

Written evidence submitted by
Rt Hon Lord Morris of Aberavon (GFE 06)

A SECOND GENERAL ELECTION?

Given the state of the polls - and there will be many more - at present indicating the possibility, if not the probability of a hung parliament, I surmise that someone in the offices of the Prime Minister, Ed Miliband and Nick Clegg are beavering away at the options should such a hung parliament be elected.

I may be wrong, but it would be pretty bleak, if not irresponsible, if some thought is not being given to that prospect.

I was Shadow Attorney General in 1992 and there was a possibility that Sir John Major would not win that election. I was asked to consider the prospect that in such event he might ask for an immediate second election.

Lawyers rely on the comfort of legal precedents from our courts. Unfortunately, I was not aware of any such precedents upon which to build an advice. However, learned academics have written extensively on the matter and there is even a published letter from an ex-holder of the office of the King's Private Secretary.

The recent publication of the Report of the House of Commons Political and Constitutional Reform Committee, "Revisiting the Cabinet Manual", coupled with the inevitable countdown of the number of days to the General Election, has triggered off some press interest into what should happen if the Prime Minister is not able to form a government.

The amended Cabinet Manual now reads:-

"Recent examples suggest that previous Prime Ministers have not offered their resignation until there was a situation in which clear advice could be given to the Sovereign on who should be asked to form a government."

The matter is then left open as to whether a constitutional convention has been established.

The Committee note, with apparent approval of the evidence of the distinguished academic lawyer, Professor Robert Hazell:

“We must always have a government, especially at times immediately after an election when it is not yet clear who can command confidence in the new Parliament. We still have a government; it is the previously existing government.”

The Committee calls on the Cabinet Secretary *“To set out clearly and well in advance....the principles which underpin the continuance in office or otherwise of administrations following a General Election.”*

In my view, the principles are well hallowed by experience in our lifetime and earlier and by comments by learned constitutional academic lawyers over the years.

Given the absence of judicial precedents when I was asked to consider the position in 1992, I consulted Professor Sir William Wade QC, formerly Master of Gonville & Caius College, Cambridge and Professor Sir David Williams QC, Master of Wolfson College, Cambridge – two of the most eminent constitutional lawyers of the age. I believed my conclusion reflected the views they held.

Another eminent constitutional lawyer, Professor Vernon Bogdanor, reflected in 2008:-

“A hung parliament may lead to a political crisis, but that is something for the political leaders, not the Sovereign to resolve.” I think he rightly called it *“The Golden Rule”*.

If the Cabinet Secretary can assist in concentrating minds as to what should be done, that would be helpful to limit the involvement of the Sovereign and assist in the implementation of Professor Bogdanor’s *“Golden Rule”*.

The Committee went further in its call to the Cabinet Secretary in enjoining him to set out the Government’s view.

The Cabinet Secretary is, after all, the servant of the Government, but the need is wider – the need is for a consensus from our main political leaders.

In short, each of our political leaders must get on with it and work out some agreement for a consensual position.

I have argued that the Fixed Term Parliament Act handcuffs Parliament at present and not only fixes the date of the 2015 General Election, but also that of 2020 and 2025. Whatever its value for 2015, nothing could be more ridiculous than to fix the dates for 2020 and 2025. As Mr. Macmillan allegedly once said, *“Events, dear boy events.”*. If he didn’t, it is very apt.

For the moment an immediate second General Election is out of bounds by statute, even if the new Parliament in May 2015 is hung. This political scenario is utterly lacking in real politiqu. To have another General Election before May 2020 needs either the passing of a vote of “no confidence” in the government or a parliamentary decision by an at least two-thirds majority that “nevertheless there should be an early General Election.”

The second alternative is fairly obvious: if there is a whiff of a two-thirds majority, the continuation of the government would in every sense be doomed. The vote would be a formality.

It is the architecture upon which the “no confidence” motion is constructed that I find hilarious; attached to it is a provision for a “cooling off” period of 14 days to allow for another motion to rescind it. The inevitability of a “no confidence” motion is almost built-in to my DNA from what happened to Callaghan’s government in 1979.

The idea of a “cooling off” period in the House of Commons is difficult to contemplate. The House of Commons would be in a state of continuous uproar and even the most magnificent of Speakers would not be able to control it. The whole House would be jumping up and down like yo-yos.

The proper solution would be to rescind the Fixed Term Parliament Act as it would have by then passed its “sell-by date”. There are ample precedents for Parliament to cure the mischief in days.

We would then revert to the status-quo before the Fixed Term Parliament Act and the Prime Minister would have a duty to advise the Sovereign. There is one view that the Royal Prerogative would not automatically revive, but that could be cured by a specific clause to that effect in the rescinding legislation. I would be content with that – “belt and braces”.

To the likes of us, who sought successfully to limit the use of the Royal Prerogative in declarations of war, we should take comfort that it is a label to describe a constitutional mechanism over the centuries when it is exercised by the Executive. In Churchill’s words, it is *“the people’s Prerogative”*. It is the mechanism for many other activities of the Executive.

On the basis of the academic authorities and constitutional practice, the only course open to a Prime Minister having been defeated is, rather than seek a second dissolution, to advise the Sovereign to send for the leader of the opposition if it appeared likely that he would command the support of a significant number in Parliament.

I came to that clear view in 1992 that a losing Prime Minister could not properly at that time seek a second dissolution. The position might be different if he had been able to govern for quite a period.

Another eminent constitutional lawyer, Professor Rodney Brazier of Manchester University has written, *“If a government continues in office as a minority party administration after an inconclusive General Election and is immediately defeated on an amendment to the Queen’s Speech, there is no precedent for a Prime Minister seeking a second dissolution, rather there is ample precedent for him to resign. Indeed, the view is held that a request for a second dissolution at that time would smack of an attempt to get a recount of the electorate’s first decision.”*

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