

# Ministers reflect

Lord McNally

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## Biographical details

### House of Lords

1995-present: Liberal Democrat Member

## Parliamentary Career

2010-2013: Minister of State for Justice

2010-2013: Deputy Leader of the House of Lords

*Lord McNally was interviewed by Nicola Hughes and Peter Riddell on 21<sup>st</sup> July 2015 for the Institute for Government's Ministers Reflect Project*

**Nicola Hughes (NH): Thinking back to when you first started as a minister, I know you've had a long career in politics, but particularly focusing on the 2010 period, what was your experience of coming into government like?**

**Lord McNally:** Um, chaotic. As you say, I had been in Whitehall as a special adviser in the Foreign Office and Number 10, and therefore I had, and still have, stories that start 'When I...' which caused great amusement to colleagues. But the outcome of the 2010 election, although we'd done more planning I think than any third party had done before about how you handle a hung Parliament, the idea that you'd actually end up in a working coalition was still quite surprising.

I had two jobs on offer in 2010: one was the Ministry of Justice, and the other was Deputy Leader of the Lords. And just to give you an idea, after about 48 hours and no clear instructions or guidance from Nick Clegg about what we should be doing in the Lords, I contacted Nick to get a rather surprised, 'But I thought you handled that all yourself in the Lords?' I said, 'Not government ministers. Not government. That's your thing.'

It was all a bit confusing. I got a call from a young lady called Emma Douglas who said that she was my Private Secretary at the Ministry of Justice, and that there was a car coming – at the time I was in the House of Lords – to pick me up and she would be waiting for me on the steps of the Ministry of Justice. And that's what I did, because government cars were still being used until September [when] they pulled the government car service from junior ministers. So I had a driver who drove me round to the Ministry of Justice. Emma was standing on the pavement, introduced herself, and in I went. And for the next three and a half years, every waking moment was controlled by the Ministry of Justice, or the House of Lords as a business manager there!

Did I know what my title [would be]? Well, I knew I was going to be a Minister of State. Did any title or responsibilities go with the Deputy Leader of the House of Lords? Well that would be up to Tom Strathclyde [former Leader of the Lords] and myself to work out. What committees was I on? What areas of responsibility would I take with the MoJ [Ministry of Justice]? Well that would be the Secretary of State's decision. Ken Clarke would talk to me about that.

I didn't get the walk up Downing Street, I got a phone call about ten minutes after it had been announced on Sky News! But I got a phone call from the Prime Minister and he said, 'I'd like you to go to the Ministry of Justice with Ken Clarke'. And I said, 'Prime Minister, if you lined your Cabinet up and asked me who I'd like to work with, it would be Ken Clarke!' And indeed, Ken gave me a very interesting portfolio. He made me the minister for the implementation of the Freedom of Information Act; he made me the minister for the Human Rights Act; [and] I got the Crown dependencies, which turned out to be very interesting stuff. I was [also] going to deputise for him in Europe, which was no difficult thing to do either. So in that respect it was remarkably smooth in that it's a kind of warm embrace where suddenly you've got private secretaries who think you're wonderful and who start producing papers and agendas and making sure you're in the right place at the right time.

**Peter Riddell (PR): Just looking back at the time you worked for Jim [James Callaghan] at the Foreign Office and Number 10; how had that influenced your expectations of becoming a minister?**

**LM:** Well my experience in the mid-'70s had left me with a very high opinion of the Civil Service and its importance as a body selected on merit and politically neutral. And so I was not filled with any paranoia – [that] they were somehow going to run me, although they do, I mean there's no doubt the Civil Service has its opinions and has its policies and sometimes changing those opinions or policies is very difficult. But I never saw the Civil Service as a kind of organised conspiracy against me, and I was genuinely impressed. Now whether this is because again, ministers are slightly cocooned in their private office... But what I found was I was working with some very bright young people, a lot more women, a lot more

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ethnic minorities – that was the main change from the '70s, that the Civil Service was much more diverse. For example, one of the first officials that came to brief me – it might have been on the Freedom of Information [Act] – was Sharon White [now Chief Executive of Ofcom] who has gone on to greater things since. So I was made to feel very welcome, and as I say, very reassured by what was put at my disposal.

**NH: And what were your priorities in those first few weeks and months? You mentioned FOI and human rights.**

**LM:** I was not on the criminal justice side of the MoJ so I didn't have anything to do really with that, other than in broader discussions with prisons, or youth justice for that matter, or the courts, or legal aid, they were elsewhere. I did do legal aid later – I'll show you the scars if you want.

But I suppose the first thing was buying in to Ken's big ideas which were the rehabilitation of offenders – and I think Ken would agree with this – but I think our original idea was to try and manage down the prison population. I think our first aim was about 80,000 – it was then about 85,000. Ken was outraged at the idea that the prison population had doubled since he was last Home Secretary. And the first big piece of legislation was what became the Legal Aid, Sentencing and Punishment of Offenders Act. And you will not be surprised that the Punishment of Offenders bit was inserted by Number 10, as was the removal of any ambition to actually manage the number of prisoners down. But the main thrust of the Act I thought was small 'l' liberal.

Where I think I probably missed a trick, because I was new and I didn't see it in the way that it eventually emerged, was that Ken moved very quickly as an ex-Chancellor to do a deal with the Chancellor on the Spending Review. And he quickly agreed to a 23% cut in the MoJ budget. And I think that was partly because it was his judgement that that was the kind of scale of public expenditure cuts that was needed, and partly because if he did a quick deal with the Chancellor, the Chancellor would see him as an ally and likely to put him on any committee that would be looking at other departments' expenditure. So it was a little bit of cunning by an old ex-Chancellor; I think the department felt he could have fought harder and saved more. But everybody used to say, 'Oh, Ken's really a closet Liberal'. Ken isn't a closet Liberal, he's an old-fashioned one-nation Tory, with some very liberal views, small-'l' liberal views on issues.

I did not see cutting legal aid as being a major moral outrage. Labour had actually had in its manifesto that it was going to cut legal aid further; it had started to cut legal aid. And what we were talking about was over the lifetime of that Parliament and this, to manage legal aid down from about £2.2 billion to about £1.5 billion. And it's one of the things that... the lesson is the delayed explosion. Because actually when we first announced and we said it on the tin of the Legal Aid, Sentencing and Punishing of Offenders Bill, there was no great outcry from the criminal bar, partly because of course we were doing civil legal aid at the time. What I did find is that barristers don't give a bugger about anybody except their own fees. So anyway that's the bitterness coming out! But I should have spotted legal aid as a slow-burner, something that I should have been warned about.

Interestingly, Jeremy Hutchinson, who's now over 100, is a Liberal Democrat peer, and Jeremy was on the Bar Council committee that had sold the idea of legal aid to the Attlee government in '48 or '47. And he saw me and he said that he was passionate that I shouldn't... He said that this was the National Health Service for the legal profession. This was our National Health Service, 'a National Health Service of the law and you shouldn't let them touch it'. But I didn't think we were dismantling it. I still don't think we were dismantling it. I do think if the professions, particularly the criminal bar, but other parts of the legal system, had genuinely co-operated in modernising it and making it more efficient, we would get more bang for our buck from that £1.5 billion and still have an effective legal aid system.

**PR: Looking at how you operated, as you said you had two responsibilities: number two at Justice and number two in the Lords. You were also a prominent person in the party as well. How did you divide your time? How did you manage that?**

**LM:** It's difficult to say; in a way, it's such fun. With Jim Callaghan sometimes I'd get in the car with him and we'd be in the midst of some terrible crisis and Jim would go, 'Tum-te-tum-te-tum, isn't this fun!' And in a way, you know, you are being carried along on the adrenaline. I mean one of the reasons why I've always been – although I had terrible angst about whether I should join the Coalition – I was never in doubt about the right of the Liberal Democrats joining the Coalition, because I think you are in politics to take power and do things.

But whether there was some careful organisation of my life... I mean I was fortunate thanks to Tom Strathclyde actually. In the way that the Cabinet Office did things, I was told that I was not allowed a special adviser for my work in the Lords because I was only Deputy Leader of the Lords and Deputy Leaders of the Lords didn't have special advisers. But Tom as Leader of the House was entitled to two special advisers. So he said, 'Well, you tell me who you want and I'll appoint her or him, and that'll be your special adviser'. And so a lady who had got great experience in the Lords, Elizabeth Plummer, was made a special adviser and between them, my Private Secretary and Elizabeth, they managed very well, just knitted together. It meant a lot of hard work because you know business management, although as the present Government will tell you, we had pretty close to a majority in the Lords with the Conservatives and the Lib Dems, nevertheless business management was a pretty key part of the job and an interesting part as well.

**PR: So how much time did you spend in the Lords then?**

**LM:** I'd be there every day to some extent, and I would have said that the split was something like two thirds/one third between MoJ and the Lords, because the Lords has a number of management committees to it. And of course I was on the business committee with both Houses, which again, was interesting to see the collegiate way that worked. I remembered the first meeting with Patrick McLoughlin as Chief Whip, and he said, 'Well we've got a majority of about 80, we've got about 30 head-bangers so we should be alright!'

**PR: Thinking about tips on managing time if you were talking to another minister. You said you were greeted by your Private Secretary when you turned up, then you were in the warm embrace of the Civil Service for three-and-a-half years. Did you feel they were trying to organise your life or did you feel in control of it yourself?**

**LM:** To a certain extent; in a way, it's like going down the log flume, in a way you just enjoy the ride, as long as you don't... One bit of early advice I got from Peter Brooke [Conservative politician and former Secretary of State], Peter said to me, 'Dental appointments'. I said, 'pardon?' and he said 'Stick dental appointments in your diary, they can't touch 'em! They don't know where you are!' I didn't actually invent dental appointments... but I knew that most of the management was for a good cause. I knew Elizabeth very well, and trusted both her political judgement and her knowledge of me. And I very quickly got to have the same opinion about Emma [Private Secretary]. So in a way I was quite willing to be managed, although they would deny it! [laughter]

**PR: What about when a real unexpected event or crisis hit the department? How did you deal with that? I mean after all you were used to crises on a really spectacular scale in the late '70s. Anything would be rather mild by comparison.**

**LM:** I'm trying to think of what crises we had. But one of the benefits of having worked with Jim Callaghan was watching Jim's style. And part of that style which I tried to emulate was if something came from left-field, get all the information you can as quickly as you can, find out who in the department or in Whitehall knew about this, who could give really good advice, [and] was there any party background on it. I mean the work I did for Jim was partly to make him aware of issues in terms of party or trade-union sensitivities or whatever. And I think the nicest compliment he ever paid me [was] I gave him some advice one day and he looked at me and said, 'You're my mine detector'. And what I tried to do as a minister was to look for mine detectors, people who would say this has got this problem to it, this is the downside to it. It didn't necessarily stop the mines occasionally going off but that's how I tried to work it, and the strongest advice I'd give is to get that advice in the round. Don't forget that you are there from a political party, and there will be past work done by the party and people within the party

with an experience and expertise on it.

I think as a minister I'd tried to also be open and available to NGOs and others. I think my experience is that Whitehall was much more open than when I first went in in the '60s; then you kept the white papers to yourself until it was published and then you fought off any chance check. Now, the green papers and the much more... the examinations by select committees and things like that, I think it's much more easy to get a lever into and certainly I, as a minister, I wanted to hear as early as possible.

That's why I sometimes feel a little bit... I'll go back to Legal Aid. It always fascinates me how the pressure groups come late. I mean, they knew what we were going to do, they knew what other parties were going to do, and yet the Law Society and the Bar Council were very slow out of the traps in voicing their concerns, or in some ways coming up with completely impractical alternatives. I mean the Law Society, the best idea they came up with was putting an extra duty on whisky, which would have hurt their members, or certainly the criminal bar!

**PR: Obviously there's experience of the Coalition, but also working across Whitehall because the Justice department has a lot of business across Whitehall, not only with the Home Office but also other departments. What was your experience of that?**

**LM:** Yeah, I remember almost my first day, and my first meeting, was at the Home Office. And I went round as a kind of bright and shiny new minister, I went into the Home Office [and] I said to the lady behind the desk, 'My name's Tom McNally, I'm a minister of state at the Ministry of Justice'. 'And?' she said. I thought what a welcoming department! I think, and I suspect other Liberal Democrat ministers will probably say the same, because it was new, because we were slightly surprised to be there, it took a time to start working collegiately across departments. And I suspect we never really did, we were all busy. I remember Nick [Clegg] putting in a meeting of Lib Dem ministers, and the first two times, there were only about two thirds that turned up, and he got really angry and said, 'Look, this is important'. But that's where the departments did tend to cocoon you.

I think the cross-departmental committees; again some worked, some didn't. What I do think was very interesting about the working of the Coalition – and I think this came really, right from the top – was that it was rather collegiate. You would go to a Cabinet committee, and you would not be able to, as an outsider, find out from who was taking which side in a particular discussion, which were the Liberal Democrats and which were the Conservatives. There was much more cross-cutting in that respect, and made it very good to be in.

**PR: How did that change in your three and a half years because you went over the period of warmth to slight distance and then frostiness in your period as a minister, I mean in terms the Coalition as a whole? And also you had a change of Secretary of State.**

**LM:** I mean it changed of course with Ken's departure, and Chris Grayling said to me on the first day, he said, 'I'm not a right-wing swivel-eyed loon. But I have been sent here to buff up the Conservative Party's credentials on law and order'. And he said, 'If I have one ambition, it's there will be three more people in prison at the end of my term than there are now. So if you can work on that basis, I can work with you'. And I think we did work reasonably well together; I had to get used to the fact that Chris spent a good deal of his time towards the weekend ringing up one of the Sunday papers to tell them what new horror he's imposing on prison regimes to make them tougher, etc. But he also had something I fully agree with, which was to give much, much greater priority to education and training for people while they were in custody. I mean that's still work-in-progress, but if that were able to be made to work, that would be transformational.

**PR: What do you think your greatest achievement in office was, and how did you achieve it?**

**LM:** I suppose in terms of positives, and again this is use of the expertise of others, I managed to achieve the first reform of the Rehabilitation of Offenders Act for 40 years. But that was mainly on the advice of

Lord Dholakia. And I achieved a significant reform in our libel laws, and that was mainly on the advice of Anthony Lester [ Lord Lester QC] and John Kampfner [the writer].

Looking back, I think I can claim a seriously large achievement that when I had this conversation with Chris Grayling, I said one of my red lines is the Human Rights Act, and as far as I'm concerned there will be no change to the Human Rights Act during the lifetime of this government. I had a formula which I think I usually said, those parties that want to abolish the Human Rights Act should take their case to the hustings. Since they did that, I had to revise it but that was a very clear line which I didn't have any great difficulty in agreeing with Nick [Clegg].

The other was the Freedom of Information Act. I had tried to persuade Jim Callaghan to bring one in, in the '70s, but Jim was not in favour. But I was instrumental in helping the Labour government get the FOI Act through the Lords, and I'm proud that during my stewardship of the Act, we actually extended it, and I still believe in it. I think this review committee [cross-party commission set up in July 2015 to review the Act ] shows that someone in Whitehall has a sense of humour. I said to someone the other day, putting Jack Straw and Michael Howard to examine the Freedom of Information Act is like asking Burke and Hare to look at graveyard security.

**PR: In all the achievements you had, I mean not the stopping of things but the positive ones, they all involved outside advice, building up consensus didn't they?**

**LM:** Yes, exactly, and I think that's one of those things where NGOs can be very influential, and helpful to a minister. I mean the department was not initially enthusiastic about the libel law reform, but the external lobbying was very effective. And was effective for me in that I could show them drafts of departmental proposals and they would say, 'Doesn't go far enough' or 'That's not tight enough' etc.

But you've got to remember as well, the department was under a pretty severe cosh in terms of cuts. The main thrust of the work, which I agree with, [was] first of all in the rehabilitation of offenders legislation, and the transforming justice legislation; I was on all the departmental committees that worked on that and you know, again, the stuff that's in there, was fully square with certainly my own views and with Liberal Democrat Party views. For example, the extension of oversight of released prisoners to those serving less than 12 months, is again I think transformational, because most reoffending is from people who have served short sentences. And yet, we literally used to take them to the prison door, push them out with £44 in their pocket, and be surprised that they were back the following Monday. So a lot of the prison reforms or the reforms of treatment of prisoners in custody, if we can make it work, it will be transformational.

The big problem is on the one hand, you've got these very noble aspirations to educate, up-skill, prepare for life in the outside world; and on the other hand, you're cutting costs in the prisons to a point where certainly in the youth offender institutes, security is so poor that you can't move them from their cell to their classrooms with any guarantee of the safety of young people or the staff that's working on them. So far, it's not exploded, but it's going to be very difficult.

Reforming in an age of austerity is a great challenge. What one's got to think of, certainly I think of, is growing admiration for the Attlee Government. I mean they would be well-entitled to say, 'Austerity; you've not seen austerity!' And yet they carried through transformational changes. I sometimes think that in some ways, this generation of politicians have lost their nerve about what can be done and what should be done. It is always difficult to... in some ways you feel very envious that Jennie Lee could say, 'I founded the Open University'; I was in the ante room when Jennie, during another economic crisis, the Open University which was then in its planning stage, was out for the chop but survived because Jennie cited the memory of Nye [Bevan] to Harold [Wilson], who was a very, very soft-hearted man.

But it's very difficult, particularly in just one term of office to be able to say, 'This is what I did'. I do genuinely think that my views on FOI and human rights... and certainly if anybody asks me the high-point of my term as minister, it was to go to Geneva. Every four years we do this, and a minister appears before the UN Human Rights Council, and makes a short presentation and then answers questions for an hour, and I was very proud to do that. The only coverage I got for it was that the Daily Mail said it was

an outrage that a British minister had to justify our human rights record to Belarus and Iran, which indeed I did.

**PR: What was the most frustrating thing about being a minister?**

**LM:** Not as experienced by me... I mean the department could assemble formidable reasons for you not being able to do something, and particularly as a junior minister, you're not totally in control. But I didn't find it a frustrating experience. I thought it was in the main, a very enjoyable experience. But the usual criticisms is that you pull the lever and nothing happens, or something happens that you didn't think was going to happen. It's all the old things, that you're driving a super-tanker not an F1 sports car, it doesn't respond quickly. And there are other pressures that can be mobilised against you in what you want to do.

I still think we've got far too many people in prison. I think we've got about twice as many women in prison as should be there, and it was very difficult to get a programme... I would love to go into the MoJ as a minister with a real positive idea for getting [numbers down] – one which should please the Treasury, because spending £30,000-£40,000 a year keeping an adult in prison and over £100,000 a year keeping a young person in prison, there should be some savings there by finding better ways of doing it. But the political mood is not there, in either of the major parties. I mean one of the problems of making a move on the liberal side of criminal justice was that even if you could persuade your Conservative colleague to go along with you, the Labour Party would be out with a statement saying this is going to put rapists and paedophiles on the street and this is disgraceful. I mean one of the most disappointing... I once went back and read the debate about Sydney Silverman's abolition of hanging bill, and the shape and parameters of that bill in what people thought prison was for and how long people should be in prison. Well it is a lifetime away from where we are now. So pushing prison reform is extremely difficult.

The only trouble I really got into, and one of the great lessons I would advise a new minister, my very first time at a Lib Dem conference as a minister, I spoke at a very small breakfast meeting about what we were thinking of doing and that's it. And somebody asked me about what eventually became the LASPO [Legal Aid, Sentencing and Punishment of Offenders] Bill. I think it was a good bill, and I said, 'Yes I think it really is a reform bill in the way we treat prisoners', and then I paused and I said, 'That's if you can stop those little elves in Number 10 hanging baubles on it like a Christmas tree!' And this was about eight o'clock in the morning, the meeting finished at nine and I came out and there was [a message saying] 'Ring your private office immediately!' So I rang the private office and a rather breathless Emma said, 'What's this about you attacking the Number 10 Policy Unit?' And I said, 'I never made an attack on the Number 10 Policy Unit!' She said, 'Yes you did, you called them little elves hanging baubles on our bill like a Christmas tree!' And I said, 'Well I said that about 20 minutes ago in a private meeting!' and she said, 'Well yes, somebody tweeted it, and it's now running on P.A.!'

**PR: That's a big thing now...**

**LM:** Just one more thing on that, which is when I - with Ken Clarke - and I actually am not so proud of this now because I think politicians have got to master tweeting, but a young lady came down from our press department and said 'We've got this idea that you and the Secretary of State should start tweeting'. And I looked at her and I said, 'There is only one man in England less likely to start tweeting and that is our Secretary of State!' [laughter]

**NH: How would you define an effective minister?**

**LM:** One who is willing to take advice from a wide range of sources; has a clear idea of what he wants to do, but that's not always true in our system. It is sometimes true that you've come in having spent five years working on health policy or 10 years working on home policy and you know exactly what you want to do, although that's not always a good idea. I mean [Andrew] Lansley has been working on it [health] for 10 years.



I think it's the ability to take advice but also a willingness to make decisions; to take decisions and stand by them and be willing to argue them through. I think Whitehall is a jungle and you've got to be able to stand up for yourself and take people with you. You've also got to be able to master a brief, and I wouldn't put myself high on detail. I'm a broad-brush man rather than a detail man. But it is important that you're on top of what you're doing and your ability to argue what you want to do with others.

So it's ability to take advice and decisiveness that I'm looking for in a minister. Sir Bernard Braine was Sir Alec Douglas-Home's deputy as a shadow minister, and when the Tories went into government again, rather surprisingly, in 1970, Sir Alec was asked would you like to take Bernard as his minister of state and he said, 'No, he can't make his mind up about anything!' And I think that an ability to make your mind up, to listen to a range of advice and then say 'That's what we'll do'.

**NH: On the taking advice, you talked a lot about external groups. How did you build up constructive relationships within the department, with other ministers, special advisers, senior officials, so you could get constructive and challenging advice from them?**

**LM:** Well, I suppose partly it's a matter of personality, of being willing - I mean I didn't go in seeing either my Conservative colleagues or their special advisers or the Civil Service as 'the enemy'. But neither did I see them all as closet Liberal Democrats who were really on my side. But I was very interested to hear... I mean one I got on very well with - this will probably ruin his political career - but Jeremy Wright was in the MoJ; I enjoyed discussing issues with Jeremy and he would come at it as a Conservative but with interesting ideas and views. I've never been a tribalist as a politician; that's probably because I've been in so many parties! [laughter]

But no, I mean I've always been a little bit of a magpie. When I worked in public relations, an American called Bob Dilenschneider who was a leading public relations guy said to me, 'You know, if I go to one meeting, reception, conference and I come away with one good contact, I consider that to be a worthwhile use of my time.' And I've always believed that as well; I've always felt that networking, building a range of contacts so that if a problem comes your way, you can think back and think, 'Yeah, he knows about that, and he might be able to help me'. And I still operate in that way, I still operate like that with the YJB [Youth Justice Board]. Because I think there is a danger of being cocooned in a ministry because it is an extremely comfortable existence unless, the ministry gets something terribly wrong and you're cocooned in there and you go down with the ship. But it is just to remember that you're not a civil servant. They're not your friends although interestingly, most of them, as I think with many ministers, I have ended up with friends who worked with me on the inside, and actually I'm still there [Lord McNally is now Chair of the Youth Justice Board]. So I'm now on my third permanent secretary, and my third secretary of state since I walked through the doors of the MoJ in 2010.

So it's having the confidence to be yourself, know where to get advice, and you can't be too ideological. I mean I was always worried about Francis Maude's attitude to the Civil Service, being too driven by a preconceived concept. Thank god they've now given him a job that keeps him on a plane for two-thirds of the year. But I never agreed with that approach, and I'm worried with this whole concept that small government is good government. I don't mean that big government is good government; it means that good government is what's required for the challenge its facing. And that may be small, or it may be a little bit larger, or it may indeed occasionally be big. But I'm always suspicious of the ideologues in politics, and it's probably why as I say I've had a rather peripatetic career.

**NH: We should probably draw it to a close unless you have any final bits of advice you'd like to impart.**

**LM:** Yes, I was saying as we came to the end of the Government that there's not many things that I passionately believe in, but this [current] Government has managed to touch almost every nerve end in that I passionately believe in the BBC, I passionately believe in staying in the European Community; I passionately believe in preserving the Human Rights Act and remaining a member of the ECHR [European Convention on Human Rights]. But I also passionately believe in a Civil Service selected on merit and promoted on merit, and I worry that in all the political parties, there's a kind of generation of management politicians who still believe that if only we can surround ourselves with like-minded souls

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with the strength to drive through our grand ideas, we can do it. Some of the worst advice that I've seen was from super-successful men from the private sector who have no concept of how you manage decision-making in a Parliamentary democracy. But anyway, that's another rant!

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