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The 2010 General Election outcome and formation of the Conservative-Liberal Democrat coalition government

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***P.L. 30** What started out as a singularly dull general election campaign in the spring of 2010, against the backdrop of widespread apathy and popular disengagement from politics, ended up as one of the most gripping political dramas and constitutionally significant outcomes of a general election in modern times. Between the Labour Prime Minister Gordon Brown's announcement of the election on Tuesday April 6, and the appointment of David Cameron as Prime Minister over a Conservative-Liberal Democrat Coalition Government on Tuesday May 11, a succession of novel phenomena, surprises, and sensational events guaranteed that this general election and its impact upon our political and constitutional system will remain the focus for scholarly and establishment debates for many years to come.

The fact of the coalition itself is sufficient to ensure this election's significance in our constitutional history. It is almost 80 years since the last peacetime coalition was formed,¹ and it is 65 years since the end of Winston Churchill's coalition formed for the purposes of fighting the Second World War. It is the only Coalition Government to have been appointed during the reign of Queen Elizabeth II. But other special features of this election were to include the dramatic effect that the televised party leaders' debates, the first ever of their kind in the United Kingdom, had on popular opinion and on the standing of the Liberal Democrat leader, Nick Clegg. They included a deep ambivalence in the electorate about its voting intention in advance of polling day, and a widespread expectation that a "hung" Parliament would be the outcome which indeed proved to be the case. Precisely what were the rules on government formation in situations of no single party gaining an overall majority in the House of Commons was initially the subject of confusion in the media, but largely as a result of a media campaign by the Cabinet Office some semblance of public understanding was reached. The Cabinet Office too, in the months preceding the election, mounted a concerted effort to re-forge the rules and procedures in a hung Parliament situation, with itself playing a leading role in supervising inter-party negotiations.

***P.L. 31** But the most dramatic and significant part of the electoral outcome came in the five days of inter-party negotiations leading to the formation of the Coalition Government. The political climax to any UK general election almost always comes the morning after polling day which on this occasion had been Thursday May 6. Where a Government is defeated as had previously occurred in 1997, the transition of government is famously swift. The Prime Minister's resignation and the appointment of the Opposition leader as his successor takes place at Buckingham Palace the next morning, immediately followed by the new Premier entering 10 Downing Street, just after the outgoing Prime Minister has left the premises with furniture vans by the back door. But in May 2010 no such immediate climax occurred, leaving the 24-hour mass media and country in a state of suspense.

Over the course of five long days, Friday May 7 to Tuesday May 11, the political parties entered into a multi-faceted process of negotiations, some formal, many informal, with pressures exerted upon the leading players from within their parties and without. A significant feature throughout this period was the intense confidentiality surrounding the communications and meetings between participants. There were virtually no off the record briefings to the media about the substance of the meetings or how the negotiations were going, in contrast to the normal state of affairs where the media and politics are closely intertwined. The only politicians actively involved in the negotiations who talked at all to the media beyond the formal statements or public utterances outside the Cabinet Office or other inter-party meeting places were on the Labour side. When public statements were made, therefore, the sensational nature of their content was enhanced even further.

What made these five days in May so dramatic at the time was the unpredictability of their outcome. The precise arithmetic of the election result could hardly have thrown up a more difficult political and constitutional equation for the parties to deal with.

UK GENERAL ELECTION RESULT 2010²			
	Votes	% vote	Seats won
Conservative	10,703,744	36.1	306
Labour	8,606,518	29.0	258
Liberal Democrats	6,836,198	23.0	57
SNP	491,386	1.7	6
Green	284,823	1.0	1
Independent	229,021	0.8	1
Sinn Fein	171,942	0.6	5
Democratic Unionist	168,216	0.6	8
Plaid Cymru	165,394	0.6	3
SDLP	110,970	0.4	3
Alliance	42,762	0.1	1
Speaker	22,860	0.1	1

***P.L. 32** This hung Parliament was of a markedly different nature to the previous occasion in February 1974, where the two main parties were virtually even--the Conservative Government gaining 297 seats, to Labour's 301--with the Liberals fielding a very small band of MPs, just 14.² In 1974, because there were 23 other MPs (7 SNP, 2 Plaid Cymru, 12 members for Northern Ireland constituencies, and two independent Labour MPs), the Liberals could not offer either the Conservatives or Labour an overall working majority.

In 2010, by contrast, the Liberal Democrats were fielding a much larger parliamentary team of 57 seats. A figure of 326 parliamentary seats was needed for an overall majority, leaving the largest party, the Conservatives, 20 short. If the Liberal Democrats entered into an arrangement with Labour (the party with which they had the closer ideological affinity), their combined voting power in the Commons was greater than that of the Conservatives, 315 to 306. This would leave the regional and other Members holding the balance of power, though the Green and SDLP Members could be expected to vote with Labour, and the Unionists with the Conservatives. The SNP and Plaid Cymru

Members would generally support Labour too, so a “rainbow” or “progressive” alliance behind Labour remaining in office was certainly feasible.

However, a key factor in the Liberal Democrats turning to the Conservatives was a commitment of constitutional principle that they should attempt to deal first with the party with the strongest mandate. Nick Clegg's view was that there was a moral imperative upon him, that:

“whichever party--whether it is the Liberal Democrats, Labour or the Conservatives--have the strongest mandate from the British people, it seems obvious to me in a democracy, they have the first right to seek to try and govern either on their own or with others.”³

This was not the view of the Labour leadership, including Gordon Brown and Lord (Peter) Mandelson (the then First Secretary of State and a key strategist). Throughout the five days of negotiation, constitutional arguments were produced from all sides in support of conflicting interpretations of what constitutional convention and practice in hung Parliament situations was, or what it ought to be.

Whilst naturally endorsing Mr Clegg's stance, the Conservative leader David Cameron was less concerned with constitutional principle than an effective working Government to combat the economic crisis that would require a raft of unpopular public expenditure cuts and taxation increases. If the Conservative Party were combined with the Liberal Democrats, their voting strength in the House of Commons would be 363 compared to 287 all others. A minority Conservative administration could have operated under a “confidence and supply” agreement, whereby Liberal Democrats in consideration of the Conservative Government **P.L. 33* implementing an agreed set of Liberal Democrat policies would support the Government on the annual Queen's Speeches and Budgets, and either abstain or vote with the Government in any no confidence motion in the House of Commons.

However, the key advantages of a full-blown coalition with the Liberal Democrats from David Cameron's point of view were that a clearer obligation would exist upon Liberal Democrats for positive voting with the Government, and the Liberal Democrat leadership would have a stronger incentive to deliver its party's backbench Members' votes in the House of Commons. Furthermore, Mr Cameron could present the coalition to the country as a Government of national unity, sharing responsibility across the two parties for the unpopular economic measures it would need to take in the months and years ahead.

The issue of popular consent and maintaining public support was undoubtedly a critical factor. The reality was that the Conservatives had not won the election, and there were many more votes cast against them than for. The sudden popularity in the polls that Nick Clegg had gathered as a result of the televised election debates was a significant factor to be considered. These three debates, which attracted very large audiences (around 10 million, 7 million, and 9 million, respectively), projected the Liberal Democrat leader Nick Clegg into the public consciousness with a popularity that saw his party surge upwards in the opinion polls on voting intentions.⁴ Before the televised debates, Mr Clegg was little known in the country. Not only did the debates give him equal billing with his Labour and Conservative counterparts, but he performed particularly well, and indeed in opinion polling was the “winner” of their outcome. His far higher public profile as a result not only assisted his party electorally, but was a powerful supporting factor in the Conservative decision to embrace him in a formal coalition, even to the extent of David Cameron offering him the post of Deputy Prime Minister.

“Who governs?”--The constitutional framework for hung Parliaments

The pre-existing constitutional position

After the election timing debacle of 2007 when Gordon Brown, shortly after succeeding Tony Blair as Prime Minister, made it known he was considering an autumn election (at a time when the change of Premier had caused Labour's opinion poll ratings to jump ahead of the Conservatives by as much as 13 per cent), and then suddenly changed his mind (following a slump in Labour's ratings after the party conference season), most commentators were confidently expecting Parliament to run its full maximum duration of five years, with polling day most likely to be Thursday May 6, 2010; and so it proved to be the case.

It was only by the autumn of 2009, however, that the media started publishing regular stories about the prospect of a hung Parliament, many with some sensational angle or warning about how a hung Parliament meant a constitutional and economic crisis. There were dire warnings of political chaos,

uncertainty over how a Prime ***P.L. 34** Minister would be appointed,⁵ and financial volatility in the markets. These scare stories were considerably aggravated by leading politicians themselves during the election campaign, as a means of worrying or goading people into voting for them.⁶ Leading articles in partisan newspapers stirred things further.⁷ The vision of financial catastrophe being propagated only served to heighten concern over who was the best person to be appointed Prime Minister in a hung Parliament and what were the constitutional rules and processes that applied, if any.

One way of answering this question was by looking at what happened in February 1974, the last occasion when an electoral outcome produced no overall majority. A summary of what happened is as follows. The incumbent Prime Minister leading a Conservative Government was Edward Heath, and the result of polling day on February 28, 1974, in terms of parliamentary seats won, had been Labour 301, Conservative 297, Liberal 14, SNP 7, Plaid Cymru 2, Northern Ireland parties 12, Others 2. So no party had won an overall majority, and any Labour claim to have the strongest mandate was offset by the fact that the Conservatives nationally won almost 300,000 more votes than Labour, or a 37.9 per cent share of the total vote compared to Labour's 37.1.

Mr Heath chose to remain in office over the weekend, and proceeded to attempt to form an agreement with the Liberal leader Jeremy Thorpe that would sustain him in Government. He had meetings with Mr Thorpe at 10 Downing Street on the Saturday at 4pm and on the Sunday at 10.30pm, and indicated his preference for a coalition, with Mr Thorpe being offered a seat in Cabinet. Any possible deal foundered, however, after meetings of the Liberal parliamentary party and the Conservative Cabinet on the Monday morning, with Mr Thorpe's Liberal colleagues refusing to support any deal without a commitment from Mr Heath to enact proportional representation, and the Conservative Cabinet being unwilling to go further than offer a Speaker's Conference on electoral reform. On Monday early evening, Mr Heath visited the Queen at Buckingham Palace to tender his resignation, and Harold Wilson was invited to form his third Labour administration.

Reflecting on the process that had been followed, Mr Heath in his memoirs expressed the view,⁸ "I had a clear constitutional duty to see if I was best placed to carry on that responsibility". Rumblyings of Labour disquiet and murmurings of unconstitutional conduct had emanated from some quarters in the Labour party, but the Opposition leader, Harold Wilson, was content with Mr Heath's position. At Mr Wilson's meeting with the Labour parliamentary committee on the Friday, it was:

***P.L. 35** "resolved that none of us would make any news comment, claim or forecast over the weekend. The Conservatives still formed the Government. They had to decide whether to resign or seek to carry on."⁹

In his memoirs, Mr Wilson described his view of the constitutional process in the following terms:

"The position traditionally taken by Buckingham Palace in this kind of a situation following an unclear election result, or a vacancy occurring during the lifetime of an elected Parliament, is not always understood. There were suggestions in March 1974 that as Labour had more seats than any other party, though not a plurality in the Commons, the Sovereign should have sent at once for the Labour leader. This is not so. A Government was in existence, and until it resigns, following the election results, or a defeat on the Queen's Speech, the Palace can only observe the classical doctrine, 'We have a Government'."

The events of 1974 were the subject of some media attention in the months prior to polling day in 2010, largely as a result of the recent public release through the Margaret Thatcher Foundation of a formerly secret memorandum by Robert (now Lord) Armstrong, entitled "Note for the Record: Events leading to the resignation of Mr. Heath's administration on 4 March 1974", giving details of what happened behind closed doors at 10 Downing Street between Friday 1 and Monday March 4.¹⁰ Lord Armstrong had been Mr Heath's principal private secretary, and later became Cabinet Secretary under Margaret Thatcher. For historians, this made fascinating reading on the personalities involved; for constitutional lawyers, it confirmed the position on prime ministerial appointment in established convention.

Stated simply, these conventions are, first, that the incumbent Prime Minister has the first opportunity to continue in office and form an administration; secondly, that if he is unable to do so (and resigns, or is defeated on the Address or in a no confidence motion at the meeting of the new Parliament) then the Leader of the Opposition is appointed Prime Minister; and thirdly, it is for the political parties to negotiate any inter-party agreement for government among themselves without royal involvement.

This is precisely what happened in 2010, as indeed it had happened previously in February 1974.

In late 2009 and early 2010, various attempts were made to inform the media and public about the constitutional position. I myself, in addition to my earlier works on the subject,¹¹ wrote a letter to the *Times* succinctly setting out the conventions in November 2009,¹² and I co-authored a Study of Parliament Group/Hansard Society pamphlet on government formation launched at a press conference at the House of Commons in March 2010.¹³ A few of the more academically-minded journalists, including Andrew Rawnsley,¹⁴ wrote thoughtful pieces in the press, rebutting claims that a hung Parliament would provoke a crisis.

***P.L. 36** At an official level the Cabinet Office prepared a document on the conventions governing electoral outcomes including hung Parliaments, and this was widely distributed to the media. This was in the form of a chapter in a draft Cabinet manual, published initially as written evidence for the House of Commons Justice Select Committee, and its content discussed by the Cabinet Secretary Sir Gus O'Donnell with the Committee at an oral evidence session held on February 24, 2010.¹⁵ It was then made available to the media and treated as formal guidance to be referred to for the constitutional rules and procedures in a hung Parliament. In this educative role, the draft manual sought to calm speculation that the country was heading towards a constitutional crisis.

"Where an election does not result in a clear majority for a single party, the incumbent Government remains in office unless and until the Prime Minister tenders his and the Government's resignation to the Monarch. An incumbent Government is entitled to await the meeting of the new Parliament to see if it can command the confidence of the House of Commons or to resign if it becomes clear that it is unlikely to command that confidence. If a Government is defeated on a motion of confidence in the House of Commons, a Prime Minister is expected to tender the Government's resignation immediately..."

New developments in hung Parliament practice and theory

It became apparent, however, that the purpose of the Cabinet Secretary behind the new draft manual was not simply to codify convention, but to create new expectations and processes.¹⁶ The first change in conventional practice desired by the Cabinet Secretary was to establish and extend the principle of a "caretaker" Prime Minister and Government.

Currently, between the public announcement of an election and polling day, a period of "purdah" has been said to exist, when the Government will refrain from initiating any significant new government policy, executive action, or expenditure of public money, particularly if it represents a commitment that will bind the post-election Government. Its democratic logic is essentially one of fairness: that a popular act could be seen as stealing an advantage over the other parties; and particularly if a change of Government is in prospect, the decision is rightly one for the new Government to take. As described in the earlier 2005 general election guidance issued to officials¹⁷ :

"During an election campaign, the Government retains its responsibility to govern, and Ministers remain in charge of their Departments. Essential business must be carried on. However, it is customary for Ministers to observe discretion initiating any new action of a continuing or long-term character. Decisions on matters of policy on which a new Government might be expected ***P.L. 37** to want the opportunity to take a different view from the present Government should be postponed until after the Election, provided that such postponement would not be detrimental to the national interest or wasteful of public money."

The Cabinet Secretary told the Commons Justice Committee that he wished to now extend this "discretion" on the part of a Government into the post-election period "when we do not have a stable government".¹⁸ This would certainly include any period of inter-party negotiation, as in fact occurred between May 7 and May 11, 2010, and could extend considerably further, not just until the meeting of the new Parliament and Queen's Speech, but arguably for several months thereafter if a minority Government's position in the House of Commons was considered politically fragile with a real possibility of losing a confidence motion or a second general election being called. The new principle drafted on Sir Gus O'Donnell's instruction for the draft Cabinet manual was¹⁹ :

"As long as there is significant doubt whether the Government has the confidence of the House of Commons, it would be prudent for it to observe discretion about taking significant decisions, as per the pre-election period. The normal and essential business of government at all levels, however, will need to be carried on."

The second change sought by the Cabinet Secretary was for the civil service to take over the hosting of any post-election inter-party negotiations.²⁰ The draft Cabinet manual included a paragraph stating²¹ :

“It is open to the Prime Minister to ask the Cabinet Secretary to support the Government's discussions with Opposition or minority parties on the formation of a government. If Opposition parties request similar support for their discussions with each other or with the Government, this can be provided by the Cabinet Office with the authorisation of the Prime Minister.”

However, precise details on the nature of support being envisaged were unclear, with Sir Gus O'Donnell agreeing in discussions with the Justice Committee that “we have some quite difficult practical issues to sort out as to how we make this work”. At the most basic, it would include personnel support and objective factual advice.

Supporting the ideas of the Cabinet Secretary on transition of government arrangements were modifications made under the authority of the royal prerogative to the meeting of the new Parliament.²² The date for the first meeting of the newly elected Parliament in 2010 was put back one week longer than had been normal under post-1945 constitutional practice. This had in fact been an earlier recommendation of the House of Commons Modernisation Committee,²³ on the basis that it would enable new Members more time to acclimatise to their new position. But governments and civil servants rarely adopt a Select Committee **P.L. 38* proposal unless it suits their own convenience. The real or principal reason for this change, certainly as it was perceived by the media being routinely briefed by the civil service on these matters,²⁴ was to facilitate post-election negotiations in the transition of Government.

Crucially--and well advisedly²⁵ --it seems the Palace was content to go along with Sir Gus's O'Donnell's suggestion that the Queen had no active role to play in a hung Parliament situation and any inter-party talks. Put politely in his draft Cabinet manual:

“The Monarch would not expect to become involved in such discussions, although the political parties and the Cabinet Secretary would have a role in ensuring that the Palace is informed of progress.”

In other words, if any proactive role was required to facilitate the inter-party negotiations, it would come from the Cabinet Office, not the Palace.²⁶

An important distinction to be drawn in interpreting the constitutional conventions on hung Parliaments is to realise that the constitutional right of an incumbent Prime Minister to remain in office and attempt to form a working Commons majority with others outside his party, does not mean or translate into a constitutional obligation upon third parties to do a deal with the incumbent Prime Minister or even to enter into any negotiations with him and his party. In other words, in 2010 it would be open to Gordon Brown as incumbent Prime Minister to make overtures, but it would be for the Liberal Democrat leader Nick Clegg to decide with whom he would forge an agreement for Government.

In this context, the public statement made by Nick Clegg in a television interview on November 22, 2009 that he would regard the party with “the strongest mandate” as having won the election and therefore the one with which he would enter into negotiations first, was a highly significant political development, and indeed a portent for how the election outcome would eventually unfold in terms of the negotiations between the parties during the five days of May 7 and May 11.

“Five days in May”--The post-election negotiations²⁷

The details of the post-election negotiations, and the accompanying public utterances by its leading participants, are now of some importance. This is so not simply for their own intrinsic interest as the story of a key political landmark, but **P.L. 39* for the precedents they have thrown up for the future and the lessons they tell us about the workings of the political process and constitution in hung Parliament situations. A chronicle of these events is as follows.

Friday May 7

By 10am the morning after polling day, 615 constituency results had been declared²⁸ and it had become certain there would be a hung Parliament, with no possibility of the Conservatives reaching the required number of 326 seats. The senior civil servants at the Cabinet Office, primed for this situation and armed with its draft Cabinet manual, now moved into action to host the inter-party

negotiations. A Press Notice statement was drafted for Gordon Brown, authorising this process to come into effect.

“On 2 February, I announced that I had asked the Cabinet Secretary to prepare a Cabinet manual, bringing together the existing conventions that determine the formation of governments including where no party has an overall majority.

On 24 February, a draft chapter of this manual, relating specifically to elections and government formation was published and was welcomed by the cross-party Justice Committee.

The election results are likely to show there is no clear majority for any single party. As I said last night, it is my duty as Prime Minister to take all steps to ensure Britain has a strong, stable and principled government. This is, of course, chiefly a task for politicians and--in time--for Parliament.

But to facilitate this process and consistent with the conventions set out in the draft Cabinet manual, I have asked the Cabinet Secretary to arrange for the civil service to provide support on request to parties engaged in discussions on the formation of government.”

The constitutional significance of this document, covering the novel civil service actions with prime ministerial authority, aroused little public interest in itself, for the glare of public attention was now focussed on what the Liberal Democrat leader, Nick Clegg, would do, with the results showing he held the balance of power and would be acting as “kingmaker”.

At 11am, Nick Clegg appeared outside Liberal Democrat headquarters to make his public statement. After a few comments on the results, with references to the 23 per cent of the national popular vote his party had received from the electorate, he referred to the “very fluid political situation” existing, with no party enjoying an absolute majority. He then spelt out why he would be negotiating first with the Conservatives, referring to his public statements the previous November²⁹ :

“I have also said that whichever party gets the most votes and the most seats, if not an absolute majority, has the first right to seek to govern, either on its own or by reaching out to other parties, and I stick to that view. It seems this morning that it is the Conservative party that has more votes and more seats, ***P.L. 40** though not an absolute majority, and that is why I think it is now for the Conservative party to prove that it is capable of seeking to govern in the national interest.”

Unless he was to concede defeat, the Prime Minister Gordon Brown had to create some political momentum behind Labour still being a contender for power. In a speech delivered to the media outside 10 Downing Street at 1.40pm, he said he respected Mr Clegg's decision to enter into negotiations with the Conservatives, but added, “For my part, I should make it clear that I would be willing to see any of the party leaders”. He then elaborated on potential areas of Labour and Liberal Democrat agreement. Shortly beforehand, the Press Association reported Alex Salmond, the SNP leader and Scottish First Minister, as saying that the SNP and Plaid Cymru had already accepted an invitation from Gordon Brown to enter into negotiations about an arrangement to support Labour staying in office.³⁰

The day's most sensational event then came at 2.30pm, with David Cameron's scheduled media conference at the St Stephen's Club, attended by leading members of the Conservatives' shadow Cabinet. Almost everyone was anticipating that Mr Cameron would proceed to attack Gordon Brown, saying he had lost the election and should get out of 10 Downing Street immediately. Instead to everyone's surprise, Mr Cameron delivered a positive speech, making no negative criticisms or demands. He thanked Nick Clegg for publicly stating that, because the Conservative Party had won the most votes and most seats, the Conservatives should have the first chance to form a Government. He then went on to make the Liberal Democrats “a big, open and comprehensive offer”, going much further than an arrangement which would simply keep a minority Conservative Government in office.

Until that moment, virtually all speculation had been of a “confidence and supply” arrangement, whereby in exchange for implementing some Liberal Democrat policies, the Liberal Democrats would support a minority Conservative Government on any confidence motion in the House of Commons, and support its general budget and expenditure plans. But now Mr Cameron was suggesting that the negotiations with the Liberal Democrats would have far wider parameters than expected, outlining areas where Liberal Democrats and Conservatives had common concerns including in the tax system and on civil liberties, and a number of Liberal Democrat policies which he was willing to take further. The prospect of a Conservative-Liberal Democrat coalition was now on the table. Nick Clegg and

David Cameron began a series of telephone conversations and the first of a number of personal meetings that were to take place over the course of the five days.

Nick Clegg's declaration that he would be dealing with the Conservatives first did not mean that communications with Labour would not take place or had been halted. Very much to the contrary, a steady stream of telephone calls and meetings between Labour and Liberal Democrat figures began taking place, facilitated by the fact that several senior members from the two parties were personal friends, such as the former Liberal Democrat leader Sir Menzies Campbell and Gordon Brown himself.

***P.L. 41 Saturday May 8**

The negotiating teams for the Conservatives and Liberal Democrats were now established, and had a preliminary meeting at the Cabinet Office to determine how they would proceed, agreeing to re-convene at 11am the next day, Sunday. The leaders themselves kept away from the formal negotiations, leaving it to a small group of three from each party, selecting senior working colleagues who had been closely involved in their parties' policy preparations for the general election. The Conservative negotiating team comprised William Hague, George Osborne, and Oliver Letwin; and for the Liberal Democrats, Danny Alexander, Chris Huhne, and David Laws. A further group of advisers supported their teams, including on the Liberal Democrat side Lord (Jim) Wallace who had negotiated with Labour's Donald Dewar over the first Scottish Coalition Government in 1999.

Nick Clegg now had to turn his tactical ability to carrying his party with him, under a formal party constitutional process that applied to neither of the other two major parties. Under party rules, there was a "triple lock" of constraints binding the party leader before entering into any agreement with another party. The resolution governing this procedure was passed by the Liberal Democrat party conference in 1998, at which time there were concerns among activists about its then leader Paddy Ashdown's ideas for closer relations with Tony Blair's New Labour Government. Its provisions were:

"Conference notes the absence of specific constitutional provisions which clearly define the Party's approach to gaining positive consent to proposals for an important change in strategy or positioning [and] agrees that:

- (i) in the event of any substantial proposal which could affect the Party's independence of political action, the consent will be required of a majority of members of the Parliamentary Party in the House of Commons and the Federal Executive; *and*
- (ii) unless there is a three-quarters majority of each group in favour of the proposals, the consent of the majority of those present and voting at a Special Conference convened under clause 6.6 of the Constitution; *and*
- (iii) unless there is a two-thirds majority of those present and voting at that Conference in favour of the proposals, the consent of a majority of all members of the Party voting in the ballot called pursuant to clause 6.11 or 8.6 of the Constitution."

Three internal Liberal Party meetings took place on Saturday, being with front-bench MPs, the parliamentary party, and the Federal Executive,³¹ their purpose being one of consultation on Mr Clegg's strategy, and serving as a sounding-board for how the inter-party negotiations might proceed and what were the key or minimum expectations from any agreement with the Conservatives.

***P.L. 42** By contrast on the Conservative side, no such processes to carry the party behind its leader were needed, though at 6pm David Cameron visited his party headquarters at Millbank to speak with party workers. From there, he travelled the short distance to the last key meeting of the day at 7pm at Admiralty House, Whitehall. There Mr Cameron and Mr Clegg met alone together for 70 minutes of talks, described to the press by a Conservative spokesman as "constructive and amicable".

At the highest level of the Labour Party, more furtive developments were taking place. Not until several days later was it revealed that a group of senior Labour ministers³² had informally met with the Liberal Democrat negotiating team in secret at Portcullis House this Saturday, and without Conservative knowledge. Gordon Brown himself kept a low public profile, and after the Cenotaph ceremony at midday flew back to his constituency in Scotland for 24 hours. It was becoming clear within Labour, and from what talks had taken place with the Liberal Democrats, that Gordon Brown represented an obstacle to any Labour-Liberal Democrat deal.³³ Furthermore, overt criticisms of his leadership from within the party were starting to re-emerge in public interviews given to the media.³⁴

Sunday May 9

The political scene and intrigues were given mass coverage in the Sunday morning newspapers, as a backdrop to the commencement of the formal inter-party negotiations that would last the whole day. Themes that had been emerging during the previous two days were gathering momentum and were reflected in television interviews.³⁵ On the Left, enthusiasm was being expressed for a “rainbow alliance” of the “progressive” forces in politics (meaning Labour, Liberal Democrats, the new Green MP, SDLP, SNP and Plaid Cymru); and on the Right, a leading Conservative was offering to give up his Cabinet seat if necessary to a Liberal Democrat.

Setting out the central dilemma, Lord Ashdown (who was known to be advising Nick Clegg) said that:

“[T]he British electorate had invented a deliciously painful torture mechanism for the Liberal Democrats, because our instincts go one way but the mathematics go the other, and we have to make our decision.”

Referring to a deal with the Left, he said:

***P.L. 43** “Could you run the country on the basis of a coalition made up of the DUP, Plaid Cymru, the Greens, the Alliance... would that provide the kind of stable government capable of taking strong decisions in a time of international crisis that I think comes first?... Well I pose the question and the answer seems to me is self-evident.”

But then on the other hand, he held out ideas about a deal with Labour, saying:

“Now there may be other ways round this... What Nick is doing at present--and the phrase is I think extremely important--he said, ‘We are talking to the Conservatives, but we are listening to Labour’... It is not our job to tell the Labour Party who is their Leader... We all have to accept that Gordon fought a magnificent campaign coming from where he came from, but amongst his personal qualities, it seems to me, is not one that makes him an easy or a very able leader of a collegiate style government. Now that is a question for Gordon ...”

A YouGov poll that morning showed that two-thirds of voters now believed that Gordon Brown should resign.

At 11am the Conservative and Liberal Democrat negotiating teams met to commence their substantive talks on policy agreement at the Cabinet Office, 70 Whitehall, in the rooms provided by the civil service. These lasted for six hours, with no media briefing on the content of the talks, apart from short public statements as members of the team departed that the negotiations were proceeding well. In the evening, Nick Clegg had a two hour meeting with Liberal Democrat MPs to update and consult them on how negotiations were proceeding, and then he and David Cameron had another private meeting. A feature of the day, as would continue until the coalition was formed, was Mr Clegg having to negotiate on two fronts: first, with his own party which contained some strong reservations about working with a centre-right Euro-sceptic party wedded to the existing first-past-the-post electoral system they wished to reform; and second, with the Conservatives, both through his negotiating team at the Cabinet Office and directly with David Cameron at successive one-to-one personal meetings.

Further secret dealings with Labour continued. Unknown to everybody at the time, around 4pm Nick Clegg and Gordon Brown had a private meeting at the Foreign Office to discuss a potential deal. According to a text message received by the BBC from a Downing Street spokesman:

“Gordon Brown phoned Nick Clegg [Saturday] night. Following the discussion they met at the Foreign Office to update each other.”³⁶

It was reported that David Cameron was aware of the meeting, and that the meeting had been “amicable”, discussing areas of overlapping manifesto policies including electoral reform. Then several hours later in the evening, a second meeting between Gordon Brown and Nick Clegg took place in the Prime Minister's office at the House of Commons, which Lord Mandelson and Danny Alexander also attended. Broad policy areas of common agreement were discussed, but it was “personnel” that proved the main issue of concern. It was made plain by Messrs Clegg and ***P.L. 44** Alexander that no Labour-Liberal Democrat deal could be made whereby Gordon Brown stayed on as Prime Minister beyond the date of a referendum on electoral reform.³⁷

Monday May 10

Once news broke about Nick Clegg's meetings with Gordon Brown, and that Liberal Democrat and Labour negotiating teams had met and had talks, media speculation of the eventual outcome to the election was set ablaze again. The previously growing assumption that the country was on course for a Conservative-Liberal Democrat deal arising from their talks at the Cabinet Office went into full reverse, and public attention was now focussed on what looked like a very real prospect of a Labour-Liberal Democrat "progressive alliance" being reached.

Of any of the five days, this proved the greatest rollercoaster in terms of developments. At 10am the Conservative and Liberal Democrat negotiating teams re-convened at the Cabinet Office and broke up at 11.40am, with William Hague telling the media the talks had gone well and they were reporting back to David Cameron, and Danny Alexander saying he was reporting to Nick Clegg. Meanwhile, between 10.40am to around midday, the media noticed that Gordon Brown had disappeared with Lord Mandelson from Downing Street. When asked, officials refused to say where they had gone, adding, "We are not providing a running commentary on his [the Prime Minister's] movements".³⁸ It later transpired this was another private meeting between the Prime Minister and Nick Clegg at the House of Commons.³⁹ During the afternoon further internal party consultations took place, with David Cameron meeting his shadow cabinet at 2pm, and Nick Clegg meeting his parliamentary party during the afternoon. At 4.40pm, one of the Liberal Democrat negotiators David Laws gave a public statement denying media suggestions that he and his colleagues were playing the Conservatives off against Labour.

The most sensational event of the day then came at 5pm, when in a public speech outside 10 Downing Street, Gordon Brown announced he would resign as leader of the Labour Party to facilitate negotiations with the Liberal Democrats. The mounting suspense over the outcome of the election built up over the previous 84 hours was now in part alleviated, for it was clear that it was not going to be Gordon Brown who had won the election and would be remaining as Prime Minister, or at least for much longer. But equally, media excitement was raised by the greater possibility this presented for a Labour-Liberal Democrat alliance, denying the Conservative Party office. In explaining his move, Mr Brown said:

"We have a parliamentary and not presidential system in the country and, as I said on Friday, with no party able to command a parliamentary majority after the general election... As we know, the Liberal Democrats felt they **P.L. 45* should first talk to the Conservative Party, and Mr Clegg has just informed me that while he intends to continue this dialogue ... he now wishes to take forward formal negotiations with the Labour Party. I believe it is sensible and in the national interest to respond positively. The Cabinet will meet soon and a formal policy negotiating process is being established...

I would, however, like to say something also about my own position. If it becomes clear that the national interest... can be best served by Labour and the Liberal Democrats then I believe I should discharge the duty to form the government which would in my view command a majority in the Queen's speech... But I have no desire to stay in my position longer than is needed to secure economic stability and for the process of political reform to move forward quickly. The reason we have a hung Parliament was no single party or leader was able to win the full support of the country. As leader of my party I accept that is a judgment on me.

I intend to ask the Labour party to set in train the process for its own leadership election. I would hope it would be completed in time for a new leader to be in post by the time of the next conference. I will play no part in that contest and back no individual candidate."

The idea of a progressive alliance under a new occupant at 10 Downing Street, most likely David Miliband in most people's estimation, was therefore moving forward. In terms of popular acceptance and potential criticism, which from the Conservatives could be expected to be fierce, this outcome would suffer from the accusation of it being headed by an unelected Prime Minister. Nonetheless, formal talks proceeded that evening at the House of Commons between the Liberal Democrat and Labour negotiating teams and, after breaking up and reporting back to their respective party leaders, were due to resume the next morning.

Tuesday May 11

The media and public alike were now utterly absorbed by the political drama unfolding, with seemingly everyone discussing the possible outcomes. In the early morning, Labour's negotiating

team met again for their second formal round of talks with the Liberal Democrats at the House of Commons. The BBC reported that Labour was confident of a deal and had even drawn up a five-point plan to convince party members and the public for their support. These talks lasted for three hours, from 8.45 to 12.45, before breaking up.

However, public doubts about an alliance with the Liberal Democrats and remaining in Government were starting to escalate from senior voices within the Labour Party. These included the minister Phil Woolas, the former Lord Chancellor Lord Falconer, and John Reid, the former Home Secretary, who said:

“I fail to see how trying to bring together six different parties--and even then not having a majority--will bring the degree of stability we need.”

Later in the week, the then Justice Secretary and Lord Chancellor, Jack Straw, wrote what his real feelings had been at the time, expressing relief that the negotiations had failed. He wrote⁴⁰ :

***P.L. 46** “Many in the House, including me, and outside would have found a coalition difficult to stomach.”

He explained:

“We did have a responsibility to discuss a deal. It would have been irresponsible not to. But almost certainly, it could never have succeeded.”

One fact stands out in the respective parties' dealings, which is that whilst the Liberal Democrat leaders were assiduously meeting and reporting back to MPs, peers and its Federal Executive, the Labour leadership appeared to make no efforts to consult their party or make attempts to dampen a rising chorus of dissenting voices.

Just over an hour after meeting the Labour negotiators, at 2pm the Liberal Democrats and Conservative teams resumed their talks at the Cabinet Office, which lasted until 7pm. Earlier Nick Clegg had held yet another personal meeting for one hour with David Cameron, at midday. By mid-afternoon, an assumption was universally emerging in the media that the prospect of a deal with Labour was evaporating, and that a Conservative-Liberal Democrat agreement was about to be reached.

Among Labour's negotiators later on, there were some who felt that the Liberal Democrats were never serious about a coalition with Labour, and were merely playing them along in order to extract more concessions from the Conservative leader and his negotiating team. According to Labour briefings the next day, the talks stymied through a mixture of excessive demands made by the Liberal Democrats, and Nick Clegg being obstructive.⁴¹ On constitutional reform, the Liberal Democrat demands went too far for the Labour leadership, seeking legislation on the Alternative Vote straightaway and a referendum afterwards that would allow voters a choice including a proportional system. The Labour team was unwilling to introduce the Alternative Vote without a prior referendum in the knowledge that the party was not united behind electoral reform.⁴² Lord Mandelson told the media he believed the Liberal Democrats had never been serious about a deal, inferring they were simply using the talks with Labour as a bartering device to extract more concessions from the Conservatives.⁴³ According to Labour's Lord Adonis, what happened:

“[W]as an attempt by the Lib Dem leadership to conduct a dutch auction, inviting Labour to outbid the Tories on a shopping list of demands.”⁴⁴

Throughout the afternoon, Gordon Brown was kept waiting at the end of a telephone in his office at 10 Downing Street to hear what conclusions Nick Clegg had come to. Mr Clegg wished to prolong his talks with the Conservatives, with the Prime Minister standing by and performing the “caretaker” role the Cabinet Office had ***P.L. 47** carved out for him. For Gordon Brown, however, his remaining in office was becoming a personal and public embarrassment.⁴⁵ Deeply frustrated after several telephone calls from Nick Clegg, he said⁴⁶ :

“Nick, Nick... I know the country's mood. They will not tolerate me waiting another night. You are a good man and you have to make a decision. I have made mine. It is final. I am going to the Palace. Goodbye.”

Just after 7pm, Gordon Brown, accompanied by his wife Sarah and two sons, made his resignation speech from outside 10 Downing Street, saying:

"I have informed the Queen's Private Secretary that it is my intention to tender my resignation to the Queen. In the event that the Queen accepts, I shall advise her to invite the Leader of the Opposition to form a government."

He left immediately for the Palace where he spent about ten minutes with the Queen, to be followed there a few minutes later by David Cameron. The media announcement from Buckingham Palace coolly reflected none of the sound and fury of the five days' negotiations:

"The Queen received the Right Honourable David Cameron this evening and requested him to form a new administration. The Right Honourable David Cameron accepted Her Majesty's offer and Kissed Hands upon his appointment as Prime Minister and First Lord of the Treasury.

The Right Honourable Gordon Brown had an Audience of The Queen this evening and tendered his resignation as Prime Minister and First Lord of the Treasury, which Her Majesty accepted."

A few hours later, Downing Street announced that Nick Clegg had been appointed Deputy Prime Minister in a Coalition Government of the Conservative and Liberal Democrat parties.

"The deal"--The election outcome and coalition agreement

As dawn broke on Wednesday May 12, the new coalition's public relations began, a charm offensive on the UK electorate to promote the positive face of the electoral outcome--not a "hung Parliament" or a constitutional and economic crisis, but a "a strong and stable government", "a new politics" with politicians working together, a Government for "national unity".

At 9.40am, in a carefully planned exercise, Nick Clegg's new ministerial car arrived inside the gates of Downing Street, and in front of the world's media he walked down the road to be greeted by David Cameron personally. They stood in front of the door to Number 10, smiling and shaking hands. For the electorate, this public image sealed the deal. The remainder of the day would be spent promoting the new Coalition Government in its most positive light, and presenting its agreed policy programme. In the early afternoon, the two party leaders' first joint media **P.L. 48* conference took place in the Downing Street rose garden, with two lecterns positioned close to one another. Arriving together, in conversation as they walked towards the assembled media sitting in rows of chairs, David Cameron began by saying:

"Today we are not just announcing a new government and new ministers. We are announcing a New Politics. A New Politics where the national interest is more important than party interest, where co-operation wins out over confrontation, where compromise, give and take, reasonable, civilised, grown-up behaviour is not a sign of weakness but of strength."

These sentiments were echoed in the speech that Nick Clegg then made:

"Until today, we have been rivals: now we are colleagues. That says a lot about the scale of the New Politics which is now beginning to unfold. This is a new government and a new kind of government. A radical reforming government, where it needs to be. And a source of reassurance and stability, too, at a time of great uncertainty in our country."

Throughout the day, the composition of the Coalition Government began to take shape. The names of new Cabinet members and other senior ministers were released to the media by officials at Downing Street, starting with confirmation that the two leading Conservative colleagues of Mr Cameron, George Osborne and William Hague, were to be Chancellor of the Exchequer and Foreign Secretary respectively, both of whom took up their posts in the morning. The Liberal Democrats were to be given five of the 23 seats in Cabinet, being Nick Clegg as Deputy Prime Minister, David Laws as Chief Secretary to the Treasury, Chris Huhne as Energy and Climate Change Secretary, and Danny Alexander as Scotland Secretary.⁴⁷ Six of the other ministerial posts were also allocated to Liberal Democrats, under terms agreed with Nick Clegg. The first full Cabinet meeting was held at 9am the next day, Thursday May 13, with pictures released to the press, showing Nick Clegg in prime position of being directly the other side of the table from David Cameron.

The Policy Programme for the Coalition Government

On the substance of the post-election agreements between the Conservative and Liberal Democrat leaderships, four documents were published in May, shaping how the Coalition Government would operate, two dealing with policy, two with process. Collectively, these documents and the

accompanying statements made by the party leaders represent the constitutional principles and working arrangements for the Conservative-Liberal Democrat Coalition Government.

The first of these, published as a simple seven page stapled document and in electronic form, contained the coalition agreement reached between the Conservatives' and the Liberal Democrats' negotiating teams during the five days in May. This was completed on May 11, and was launched by the two party leaders at their media conference the day after taking office. It set out the issues that needed to be resolved between the two parties in order to establish a "strong and stable *P.L. 49 government", and said it would be followed in due course by a final Coalition Agreement, covering the full range of policy including foreign, defence and domestic policy issues not covered in the preliminary document. The 11 parts of this agreement covered deficit reduction, spending review (the national health service, schools and a fairer society), tax measures, banking reform, immigration, political reform, pensions and welfare, education, relations with the European Union, civil liberties, and the environment.

Eight days later on May 20, a glossy HM Government document gave further elaboration on the parties' agreements, entitled *The Coalition: Our Programme for Government*. The principles of "Freedom, Fairness, Responsibility" were starkly emblazoned on its opening page. The jointly written foreword by David Cameron and Nick Clegg, accompanied by a photograph of them sitting at a desk working together, referred to the agreement as "an historic document in British politics", their Government being the first coalition in over half a century. Working on the themes of "change" and "national unity", the agreement read:

"We are both committed to turning old thinking on its head and developing new approaches to government... After the election, of course, there was the option of minority government--but we were uninspired by it. Instead, there was the option of a coalition in the national interest--and we seized it... We arrive at this programme for government a strong, progressive coalition inspired by the principles of freedom, fairness and responsibility."

The Coalition Agreement reads and looks like an election manifesto, though its moral authority in terms of representing a democratic mandate for Government is open to philosophical debate. Its 31 sections embraced the subjects of the preliminary agreement, but went into significantly greater detail on a wider range of matters. On a few areas there was a pre-existing similarity in the parties' policies, though with differing shades of enthusiasm. On the scrapping of national identity cards, for example, there was total accord. On reconstituting the House of Lords by way of elections, there had been a similar broad objective, but a differing sense of urgency. Lords reform had been relegated in Conservative thinking to a "third term" item on their agenda, with a party manifesto pledge merely to "work to build a consensus for a mainly-elected second chamber". The agreement with the Liberal Democrats was more sharply framed and brought the time-frame to the forefront of the new Parliament, by agreeing that a committee would bring forward proposals to Parliament for a wholly or mainly elected upper chamber on the basis of proportional representation by December 2010.

On areas where the two parties could be expected to disagree most sharply, it found a creative consensus. Guiding its approach to Europe, for example, was its stated belief that:

"Britain should play a leading role in an enlarged European Union, but that no further powers should be transferred to Brussels without a referendum."⁴⁸

This approach, the document said, struck the "right balance" between constructive engagement with the European Union to deal with the issues affecting British citizens, and protecting "our national sovereignty". On the other best-known policy *P.L. 50 divide, that of electoral reform, the Coalition Agreement reflected one of the key deals struck during the five days in May for a referendum on the Alternative Vote method of electing MPs. It pledged:

"We will bring forward a Referendum Bill on electoral reform, which includes provision for the introduction of the Alternative Vote in the event of a positive result in the referendum."⁴⁹

Cementing the Coalition: the machinery governing the partnership

The nature and procedures for the Conservatives and Liberal Democrats joint working arrangements were finalised between the party leaders last, and are contained in a document entitled *Coalition Agreement for Stability and Reform*.⁵⁰ It was published in a simple manner similar to the initial policy agreement, presumably on the basis that it was a purely party political matter, not one of official government business. Its content is at least as crucial to the enduring nature of the coalition as the

policy agreement, for its terms dictate the nature of the partnership, the balance of power between the two parties, and how differences of opinion will be resolved. It needs to be read alongside the fourth key document of the coalition, the new revised version of the *Ministerial Code*.⁵¹ Whilst the *Stability and Reform* document goes to the heart of the political partnership of the two parties, the *Code* has a more formal status so far as the Cabinet Office and machinery of government is concerned.

The *Stability and Reform* agreement was a concise, three page summary of essential working arrangements, under the headings of “composition of the government”, “collective responsibility”, “functioning of the government”, and “support for the government in Parliament”. At the crux of the power relationship between the parties and their respective leaders lies the constitutional fact that the Prime Minister has the executive powers of the royal prerogative at his disposal. These include the key powers of ministerial appointment, transfers, and dismissals; public appointments, including peerages in the second chamber; and control over the agenda and arrangement of Cabinet proceedings. Unsurprisingly therefore, consultation processes with the Deputy Prime Minister feature strongly throughout the *Stability and Reform* agreement.

Thus on ministerial appointments, it is recognised that “the Parliamentary Party with fewer MPs”, in other words, the Liberal Democrats, “will have a share of Cabinet, Ministerial and Whip appointments... approximately in proportion to the size of the two Parliamentary Parties”. The initial allocation of appointments made on or shortly after May 12 was agreed personally between the Prime Minister and Deputy Prime Minister. Future allocation will proceed on the basis of the Prime Minister consulting the Deputy Prime Minister, and “the Prime Minister will nominate Conservative Party Ministers and the Deputy Prime Minister will nominate Liberal Democrat Ministers”. Specific agreement between the two must **P.L. 51* be reached over the appointment of the law officers, and over any changes to the allocation of ministerial portfolios. “Full consultation” is necessary before any Liberal Democrat Minister or Whip is removed from office.

More complex and politically sensitive is precisely how disagreements are to be managed and resolved, and how each party leader (particularly the Deputy Prime Minister) will deliver the support of his party in parliamentary votes crucial to the life of the Coalition Government. The well-known principles of collective Cabinet responsibility--confidentiality of proceedings and the public appearance of unanimity--are endorsed in the *Coalition Agreement for Stability and Reform*. They are stated to apply “unless explicitly set aside”, and this is mirrored in the new version of the *Ministerial Code*.⁵² The agreement takes into account, however, that demands for collective responsibility must be matched by allowing ministers to present their views and be involved in relevant consultations⁵³ and discussion. The agreement stipulates requirements for:

- (a) an appropriate degree of consultation and discussion among Ministers to provide the opportunity for them to express their views frankly as decisions are reached, and to ensure the support of all Ministers;
- (b) the opinions expressed and advice offered within the Government to remain private;
- (c) decisions of the Cabinet to be binding on and supported by all Ministers;
- (d) full use being made of the Cabinet Committee system and application of the mechanisms for sharing information and resolving disputes.

A carefully constructed machinery has been created by the two party leaders to sustain the coalition and swiftly resolve any issues between the two parties. The most senior component in this is the “Coalition Committee”, which has the status of being a formal Cabinet Committee. It is co-chaired by David Cameron and Nick Clegg, and comprises an equal number of Cabinet members from each party, currently William Hague, George Osborne, Francis Maude, and Oliver Letwin for the Conservatives; and all the other Liberal Democrat Cabinet ministers, namely Vincent Cable, Chris Huhne, Danny Alexander, and Michael Moore. It meets weekly, or as required, to manage the business and priorities of the Government and the implementation and operation of the coalition agreement. Below it is the Coalition Operation and Strategic Planning Group, which is designated an informal working group (not a Cabinet sub-committee), comprising four members, two from each party, with Danny Alexander and Oliver Letwin acting as co-chairs, but frequently inviting other ministers and senior civil servants to attend where useful. This group also meets weekly and as required, to consider and resolve issues relating to the operation of the coalition agreement, the longer term strategic planning of government business, and to report as necessary to the Coalition Committee. Across the new structure of Cabinet Committees established by the Prime Minister, each Committee has a chair from one party and a deputy chair **P.L. 52* from the other party, and if any

unresolved issues arise between members of the different parties on any of the Committees, they are to be referred to the Coalition Committee.

So too, the *Coalition Agreement for Stability and Reform* carefully sets out the principles aimed at securing support for the Coalition Government in Parliament. "Ministers will be responsible for developing and maintaining a constructive dialogue with Members of both Parliamentary Parties", the agreement reads, and:

"the two Parties will aim to ensure support for Government policy and legislation from their two Parliamentary Parties, except where the Coalition Programme for Government specifically provides otherwise."⁵⁴

The document provides that any exceptions allowing dissent must be specifically agreed by the Coalition Committee and Cabinet. On whipping arrangements in both Houses, the same whip will apply equally to both parties, and a Conservative member will hold the office of Government Chief Whip, and a Liberal Democrat member that of Deputy Chief Whip. In order to ward off any intra-party dissent emanating from a backbench initiative, the agreement had the foresight to stipulate that neither parliamentary party will support proposals brought before Parliament other than by the Government unless considered and agreed by both parties, and matters subject to a free vote will be determined by the two parties in the Coalition Committee or in the new Backbench Business Committee.⁵⁵ Essentially:

"in all circumstances, all members of both parties will be expected to support the Government on all matters of confidence."⁵⁶

The new *Ministerial Code* states that it is for the Prime Minister personally to enforce the *Ministerial Code's* provisions on standards and ethics, consulting the Cabinet Secretary and/or referring matters to the independent adviser on ministers' interests as appropriate. He retains the sanction of dismissing a minister from office, and the *Code* underlines this by saying, "Ministers only remain in office for so long as they retain the confidence of the Prime Minister... he is the ultimate judge".⁵⁷ However, as described above, any dealings with a Liberal Democrat minister will be subject to consultation with the Liberal Democrat leader. As under Tony Blair and Gordon Brown, the 10 Downing Street press and private offices retain control over the presentation of policy to the media, and all major announcements, speeches, press releases and new policy initiatives must be cleared with them 24 hours in advance. Similarly, all ministers must ensure their public statements are consistent with collective government policy.⁵⁸

***P.L. 53 "The constitution is what happens"--The durability of the coalition and the New Politics**

A vital element in the negotiations between the coalition partners was to fix the duration of their alliance. For both coalition parties, this appeared essential. For the Liberal Democrats, without some guarantee on this, the Conservative Prime Minister could at any time that happened to be favourable to his party in the opinion polls (and unfavourable to the Liberal Democrats) cut and run with a second general election pitching for an overall majority and return to single party government. From the Conservative perspective, the dire financial crisis meant as an incoming Government they had minimal manoeuvre for immediately taking popular measures to elevate its electoral prospects for an early second poll. To the contrary, there was an urgent need for public expenditure cuts and taxation increases. A long period in office, sharing responsibility for these unpopular measures with the Liberal Democrats, was the safest political route forward. Without some fixed term guarantee, however, the Liberal Democrats could at any time change their mind, leave the coalition, and support a no confidence motion with the Labour opposition in the House of Commons.

A key policy in the coalition agreement, then, became the promise of legislation on a fixed term Parliament. The principled case for this reform has made elsewhere,⁵⁹ as has a study of the ancestry of parliamentary attempts to bring in such a measure, and occasions where Labour or Conservative party politicians have occasionally flirted with the idea. It had been advocated by the Liberal Democrats as part of their comprehensive constitutional reform agenda for many years. However, practical politics now provided a powerful incentive upon both them and the Conservative leadership to implement and shape such a measure. A policy and decision to implement fixed term Parliaments had been neither Conservative policy nor an item contained in their election manifesto prior to May 2010. To the contrary, in April 2010 during the election campaign the Conservative leader David Cameron made the flatly contradictory promise for legislation to require a general election within six

months of a new party leader taking over as Prime Minister, following the death or resignation of the previous incumbent.⁶⁰ Yet, prompted by the short-term political imperative for cementing the coalition agreement with the Liberal Democrats, a hurried outline proposal for a fixed five year parliamentary term was put together by the new coalition, with the intention of piloting it through Parliament in its first session under a whipped vote.⁶¹

Events, therefore, will now determine what stresses and strains will be exerted upon the coalition and whether these become so strong as to derail the coalition and cause another general election. Divisions in ideological attitudes, including over Europe, and strength of feelings over conflicting pre-election party policies, *P.L. 54 will surface from time to time. Above all, the fearfulness of Liberal Democrats over their party's identity and standing in popular opinion and future voting intentions is likely to grow as time goes on and the next election grows nearer. Ominously, an ICM poll⁶² during the month following the election showed that whilst 54 per cent of the electorate supported the Coalition Government and believed it was "doing a good job", voting intentions showed that support for the Liberal Democrats had substantially dropped from 23 per cent to 16 per cent (41 per cent Conservative, 35 per cent Labour) which if replicated at a general election would see the number of Liberal Democrat MPs decimated.

Internal dissent in both parties remains the greatest threat. Currently Liberal Democrat unity largely rests upon party loyalty and the fact that the Conservative-Liberal Democrat coalition agreement was consulted upon and went through all the party's formal processes of being approved by the parliamentary party and the Federal Executive under the terms of the Liberal Democrats' constitutional arrangements. It is settled that Liberal Democrat MPs who are not Government ministers have some leeway to dissent on matters not considered central to the Coalition Government's agreed programme, and to this end may support or initiate amendments to Government bills. For example, during the Commons debate on the Government's first Budget, the party's deputy leader Simon Hughes announced⁶³ :

"We will vote for the Budget next week. However, if there are measures in the Finance Bill whereby we can improve fairness and make for a fairer Britain, then we will table amendments to try to do that. That is where we can make the difference, as we will during the spending review that will follow in the months ahead."

Under the coalition agreement, each party has responsibility for maintaining effective party support for the Government in Parliament, and will devise its own methods for doing so. On the Conservative side, early on in the life of the new Parliament David Cameron courted controversy by wanting to change the rules of the Conservative "1922 Committee", whose membership when the party is in Government has traditionally been limited to backbench Members. Seeing this as divisive and a possible breeding ground for dissent, Mr Cameron sought to allow members of the Government to attend as well, and despite vocal opposition from many Conservative MPs was approved on May 20, 2010 by 168 votes to 118.

In addition to the cooperation machinery laid down in the *Coalition Agreement for Stability and Reform*, the extent to which there is, and remains, a genuine and public process of mutual respect between the coalition party members will be an important factor. In this task, personalities matter. During the five days in May 2010, it would appear the Conservative and Liberal Democrat negotiating teams were surprised at the relative ease with which they dealt with one another. William Hague even commented that, "these negotiations were at times enjoyable".⁶⁴ There are many personal similarities between the two party leaders, and a remarkable chemistry appears to exist between them. Indeed, so convincing has the Prime *P.L. 55 Minister been in proclaiming the New Politics and his fondness and liking for working with the Liberal Democrats that many die-hard Tories have been perplexed about whether he is acting the part from force of political circumstance or whether he might actually mean it. There is no doubt that, like Tony Blair, David Cameron is a consummate political actor and performer.⁶⁵ A final personal feature remains of great importance to the durability of the coalition. This is that the whole joint working arrangement is heavily reliant upon Nick Clegg personally. There is no machinery set up in the coalition agreement documents to provide for the appointment of a new or different Deputy Prime Minister in the event that Nick Clegg resigned, died, or was deselected as Liberal Democrat leader.

In the longer term a question-mark must rest over the Conservative commitment to the "New Politics" of inter-party agreement and national unity, which it has presented to the public since taking office. In substance, this is simply propaganda for its immediate vested interests in forming the coalition, and its leaders are most unlikely to believe in this New Politics as a going concern on a permanent basis.

Most senior Conservatives including David Cameron oppose a change in the voting system precisely because proportional representation or the Alternative Vote would be more likely to produce hung Parliaments, and they have strongly endorsed the existing first-past-the-post voting system that generally produces single party Government. Although it is conceivable that the coalition partners return to the polls for a mandate to continue as a Government of national unity, as the 1931 National Government did in 1935, it currently seems most likely the Conservatives will want a return to single party Government. If so, there will be little permanence to the New Politics of co-operation, compromise, and putting the national interest first, as proclaimed by the Prime Minister on his first day in office. Nonetheless, the fact of the coalition itself, and the promise of other political and constitutional reforms ahead under the stewardship of the Deputy Prime Minister, will ensure that the events of May 2010 remain a landmark in the constitutional development of the United Kingdom.

P.L. 2011, Jan, 30-55

1. This was the National Government of 1931: see R. Bassett, *1931: Political Crisis* (London: Macmillan, 1958).
2. C. Rallings and M. Thrasher (eds), *British Electoral Facts, 1832-1999* (Aldershot: Ashgate, 2000) p.54.
3. BBC interview, Andrew Marr Show, November 22, 2009.
4. In YouGov polls on voting intentions, the effect of the first televised leaders' debate on ITV on April 15, 2010, was to project the Liberal Democrats from 18 per cent immediately prior to the debate (sample taken April 13-14) to 33 points two days later (sample taken April 17-18). This phenomenon was termed "Clegg-mania" in the compact press.
5. See, e.g. D. Finkelstein, "How to stop the Queen picking the next Prime Minister", *The Times*, November 24, 2009; Mark Oaten MP, "We must head off the possible constitutional crisis if the result of the next election is close", Letters, *The Times*, November 27, 2009.
6. e.g. David Cameron and Kenneth Clarke warned that a hung Parliament would put Britain's credit rating at risk, put pressure on the currency, increase domestic and business bills, and could cause the International Monetary Fund to have to bail the country out: *The Times*, April 22, 2010; *The Independent*, April 22, 2010; *Daily Telegraph*, April 22, 2010. George Osborne was reported as saying a hung Parliament would mean "politics behind closed doors, indecision and weak government, a paralysed economy, yet another election", *Daily Telegraph*, April 27, 2010.
7. e.g. "A hung Parliament will bring us more trouble", *Daily Telegraph*, April 24, 2010. "Hung, overdrawn... and slaughtered" read a prominent article in the *Sun*, April 22, 2010.
8. Edward Heath, *The Course of My Life* (London: Hodder and Stoughton, 1988) p.517.
9. Harold Wilson, *Final Term: The Labour Government 1974-76* (London: Weidenfeld and Nicolson, 1979) p.9.
10. See <http://www.margaretthatcher.org/archive> [accessed October 7, 2010].
11. See especially R. Blackburn, *The Meeting of Parliament* (Aldershot: Dartmouth, 1990), *The Electoral System in Britain* (London: Macmillan, 1995) and R. Blackburn, "Monarchy and the Personal Prerogatives" [2004] P.L. 546.
12. *The Times*, Letters, November 28, 2009.
13. March 11, 2010. R. Blackburn, R. Fox, O. Gay & L. Maer, *Who Governs? Forming a Coalition or a Minority Government in the Event of a Hung Parliament* (London: Hansard Society, 2010).
14. "The British don't need to be hung up about a hung Parliament", *Observer*, May 2, 2010.
15. HC Paper No.396 (Session 2009/10). The purpose of the Justice Committee's inquiry was to hold an evidence session "on how constitutional principle, provision and practice apply after general elections... in the light of speculation that the forthcoming general election could result in a House of Commons where no one party has an overall majority" para.1.
16. Sir Gus O'Donnell was influenced by two reports, *Transitions: Preparing for Changes of Government* by P. Riddell and C. Haddon (Institute for Government, 2009) and *Making Minority Government Work*, ed. R. Hazell and A. Paul (Institute for Government/Constitution Unit, 2009).

17. Cabinet Office, *General Election Guidance 2005*, Preface para.2.
18. HC Paper No.396 (Session 2009/10), Ev 16, Q87 (February 24, 2010).
19. HC Paper No.396 (Session 2009/10), Ev 25, para.20.
20. *Making Minority Government Work* ed. R. Hazell and A. Paul (Institute for Government/Constitution Unit, 2009), had concluded, "Lessons for the civil service: Be prepared for a caretaker government, and the need to support negotiations between political parties during a prolonged period of government formation", p.5.
21. HC Paper No.396 (Session 2009/10), Ev 25, para.19.
22. Generally see R. Blackburn, *The Meeting of Parliament* (Aldershot: Dartmouth, 1990).
23. HC paper 337 (Session 2006/07).
24. The day after the royal proclamation dissolving Parliament and summoning its successor, the *Daily Telegraph* reported, "Party leaders could take almost three weeks to form a government if the election results in a hung Parliament... Party bosses will use the time to negotiate deals and coalitions if a clear winner does not emerge on May 6... The Cabinet Office has issued guidance on the constitutional rules and procedures in such circumstances" (April 13, 2010). A retrospective leading article in the *Financial Times* commented, "In the best British constitutional tradition, existing conventions were stretched to fit the circumstances. The return of parliament after the election was delayed by one week to allow time for negotiations." (May 15, 2010).
25. For discussion of the role of the monarch in hung Parliament situations see R. Blackburn, "Monarchy and the Personal Prerogatives" [2004] P.L. 546.
26. In a former era, King George V played the key role in orchestrating the change of Government in August 1931, the negotiations for which took place at Buckingham Palace: see R. Bassett, *1931: Political Crisis* (London: Macmillan, 1958).
27. This account is based on sources available during the five days themselves, with some references to the subsequent memoirs of Lord Mandelson who was personally involved in the post-election negotiations, *The Third Man: Life at the Heart of New Labour* (London: Harper Collins, 2010) and *Hung Together* (London: Simon and Schuster, 2010) by the journalists Adam Boulton and Joey Jones.
28. At this stage the Conservatives had 290 seats Labour 247, Liberal Democrats 51, others 27.
29. See above, pp.31 and 37.
30. Mr Salmond expressly ruled out an SNP deal with the Conservatives.
31. Under the Liberal Democrat constitution, the Federal Executive is responsible for directing, co-ordinating and implementing the work of the Federal Party, and consists of (a) the President, who shall act as its chair; (b) the Vice-Presidents; (c) the Leader; (d) two other MPs elected by and from the Parliamentary Party in the House of Commons; (e) one Peer elected by and from the Parliamentary Party in the House of Lords; (f) one MEP elected by and from the Parliamentary Party in the European Parliament; (g) two principal local authority councillors elected by principal local authority councillors of the Party from among their own number; (h) one representative of each State Party, elected by its internal procedures; (i) one more person than the total number of voting members elected or appointed under paragraphs (a) to (h) above elected by the Federal Conference.
32. Lord (Peter) Mandelson, Ed Balls, Ed Miliband, Lord (Andrew) Adonis.
33. Nick Clegg is said to have found Mr Brown difficult to deal with ("lecturing, bullying, uncongenial"): Peter Mandelson, *The Third Man: Life at the Heart of New Labour* (London: Harper Collins, 2010) p.550.
34. At 4pm the Labour MP John Mann called for Mr Brown to stand down: "Whatever happens in the next few days, Gordon Brown should not lead Labour into any future election and he should stand down before the next party conference. Gordon Brown's continuation as leader rules out the credibility of a Lib/Lab pact" (as reported in the *Observer*, May 9, 2010).
35. BBC Andrew Marr Show, May 9, 2010 (Helena Kennedy, Michael Gove, Lord Ashdown).
36. BBC News, May 9, 2010.
37. This meeting is described in Peter Mandelson's memoirs, *The Third Man: Life at the Heart of New Labour* (London: Harper Collins, 2010)

p.548-549; and see also Adam Boulton and Joey Jones, *Hung Together* (London: Simon and Schuster, 2010).

38. BBC News, May 10, 2010.
39. Lord Mandelson waited outside the room, joining them at the end of the meeting to take a summary note: see his memoir, *The Third Man: Life at the Heart of New Labour* (London: Harper Collins, 2010) pp.550-551.
40. *The Times*, May 13, 2010.
41. It was reported, e.g. that Mr Clegg refused to allow Vince Cable to meet privately with the Chancellor, Alastair Darling, in the morning: P. Wintour, "How the left's impossible dream evaporated", *The Guardian*, May 12, 2010.
42. The Labour election manifesto had promised a referendum on the Alternative Vote.
43. *The Times*, *The Independent*, May 12, 2010. See also Lord Mandelson's memoirs where he suggests the attitude of the Liberal Democrats had changed on the Tuesday morning: "There seemed to be sharper differences on a range of issues. What was most striking, however, was a new attitude of prickliness, even truculence, from the Lib Dems... It was also becoming clear to both sides that there were strains within Labour over whether a coalition would be tenable": *The Third Man: Life at the Heart of New Labour* (London: Harper Collins, 2010) p.552.
44. "Tory-Lib coalition: Pact of the unprincipled", *The Guardian*, May 13, 2010.
45. Some of the mass circulation press were scathing about Mr Brown not having resigned earlier. e.g. "Whitehall property scandal--squatter holed up in No 10--Man, 59, refuses to leave house in Downing Street", ran one of the *Sun*'s front pages during the five days (May 8, 2010).
46. Adam Boulton and Joey Jones, *Hung Together* (London: Simon and Schuster, 2010) p.241; Peter Mandelson, *The Third Man: Life at the Heart of New Labour* (London: Harper Collins, 2010) p.554.
47. Following David Laws' resignation for personal reasons on May 29, 2010, Danny Alexander was appointed Chief Secretary to the Treasury and Michael Moore Scotland Secretary.
48. *The Coalition: Our Programme for Government*, (HM Government, 2010) p.19.
49. *The Coalition: Our Programme for Government*, (HM Government, 2010) p.27.
50. Cabinet Office, May 2010; <http://www.cabinetoffice.gov.uk/government-business/government-structure.aspx> [accessed October 7, 2010].
51. Cabinet Office, May 2010; <http://www.cabinetoffice.gov.uk/conduct-ethics/ministerial.aspx> [accessed October 7, 2010].
52. To reflect the coalition arrangements, an amendment to the previous *Ministerial Code* has been made, inserting the words "save where it is explicitly set aside" within the general principle of collective responsibility: Cabinet Office, *Ministerial Code* (May 2010) para.2.1.
53. Certain standard exceptions from this commitment to consultation are stated to apply, including the Chancellor's Budget judgements, and quasi-judicial decisions and opinions of the Law Officers, para.2.
54. Cabinet Office, May 2010; <http://www.cabinetoffice.gov.uk/government-business/government-structure.aspx> [accessed October 7, 2010] para.5.1.
55. See Standing Orders of the House of Commons, *Public Business* (2010, New Parliament, HC 539) No.152J.
56. Cabinet Office, May 2010; <http://www.cabinetoffice.gov.uk/government-business/government-structure.aspx> [accessed October 7, 2010] para.5.2.
57. Cabinet Office, *Ministerial Code* (May 2010) para1.5.
58. Cabinet Office, *Ministerial Code* (May 2010) paras 8.2-3.
59. See R. Blackburn, *The Electoral System in Britain* (London: Macmillan, 1995) Ch.2, "The Case for Fixed Term Parliaments"; R.

Blackburn, *The Meeting of Parliament* (Aldershot: Dartmouth, 1990); and R. Blackburn, "The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform" [2009] P.L. 766.

60. BBC News, April 24, 2010. Mr Cameron said, "It means putting people in charge, I believe you should be in Number 10 because people have voted for you". This was a critical reference to Gordon Brown taking over from Tony Blair in 2007.
61. At the time of writing, September 15, 2010, the Fixed Term Parliaments Bill (2010-11) HC 64 has received its second reading in the House of Commons: *Hansard*, HC Vol. 515 Col.704 (September 13, 2010). For commentary including in oral and written evidence by myself, see the report of the Commons Political and Constitutional Reform Committee, *Fixed Term Parliaments Bill*, Second Report of 2010-11, HC 436.
62. *Sunday Telegraph*, June 27, 2010.
63. *Hansard*, HC Vol.512 Col.468 (June 24, 2010).
64. BBC News, May 12, 2010.
65. The former Liberal Democrat leader Paddy Ashdown made this point in more political terms: "The Tories, under David Cameron, seemed to understand the demand from the electorate for a new kind of politics better than many in Old Labour, and responded to it with speed, understanding and a good deal of statesmanship" ("This will bring out the best in both parties", *Daily Telegraph*, May 13, 2010).

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