on that. I myself would not put too much weight on that.

I remember coming into the House of Commons as a young Lobby correspondent in ’76. In my first week, the Wilson Government lost a vote on their public expenditure White Paper, which was indeed central because we were in the middle of a huge economic crisis, and they faced a confidence vote the next night, which they won. It went down in political history, that one, because Denis Healey, the Chancellor, came in late and shouted at Eric Heffer, who accused him of being a Stalinist. It was the most wonderful political theatre. How innocent those days seem compared with the crises we are now living through. What is the sterling crisis these days? That is just a sort of side thought.

That was the standard way it was done in those days. If you lost something of absolute central importance to the Government, you had a confidence vote very quickly thereafter, and you usually restored the position. Again, all that was part of the understandings. The European question, and the travails of the Johnson Government, which led them to set aside the Fixed-term Parliaments Act with the "notwithstanding" legislation, were *sui generis*.

Q231 **Aaron Bell:** So you would not say that the convention itself has changed off the back of that?

Lord Hennessy: No, I really would not.

Q232 **Aaron Bell:** I should say that, happily, I was not living through that—I was not an MP at the time—but I think most of my Committee colleagues were. Professor Hazell, did you want to add anything of your understanding of whether those votes altered the conventions around no confidence?

Professor Hazell: Briefly, if I may. I think the conventions and their understanding have changed, but for other reasons. To remind you of the evidence that you heard last week, Professor Twomey, having enumerated defeat on the Queen’s Speech, losing the Budget and so on, as examples that are clearly issues of confidence, acknowledged at the end that it was an old list, dating from around the middle of the 20th century. Professor Lagassé then added, “I would say that that notion that the Government must get its way on major policy and must be able to control what occurs in the Houses of Parliament is fraying in the United Kingdom… I suspect in an era of far greater Back-Bench independence in the United Kingdom that might not be as well seen as it would have been in the past, as Professor Twomey indicated.” Speaking for myself, I agree with that.

In what may be an era of more frequent minority or coalition Governments, our understanding of what constitutes loss of confidence may gradually change, because Governments will be more frequently defeated in Parliament, including on major matters, without that necessarily counting as loss of confidence. Of course, it is still open to any Government formally to declare an issue to be one of confidence.

Q233 **Aaron Bell:** Thank you. Prior to the Fixed-term Parliaments Act, if the Government were defeated on something that was explicitly a matter of confidence, either because they called the vote and made it clear that that was the case, or because it was the Queen’s Speech or a motion of no confidence, what course of action ought then to have followed? Will it almost automatically be a Dissolution now, or is the option of resignation still there for a Government?

Professor Hazell: The option of resignation is absolutely still there. There are two alternatives: the Government either request a Dissolution or tender their resignation.

Q234 **Aaron Bell:** Thank you. Lord Hennessy, any further points about that?

Lord Hennessy: I agree with Robert.

Aaron Bell: What is expected? Does that depend on the political circumstances and the length of time since the last election?

Professor Hazell: Yes. It depends very much on the political circumstances. In thinking about this, I mused about another hypothetical situation. Suppose that Harold Wilson had lost the first Brexit referendum, as it were, or rather the Brentry referendum—the 1975 referendum on the renegotiated terms of accession to the European Community. Suppose that he then proposed to his Labour Cabinet colleagues that he should seek a Dissolution, but suppose that the colleagues were opposed and said that there was an alternative leader who could lead the party and command the confidence of the House of Commons. In those circumstances, I would have expected Harold Wilson to offer his resignation and to advise the Queen to appoint the leader of the alternative faction in his place. Now, we can all dream up lots of similar kinds of scenarios, but resignation is definitely an alternative to a request for a Dissolution, depending on the political circumstances.

Aaron Bell: Thank you. That's all from me.

Q235 **Baroness Lawrence of Clarendon:** When Lord Hennessy was answering the first question, he referred to good behaviour. That leads on to my question. Prior to the Fixed-term Parliaments Act, the prerogative power of Dissolution was regarded as a personal or constitutional prerogative, rather than one that was exercised by a Minister. What do you understand that to have meant?

Lord Hennessy: The Queen had only two personal prerogatives left—three, really, I suppose—before this Act. One was appointing a Prime Minister, one was Dissolution and the other one was Prorogation.

The royal prerogatives are a very interesting thing. I remember that extraordinary man, Enoch Powell, once saying that the greatest gift of the British monarchy is to give its absolute powers absolutely to Parliament, but I never thought that that quite fitted, because quite a lot of the prerogative got stuck halfway in Whitehall. It all shifted from the Queen, apart from those personal prerogatives, and they stood alone, Doreen, as something very significant and very different. They fitted also with the much wider concept of the Queen as a constitutional backstop against improper behaviour by a Prime Minister. Perhaps I should not bring in the United States experience, because it is not directly relevant, but it is a great idea, I think, to keep the Head of State separate, and for them to be a different person from the Head of Government.

There is a notion that fed into those personal prerogatives, which is why their utility has lasted so long—or did until the Fixed-term Parliaments Act. You had the Queen as a constitutional backstop, who would of course be drawn into political circumstances, but not party political circumstances. That was the genius of the old arrangement of the personal prerogatives, but all this is intensely political.

On the question of confidence, the PACAC report that Robert was quoting put it so well: confidence is central to the whole notion of parliamentary government. At the same time, the Queen was in a position of being detached from the party political elements of it. The understanding was that the politicians would have to sort it out among themselves and bring a solution to her to give her "*Good Housekeeping*" seal of approval, as it were. That, in a roundabout way, is how I regard the remaining personal prerogatives.

Then, of course, the question arises—it is one of your great dilemmas—of whether you can revive the personal prerogatives if they have been removed by statute. Can they rise Lazarus-like from constitutional history? That is not entirely clear, Doreen, but the whole business isn't entirely clear. It is this peculiar bundle of custom, practice, conventions, statute and expectations, out of which you have to make something sensible and palatable, which is a tough task.

Q236 **Baroness Lawrence of Clarendon:** That is what probably happened back in 2019, when we had that difficult situation in which the Prime Minister had gone to the monarch to dissolve Parliament. I presume that is part of all of that. Professor Hazell, do you have anything to add?

Professor Hazell: Yes. Just this: you asked, prior to the Fixed-term Parliaments Act, what does it mean that the prerogative power of Dissolution was regarded as a personal or constitutional prerogative? My answer would be that it means that it was discretionary. Namely, that an improper or untimely request could be refused—and there are examples of it being refused in other parts of the Commonwealth by the Queen's representative, the Governor-General.

The notable examples were referred to last week by Anne Twomey and Phillipe Lagassé: Gough Whitlam being refused Dissolution in Australia in 1975; and in Canada the King-Byng affair, when Mackenzie King was refused Dissolution by the then Governor-General, Lord Byng, in 1926. On both occasions, it was the peak of a major constitutional crisis. But Dissolution can be refused, and occasionally has been refused.

Baroness Lawrence of Clarendon: Thank you.

Chair: We will come back with Robert Goodwill on 2011 later, I hope. Let us move on to the constitutional convention.

Q237 **Lord Jay of Ewelme:** There is a constitutional convention that the monarch is kept out of matters of party political controversy as far as possible. Obviously, some of the things that we have been talking about—Dissolution, Government formation and so on—risk, or would risk, bringing her into politics.

Peter Hennessy has talked about some of the safeguards that existed under the old system in the event of a Prime Minister going slightly adrift—the golden triangle operating in a mixture of Oxford and St James's Park, for example. I wondered whether you wanted to add anything to that and, in the light of the 2019 Prorogation dispute, do you think that we need new arrangements to ensure that the monarch is not brought into party politics? What form might those take? Might there be a role for Parliament or the courts here, or wise people in some form or another, whether formal or informal? Will you comment on those questions?

Lord Hennessy: Robert, do you want to go first?

Professor Hazell: If you like. If I may, I am going to offer an answer about bad faith in a slightly different sense, because this is a really important aspect. That is, under the old system, there were no safeguards against a Prime Minister calling an election at the time most favourable to them and their party.

Some in Committee have questioned whether that really confirmed an advantage, citing examples such as Theresa May's early election in 2017, but the evidence from Professor Petra Schleiter's research is incontrovertible. Doing a systematic analysis of all elections since 1945, she concludes that allowing the Prime Minister to choose the election date confers an advantage of about 6% in votes and 12% in seats. To quote the conclusion from her article in *Parliamentary Affairs* in 2016: "incumbents have on average realised vote share bonuses of just under 6% and seat share bonuses of 12% in elections scheduled for partisan advantage". She goes on: "Moreover, prime ministers had a 40–50% better chance of surviving in office in such elections."

The reason I want to mention this is that that is not trivial—that is a seriously unfair advantage. I know that the Government deny that; if any of you on the Committee still deny it, I feel you really ought to invite Professor Schleiter to give evidence. Her research is greatly respected in the academic community. She has submitted evidence to this Committee and previously to PACAC. You cannot ignore her evidence or sweep it under the carpet, so you must accept that if we revert to the old system where the Prime Minister chooses the election date, that introduces a significant element of unfairness into our system of elections.

Lord Hennessy: I was horrified by the Prorogation story of August 2019; I really did feel the Queen should not have been put in that position. I was perhaps in a somewhat inflamed state when I was asked by Radio 4 to comment; I said I could feel the "good chaps" theory lying in shards between Her Majesty the Queen and those Privy Counsellors at Balmoral on that day in August 2019. That was what I meant about being "tone deaf" on the part of some people, of the niceties. She simply should not have been put in that position.

Indeed, I think the Constitution Committee of the House of Lords, when it looked at the Fixed-term Parliaments Act initially, thought it was inconceivable that there would ever really be a problem with the Prorogation, but we were quite wrong about that. So I am still recoiling from it; I can't quite believe that that happened. It was deeply unfortunate and I am very keen—I have no doubt we will come to this in a minute—that the way to resolve pretty well all these things is to have a proper clean vote of the House of Commons on it, where a simple majority will suffice.

This is what I meant in my opening thought about making sure that the powers of an incumbent Prime Minister are not excessive. If the "good chaps" notion does not hold any more, you have to write things down. That is one of the sadnesses, really, but I think the Prorogation story of August 2019 and the subsequent Miller-Cherry case were a real shock to the system. All sorts of assumptions about personal behaviour went up in smoke, didn't they? It is not for me to ask questions, Michael, but I have a slight suspicion you would agree with that, though you would use more careful language than I have because you are trained to.

Q238 **Lord Jay of Ewelme:** You talked earlier on, Peter, about the need for the right balance between predictability and flexibility. Are you talking here really about

moving quite a long way down that spectrum from flexibility to predictability, to prevent this sort of problem happening in the future—particularly if people are going to behave in rather different ways than they have done in the past?

Lord Hennessy: Exactly. I think the flexibility comes in trying to create a system with the replacement legislation that is good for all seasons and good for all circumstances but, at the same time, has a predictability; because it is the Commons that matters. The Commons expressing its view on these things is what matters, and that makes it understandable to the electorate, I think, because they understand votes—not "fancy franchises", to use the 19th century phrase, but straightforward clean, simple majority votes in the House of Commons. Everybody understands what that means. So I think that is the solution, probably, I would recommend that we get to. That is where dispute resolution must take place in our system. It has to be on the Floor of the House of Commons.

Q239 **Lord Jay of Ewelme:** Robert Hazell, from what you were saying you were also suggesting that we need to move quite some way down the spectrum from flexibility to predictability. Is that right?

Professor Hazell: Indeed, and please forgive me, Lord Jay, for not giving a more direct answer to your question previously. On this question in particular of Prorogation, I myself said in evidence to the Lords Constitution Committee—as it happens I have the date of my written evidence, which was 15 August, so it was submitted two weeks before the Prorogation actually happened at the end of August 2019: "Its exercise has normally been uncontroversial, to end a parliamentary session. But given the risk of possible abuse, it would seem wise to ensure that Parliament cannot be prorogued against its will. One way to do this would be to make the prerogative power exercisable at the request of Parliament rather than on the advice of the Prime Minister." I think in effect Peter and I are saying exactly the same thing on that particular point.

Lord Hennessy: We are.

Q240 **Mr Goodwill:** My question was about in effect whether the Fixed-term Parliaments Act painted the monarch into a corner.

Can I start with Professor Hazell? By early 2011, was there any meaningful sense in which the prerogative powers could be exercised contrary to the advice, with or without a capital A, or a request or recommendation from the Prime Minister of the day? Could the monarch still be said to be a real safeguard against the abuse of prerogative powers by the Prime Minister or the Government?

We had a situation when Parliament was prorogued and the Miller cases questioned that. Are the powers still there in any sort of vestigial sense or are they completely removed by the Act?

Professor Hazell: I think the monarch was still the ultimate safeguard and still is. The draft "Cabinet Manual" was quite clear about that. It said: "The Sovereign is not bound to accept such a request," meaning a request for Dissolution.

Coming on to your point about Prorogation, it might be thought that the Queen's acceptance of the Prime Minister's advice on Prorogation in August 2019 has rather undermined that, but I would suggest the reverse. I think what will happen, if in the future any Prime Minister

seeks to shut down Parliament through a Prorogation that is untimely or unduly long, is that the monarch will not want for a second time to have an Order of Prorogation be declared "unlawful, void and of no effect." I would expect the Palace to quiz the Prime Minister hard over any future request for Prorogation, to ensure that Prorogation is lawful and justified, within the guidelines laid down by the Supreme Court. In addition to the Lascelles principles on Dissolution, we now have the Hale guidelines on Prorogation.

As Peter and I have both suggested, there are other ways of avoiding abuse of the prerogative power of Prorogation, namely, by making Prorogation exercisable at the request of Parliament rather than on the advice of the Prime Minister.

Q241 **Mr Goodwill:** The ouster clause is presumably to prevent that happening again.

Professor Hazell: Yes. We may come on to the ouster clause, but in my view it is highly undesirable because it leaves the monarch, in effect, without the protection of the advice about constitutional principles, which the Supreme Court handed down in 2019 in the Prorogation case.

Q242 **Mr Goodwill:** Thank you. Lord Hennessy, have you any observations to add?

Lord Hennessy: I agree with Robert. I would just add one thought. It was significant in Robin Butler's evidence to you that he still regards the monarch as the last resort against truly improper behaviour by a Prime Minister. There is still the power to dismiss. It is almost inconceivable that would happen. Also, Robert Armstrong—it was the same in 1991, in the documentary transcript, when we asked him to update the Lascelles criteria.

These are almost inconceivable circumstances. This sounds a bit alarmist, but if you will allow me, Chairman, there was a moment when there was a great flood of cold war documents declassified after the cold war was over—nuclear release procedures and whatnot, and how the Prime Minister is the only one who can authorise a nuclear release.

I remember the great Sir Frank Cooper, who was a very tough operator—permanent secretary at the Ministry of Defence—sitting me down. Frank was rather an aggressive man. He said, "You've never understood the British constitution." I said, "In what way?" He said, "Well, you asked me the question: what would happen if a Prime Minister went mad and authorised nuclear release when there was no military justification?" He said, "The Prime Minister is not the Commander in Chief of the British armed forces—the Queen is. So the Prime Minister can't give a military order. He can authorise, but he can't give a military order. So the Chief of the Defence Staff by his side would say, 'There is no military justification for this.' The Prime Minister of the day, if so moved, would have to sack the CDS." Frank said, "And only the Queen can appoint a new CDS, which takes a while, but gives you plenty of time for the white coats to come in and sort the Prime Minister out."

I don't want to bring you down—we have enough to worry about in our poor old country at the moment, without thinking about a mad Prime Minister and nuclear release—but Frank Cooper talked about the informal constitution there and the Queen's role in that case would be not appointing a CDS pliable enough to do what the Prime Minister wanted. That is a very grave contingency.

You asked Robin Butler about what would happen if a Prime Minister sent a mob down to sack the House of Commons. That was quite an interesting answer as well.

Q243 **Mr Goodwill:** Maybe you have to be a little bit mad to even want to be Prime Minister. I wonder if the situation would have been any different that autumn if we had had a Speaker who was more of a referee and less somebody who wanted to play for one of the sides on the pitch.

Lord Hennessy: I do not want to be unkind to Speaker Bercow, but I think history will record one thing about him—that nobody was neutral about him. Some people thought that he was a great tribune of the people, and of Back Benchers and so on, and others took a different view of his style and level of activity, if I could put it that way. But I am not sure I want to get drawn into that one; I will leave that to another PhD student of mine.

Mr Goodwill: That is probably enough said. Back to you, Chair.

Q244 **Chair:** Lord Hennessy, I think you complimented Lord Jay on his diplomatic answers. I think you must have been learning a heck of a lot from him over the period of time, as shown in the answers that you have given on that particular subject so far this morning.

May I put one point to you, though? When we are talking about the Prorogation in 2019, of course it seemed a long time, but normally the House of Commons would have risen for the party conferences. Actually, by the time you had taken out the party conference recesses, that Prorogation was not as extended as it seemed, given the way in which Parliament would normally have happened, and there was a Queen's Speech, which had already been announced.

Lord Hennessy: I take that point, but it still struck pretty well everybody as unnecessarily long. And of course intentions were suspect, weren't they? That was the difficulty.

Chair: Okay. Thank you. Chris Bryant.

Q245 **Chris Bryant:** I won't get into that one, Chairman. May I just ask one preliminary question? Lord Hennessy, you have referred several times to two phrases. The first was "good for all seasons", which I presume means that we need a set of constitutional arrangements that work whether you have a good guy or a bad guy, or a bad woman or a good woman, both as Prime Minister and actually as monarch as well.

Lord Hennessy: Precisely, yes.

Chris Bryant: If you just rely on a simple majority in the House of Commons, when a Government can change the Standing Orders and can change legislation and so on, isn't there a danger that it is very difficult to achieve a constitutional set of arrangements that are good for all seasons?

Lord Hennessy: I would agree with that, but you could increase the chances as much as you possibly can. In the end, there's no guarantee against bad behaviour, really, is there? But I have always thought that our constitution, with all this peculiar mixture of custom and practice and conventions and statutes and codes and so on, somehow could take the strain. Perhaps it is a British conceit that I share with—I hope; indeed I suspect—quite a lot of people in the country: that we have a genius for muddling through.

Jim Callaghan spoke for pretty well everybody in that radio documentary in 1991, when he said, "Well, it works, doesn't it? It may be on the back-of-an-envelope. You don't have to write everything down in a written constitution." Jim was a very shrewd judge of these things.

I have a version of that in my own head. I do think that the combination of restraints that we have, by and large, does encourage good behaviour most of the time, but you cannot legislate against rogues, can you—capital "R" Rogues as well as other sorts of rogues?

Q246 **Chris Bryant:** This may be a personal point, but it doesn't feel as if we have a system that limits the power of a Prime Minister. If you simply rely on a majority in the Commons, they can suspend Standing Orders every day of the week and they can refuse to abide by a convention—for instance, one that says that a piece of secondary legislation that has been prayed against by the Leader of the Opposition shall be guaranteed time on the Floor of the House and a vote. That has been suspended the best part of 40 times in the last year.

Lord Hennessy: Yes.

Q247 **Chris Bryant:** I would say that nostalgia isn't going to serve us very well.

Lord Hennessy: Nostalgia has its uses, because we all have a certain idea of what proper behaviour is, Chris, I think. The great virtue of this country—at the time of the expenses scandal, I thought this, too—is that we are still shockable by bad behaviour, and in the end Governments will pay a price for it.

Q248 **Chris Bryant:** And get re-elected.

Lord Hennessy: I was thinking that the gods of politics are wrathful bastards—Chris, you know that—and those Governments will get their come-uppance one day.

Q249 **Chris Bryant:** I have just tiny questions on amendments and votes of no confidence. People have mentioned losing a vote on the Queen's Speech—does that include losing an amendment on the Queen's Speech, or just losing the Queen's Speech?

Lord Hennessy: Robert, I don't know what you think, but I would have thought losing the Queen's Speech as a whole. Maybe I'm wrong about that.

Q250 **Chris Bryant:** Historically, it has been an amendment.

Professor Hazell: Yes—

Lord Hennessy: It has been an amendment, Chris; you're quite right. Yes, that is the standard assumption. My brain is a bit cloudy; you're quite right. An amendment of the Queen's Speech would qualify—forgive me.

Professor Hazell: I agree with that. Could I just add something on your earlier questions? They go to what Peter Hennessy was saying right at the beginning about any replacement for the Fixed-term Parliaments Act needing to be robust and to stand the test of time. We might come on to discuss what, ideally, should replace the Fixed-term Parliaments Act, but I think it is possible to devise a replacement set of rules that is not so reliant on conventions that it can work only with good chaps in government. It must be robust, as Peter said, for good times and for bad.

Q251 **Chris Bryant:** That takes me on to a different question, which is about the effect on the electoral cycle. Is it a good thing or a bad thing to have a generally predictable time when general elections shall be held?

Professor Hazell: Shall I go first on that? It is clearly a good thing. I thought that Anne Twomey was very eloquent when giving evidence to you last week, not least because she was not talking about it from a purely theoretical point of view; she was talking about her experience as a former public servant in New South Wales. She told you, very clearly, the advantages that predictable election cycles have in terms of effective planning in government.

If I may, I will refer briefly to my own experience. I was myself a civil servant in Whitehall for almost 15 years, in the old days, pre the Fixed-term Parliaments Act, and I can still remember, from about the third year onwards of a Parliament, the debilitating effect of the speculation in the media and around the traps in Westminster and Whitehall: "Will the Prime Minister call an early election?" It did hamper our planning of the legislative programme in the final years of the Parliament. It did hamper our funding programmes and the like. It was very debilitating, not knowing clearly when the next election would be held. That is a very clear advantage of fixed terms.

Chris Bryant: Professor Hennessy?

Lord Hennessy: Chris, I would agree with that. I was worried when the Bill that became the 2011 Act was going through. I would have settled for four years, because that seemed to be the biorhythm we had got used to. It seemed more natural to go with the natural biorhythm as established by custom and practice in recent history than to go for five years, because you get the fifth-year blight, as I think people called it. So I was worried about that. Overall, I think in the expectations of general elections, a four-year term would be my choice. I think the 2011 Act did change expectations. Indeed, we had an election on schedule in 2015. It seemed to be doing its stuff, didn't it?

But I remember Robert Armstrong saying in the debates in the Lords on the 2011 Bill that it might be preferable for an incoming Government to have a resolution passed in the House of Commons noting its expectation that this Parliament would last for five years; you didn't need this full-blooded statute to do that, and it would be better left to each incoming Government to decide whether it wanted to be like that or not. I think he put that as an amendment, which was lost, but I thought that was one way of doing it, too.

Chris Bryant: I think I tabled the amendment that said four years instead of five—

Lord Hennessy: Ah! We think as one.

Q252 **Chris Bryant:** A simple majority in the House of Commons defeated it. And the period is not exactly five years, either, now, is it? It's five years plus a bit.

Lord Hennessy: Yes.

Q253 **Chris Bryant:** Which would make it the longest in the world?

Lord Hennessy: I shouldn't think so—is it?

Chris Bryant: Of a Parliament.

Lord Hennessy: Oh, of a proper Parliament? It might be of a proper Parliament, yes.

Q254 **Chair:** Peter, you have just talked about the fifth-year blight with a fixed-term Parliament of five years. If you had a four-year Parliament, wouldn't you have a fourth-year blight?

Lord Hennessy: I think, Patrick, Governments are much more knackered in the fifth year than they are in the fourth. It's a physical thing as much as anything else. There's only so much people can take these days, isn't there? I remember the wonderful Douglas Hurd saying—he was talking about John Major's Government, I think—that of course you get to a point where whatever you do, they don't want you, and it affects people terribly badly. There's that human side of it as well, you see.

Q255 **Chair:** Yes, but presumably Douglas was talking about the '92 to '97 Parliament, when the Government had been in office for a very long time. By the time we got to the '97 election, it was a minority Government. It possibly depends on the cycle, but we can take that further forward. I had better move on and not dominate too much. Let's go to Angela Eagle.

Q256 **Dame Angela Eagle:** Thank you very much, Patrick. I remember the '92 to '97 Parliament with some nostalgia, as it happens.

Lord Hennessy, you observed at the beginning of your evidence that the Bill to replace the Fixed-term Parliaments Act will become one of the fundamental constitutional texts of the UK.

Lord Hennessy: That is Robert's phrase, actually, which I lifted from his evidence.

Q257 **Dame Angela Eagle:** Fine. Well done for attributing it to Robert. I will come to Robert in a minute, but is the Bill as currently drafted up to it? How would you change it so that it could hold the weight that is expected of it as a fundamental centrepiece?

Lord Hennessy: It is an extraordinary Bill. In a way, it is a "shout of rage" Bill. I have never seen a statute before like clause 2. We are required by the legislation to treat this as all a bad dream that never happened. Clause 2 is an extraordinary injunction, isn't it?

Dame Angela Eagle: Back to the future.

Lord Hennessy: Yes, back to the future. A bit of amnesia is required on all our parts. It is a very peculiar statute, and I think it has been drafted in a "fit of pique", which is never a good basis for legislation. It is also reacting to those very particular circumstances in 2019. That is the weather system it is reflecting, which is a great pity, because you have to try to rise above all that in a statute like this. It has to be a very high-minded statute. I am not a musicologist, but it is like the opening bars of Elgar's first symphony, which are marked "nobilmente". A nobilmente statute is what we require. This reeks of partisanship and pique, which is a great pity. The whole tone is wrong, and I have no doubt we will get to the ouster clause in a minute.

The Dissolution principles also worry me, because I do not think they are right, as I was saying earlier. The essence of the decency bits in the "Dissolution Principles" statement

should be in the main body of the Bill, if you can engineer it that way. It is unsatisfactory, but out of this strange bundle of drafting, something good might just emerge. If you can somehow, as a pre-leg Committee, get a fusion of the best of the ancien régime with the best of a nouveau régime, you will have taken the trick. That is the great prize for you, and I am sure you can do it. It is just that, at the moment, it is not there. It is nowhere near that.

Q258 **Dame Angela Eagle:** That is very interesting. Professor Hazell, you said that it was possible to devise a replacement Bill that would be less reliant on the conventions and would do the job of replacing the Fixed-term Parliaments Act. Do you think that we have it before us? How do you think we should try to change this draft Bill, or what suggestions could we put to the Government as a result of our report? How do you think we should change what we have in front of us?

Professor Hazell: Coming to your earlier question about the title of the Bill, which I think is very undesirable for what will be a fundamental constitutional statute, it needs to be titled something like the "Dissolution and Duration of Parliament Bill". That would give people a much better understanding of what this Bill is about.

I can answer your question in a slightly different way, as Peter referred to retaining the best of the nouveau régime. Forgive me, Chair—I don't know at what point I could say this, but may I briefly mention the respects in which those elements of the Fixed-term Parliaments Act that are retained need to be amended? If I may, I will very briefly mention four respects. The first is, most obviously, that we need to remove the two-thirds requirement for a vote for voluntary Dissolution and replace it with a simple majority. As we saw in 2019, the two-thirds threshold can easily be circumvented by legislation for an early election, so it is pointless to maintain it.

Secondly, there is the silence, which we have already mentioned, in section 2 of the Fixed-term Parliaments Act about how an alternative Government might be formed during the 14-day period if there is an alternative that might command confidence. In practice, I would expect the House of Commons to signal that alternative to the monarch by a resolution or a motion on a Humble Address, but the silence is not satisfactory and it is vulnerable to procedural wrangling, so it does need to be filled by some more specific provisions, either by tightening up section 2 or—this would be my preference—by drafting some specific Standing Orders to fill the gap.

Thirdly, there is the provision in section 2(7) of the Fixed-term Parliaments Act that following a mid-term Dissolution the polling day is set by the Prime Minister. Given the mistrust and controversy that that generated in September 2019, it would be preferable for the polling day to be approved by the House of Commons. We set out how that could be done in paragraphs 28 and 29 of our written submission.

Fourthly and finally, there is also a problem that the 14-day period could encompass a time when the House of Commons is not sitting, with the risk that an election could happen against the wishes of Members of Parliament or indeed, as Anne Twomey warned you last week, that the Prime Minister might seek to prorogue Parliament during the 14 days. We have suggested that those difficulties could be avoided by amending the 14-day period to 10 sitting days. Those are the main respects in which, if you are minded to retain elements of what Peter called the nouveau régime, the nouveau régime nevertheless needs to be amended.

Lord Hennessy: Angela, I agree with all of that. May I add a thought about the title of the Bill? It is so boring. It makes it sound like a minor readjustment of the plumbing. It needs resonance, just like the Representation of the People Act has resonance. I would call it the Confidence Act, which is the basis of it. The PACAC report of September last year, which I thought was terrific, made confidence the centrepiece of all of this, which of course it is. Indeed, the report of the House of Lords Committee on the Constitution was titled "A Question of Confidence?" although we did put a question mark after it. You need a title that is resonant and will stick to the velcro of memory, so I would go for the Confidence Act, which is much better. This one just will not do. There is a complete lack of inspiration in it. Boring as hell.

Dame Angela Eagle: It can't be a howl of rage and be boring, surely.

Lord Hennessy: No, you are quite right.

Q259 **Lord Beith:** Can I just track back for a moment to reasons for refusal, because it occurs to me that we may have created a new reason why the monarch might be under some pressure to refuse a Dissolution, and we are doing so by creating, desirably I think, a situation where boundary changes cannot be delayed or manipulated by the Government of the day or a majority in the House of Commons, but automatically come into effect. Of course, a party leader with a majority in the House might seek to time an election so as to get in before the boundary changes took effect, if they were thought to be disadvantageous. Can you envisage the legislation coping with that, or indeed the existing conventions coping with that?

Lord Hennessy: I had not thought of that, Alan. That is a complication. I remember in the late '60s Jim Callaghan as Home Secretary got into a terrible pickle about all of that. He got a very good reputation overall as Home Secretary, but that was not the brightest bit of his escutcheon, was it? I hadn't thought of that, Alan, at all. It really does add a possible complication, doesn't it?

Q260 **Lord Beith:** Yes. Does Robert have a view about it?

Professor Hazell: Lord Beith, I agree with you. I think it is a very desirable change, and it has been made now. The new boundaries cannot be changed because they become automatic on the boundary commissions delivering their final report. It goes back, in a way, to my answer to Lord Jay about the unfairness that is inherent in any system where the incumbent Prime Minister can choose the timing of the next election. That is all I would say.

Q261 **Lord Beith:** The Conservative party's position, and the Government's position, moved from the 2015 manifesto, in which they said that the Fixed-term Parliaments Act was "an unprecedented transfer of Executive power"—I think that was in favourable terms—to the position that led to the Bill being introduced. Of course, that was brought about by the whole Brexit crisis, which obviously changed their perception. Can we really learn any lessons, in terms of the framing of legislation, from events that had such distinctive features—preventing a no-deal exit by a fixed date, in particular—or are we in danger of writing legislation to deal with something that will never recur in that form, when we should be writing legislation that, so far as possible, allows the system to cope with whatever new circumstances arise?

Lord Hennessy: I quite agree, Alan. I do not think that statute should be shaped by the freakish conditions of the last twitchings of the great Brexit debate—I really do not. The wider lesson in all that is that we surely cannot put ourselves through that again. The parliamentary lessons, as I was saying earlier, are *sui generis*. There is always a danger of legislating on the back of some trauma, and I think trauma is the right word for it, really. It was not the better angels of our parliamentary system in evidence, was it? I would try to divorce this legislation from that, while understanding that the motive power for a lot of it does come from that, quite obviously.

Professor Hazell: I wholly agree. It is clearly convenient for the Government to try to pin the blame for the paralysis in the last Parliament on the Fixed-term Parliaments Act, but as a lot of your previous witnesses have pointed out, that is nonsense. My colleague Professor Meg Russell has written an article in *Parliamentary Affairs* analysing the deadlock in the last Parliament and explaining that it was a perfect storm caused by a combination of factors, which you all know; in particular, a minority Government with the governing party deeply divided over its flagship policy, and a very weak Opposition, which was also divided, with no confidence in its Leader. Meg Russell identified four factors that caused the paralysis, but not one was the Fixed-term Parliaments Act. Even without that Act, we would have had a zombie Government unable to deliver their flagship policy, with a very weak Opposition unable to put the Government out of their misery. None of us would want to live through such a Parliament again, but it is a travesty to blame its dysfunction on the Fixed-term Parliaments Act.

Q262 **Lord Mancroft:** The draft Bill proposes to revive the prerogative powers that governed Dissolution and the calling of a new Parliament before 2011. What is your view on the Bill's approach to that?

Lord Hennessy: I was cheered up when I read Lady Hale's evidence to you because she found the question of whether you can revive the prerogative confusing, and if she can find it confusing, we can all find it confusing. I do not think it is crucial, if you take the solutions that Robert and I are keen on: clear-cut votes of the Commons, and straightforward majorities. I am always very keen on scholarly debates because that was my living for a while, and a great debate like that is how you find exam questions to set each year. In practical terms, I do not think it need detain us very much. I do love scholarly debates, and they quite often shed light on things, but this one is really angels on the head of a pin stuff.

Professor Hazell: Lord Mancroft, I think it very undesirable to revive the prerogative powers, for all the reasons that have been given by your previous witnesses. In sum, they have criticised the draft Bill because it will lead to uncertainty—it is not possible simply to revert to the status quo ante. In particular, as Peter said in citing Lady Hale, it is uncertain whether the power revived will be a prerogative or a statutory power. It would lead to uncertainty in not knowing the timing of the next election, making planning more difficult in Whitehall. It would create unfairness by reviving the power of the incumbent Prime Minister to choose the election date at a time that best suits the governing party. Lastly, it risks drawing the monarch into controversy if there are doubtful requests for Dissolution. The best way of protecting the monarchy is not to revive the prerogative power but to leave decisions about Dissolution where they belong—in Parliament, in the House of Commons.

Lord Hennessy: Absolutely.

Lord Mancroft: That is very clear. Thank you very much.

Q263 **Craig Whittaker:** Thank you both for attending today. Can I briefly ask about the writs of Parliament? As the Bill is currently drafted, the writ does not have to be issued immediately after Dissolution. As we know, that would take it over the 25-day requirement. Is that acceptable?

Lord Hennessy: Robert, do you want to go first?

Professor Hazell: Clearly, it is not acceptable. I would hope that that is simply an oversight, rather than the Government being Machiavellian about this. The remedy seems simple enough—to tie the issue of the writ to the date of Dissolution.

Lord Hennessy: I agree, absolutely.

Craig Whittaker: Thank you, Chair. That is all I wanted to ask.

Q264 **Mr Vara:** Thank you very much, Lord Chairman, and good afternoon to Lord Hennessy and Professor Hazell. The ouster clause, which has been referred to several times earlier, clearly seeks to determine that this area is for political determination, rather than for the courts. Professor Hazell has raised one or two issues on it, and I will come to them in a moment, but more generally, what is the problem in a Government having a mandate to get rid of a particular Act? What is the problem in a Government actually setting out in law that the courts cannot intervene?

Lord Hennessy: There are precedents, of course, for ouster clauses—the Parliament Act 1911 is one of them—but my view is that we don't need it. If ever there is classic territory for article 9 of the Bill of Rights 1689, it is this. I dug out the wording the other day: "Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament". I think that, in this instance, article 9 would rise and ride across the scene in full armour if the courts tried to get involved. I can't imagine that the Supreme Court would want to touch this. If ever there is classic terrain in parliamentary terms for article 9 of the Bill of Rights, it is this. Maybe that is part of an old assumption that just doesn't hold any more. I can see why people are concerned about it, but the ouster clause is deeply unsatisfactory, and I would just stand on the Bill of Rights.

Q265 **Mr Vara:** That may be so, but what is the problem in making it even more abundantly clear by putting it in law that this is not something for the courts? Those are extra measures or, as Sir Stephen Laws put it, a sledgehammer to make it absolutely clear to the courts that this is not something that they should interfere in.

Lord Hennessy: The way I have been viewing it, it is yet another delayed reaction to Miller-Cherry. It is a statute drafted in a "fit of pique", which I think is very undesirable. I would stand on 1689.

Mr Vara: Putting this Bill or the original Act in context, Sir Oliver Letwin made it absolutely clear that there was only one reason why the Fixed-term Parliaments Act came into being, and that was to ensure that the Lib Dems had comfort that the Conservatives wouldn't cut and run when it was politically convenient to do so. That was the sole purpose for this Act. Given that that objective was achieved, and there

was a five-year Government, which the Lib Dems wanted, there is no reason why it cannot be removed.

Professor Hazell said that increasingly you are going to get Governments that have small majorities, or even those working with other parties. Given that that scenario is felt to be the case, at the moment we have a political party that had the removal of this Act and the restoration of the prerogative powers in its manifesto. This is a Government that has a majority of 80 and all it is simply trying to do now is to put in law what it has a mandate to do. What is the problem in a Government trying to fulfil a manifesto commitment? This is for Lord Hennessy, but Professor Hazell may also want to come in.

Professor Hazell: Shall I go first? I have two points in response to this. First, it is a myth that the Fixed-term Parliaments Act was introduced simply to buttress the Conservative-Lib Dem coalition in 2010. Fixed-term Parliament legislation had been proposed in several private Members' Bills in the decades before 2010.

Fixed-term Parliament legislation has been introduced around the world, including in the Westminster world. In a supplementary written submission, which I put in to the Committee only a couple of weeks ago, I refer in detail to the fixed-term legislation in Canada, in Australia and, much closer to home, in the devolved Parliaments in Scotland and Wales, and the Assembly in Northern Ireland. I put in that supplementary submission to make the basic point that fixed-term Parliament legislation is very common in other Parliaments, including in the Westminster world, and that it works, in the sense that most of the time it establishes a new norm and Parliaments will run to the full term.

Secondly, on your point about the Government having a mandate, you referred specifically to the ouster clause. What the Government manifesto said was, "we will repeal the Fixed-term Parliaments Act." Forgive me; there was no mandate for the ouster clause. The ouster clause was not specifically mentioned.

More generally, manifestos are not a sacred contract between the governing party and the people. Again, this is a bit of a myth. It is not uncommon for manifesto commitments to be modified or, occasionally, to be dropped. Under this Government, we have already seen a related commitment to establish in the first year a commission on the constitution, democracy and rights being quietly dropped. That was announced by the Lord Chancellor only a few weeks ago. There is nothing sacrosanct about manifesto commitments.

The Institute for Government has done detailed research on how many manifesto commitments are fulfilled. Again, I can refer you and the Committee to the relevant web pages, if you want. I don't think one can make too much of how sacred a manifesto commitment might be, because not all manifesto commitments survive contact with political reality. They are subject to sober second thoughts, testing with experts and exactly the kind of exercise that this Committee, I am glad to say, is now going through.

Q266 **Mr Vara:** Professor Hazell, can I briefly respond? We could be here a long time. What made those numerous private Members' Bills is completely different from what political parties put forward to the nation in a general election. The point I am making is that the Fixed-term Parliaments Act was not proposed in any of the manifestos of the major political parties, which I think outrank private Members'

Bills, which are those of individual Back Benchers.

In terms of overriding manifesto commitments, you say that it is often the case that they are not fulfilled, but this was not an ordinary manifesto commitment. I lived through the last Parliament and the chaos that we had. To put it bluntly, Members of Parliament would come in every morning not knowing whether the business of the day would be as determined by the Government, as determined by the Opposition or as determined by a small group of MPs in the governing party who were working with Opposition parties. Indeed, nobody knew whether it was going to be the agenda of the Speaker. We had those extraordinary circumstances, and the Prime Minister did seek to call an election, but was prevented from doing so because of this Fixed-term Parliaments Act. We had the extraordinary situation of a paralysed Government, which is no good for the nation or for our reputation on the international scene. That was the scenario—an exceptional scenario.

Everybody talks about the Fixed-term Parliaments Act—its importance and how it was necessary—but it had a specific purpose, and we saw last time that it was a hindrance to a Prime Minister being able to go to the country for the country to decide. That is the context that we come from. I think Professor Hazell said that we might end up with minority Governments again. You could even have minority Governments relying on not having a majority in their own right, even of one. You might say that a simple majority of one should be enough to have a general election, but there might well be a scenario where a Government cannot command that majority of one and you have the paralysis that we all witnessed last year.

Coming back to the issue of the ouster clause, what the Government are simply trying to do is to make sure that the courts do not intervene on a very fundamental manifesto commitment that they wish to push through. Professor Hazell—I would like you to come back on this—you also say that it would put the monarch in a difficult position. It would put the monarch in no different position than the monarch was in just over a year ago, before Baroness Hale came up with her guidelines. Why is it that everything was fine for the monarch just over a year ago, and yet we then have Baroness Hale setting out some rules and it all becomes extraordinarily difficult to go back to the old scenario? Professor Hazell, please.

Professor Hazell: If I could just respond briefly on all the points that you have made. First, I wholly agree with you, none of us would want to live through again the last Parliament and its many travails. Secondly, as I said in my responses to Lord Beith, it is a travesty to suggest that any of the dysfunction of the last Parliament was attributable to the Fixed-term Parliaments Act. I refer you to the very careful analysis in the article by Professor Meg Russell where she analyses what the causes were of the perfect storm in the last Parliament, but none of the factors was the Fixed-term Parliaments Act.

Thirdly, you referred specifically to the Prime Minister's difficulty in getting a vote to dissolve with the requisite two-thirds threshold. I suggest very strongly to the Committee that if you are minded to retain aspects of a fixed-term Parliament regime, you should scrap the two-thirds threshold. It is undesirable, and it was also clearly ineffective because the Government were able to easily circumvent it by introducing the Early Parliamentary General Election Act 2019.

Fourthly, very briefly, there have been manifesto commitments from major political parties to introduce fixed-term Parliament legislation.

Mr Vara: I am specifically referring to the commitment at the last election—

Professor Hazell: In 2019?

Q267 **Mr Vara:** In 2019, yes. I just want to make the point that I am referring to the manifesto commitments of the last general election. Also, if I may say so, they did say that they would repeal it, and they did not say that they would introduce other legislation in its place. By repealing it, it is implied that it would be the status quo as was before the Act was introduced.

Professor Hazell: We must not rehearse all the previous witness sessions that you have had, but I hope that it has become pretty clear that the Fixed-term Parliaments Act cannot simply be repealed. All the legal experts who have spoken to you have said that that would be extremely dangerous, because it would create such uncertainty.

Mr Vara: With respect, Professor—

Chair: Shailesh, let us give people a chance to answer the questions, and then you can come back right at the end.

Professor Hazell: Finally, you asked me about the risks to the monarch from the ouster clause. What I said in our written evidence was that under the Government's proposals, in the event of an improper request for Dissolution, the Queen would be on her own. Because of the ouster clause, the monarch would lack the advice and protection of the courts. The Government justify that in the foreword to the draft Bill by stating: "The long standing position is that dissolution is not reviewable by the Courts and judgement on the Government's actions in such matters should be left to the electorate at the polling booth or, in extremely exceptional circumstances, to the Sovereign."

In my view, that offers cold comfort to the palace, because if the Crown is left as the only check to improper or untimely requests for Dissolution, it would inevitably be drawn into controversy if such a request were refused. That happened in the King-Byng affair in Canada in 1926 and with Gough Whitlam in Australia in 1975. In each case, the Governor-General's refusal of the Prime Minister's request for Dissolution triggered a major constitutional crisis.

The most effective way of avoiding such crises is to leave decisions on Dissolution with Parliament, which is the right place for a quintessentially political decision. As Peter Hennessy has explained very eloquently, if the decision is made by Parliament then, under the Bill of Rights, it is beyond any kind of challenge in the courts.

Lord Hennessy: May I just add one small point? Historically—Alan Beith will have the figures in his head, but I don't—the Liberal Democrats' party has wanted a fixed-term Parliament for a long time, so I think it is a bit unfair to say that the sole motivation of the 2011 Act was to keep the coalition in one piece. I am sure that was one factor, but it had been argued by many people for a long time that the excessive power of the Prime Minister in this area needed curbing, so there was a high-minded approach to this, as well as an immediate

coalition survival motivation. I think you are being slightly uncharitable towards people in your characterisation of the motives for the 2011 legislation.

Q268 **Mr Vara:** Lord Hennessy, I am merely quoting, or paraphrasing, one of the key people involved in those negotiations, which is Sir Oliver Letwin, who was the representative of the Conservatives in those negotiations. He himself said—you can look back at his evidence—that that was the purpose. Forgive me if I am being uncharitable simply by quoting one of the key players in those negotiations.

Lord Hennessy: I respect him greatly, but I think he was wrong about that.

Mr Vara: May I conclude by saying one thing? I just want to say to Professor Hazell that, when he says a number of people have said that it would be not right to repeal the Act, I think if we look at their wording carefully, very few of them are definitive in saying that you cannot simply repeal the Act because it would cause chaos. Many of them have concerns, but having concerns is different from being definitive not to repeal it. Also, Lord Sumption, one of the country's most respected former Supreme Court judges, has said that the ouster clause should be respected; it is what the Government want. Likewise, Sir Stephen Laws, one of the country's leading counsels, is definitive. So, two of the country's leading lawyers are being absolutely clear in their language that the ouster clause is valid, and a whole lot of other people are not definitive but raise various caveats.

Chair: Thank you, Shailesh. John, are you now back with us?

John Spellar: Can you hear me?

Chair: Yes, I can hear you.

Q269 **John Spellar:** Even better. One of the problems is that so many colleagues are at home that they feel the need to talk endlessly when they get the opportunity.

In response to Lord Hennessy's comment about this being done in a "fit of pique", this Committee has been set up in a roundabout way. The legislation said that a Committee should have been set up in order to take evidence and report and that that should form the basis of the legislation, rather than the legislation being considered by the Committee.

Can I come to Professor Hazell? I thought he said that Australia had fixed-term Parliaments legislation. That is certainly true for the states, but is that true at the federal level?

Professor Hazell: No, it is not—forgive me. In all the Australian states bar one—Tasmania—they have introduced fixed-term legislation over the last 15 years or so. You heard eloquent testimony last week from Anne Twomey from New South Wales, which was the first state to introduce fixed-term legislation. From memory, that was in 1995. At the federal level, you are absolutely right: they don't have fixed-term legislation, but they do, unusually, have a maximum term of three years.

Q270 **John Spellar:** That is a different issue. Is that in any way dissimilar from here, where

councils and Scotland and Wales have fixed terms, but the equivalent—the federal Parliament, the national Parliament—is frankly in a similar position to Australia?

Professor Hazell: At the moment, until the Fixed-term Parliaments Act is repealed, we do have fixed terms. If I could briefly touch on Canada—I refer you to the supplementary submission that I put in to the Committee about both Australia and Canada—in Canada they do have fixed-term legislation at the federal level, as well as in the Canadian provinces.

Q271 **John Spellar:** Can I just briefly touch on the Whitlam Government, because you mentioned that here and in your submission? Wasn't the underlying problem that the Governor-General, acting on behalf of the monarch, was in fact taking advice from the Leader of the Opposition rather than from the Prime Minister—indeed, was conspiring with the Leader of the Opposition?

Professor Hazell: We should recall Professor Twomey, who is one of the world's leading experts about the constitutional crisis in Australia in 1975. Forgive me, I am not. All I can recall, in brief, is that the Whitlam Government could not get supply, which was blocked in the upper House, the Senate, which in Australia has power over finance matters, and Whitlam requested a Dissolution—

Q272 **John Spellar:** Only a half-Dissolution of the Senate, not of the House of Representatives, which should have been in charge of supply.

Professor Hazell: The Australian system is not the same as ours and the Senate did have power and that was Gough Whitlam's difficulty, because he didn't have a majority in the Senate. But I don't think the Chairman will thank us for discussing at great length the Australian crisis of 1975.

Q273 **John Spellar:** In that case, can I return to the question that has been allocated to me? Peter Hennessy described the "Dissolution Principles" as not adequate. Do you think that the document adequately captures the conventions on Dissolution, on the calling of Parliament and on Government formation as they existed before the Act?

Lord Hennessy: I think, John, the problem is that it is not precise enough on the two concepts of advice—the capital A advice and the lower-case advice the monarch doesn't have to accept. Also, there is the verb "request". The Lascelles principles had the verb "request". The Prime Minister could only "request" a Dissolution. "The Cabinet Manual" repeats the Lascelles language. I think in the "Dissolution Principles" here it has got to be much more in line with "The Cabinet Manual" and the Lascelles principles.

Again, I suspect it was done in a rush. Also, it is back-of-an-envelope of the worst kind, isn't it? It doesn't read in the sort of language you would expect it to, given the magnitude of the questions it is addressing. It is an unsatisfactory piece of drafting as well.

Q274 **John Spellar:** Can I be clear? Do you think that talking about advising, rather than requesting, actually represents a change in substance?

Lord Hennessy: I think the assumption that it requests, rather than advises—the advice question—is very precise. Again, I might have quoted Martin Charteris directly earlier in this session. He said that we always have to distinguish between capital A advice, which the monarch always accepts from Ministers, and lower-case advice on personal prerogatives, which the monarch does not have to accept. That needs to be made plain, so that the historical

continuity, which is terribly important in constitution-crafting, is maintained. That is all I am saying, John.

John Spellar: Thank you very much.

Q275 **Chair:** Thank you. Could I ask Peter Hennessy about his experiences? You talk about the public knowing when an election is going to be. In all the elections I can recall, people have generally known when the election will be or that there is an election in the offing, apart from probably the 2017 election. Could you give me any other examples of when an election was called without the public being aware that there was about to be a general election, or without a lot of news that there was going to be a general election?

Lord Hennessy: The only one I can remember being a bit of a shock—it was only a bit of a shock—was Harold Wilson going in 1970. We were a bit surprised that he was going that soon. Of course, it rebounded on him. If there is an iron law of electoral history, I suppose it is that the electorate gets very fed up if there is a general election when there does not need to be one. I remember Willie Whitelaw after '74—he was a very shrewd observer of these things—saying that if you have a "Who rules?" general election, people stand back and say, "Actually, we thought you were governing." It is the knicker-elastic theory of elections: it snaps back on you if you foist an election on people when you do not need to.

Chair: Which is much of what Robin Butler said to us as well. Lord Beith, did you want to make a point?

Q276 **Lord Beith:** I was just quoting Ted Heath in February 1974. He had a reason to call an election, but it was an unexpected election. A lot of MPs found themselves retiring a little earlier than they had expected. There was less surprise about the October election in '74—the only question was when it would be. But if he had asked for it in March or April '74, the golden triangle might have asked him whether he could leave his call to the palace to a little later in the year.

Chair: A few people want to make comments: Maria Miller, Chris Bryant and Bruce Grocott. Chris, do you want to go first? Then we'll hear from Maria.

Q277 **Chris Bryant:** Very quickly, I remember at least one general election that did not come about when we thought it was going to happen: when Gordon Brown became Prime Minister. That destabilised Government considerably.

Lord Hennessy: We expected an election in October '78, didn't we? Jim Callaghan delayed.

John Spellar: "There was I, waiting at the church," he said.

Q278 **Mrs Miller:** Much as I would like to examine further the knicker-elastic rule of politics, I want to clarify one very simple point. I realise that maybe I did not catch this in the discussion. Can I confirm that neither of our witnesses advocate the retention of the Fixed-term Parliaments Act as it is? I gently remind them both that it was not just the Conservative party that had its manifesto to repeal the Fixed-term Parliaments Act; the Labour party had it in its manifesto as well. Can I get very simple clarification on that point, first from Professor Hazell and then from Lord Hennessy?

Professor Hazell: I am certainly not advocating retaining the Fixed-term Parliaments Act as it is. It is clear that if it is repealed, there will need to be a replacement statute, and I hope the whole discussion of this Committee will be about what should be in that replacement statute. During my evidence, I listed four respects in which, if we continue to have a fixed-term Parliament regime—I hope that we shall—the existing fixed-term Parliament legislation needs to be amended. I won't repeat those respects now, but they will be on the record.

Lord Hennessy: I think it should go. It's almost friendless; it's not entirely friendless, but it should go, I think. To use the terminology that matters, people have no confidence in it anymore, and that's a very unsatisfactory position. But again, to adapt Arthur Balfour on Dissolutions, we can't go on going round this circuit forever. This is the time to get a settlement that will hold, and I am sure you can. I am sure you can find a way through for all of us.

Q279 **Lord Grocott:** Just on the question of unexpected elections, you have gone to a period there—I would like to ask a question of Robert Hazell on this. There were four elections there, weren't there? The 1970 election, which was unexpected and didn't get the result the Prime Minister wanted. The February 1974 election, where ditto. The October '74 election, where the Prime Minister expected to get a substantial majority and didn't. And of course the '79 election, where James Callaghan certainly didn't want Margaret Thatcher to be Prime Minister.

The only reason I mention all those unexpected elections with results that the Prime Minister would not have wanted is to relate that to Robert Hazell's point about the research saying what an advantage there was to a sitting Government, but more specifically to ask him this question. He has several times said that that was unfair, which I am not saying I necessarily disagree with, but that it should be replaced by the Commons making a decision. The Commons, almost by definition, will have a majority that will agree with the Prime Minister when required to on the matter of elections, so it seems to me that the Prime Minister of the day requesting an election and a simple majority in the House of Commons deciding on a general election date—we are all agreed that the two-thirds requirement was ridiculous—amount to pretty much the same thing.

Professor Hazell: Could I respond briefly? First, by reminding me of those elections where there has been a slight surprise to the Prime Minister, you are really, in effect, challenging the evidence of Professor Petra Schleiter. And as I said in my reply to Lord Jay, if there are members of the Committee who want to question that evidence, I really would encourage you to invite Petra Schleiter to give evidence to the Committee, because to me, her research is very careful. As I said, it's highly respected, and her conclusions are incontrovertible.

Secondly, you asked about giving the decision on Dissolution to the House of Commons. Let me make it clear that, under fixed-term legislation, Parliaments will normally run for their full term. That was the whole purpose of the supplementary submission that I put in to the Committee: to demonstrate that that is what happens in practice in those Westminster jurisdictions that have fixed-term legislation.

Just to take one example, the example closest to home, which you will know about very well, Scotland, Wales and Northern Ireland have fixed-term legislation, and we take it for granted that their Parliaments will run for a full term. And they do—they have, with only one

exception. My evidence also goes into the experience in Canada and Australia, where the norm, if you have fixed-term legislation, is for the Parliament to run for the full term.

The only circumstance in which the House of Commons then decides on Dissolution is if there's a deadlock or a vote of no confidence, and that then triggers a vote on whether there should be an early Dissolution. That's the only circumstance, under fixed-term legislation, when Parliament gets to decide.

Q280 **Lord Grocott:** But that is a simple majority, which the Prime Minister can be fairly confident of getting.

Professor Hazell: Well, it depends entirely on the political circumstance and whether the Prime Minister has a majority, as you are supposing, but you're right. Please: I would encourage you to read my supplementary submission, because I make the case that fixed-term legislation is not a set of fixed rules and therefore some people have suggested it's a misnomer to call it a fixed-term Parliaments Act. It creates a new norm, and what I tried to explain in the supplementary submission is that most of the time, in most Parliaments, for most of their parliamentary terms, that norm is observed. It works.

If we are coming to the end, I would like to say something very briefly by way of a final remark, if I may.

Chair: Are you okay with that Bruce? Have you finished now?

Lord Grocott: I just don't agree, but we would go on forever, I suppose.

Q281 **Chair:** Okay. Robert, if you want to make your final remarks, please do.

Professor Hazell: This will be very brief. It is to make one simple but really fundamental point. At bottom, this whole discussion has been about where power lies and where it should lie in our parliamentary democracy. Should the Executive be accountable to Parliament, or should Parliament be accountable to and controlled by the Executive?

The Government's draft Bill, to my mind and that of several of the other witnesses who have given evidence to your Committee, is that it is a bit of an Executive power grab. It is an attempt to ensure that Parliament is controlled by the Executive, and that the Executive should decide when Parliament sits or is dissolved. I hope that, as a group of wise and experienced parliamentarians, you will stand up for parliamentary sovereignty and the principle that decisions about Dissolution and prorogation properly belong with Parliament. Parliament is the central institution in our democracy, and it should decide when it is dissolved or prorogued. That is my parting thought.

Q282 **Chair:** Thank you very much. Peter, I don't know whether there is any point that you want to summarise with.

Lord Hennessy: Just one remark. We began with confidence and I would like to end with it. I have great confidence in your Committee, Chairman, to do this, to pull it off, to blend the nouveau and the ancien. You will have the Hosannas of a grateful nation when you do so, not least from me.

Chair: Thank you very much for that. I am going to share a comment. I haven't got permission to do so, but Chris Bryant texted me to say, "Good luck getting consensus on this." I think that is certainly the case.

I thank both our witnesses, Lord Hennessy and Robert Hazell, for their forbearance and their answering of the questions in very thoughtful ways this morning. It has been a fascinating session and has answered some of our questions and led us to think a bit more about some of the other issues that are there for us to address. Thank you very much for participating this morning.