

# Westminster in an age of minorities

How to form and sustain a government after another hung parliament



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with Charlie Mitchell

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# Executive summary

The UK once had a highly majoritarian political system, with power alternating between the Conservative and Labour parties. At its 1950s peak, this bipolar system left almost no room at all for smaller parties, and the idea of power-sharing, compromise and negotiation came to be seen as almost alien to British politics.

This has now changed. The vote share of the two large parties has declined dramatically and the political landscape is more multicoloured than ever. The two parties are a shadow of the forces they once were: 35% is now regarded as a winning rather than a losing vote share. This makes single-party majorities less likely (though not impossible) to achieve as greater space is created for smaller parties to establish themselves on the green benches of the House of Commons.

In many countries, elections always produce legislatures composed of a range of parties with a minority of seats, who must work together to produce effective and stable government. In the UK we call this a *hung parliament*, the phrase implying that it is an unwelcome exception to the norm. One consequence of this prevailing view is that many of the conventions and expectations surrounding elections are designed for an era of two-party dominance and may now therefore need rethinking. We consider some of the key issues in this paper, making suggestions for what should be done up to and after the election of May 2015, as well as proposals for broader reforms to consider over the longer term.

## **The pre-election period**

Parties and officials should prepare for a wider range of scenarios and forms of government emerging after the election. Before the last election, few predicted a Conservative–Liberal Democrat coalition but May 2010 showed that parliamentary arithmetic plus political leadership can radically change calculations of what is possible.

There should also be more contact between the Civil Service and non-government parties. Pre-election contacts are currently focused on ensuring that Whitehall understands the plans of the major opposition party. But more parties now have the potential to determine the composition and policy of the Government, so the Civil Service should put more emphasis on learning about smaller parties' policy and other priorities. In 2015 it clearly makes sense for departments to study the manifestos of all parties that are likely to return MPs to Westminster.

As in 2010, liaison officials should be appointed for each of the parties, tasked with getting up to speed on likely negotiating priorities and standing prepared to act as a communication channel between the Civil Service and that party after the election.

*In the longer-term*, before future elections, there should be a culture of greater openness, allowing direct communication between the Civil Service and minor parties, perhaps through a scaled-down version of the pre-election contact system that in 2015 is offered only to the Labour Party.

In addition, the scope of pre-election contacts should be broadened to enable more two-way dialogue between civil servants and non-government parties about the implementation of policy. This would help ensure that any parties entering post-election negotiations do so with a better sense of the practical implications of their plans and the challenges they may face.

We also favour the development of a system whereby all parties can have policy plans assessed and costed in advance of an election, as in the Netherlands and Australia. This option should be firmly on the table when the role of the Office for Budget Responsibility is reviewed after the election.

## **Forming a government**

Significant misconceptions remain about what happens next in the event of a hung parliament, both because this has rarely occurred in recent decades, and also because of ambiguity in the rules and conventions. One crucial task for 2015 for civil service and political leaders is to seek to improve public and media understanding before the event. The important principles are as follows:

- First, the UK has an ‘unordered’ government-formation process, meaning any party can talk to any other. Being the largest party is significant politically and arithmetically, but not constitutionally. Neither does the incumbent ‘get first go’ at trying to form a coalition.
- Second, however, the incumbent prime minister is duty bound to remain in office while the government-formation process continues. S/he should resign only when it is clear that s/he is no longer able to govern and there is a clear replacement. There should be no repeat of accusations such as those levelled at Gordon Brown, who was said to be ‘squatters’ in Downing Street while negotiations were in progress.
- Third, until then, the incumbent government operates as a ‘caretaker’ administration, avoiding taking significant decisions without consulting the Opposition. But to avoid any chance of controversy after the election, these rules should be clarified further and communicated clearly to the media and public as well as internally across Whitehall.
- Fourth, who becomes prime minister is determined solely by their ability to command the support (or at least the toleration) of a majority of MPs (the parliamentary confidence test). This may become clear through the negotiation process, but it may remain uncertain until Parliament meets.

Similar to the 2010 timetable, Parliament will return 11 days after the election on 18 May, with the state opening and Queen’s Speech fixed for just over a week later on 27 May. The expectation will be that a government will be in place by the time of the Queen’s Speech to present its programme to Parliament, with votes on the speech acting as the first test of parliamentary confidence.

If the position is very close, the incumbent government may remain in office until the Queen’s Speech without knowing for certain whether it retains the confidence of the House. Defeat would almost certainly lead to immediate resignation (possibly following a formal no-confidence vote). The Opposition would then be given a chance to form a government, followed by a vote to test its own support in the House.

To limit the period of uncertainty and provide greater clarity to voters, we conclude that the parties should agree to hold as early a vote as possible to test parliamentary confidence in the government.

*In the longer term*, we favour a new system whereby the first business of the House of Commons is an explicit vote on who should become prime minister (as in Scotland). This would be more transparent and comprehensible, and would make clear that a government is formed on the basis of its support in the Commons, not at the discretion of the Queen.

### The negotiation process

If another coalition is formed in 2015, the process may take longer than in 2010, since parties may be more determined to tie down other parties at the outset. International evidence shows that coalition agreements grow longer and more detailed over time. This makes it more important to get the details right at the outset.

The parties should consider drawing on civil service expertise before concluding their agreement, to avoid binding themselves to flawed policies. This could be through official support to negotiating teams during talks, or through input after a provisional deal is reached but before it is finalised and published. It would remain for the parties alone to conduct the negotiations and determine the form of any government that emerges.

The parties should also focus on more than just policy during negotiations. More thought should be given to the machinery, processes and principles by which any new multi-party arrangement will work. Key issues include how to keep both parties informed of all relevant policy developments, how to resolve differences, and how much scope to allow for agreement to disagree. The smaller party in particular may also think harder than in 2010 about which ministerial jobs to take – especially in the case of their leader. All this may slow down and complicate the talks.

Any new coalition deal should also consider building in plans at the outset for a mid-term review, to prevent a detailed policy programme from constraining agility and innovation later in the parliament if circumstances change.

However, coalition is not the only option in a hung parliament. One alternative is a confidence and supply deal. This approach can provide a government with stability without forcing it to compromise significantly on its policy programme. For smaller support parties, benefits include securing some policy successes without risking the loss

of identity that full coalition can bring. Challenges include ensuring that the smaller party is kept informed of government plans and given credit for success.

Then there is pure or unsupported minority government. This is often seen as a worst-case scenario, but minority administrations can be effective and stable when they adapt their governing style. It will be necessary to manage public expectations about what the government can and can't do, and about the likelihood of parliamentary defeats. But with a clear sense of purpose, and an ability to build temporary coalitions with different parties on different issues, minority governments can achieve a lot. A minority government also holds many powers that can be exercised irrespective of parliamentary votes, including over public spending, public appointments and foreign policy.

While it is true that a minority government holds office only with the acquiescence of the Opposition, in practice it is rare for the interests of all non-government parties to align (especially in a more fragmented, multi-party context), so minority governments can often divide and rule.

# Introduction

In spring 2009, the Institute for Government started work on a project, in partnership with the Constitution Unit at University College London, considering the implications of a hung parliament being returned at the 2010 general election.<sup>1</sup> During most of the project, the opinion polls pointed to a comfortable Conservative majority, leading the project team sometimes to wonder about the likely relevance of their work. But over the final months of the election campaign the polls narrowed significantly, and interest in our work rose accordingly. By polling day there was widespread recognition that a hung parliament was a likely outcome, although fundamental misconceptions remained common about how a government would be formed and sustained in this context.

Since then, the country has grown accustomed to the idea that first-past-the-post does not always produce decisive victories and that British political parties are capable of working together in government as their counterparts do through much of the democratic world. Whether the country has grown to love coalitions is another matter. Neither is it clear whether the political parties, the Civil Service and the Westminster-watching media have fully absorbed the implications of living in an age when hung parliaments, rather than decisive victories, may have become the new norm.

A majority victory this May remains a possibility, but most polls and pundits are pointing towards another parliament under no overall control. The reasons for this are well-established. Over several decades, the British party system has grown more pluralistic. The key data points illustrating this are cited often but remain striking. From 97% of votes and 99% of seats in 1951, the two major parties attracted just 65% of voters in 2010, translating to 87% of seats. This has created a wide ‘no-man’s-land’ between decisive victories for either Labour or the Conservatives.<sup>2</sup> In 2010, for instance, it was estimated that a Conservative lead of anything under 10% would be likely to translate into a hung parliament.

The decline of the old bipolar system is a result principally of the growth of the Liberal Democrats and their predecessors, as well as the emergence of distinct party systems in Scotland, Wales and Northern Ireland. As we approach the 2015 election, we can observe a landscape even more multicoloured than that of five years ago. The Liberal Democrat decline has not translated into a return to two-party hegemony. Instead, space has been created for other challengers to the old order, in particular the Scottish National Party (SNP), the UK Independence Party (UKIP) and the Greens.

The fragmentation of the old, class-based party system reflects deep, underlying social changes in Britain in the post-war era, and is mirrored in many other western countries.<sup>3</sup> As such it seems unlikely to be restored, and the unavoidable conclusion is that hung parliaments will become more frequent. At the same time, first-past-the-post may begin to translate votes into seats in an even more disproportionate and unpredictable manner, which may in time increase the pressure for electoral reform.

A huge amount has been and will be written on the complex political dynamics of this election campaign and the range of possible electoral outcomes and post-election scenarios. This paper does not seek to forecast the result or to analyse the potential for co-operation between particular pairs or groups of parties – fascinating though those subjects are. Our focus is on how government should operate in the event of an unclear election result, and how it can govern effectively whatever the outcome of any post-election negotiations.

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<sup>1</sup> Hazell, R., and Paun, A. (eds), *Making Minority Government Work: Hung parliaments and the challenges for Westminster and Whitehall*, Institute for Government/Constitution Unit, 2009. <http://www.instituteforgovernment.org.uk/publications/making-minority-government-work>

<sup>2</sup> Butler, D., ‘Hung Parliaments: context and background’, in Brazier, A., and Kalitowski, S., *No Overall Control? The impact of a ‘hung parliament’ on British politics*, Hansard Society, 2008, p. 8.

<sup>3</sup> See e.g. Dalton, R., ‘Political Cleavages, Issues, and Electoral Change’, in LeDuc, L., Niemi, R., and Norris, P. (eds), *Comparing Democracies: Elections and Voting in Global Perspective*, Sage Publications, 1996.

We start the story in the pre-election period, asking how the parties and the Civil Service should prepare for the possibility of a hung parliament. We then move on to the aftermath of the election, discussing the rules and conventions relating to government formation and how the incumbent administration operates during the formation process. We also discuss the role of the Civil Service in this period and consider the different forms of government that might emerge. In addressing these questions and challenges, we consider lessons that might be learned from experience in the UK during the past five years, as well as from other countries.

During the course of the paper, we make a set of recommendations aimed at the parties and the Civil Service. Some of these relate specifically to May 2015. Others are proposals for the longer term: reforms that should be considered on the grounds that, we argue, the UK is in the process of transition from a majoritarian era to an age of minorities.

# Preparing for a hung parliament

*How should the Civil Service and parties prepare for a possible hung parliament this May and the different scenarios that may emerge? What lessons can be learned from 2010 about preparations before the election? Do existing conventions for pre-election contact between the Civil Service and the Opposition need to be revised when hung parliaments are likely? And in the longer run, is there a need for new systems to enable all parties to test and cost their policy plans before elections?*

As part of its pre-election preparation in 2010, the Civil Service carried out a simulated government-formation exercise – so-called ‘war-gaming’ – in which senior officials took the part of leading politicians and tried to reach agreement on the form of the government in various electoral scenarios. Lord O’Donnell, who oversaw the exercise as Cabinet Secretary, recalls that in the scenario (no. 4) that came closest to the actual result, the actors involved failed to reach agreement.<sup>4</sup> This led, we were told, to a realisation that a deal in this context would depend on ‘politicians doing what politicians can do, which [the Civil Service] can’t, which is decide how to be flexible’.<sup>5</sup> A day after the election, David Cameron demonstrated just how dramatically politicians can change the game with his ‘big open and comprehensive offer’ to the Liberal Democrats, paving the way for the formation of the Coalition four days later.

The war-gaming was nonetheless a useful exercise in highlighting the likely challenges and sticking points of the negotiation process, even if civil servants were unable to unstick them themselves in the simulated scenarios. This was part of a broader attempt led by the Cabinet Secretary at ‘sensitising Whitehall to the possibility of a less than clear outcome’ and the range of scenarios this might lead to, one official recalled.<sup>6</sup>

In the failure of the Civil Service to imagine how the Conservatives and Liberal Democrats would overcome their differences lies an important broader lesson: do not underestimate the possibility of an unexpected ‘solution’ being reached. Civil servants were not the only ones to underestimate or overlook the potential for a Conservative–Lib Dem deal. The Liberal Democrats themselves thought Conservative intransigence on electoral reform would render impossible a full coalition, and instead expected no more than a confidence and supply deal to emerge if the Conservatives were the largest party.<sup>7</sup> As a senior Liberal Democrat recalled of the unlikely combination: ‘History was against it; instinct was against it.’<sup>8</sup>

The strength of this largely unchallenged consensus, that Lib Dems could enter coalition only with Labour, and that the Conservatives would rather govern alone than make the necessary compromises to form a coalition, may have led to insufficient engagement between the Civil Service and the Liberal Democrats, including formal pre-election contacts. As the Institute for Government has previously concluded: ‘The most significant failing for the contacts was the belief on the part of the Civil Service that Liberal Democrat manifesto policies were unlikely to be important following the general election.’<sup>9</sup>

Pre-election contacts consist mainly of meetings between senior civil servants and leading members of opposition parties. Their traditional purpose, as discussed in previous Institute for Government reports,<sup>10</sup> has been to enable the Civil Service to learn more about the Opposition’s thinking in the event that this party wins the election. A

<sup>4</sup> Quoted in Robinson, N., ‘How the coalition government was formed’, *The Daily Telegraph*, 29 July 2010.

<sup>5</sup> Interview, February 2015.

<sup>6</sup> Interview with a senior civil servant, March 2015.

<sup>7</sup> Laws, D., *22 Days in May: The Birth of the Lib Dem-Conservative Coalition*, Biteback, 2010, p. 17.

<sup>8</sup> Interview with a senior Liberal Democrat, February 2015.

<sup>9</sup> Haddon, C., and Varma, S., *Pre-election Contact between the Civil Service and the Parties: Lessons from 2010*, Institute for Government, 2014, p. 17.

<sup>10</sup> See Haddon and Varma, op. cit., and Riddell, P., and Haddon, C., *Transitions: Lessons Learned*, Institute for Government, 2011.

further benefit is to build relationships between each permanent secretary and the shadow minister aspiring to take over their department.

In his guidance to permanent secretaries in 2009, the Cabinet Secretary emphasised that the Civil Service should remain principally in ‘listening mode’ when meeting shadow ministers.<sup>11</sup> *The Cabinet Manual* provides further clarification, specifying that the contact meetings – also called ‘access talks’ – enable shadow ministers ‘to ask questions about departmental organisation and to inform civil servants of any organisational changes’ they are planning. Officials may ‘ask questions about the implications of opposition parties’ policy statements, although they would not normally comment on or give advice about policies’.<sup>12</sup>

The current system of pre-election contacts is a product of the era of two-party dominance, and is premised on the expectation that elections will either return the incumbents to office or else bring the Official Opposition to power, in either case probably with a clear majority and the ability to implement the party’s manifesto. Since this is no longer a safe pre-election assumption, we conclude that some of the existing conventions should be reconsidered.

In particular, pre-election contacts have always been conducted principally with the main opposition party. The third party has been involved to a limited extent in the past, but research suggests that neither the Civil Service nor the Liberal Democrats used the pre-election contacts seriously to prepare for coalition. One civil servant interviewed for a previous Institute for Government project found that, as the election approached and a hung parliament seemed increasingly probable, ‘departments greatly increased their efforts to prepare briefs on Liberal Democrat policy, though for many it was still a rush, putting it together during the coalition negotiation period, and few had much to draw on from the pre-election contact experience’.<sup>13</sup>

This time, with the Liberal Democrats already in government, pre-election contacts have so far only been with Labour. But in the context of a multi-party political system, more parties have the potential to end up having influence over government policy – whether as full members of a coalition or through some form of support agreement with a minority government. With this in mind, it is sensible for the Civil Service to do more to learn about the policy and other priorities of the smaller parties. From those parties’ own perspective, the opportunity to engage with civil servants might help them consider their policies through the lens of feasibility. They might then enter any potential post-election negotiations with a better sense of the practical implications and challenges of their policy plans.

Parties are able to ask for contact with officials but this requires the approval of the Prime Minister. Indeed, Nicola Sturgeon, the First Minister of Scotland, wrote a public letter to the Cabinet Secretary in late February requesting pre-election contacts, arguing that ‘the Whitehall system would benefit from becoming more familiar with our propositions’ on issues such as spending cuts and the renewal of the Trident nuclear weapons system.<sup>14</sup> She also made the point that, by acceding to the request, the Prime Minister would be following the lead of Alex Salmond, the former First Minister, who authorised civil servants’ pre-election contact with all major parties before the Scottish Parliament elections in 2011.

Two weeks later, however, it was confirmed that this request had been denied on the grounds that the Prime Minister ‘does not want to extend the offer more widely to parties, for example, that are fielding candidates in only some parts of the country’.<sup>15</sup> We believe this position should be reconsidered, for future elections at least. Extending the system to allow all permanent secretaries to meet all the relevant spokespersons of minor parties would not necessarily make sense. However, given the possibility of the SNP being in a position to determine the composition of the Government after 7 May, some degree of contact between the party (and perhaps other smaller parties too) and the Civil Service would have been sensible. As one official put it: ‘You wouldn’t want to apply

<sup>11</sup> O’Donnell, G., ‘Pre-Election Contacts: Note to permanent secretary colleagues’, January 2009.

<sup>12</sup> *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government*, 1st edition, October 2011, p. 16.

<sup>13</sup> Haddon and Varma, op. cit.

<sup>14</sup> ‘SNP calls for pre-election civil service contact’, BBC, 22 February 2015. <http://www.bbc.co.uk/news/uk-scotland-31565481>

<sup>15</sup> Devlin, K., ‘Cameron rejects Sturgeon’s call for pre-election talks with the civil service’, *The Herald*, 5 March, 2015.

<http://www.heraldscotland.com/politics/wider-political-news/cameron-rejects-sturgeons-call-for-pre-election-talks-with-the-civil-s.119955494>

exactly the same model, but it seems to me there would be value in at least there being a point of contact.<sup>16</sup> This might be in the form of a narrower set of conversations between the Cabinet Secretary, or other senior officials in key parts of Whitehall, and the leadership of small parties, but it could take place only with the Prime Minister's consent, which seems to be unforthcoming.

In 2015, the Civil Service should at least ensure that the election manifestos of the SNP and other smaller parties are assessed in detail and that basic implementation plans are worked up for likely top priorities in any negotiations. In addition, one element of the 2010 preparation that would be worth repeating is the appointment of specific officials to liaise between each party (including minor ones) and the Civil Service in the event of coalition negotiations. Last time round, these officials are thought to have been put in place during the election campaign and were expected to become 'familiar with the party's policy platform and thereby contribute that to internal thinking', as well as to stand prepared to open formal lines of communication after the election with any parties engaged in government-formation talks. We were told that this was a sensible exercise but that more could have been done in advance of the election to bring together the collective knowledge built up by these officials to assist in contingency planning.<sup>17</sup>

In future, it would also make sense to broaden the scope of pre-election contact away from a narrow, machinery-of-government focus and to enable non-government parties to enter into a two-way dialogue with civil servants about the practical implications and challenges of their policy plans. As the Institute for Government has previously argued, there would be value in making clear 'that implementation is and will be an issue to be considered in government and so can be discussed in the pre-election talks'.<sup>18</sup>

In the longer run, therefore, we argue that serious thought should be put into revising current conventions and guidance for the 'age of minorities' to enable interaction between the Civil Service and a wider range of parties during a fixed period before an election. Clearer rules are also needed about the rights of coalition parties to access private support from the Civil Service to assist their manifesto development, as distinct from the support they receive as part of the government of the day.<sup>19</sup> It is thought that something along these lines was agreed in autumn 2014, but this has not been publicly confirmed. The production of a Liberal Democrat alternative Budget in March 2015, with civil service support, illustrates how new conventions are emerging in this area without sufficient transparency.

There would also be value in creating a new system to allow both governing and opposition parties to have their policy proposals costed before an election. This idea will hopefully be on the table during the review of the Office for Budget Responsibility expected after the 2015 election, so we would hope a new system could be in place in time for 2020.<sup>20</sup>

More extensive systems for helping all parties to test and refine their policy plans before an election are provided by international models including Australia's Parliamentary Budget Office and the Netherlands' Central Planning Bureau (CPB). The CPB plays a particularly important role, publishing a detailed analysis of all parties' manifestos before an election, which includes forecasts of the effects of their plans on the public finances, economic growth and other social, economic and environmental indicators. Its analyses also help to facilitate coalition negotiations, as all parties are working from a common evidence base (especially when costing different policies).<sup>21</sup>

While there would always be value in enabling parties to access official sources of information to test the affordability and feasibility of policy plans, the decline of two-party dominance strengthens the case for this. In a

<sup>16</sup> Interview with a senior civil servant, March 2015.

<sup>17</sup> Interview with a senior civil servant, March 2015.

<sup>18</sup> Haddon and Varma, op. cit.

<sup>19</sup> Paun, A., and Munro, R., *Year Five: Whitehall and the Parties in the Final Year of Coalition*, Institute for Government, 2014, p. 6.  
<http://www.instituteforgovernment.org.uk/publications/year-five-whitehall-and-parties-final-year-coalition>

<sup>20</sup> *Ibid.*, p. 8.

<sup>21</sup> *Ibid.*, pp. 33-4.

multi-party political system, minor parties may have unprecedented leverage, with their policy positions taking on a new significance. Multi-party governments often commit themselves at the start of their term to a detailed and binding agreement – whether as a full coalition or in the context of a confidence and supply relationship. Policy tends to be locked down at the outset in a published agreement, to which the parties then hold their partners, whereas single-party governments generally retain more flexibility to adapt and refine policy while in office.

We have made the case that the Civil Service needs to invest more resource in its preparations for a range of post-election scenarios. But the parties themselves should do likewise. Even small parties should take more seriously their preparation for the period after the election. They may not expect to enter government, but after a very close election result, they may find themselves in a position to negotiate significant policy concessions as their price for supporting one or other prime ministerial candidate.

For this reason, manifestos should be developed with an eye to implementation and affordability as well as votes, which might help to avoid disasters such as the Liberal Democrats' pre-election pledge to oppose an increase in university tuition fees. Parties should seek opportunities to engage with civil servants or other technocratically minded experts to refine their plans in advance of any possible negotiations.

Parties should also, in private at least, entertain the possibility of the improbable, for instance by carrying out scenario-based exercises of their own, considering how they would react in the event of other parties taking unexpected negotiating positions. A general lesson for all concerned – from the 2010 general election as well as from international experience – is that political will combined with the raw logic of parliamentary arithmetic can bridge what appears at the outset to be a wide gulf in policy or ideology.

# Forming a new government

*What is the process by which a new government is formed in the event of a hung parliament? And what will be the likely timetable for this process in 2015? How is the confidence of a new government tested, and what complications might arise if the result is extremely close? What happens next if a government's Queen's Speech is defeated? And how could the process of forming a government be made simpler and more transparent?*

Many commentators have remarked on what one senior Liberal Democrat termed the 'culture of impatience' in British politics, no more so than during the period immediately following a general election.<sup>22</sup> The arrival of a removal van outside No. 10 the morning after polling day became the norm in an era of single-party majority government. When this did not occur in 2010, the public and the media were quick to demand an end to the uncertainty. Gordon Brown was accused of 'squatting' in Downing Street by some of the less thoughtful parts of the media.<sup>23</sup> In fact, Brown was acting in accordance with his constitutional duties as incumbent prime minister – and the advice he was receiving. He could not resign until it was clear that a successor could command the confidence of Parliament.<sup>24</sup> As *The Cabinet Manual* observes: 'Recent examples suggest that previous prime ministers have not offered their resignations until there was a situation in which clear advice could be given to the sovereign on who should be asked to form a government.'<sup>25</sup>

In the event, the Coalition was formed after just five days, with the full programme for government following a week later. The five-day transition period was long by UK standards but swift compared to most other parliamentary democracies (figure 1). In Germany in 2013, for instance, the process took more than two months. In that case, the leadership of the Social Democratic Party had to seek the permission of a party convention before they could enter into negotiations with the CDU-CSU party of Angela Merkel. Negotiations did not even begin until almost two weeks after election day. Even in Westminster systems such as Australia and Canada, the formal handover of power does not take place until more than a week after the election, even if there is a clear winner.<sup>26</sup>

To what extent could an extended government-formation period at Westminster be acceptable, or even desirable? In May 2010, negotiations of any length represented a departure into the unknown for most participants and observers. That, combined with the uncertain economic climate, led to an atmosphere of impatience. But the experience demonstrated that the sky does not fall in if there are a few days of uncertainty, and this may have bought the parties slightly more breathing space in May 2015. Despite this, there will still be strong political pressures to conclude the process within days rather than weeks. Speaking at the Institute for Government in January, David Laws MP argued that 'a week is a long time in government and it is long enough to form a government'.<sup>27</sup>

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<sup>22</sup> Interview with a senior Liberal Democrat, February 2015.

<sup>23</sup> Boden, N., 'From green-eyed Chancellor to the "squatter of No. 10"', Mail Online, 10 May 2010.

<http://www.dailymail.co.uk/news/election/article-1272278/From-green-eyed-Chancellor-squatter-No10-Gordon-Brown-finally-admits-hang-job-coveted-long.html>

<sup>24</sup> There is little recent precedent to guide an incumbent prime minister in his conduct after an election in the event of a hung parliament. Before 2010, the last example was in 1974, when Ted Heath resigned after four days when it became clear he would not be able to form a government with the Liberals to command a majority (Labour having won the most seats). In 1923, Stanley Baldwin stayed in office until Parliament had returned some weeks after the election, forcing Labour and the Liberals to defeat his King's Speech and allow a minority Labour government to take office.

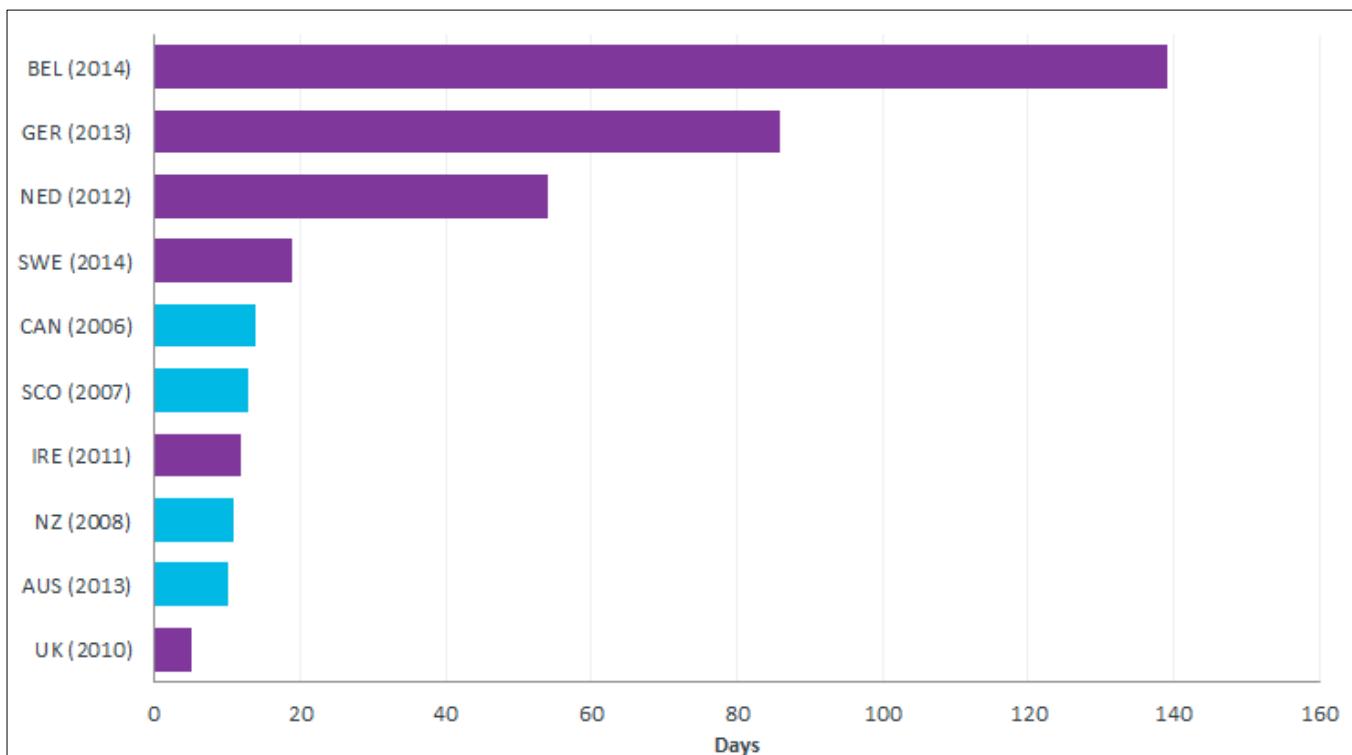
<sup>25</sup> *The Cabinet Manual*, op. cit., p. 14.

<sup>26</sup> In Australia, the new Abbott ministry did not formally take power for 10 days after the 2013 election. In Canada, the last election producing a change of government was in 2006 when Stephen Harper was sworn in as leader of a minority Conservative government on 6 February, 14 days after the election.

<sup>27</sup> Cited in Hughes, N., 'The Laws of Effective Coalitions', Institute for Government blog, 20 January 2015.

<http://www.instituteforgovernment.org.uk/blog/9964/the-laws-of-effective-coalitions/>

Figure 1: Time between election and formation of a new government



The data shows the number of days between the election and a new government taking office (or being 'sworn in') the last time there was a change of government in the countries listed. Purple bars indicate that a coalition was formed, blue bars that a single-party government (majority or minority) took office. Source: Institute for Government calculations, 2015.

At Westminster, there is no legal requirement for the process to be finished by any particular point (unlike in Scotland and Wales, for instance, where a new first minister must be appointed within 28 days to avoid another election). Neither are there binding rules about how the government-formation process should proceed. Some European countries have developed clearer conventions and rules that should be followed after an election, with the leader of the largest party sometimes explicitly given first-mover advantage.<sup>28</sup> In the Netherlands, for instance, recent reforms have enhanced the role of parliament in the process at the expense of the monarch, and specify that there should be a plenary debate on the election result within a week of polling day, leading to the appointment of *informateurs* tasked with exploring coalition options.<sup>29</sup>

By contrast, the UK retains an 'unordered' government-formation process, in which anyone can negotiate with anyone else.<sup>30</sup> The largest party has no privileged position: being the largest group in the Commons has a political and arithmetical value, but no constitutional significance. The party with most seats can therefore be consigned to opposition if other parties unite, as last occurred at Westminster in 1924. Nor does the incumbent prime minister 'get first go' at forming a government, although as we discuss below the incumbent remains in office while the formation process takes place.

How might the process unfold this year? Thanks to the Fixed-term Parliaments Act we know that the election will be on 7 May. Under the Act, Parliament is automatically dissolved 25 working days before the first Thursday in May of every fifth year. Strangely, *The Cabinet Manual*, which ought to be the definitive source on such matters, still reports that dissolution will be 17 days before polling day, which was the case until an extra eight days were

<sup>28</sup> Seyd, B., *Coalition Government in Britain: Lessons from overseas*, Constitution Unit, 2002, p. 44.

<sup>29</sup> Full details of the new Dutch process are set out at: <http://www.houseofrepresentatives.nl/formation-process> (accessed 1 March 2015).

<sup>30</sup> Seyd, B., op. cit., pp. 41-7.

added in a 2013 amendment.<sup>31</sup> In 2015, Parliament was prorogued on Thursday 26 March ahead of dissolution on Monday 30 March.<sup>32</sup>

Parliament used to return just five days or so after an election, but this period was extended by a week in 2010 after the Modernisation Committee made the case for a longer gap ‘to permit some of the practicalities that prevent Members from focusing on their new job to be addressed and to make time for an induction programme before the House starts its work’.<sup>33</sup> In 2010, this turned out to be particularly important due to the large number of new Members (at 227, or 35% of the House, this was the highest level since 1945).

While the rationale for the delayed return of the House was not the anticipation of a hung parliament, in the event the extra week was helpful in creating space for the coalition talks to conclude, as well as for its primary purpose of allowing for induction and other logistical matters (such as allocation of offices) to be dealt with. In 2015 there will be an 11-day gap, meaning that Parliament will return on Monday 18 May. If necessary, this date could be pushed back further by a second proclamation, but that would be seen as exceptional.

Once Parliament meets, there is then an established order of business in the House of Commons. The first item on the agenda is the election or re-election of the Speaker, who then presides over the swearing-in of members of the House over the following days.

The Queen’s Speech and state opening of Parliament usually take place a week or so after the meeting of the new parliament. The Queen’s Speech this year has been set for Wednesday 27 May 2015. Based on past practice, there would then be four to five days of debate on the speech. The debate concludes with a formal vote, adding an extra twist of complexity to the process of forming a government. The motion put to the House is that:

I beg to move, That an humble Address be presented to Her Majesty, as follows: Most Gracious Sovereign, We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Northern Ireland, in Parliament assembled, beg leave to offer our humble thanks to Your Majesty for the Gracious Speech which Your Majesty has addressed to both Houses of Parliament.<sup>34</sup>

This vote, and prior votes on opposition amendments, have traditionally been regarded as the ‘ultimate test of whether a government can remain in office’, and by longstanding convention, defeat has required the prime minister to offer his or her resignation.<sup>35</sup> In 2011 the passage of the Fixed-term Parliaments Act placed one form of confidence motion on to a statutory footing for the first time, specifying that an explicit motion of *no confidence* (using a prescribed wording) would require a government to resign, as well as starting a 14-day countdown either to form a new government or to face a second dissolution. The Queen’s Speech vote would not qualify as a no-confidence motion under this legislation. However, the weight of history and political pressure would nonetheless be likely to force the resignation of the government in the event of defeat.

In 2015, this vote will not take place until about four weeks after the election. In 2010, for example, the debate on the address lasted five days, but due to the timing of half-term this was spread over a fortnight, concluding on 8 June, whereas in 2005 the debate was held on five consecutive days.

Although the date of the Queen’s Speech is not set in stone and can be rearranged if necessary, ‘royal diaries and logistics make it difficult to defer’.<sup>36</sup> Consequently there is likely to be a strong expectation and pressure on the parties to ensure that coalition or other government-formation negotiations are concluded in time for the Queen’s

<sup>31</sup> *The Cabinet Manual*, op. cit., p. 96 (accessed 23 March 2015).

<sup>32</sup> As discussed in White, H., ‘Might Cameron shut Parliament early?’, Institute for Government blog, 17 March 2015. <http://www.instituteforgovernment.org.uk/blog/10710/might-cameron-shut-parliament-early/>

<sup>33</sup> House of Commons Modernisation Committee, *Revitalising the Chamber: The role of the back bench member*, HC 337, 2006-07.

<sup>34</sup> House of Commons debate, 25 May 2010, col. 34.

<sup>35</sup> Brazier, A., ‘Parliamentary procedure without a Commons majority’, in Brazier and Kalitowski (eds), *No Overall Control?*, op. cit., p. 31.

<sup>36</sup> *Ibid.*, p. 29.

Speech to be delivered on 27 May. This will give the parties about 18 days to conclude their negotiations and present the Queen with a clear candidate for prime minister able to command the confidence of the Commons.

This will probably be enough. But if there were an extremely finely balanced result, with the two large parties neck and neck and a number of different ways to build a majority, then the situation could become complicated. The first thing to note is that if he has not clearly lost the confidence of the Commons, then David Cameron would be entitled to remain in office until the Commons meets. *The Cabinet Manual* states that 'it remains a matter for the prime minister, as the sovereign's principal adviser, to judge the appropriate time at which to resign', and that recent prime ministers have not done this 'until there was a situation in which clear advice could be given to the sovereign on who should be asked to form a government'.<sup>37</sup>

If the situation were unclear, the Queen might therefore be asked to deliver a Queen's Speech on behalf of the incumbent administration (or just its Conservative contingent), while the result of the vote on the speech remained in the balance. It might, for instance, depend on the votes of minor parties or rebellious backbenchers. Defeat would be expected to trigger resignation, with the leader of the Opposition being called on to form a government, and then a vote in the Commons to test confidence in the new administration. Alternatively, rejection of the speech might be followed by an explicit vote of no confidence under the Fixed-term Parliaments Act, requiring a new government to be formed and confidence to be tested by the House within 14 days. There might even be a second Queen's Speech, though more probable would be a statement of the new government's plans by the prime minister, followed by several days of debate on the programme outlined, which is what happened in 1924 when Ramsay MacDonald succeeded Stanley Baldwin, who had been defeated on his King's Speech.<sup>38</sup> If the alternative government was itself unable to win a confidence vote, this would lead to an early election.

The above scenarios are unlikely but not impossible. And should it come to this, it would be rightly seen by many as a poor demonstration of the British constitution in action: neither dignified nor efficient. One way to minimise the disruption and embarrassment would be to hold an explicit confidence vote in the incumbent government as soon as possible (perhaps immediately after the Queen's Speech) so that if there were uncertainty about who commanded confidence, this could be cleared up quickly. Potentially there could be a 'skeleton' Queen's Speech with little policy detail, serving as a vehicle by which the incumbent prime minister could test his or her authority. This seems the least-worst solution in the event of a highly uncertain outcome in 2015. But even then, the spectacle of a confidence vote or Queen's Speech being defeated, followed by a new government emerging and having to test its own support in the House, as well as a complicated and poorly understood series of votes on arcaneously worded motions, is unlikely to boost public understanding of or respect for the political process.

A more elegant solution for the longer term, therefore, would be to create a new process by which the Commons formally selects the prime minister, by means of a vote explicitly on the question of who should become prime minister. This is how the first ministers of Scotland and Wales take office: competing candidates to lead the government are given the opportunity to state their case, followed by a debate and vote. Other countries such as Germany also have constitutionally required 'investiture votes' by which parliament legitimates the formation of a new government.

In Scotland and Wales the nomination vote does not itself anoint the first minister, but instead produces a recommendation from the presiding officer to the Queen that she appoint the successful candidate. This means that the appointment is still made under prerogative powers. A similar approach could be adopted in Westminster, but alternatively, legislation could formally abolish the royal prerogative to appoint the prime minister and grant this power formally to the House of Commons, as the Fixed-term Parliaments Act abolished the monarch's power of dissolution.

Whatever the legal basis, the main advantage to this process would be that it would be far more transparent and give the general public a much clearer understanding of how a government is formed in the event of an uncertain

<sup>37</sup> *The Cabinet Manual*, op. cit., p. 14.

<sup>38</sup> See House of Commons debate, 12 February 1924, vol. 169, cc 746-830

(<http://hansard.millbanksystems.com/commons/1924/feb/12/government-policy>) and the debate on subsequent days. With thanks to Stuart Hallifax for finding this reference.

election result. It would also make it clear that a government in a parliamentary democracy exists on the basis of its support in the Commons, not at the pleasure of Her Majesty. In so doing, it would help insulate the Queen from ill-informed speculation about monarchical influence on the government-formation process. Finally, it would allow smaller parties to tell the House and the public why they were choosing to support one or other putative prime minister, further enhancing accountability and transparency.

The Institute for Government has made the case for this reform over several years, and it is apparent that no such reform will occur in time for the May 2015 election and government-formation process. But in an age of minorities and hung parliaments, it is an idea that should be considered in future parliaments.

# Supporting the government-formation process

*What role should civil servants play in informing or supporting negotiations between parties after an election?*

*What should the offer to political parties be? And what are the potential benefits and disadvantages of drawing on civil service expertise when formulating a coalition or other multi-party agreement?*

One contested issue about the government-formation process concerns the role of the Civil Service in this period. In anticipation that this question might arise, in May 2010, guidance was drafted by the Civil Service under the leadership of the Cabinet Secretary, Sir Gus O'Donnell. With the approval of the Prime Minister, this guidance formed part of a draft chapter that 'set out procedures for government regarding general elections and government formation, including procedures that would take place in a hung-parliament situation'.<sup>39</sup> This later became chapter two of *The Cabinet Manual*. Published less than three months before the election, its purpose was to clarify the constitutional rules governing the period immediately following the election.

On the role of the Civil Service, the guidance states that if requested by the parties involved, civil service support for negotiations can be organised by the Cabinet Secretary with the authorisation of the Prime Minister.

Importantly, the rules also specify that any such support must be 'provided on an equal basis to all the parties involved, including the party that was currently in government'.<sup>40</sup> The manual also makes plain that any support for negotiations would be a distinct and separate function from the normal civil service role of advising the incumbent government, which it would continue to do 'in the usual way'.<sup>41</sup> As Professor Robert Hazell, director of the Constitution Unit, recently put it, civil servants are 'guardians of the transition if there is a change of government', during which period 'they continue to do their duty, ensuring the smooth running of the government, and seamlessly transferring their loyalties from one government to another'.<sup>42</sup>

After the event, Sir Gus (now Lord) O'Donnell received criticism from some quarters for his initiative. In October 2010, Professor Robert Blackburn of King's College London claimed that 'a major purpose lying behind the new draft manual was not simply to describe existing convention but to create new expectations and processes'.<sup>43</sup> He further argued that Lord O'Donnell had sought to 'take over the hosting of any post-election inter-party negotiations'.<sup>44</sup> The Conservative MP Andrew Turner also put his opposition to the involvement of the Civil Service in blunt terms, telling Lord O'Donnell: 'I would rather have the Labour Party deciding how this country is run than you as a civil servant'.<sup>45</sup> Lord O'Donnell (along with the Institute for Government and the Constitution Unit) was also the target of a far-fetched conspiracy theory in which *The Cabinet Manual* was a device to keep the Conservatives from governing alone if they failed to win a majority.<sup>46</sup>

Yet in reality, the country was set on the path to coalition government by David Cameron – with the more than willing participation of Nick Clegg – after the Conservative leader opened the door to negotiations between the two parties. During the five days that followed, civil servants had very limited direct involvement. Officials provided rooms and refreshments for the Conservative–Liberal Democrat talks, and stood prepared to play a more active support role. But the parties preferred to keep officials out of the room for most of the process. Lord O'Donnell

<sup>39</sup> Maer, L., *Hung Parliaments*, House of Commons Library, 3 June 2010, p. 1.

<sup>40</sup> *The Cabinet Manual*, op. cit., p. 15.

<sup>41</sup> *Ibid.*, p. 15.

<sup>42</sup> Hazell, R., written submission to the Commons Political and Constitutional Reform Committee (PCRC) inquiry into government formation after the election, 16 February 2015.

<sup>43</sup> Blackburn, R., written evidence to the PCRC, quoted in *Lessons from the Process of Government Formation after the 2010 General Election*, 9 October 2010.

<sup>44</sup> *Ibid.*

<sup>45</sup> Sir Gus O'Donnell, oral evidence to the PCRC, op. cit., 4 November 2010.

<sup>46</sup> Pinto-Duschinsky, M., 'The GOD Squad's Whitehall Coup', *Standpoint*, April 2011. <http://standpointmag.co.uk/node/3805/full>

himself recalls: 'I didn't witness the negotiations. I expressly wasn't in the room when those negotiations took place. I was there at the start but then they were clear that they wanted to do it themselves.'<sup>47</sup>

It does appear that the Treasury provided 'some factual background information'<sup>48</sup> at the request of the parties, for instance on how the Conservative plan for in-year spending cuts of £6 billion could be delivered.<sup>49</sup> But another account found that 'none of the [Liberal Democrat] negotiating team had presentations from the Treasury or the Bank of England during the negotiating sessions, despite several offers from civil servants'.<sup>50</sup> All in all, this was almost entirely a politically driven and determined process.

We were told of several reasons why the parties preferred to keep the civil servants away from the process. One was a concern that any notes of the negotiations taken by officials could be subject to publication if requested under the Freedom of Information (FOI) Act. Indeed, as David Laws, the lead Liberal Democrat negotiator, recently recalled, an FOI request asking for details was in fact received by the Cabinet Office before the negotiations were even completed – but it seems there were no official records that could have been subject to release under FOI.<sup>51</sup> Laws also argued that the parties found it easier to 'cut to the chase more quickly and have slightly more candid, productive arguments' without officials in the room.<sup>52</sup>

In addition, there appears to have been a specific Liberal Democrat resistance to having civil servants present because of a concern that officials might naturally defer to the larger party. This suspicion can be traced back to the party's experience in Scotland in 1999, when it felt the Civil Service had not acted in an even-handed fashion during negotiations with Labour. Speaking at the Institute for Government in 2015, Laws, who was present in Scotland in 1999, confirmed this. He recalled that in 2010, the negotiators 'locked out' the Civil Service, which he defended on the grounds that 'in spite of its professionalism, it is difficult [for the Civil Service] to maintain complete independence ... particularly when there is an asymmetry in size between the parties'.<sup>53</sup>

We were separately told by a senior Liberal Democrat that in the abortive Labour–Liberal Democrat talks, the Labour negotiators (who were of course still ministers at that point) wanted to bring Sir Jeremy Heywood (then Permanent Secretary at No. 10) with them into the coalition talks, but the Liberal Democrats refused. Another account suggests that Heywood himself was reluctant to be involved in negotiations between political parties.<sup>54</sup>

While the Civil Service was not involved during the talks that produced the short coalition agreement published after the election, it did have a greater role in turning that into the longer *Programme for Government*, published the following week. As Lord O'Donnell recalled: 'There was a document that had been agreed by the negotiating teams, and the Civil Service then worked on that to produce the *Programme for Government*'.<sup>55</sup> In other words, the Civil Service took an active role only once the initial agreement had been reached, and even then it appears to have been a fairly minimal exercise, involving turning the shorter coalition agreement into a comprehensive list of actions, rather than a detailed consideration of how all of the policies would be implemented.

Is it likely that the Civil Service will play a more extensive role in 2015 in any government-formation process after a hung parliament, or advisable for it to do so? Sir Jeremy Heywood, the current Cabinet Secretary, recently played down this idea, telling the Public Administration Committee: 'It is up to political parties to decide what their programmes are, and if it gets to a position where no party has got an overall majority ... that will be a matter for

<sup>47</sup> O'Donnell, G., oral evidence to the PCRC, op. cit., 4 November 2010, Q. 228.

<sup>48</sup> Blackburn, R., written evidence to the PCRC, op. cit., 9 October 2010.

<sup>49</sup> Seldon, A., and Lodge, G., *Brown at 10*, Biteback, 2010, pp. 457–8.

<sup>50</sup> Wilson, R., *5 Days to Power*, Biteback, 2010, p. 169.

<sup>51</sup> Perraquin, F., 'Lib Dem minister: any post-election coalition talks should be confidential', *The Guardian*, 19 January 2015. <http://www.theguardian.com/politics/2015/jan/19/liberal-democrat-minister-argues-confidential-post-election-coalition-talks>

<sup>52</sup> *Ibid.*

<sup>53</sup> David Laws speaking at the Institute for Government, 19 January 2015.

<sup>54</sup> Seldon, A., and Lodge, G., op. cit., p. 457.

<sup>55</sup> O'Donnell, G., oral evidence to the PCRC, op. cit., 4 November 2010, Q. 253.

the parties themselves to discuss among themselves. The Civil Service does not have a role in coalition negotiations as such.<sup>56</sup> He has subsequently written that he expects the role of the Civil Service to consist of ‘making logistical arrangements, and providing any factual material parties ask for on the costs and implementation of potential policies’.<sup>57</sup>

One official involved in 2010 reflected that there are two distinct types of support that could be provided to parties (separate from purely logistical support). First, the Civil Service could make ‘a small but highly skilled team available to each of the key negotiating parties, with a range of policy and financial and delivery skills, so that if they want to engage in private advice about the deliverability … they are entitled to have it at that stage’. This support would have to be entirely confidential, meaning that a team should not communicate with teams supporting other parties, or even with the Cabinet Secretary. And second, officials could offer ‘secretariat’ support, recording and codifying what was agreed between the parties, though for the reasons noted there is likely to be reluctance to accept this service.<sup>58</sup>

Whatever the model, it would of course remain entirely for the politicians to decide what to include in any agreement, irrespective of civil service views. But seeking the views of civil servants in some way on policies under discussion could strengthen the ultimate agreement by helping the parties avoid incoherent or unimplementable commitments.

It is well-established that the policies agreed in 2010 between the teams negotiating on the NHS were internally inconsistent. As Nick Timmins has written for the Institute for Government, the NHS was barely mentioned during the negotiations, in what was an ‘entirely political exercise … Health department civil servants – who were already working feverishly away on [Andrew] Lansley’s grand plan – were not involved in any way’. What resulted was a ‘cut and shut job … a neat synthesis of the two parties’ opposing philosophies’ that made little sense.<sup>59</sup> For instance, the Liberal Democrat manifesto pledge to introduce direct elections for the boards of primary care trusts (PCTs) found its way into the *Programme for Government*, even though the Conservative NHS reform plan would in effect abolish PCTs. There are other policies in the *Programme for Government* that did not stand up to much subsequent scrutiny: for instance, we were told that the proposal to reform Air Passenger Duty (by switching from a per-passenger to a per-plane fee) was quickly determined to fall foul of EU law.

For these reasons, we conclude that the parties should be more open to drawing on civil service and other technocratic expertise before committing firmly to major policy plans in any new coalition agreement (or, indeed, a narrower confidence and supply agreement). This could be through dialogue between negotiators and officials during the negotiation process. Alternatively, the parties could negotiate a provisional agreement, but then check the detail of their plans with relevant departments before the document is published. A further reason why this may be advisable was noted in an earlier chapter. It is plausible that if another coalition is formed, the parties involved will seek greater clarity at the outset about the nature of the contract they are entering into, and there may be no two-stage process, as there was last time. If the government-formation process reduces flexibility, then it becomes all the more important that the initial deal has been well thought through from a practical perspective.

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<sup>56</sup> Heywood, J., oral evidence to the Public Administration Committee, quoted in *Whitehall: capacity to address future challenges*, HC 669, 27 January 2015, Q. 373 (accessed 16 February 2015).

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-committee/whitehall-capacity-to-address-future-challenges/oral/17830.pdf>

<sup>57</sup> Heywood, J., ‘The role of the Civil Service during the election’, Civil Service blog (accessed 24 March 2015).

<https://civilservice.blog.gov.uk/2015/03/17/the-role-of-the-civil-service-during-the-election/>

<sup>58</sup> Interview with a senior civil servant, March 2015.

<sup>59</sup> Timmins, N., *Never Again? The Story of the Health and Social Care Act 2012*, Institute for Government/King’s Fund, 2012, p. 50.

## Governing while negotiations continue

*What are the rules and conventions for how government should operate while there remains uncertainty about the composition of the next government? Is there a need for greater clarity in these rules?*

As we have discussed, the election may be followed by a period of uncertainty longer than the five days it took to form the Coalition in 2010. We have also argued that taking longer may represent a worthwhile investment in terms of the quality of the agreement reached, as well as giving incoming (or returning) ministers a brief period of rest before they take the reins of power.

During the government-formation period, the existing government remains in office. In formal constitutional terms, the incumbent government retains its full legal authority at all times, since there must be a government able to act if necessary. However, so long as there is uncertainty about which leader can command the confidence of the House, the incumbent administration is expected to show restraint when making certain types of decision. In many political systems, this idea of a constrained executive is well-established and described as a ‘caretaker government’ or a government subject to a ‘caretaker convention’.

Westminster is accustomed to the swift and almost immediate formation of a government (whether new or incumbent) after an election, so the concept of a post-election caretaker government is not well-known. As a recent academic study put it, the conventions governing these issues have been ‘historically underspecified and underdeveloped’.<sup>60</sup> Until 2010 they were entirely uncodified, but as it became more likely that the 2010 election might return a hung parliament, there were calls for clarification, which led to some broad principles being set out in the draft chapter of what became *The Cabinet Manual*. The manual distinguishes between three different circumstances in which a government should act with restraint:

*Governments are expected by convention to observe discretion in initiating any new action of a continuing or long-term character in the period immediately preceding an election, immediately afterwards if the result is unclear, and following the loss of a vote of confidence. In all three circumstances essential business must be allowed to continue.*

The manual goes into some detail concerning the activity of an incumbent government in the run-up to an election during the ‘purdah’ period. To ensure a level playing field between government and opposition, ministers are required to defer decisions with significant and lasting implications and not to use government resources to make policy announcements:

*This means the deferral of activity such as: taking or announcing major policy decisions; entering into large/contentious procurement contracts or significant long-term commitments; and making some senior public appointments and approving Senior Civil Service appointments, provided that such postponement would not be detrimental to the national interest or wasteful of public money.*

*The Cabinet Manual* is also explicit that these same constraints apply in the event that a serving government loses a vote of no confidence and before a new administration is formed (or an election called). However, the guidance is less clear with regards to the period after the election. Indeed the manual studiously avoids using the word ‘caretaker’ altogether, apparently because the ‘c-word’ is seen as pejorative and implying a weak government. As Professor Hazell argues, this is misguided. Caretaker is ‘a technical term, implying a government which has full lawful authority to govern, but has lost (or has yet to acquire) full political authority’.<sup>61</sup>

But whatever the period is called, the more important question is whether there are sufficiently clear rules and conventions to guide the behaviour of ministers, civil servants and the Opposition while uncertainty about the composition of the government continues. On this point the manual is more ambiguous. It stipulates only that in

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<sup>60</sup> Schleiter, P., and Belu, V., ‘Avoiding Another “Squatter in Downing Street” Controversy: The need to improve the caretaker conventions before the 2015 general election’, *The Political Quarterly*, vol. 85, no. 4, 2014, p. 455.

<sup>61</sup> Hazell, R., written submission to the PCRC, op. cit., 16 February 2015.

this context ‘many’ of the pre-election restrictions continue to apply, without any further clarification. The vagueness of the guidance has raised concern that such ambiguity could lead to confusion and controversy in the event of an incumbent government being called into action while government-formation negotiations continue.

The ambiguity in the current wording reflects both a reluctance to agree to more detailed constraints, and also the fact that there are a range of scenarios in which these conventions might come into effect, so it is sensible to ensure flexibility. For instance, if it were clear or almost certain that the incumbent prime minister would retain power, but had first to finalise the details of a shared policy programme with other parties, then it might not be necessary to apply the full force of the pre-election restrictions.

Conversely, and unlike in the pre-election period, the incumbent might have clearly lost the confidence of the House, and it might quickly become almost certain that the Opposition would take over. In this context, a stronger set of constraints might need to apply (along with a clear expectation that if any decisions could not be deferred, they should be taken only in consultation with the opposition). There are also scenarios where for several days the question of who was to govern might remain genuinely in the balance.

In the aftermath of the 2010 election, the guidance was put to the test when Alistair Darling had to attend an extraordinary meeting of European finance ministers. Three days after the election, all 27 finance ministers of the EU member states met in Brussels to discuss plans to protect the eurozone, including the establishment of a new financial stabilisation mechanism. The meeting unarguably had the potential to have a significant and long-lasting impact on Britain. Darling opted to consult his Conservative and Liberal Democrat counterparts, informing George Osborne and Vince Cable of his plans.<sup>62</sup> Both apparently acknowledged that Darling was still Chancellor, so it remained for him to decide how to approach the negotiations, but Osborne has also stated that he ‘cautioned against committing the UK to proposals that have a lasting effect on the UK’s public finances’.<sup>63</sup> This appears to have been Darling’s view as well, so no controversy arose. However, it has been argued that the decision to consult his counterparts was a personal one, and that there was nothing ‘preventing him from making substantial commitments that would have bound the incoming government, possibly in direct contradiction to its policy position’.<sup>64</sup> The experiences of other countries highlight the potential for controversy in the absence of clear guidance on the authority of caretaker governments.

In New Zealand in 1984, for example, the outgoing National Party Prime Minister, Robert Muldoon, faced a financial crisis. The day after the election (14 July), Muldoon was urged to devalue the NZ dollar in line with the incoming Labour government’s policies. (The new government was sworn in on 26 July.) He refused, and since he was still Prime Minister, Labour was unable to dispute this decision on legal grounds. It was only after three days of political and constitutional wrangling (during which Muldoon’s own colleagues went to see the Governor-General to urge his dismissal) that Muldoon relented and agreed to devalue. The cost of his initial refusal to devalue was later estimated at NZ\$800 million: more than 2% of New Zealand’s GDP in 1984.<sup>65</sup>

Subsequently, guidance on these issues was extended and New Zealand’s *Cabinet Manual* now refers explicitly to a ‘caretaker convention’ and sets out somewhat more detailed guidance than the UK version. This includes drawing a distinction between two distinct scenarios: an ‘unclear outcome’, when the composition of the new government is not known, and a ‘clear outcome’, when it is known that there will be a change of government, but the new ministers have yet to be sworn in.<sup>66</sup> Australia has an even more detailed set of guidelines, which specify

<sup>62</sup> Darling, A., written evidence to the PCRC, op. cit., 17 January 2011 (accessed 27 March 2015).

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/528/528vw11.htm>

<sup>63</sup> Osborne, G., written evidence to the PCRC, op. cit., 16 December 2010 (accessed 27 March 2015).

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/528/528vw10.htm>

<sup>64</sup> Schleiter and Belu, op. cit., p. 257.

<sup>65</sup> Hazell, R., and Riddell, P., *A Draft Caretaker Convention for the UK*, supplementary memorandum to the Commons Justice Committee, 21 February 2010.

<sup>66</sup> In the ‘unclear outcome’ case, the rules state that the government (both ministers and officials) should defer any major decisions, seek ‘temporary or holding arrangements’ where this is not possible, and if neither is possible then act only on the basis of cross-party agreement. In the case of a ‘clear outcome’, the central principle is that if a decision must be taken, the government must act on the advice of the incoming ministers. Source: *Cabinet Manual*, ‘Elections, Transitions, and Government Formation: 6.16. Caretaker convention’ (2008).

how to deal with major policy decisions and contracts, significant appointments, international negotiations and visits, and government communications.<sup>67</sup>

Although there is a need for flexibility in the UK *Cabinet Manual*, there is currently too much reliance on the understanding and co-operation of key actors in ensuring a smooth transition between governments. While it does appear that those involved stuck to the spirit (as well as the letter, such as it is) of the rules in 2010, this might not always be the case, and if the published rules are ambiguous, holding ministers to account for breaching them will be difficult. The Institute for Government therefore concludes that the Cabinet Secretary ought to provide further clarification in advance of this year's election, to avoid media speculation and uncertainty in the event of another hung parliament.<sup>68</sup> The Political and Constitutional Reform Committee has similarly called for a clear statement 'of the constitutional principles which underpin the continuance in office or otherwise of administrations following a general election'.<sup>69</sup>

In practice, it is likely that few if any significant decisions will need to be taken during any caretaker period in May 2015. With the election date known long in advance, officials have sought to ensure that few decision points arise either during the short campaign following dissolution, or in the weeks afterwards. But unexpected international or domestic events might yet put the conventions to the test, particularly if the process takes weeks rather than days.

Greater clarity would also be helpful on two further points: what civil servants can do in the event of a perceived breach of the caretaker convention, and when the period of 'caretaker' government should come to an end. On the former point, *The Cabinet Manual* implies (but in ambiguous terms) that permanent secretaries could request a 'letter of direction' explicitly instructing them to proceed in spite of their concerns that the conventions were being breached.<sup>70</sup> And on the latter, the current guidance says that the end of restrictions 'depends on circumstances, but may often be either when a new prime minister is appointed by the sovereign or where a government's ability to command the confidence of the Commons has been tested in the House of Commons'. Again, a degree of flexibility is appropriate, but in the event of a lengthy period of uncertainty after the election, the risk is that the current wording could create scope for confusion and ill-informed media coverage (as when Gordon Brown was accused of being a 'squatter' in Downing Street).

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<sup>67</sup> Department of the Prime Minister and Cabinet, *Guidance on Caretaker Conventions*, 2013.

[http://www.dpmc.gov.au/sites/default/files/publications/Guidance\\_on\\_Caretaker\\_Conventions.pdf](http://www.dpmc.gov.au/sites/default/files/publications/Guidance_on_Caretaker_Conventions.pdf)

<sup>68</sup> Riddell, P., 'Clarify election guidelines before May 2015', Institute for Government blog.

<http://www.instituteforgovernment.org.uk/blog/10289/clarify-election-guidelines-before-may-2015/>

<sup>69</sup> PCRC, *Revisiting the Cabinet Manual*, 5th report of session 2014-15, 2 February 2015.

<sup>70</sup> *The UK Constitution and the 2015 Election*, Institute for Government explanatory paper.

[http://www.instituteforgovernment.org.uk/sites/default/files/publications/The%20UK%20Constitution%20and%20the%202015%20Election\\_0.pdf](http://www.instituteforgovernment.org.uk/sites/default/files/publications/The%20UK%20Constitution%20and%20the%202015%20Election_0.pdf)

# Striking a deal and making it stick

*What is the range of possible forms of government that could emerge in the event of a hung parliament? What are the benefits and disadvantages of these different models of inter-party co-operation? And what lessons can be learned from the past five years and from international experience about governing effectively without a single-party majority?*

If no party wins a majority this May, then some form of negotiation and co-operation between parties will be necessary to form and to sustain a government. As a previous study of these issues concluded, ‘a hung parliament will lead to multi-party governance, even if [there is a] single party government’.<sup>71</sup> The UK now has five years’ experience of one ‘solution’ to the problem of how to govern in a parliament under no overall control. But there is a spectrum of models that can be adopted, as we discuss below.

Governing effectively in the absence of a single-party majority requires parties to resolve a range of issues and challenges that we might term *the six Ps of multi-party governance*. First, and most obviously, parties will have to negotiate and reach agreement on *policy*. Second, in the context of coalition, they need to agree on the allocation of ministerial *portfolios*. Third and fourth, effective ongoing co-operation between parties rests on agreed *processes* and *principles* underpinning any multi-party governing arrangement. Fifth, the leadership of coalition parties (or of support parties to a minority government) must negotiate not only with the other parties but also internally to ensure effective *party management*. Finally, sixth, the relationship between government and *Parliament* may also operate differently in a context of non-majoritarian government.

## **Another coalition?**

Multi-party coalition governments formed on the basis of a negotiated joint-policy programme are the most common form of government across the EU.<sup>72</sup> But coalition agreements come in different shapes and sizes. They vary according to how comprehensive they are in their coverage of policy areas, how detailed they are in specifying the government’s plans, and how much flexibility they allow for the partners to agree to disagree. They also vary in the detail they provide about the processes and principles by which the coalition will operate. Coalitions are generally formed with the intention of lasting for the full term, but coalition agreements may also sometimes (as is often the case in Ireland) include a specific timetable for a review of the agreement as a whole.

The 2010 UK coalition agreement was unusual in that it followed a two-stage process – an initial, fairly short policy document provided the basis on which the Government took office, but this was followed a week later by the more detailed *Programme for Government*, covering the full range of policy areas, and setting out an agenda ‘for five years of partnership government’.<sup>73</sup> At 16,000 words, this was of average length in European terms.<sup>74</sup> It was also accompanied by a separate procedural rulebook.<sup>75</sup>

The breadth of agreement between the coalition parties in just five days of talks in 2010 was impressive. On the big issues of deficit reduction and constitutional reform, the two sides showed an unexpected willingness to compromise. On many other issues, the favoured approach was to trade off policies in different areas, to avoid filling the agreement with ‘lowest common-denominator compromises’, and to ensure that each party had some clear ‘policy wins’ it could highlight to sceptical voters and party members.<sup>76</sup> These included the Liberal Democrats’

<sup>71</sup> Hazell and Paun, op. cit., p. 7.

<sup>72</sup> See Hobolt, S., and Karp, J., ‘Voters and coalition governments’, *Electoral Studies* 29, 2010, p. 301.

<sup>73</sup> HM Government, *The Coalition: Our Programme for Government*, 2010, p. 8.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/78977/coalition\\_programme\\_for\\_government.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf)

<sup>74</sup> Hazell, R., and Yong, B., *The Politics of Coalition: How the Conservative-Liberal Democrat Government Works*, Hart Publishing, 2012, p. 36.

<sup>75</sup> *Coalition Agreement for Stability and Reform*, May 2010.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/78978/coalition-agreement-may-2010\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78978/coalition-agreement-may-2010_0.pdf)

<sup>76</sup> See Laws, *22 Days in May*, op. cit., p. 117.

'pupil premium' and pensions 'triple-lock' guarantee, and major Conservative reform plans in areas including schools, health, welfare and immigration.

Looking forward to May 2015, what might be different? Coalition agreements, international evidence shows, 'are almost everywhere growing more common, more detailed and more public'.<sup>77</sup> This may occur as a result of parties learning from experience that they need to bind their partners to as much as possible at the outset, as well as greater pressure from party members and the wider public for transparency. In situations of low trust, negotiators seem particularly likely to want to incorporate a high level of detail at the outset rather than leave more to be negotiated after the government has been formed.

This was the pattern in Scotland: the 2003 Labour–Liberal Democrat coalition was significantly longer than that of 1999, and set out a comprehensive plan for the full parliamentary term. Indeed, Sir John Elvidge, the former Permanent Secretary to the Scottish Government, has since reflected that the programme was excessively detailed and left little space for innovation. In his words: 'The more specific a coalition agreement is, the more it reduces the flexibility of the resulting government to respond to unforeseen or changing circumstances'.<sup>78</sup>

Coalition agreements are also treated as more binding than the policy plans of a single-party government, as the parties see the deal as a contract (albeit a contract with limited enforcement mechanisms available). In Germany, the coalition deal is referred to as a 'treaty', no less, and is typically adhered to very strictly. The British politicians in 2010 were under considerable time constraints as they tried to reach agreement, and one official noted the irony that 'you end[ed] up with something that's probably been crafted in even less time than it takes to craft a manifesto and yet is more slavishly adhered to'.<sup>79</sup>

Since trust between any potential coalition partners is likely to be lower in May 2015 than five years ago, we may well see parties seeking greater clarity and precision about what the shared government programme will involve. In particular, it may be that there will be no two-stage process this time, and that the parties (and their MPs and members) will not finalise any coalition until a full programme has been agreed to. There may also be less willingness to defer sensitive policy questions to commissions and reviews (as was the strategy with a few dozen issues, including university tuition fees, last time), and policy positions will instead be agreed up front. This may lead to a longer government-formation process and a greater need to ensure that policies agreed at the outset will work in practice. This in turn raises important questions about the right role for the Civil Service in supporting the process, as we have discussed above.

In addition, to avoid the programme becoming a straitjacket, it may be worth agreeing at the outset a 'refresh' process by which the coalition agreement will be reviewed in mid-term, something the Institute for Government has previously recommended,<sup>80</sup> and which a senior Liberal Democrat we spoke to was firmly in favour of.<sup>81</sup> Clear rules will also be needed about the extent to which coalition partners will be entitled to agree to disagree, rather than abiding by collective responsibility.

But as noted, the policy programme is only one part of a coalition deal. The parties must also agree on how to allocate ministerial jobs. Allocation of portfolios was purposely left out of the negotiations in 2010, and was decided between the two party leaders (in some haste, it would seem, after the initial policy agreement had been struck). As past Institute for Government studies have pointed out, the Liberal Democrats did reasonably well in terms of the number of cabinet posts they were given (5 out of 23).<sup>82</sup> But in terms of which portfolios the party took, the

<sup>77</sup> Bale, T., 'Captives no longer, but servants still? Contract parliamentarism and the new minority governance in Sweden and New Zealand', *Government and Opposition*, col. 41, no. 3, p. 443.

<sup>78</sup> Elvidge, J., *Northern Exposure: Lessons from the first twelve years of devolved government in Scotland*, Institute for Government, 2011.

<sup>79</sup> Interview with a senior civil servant, March 2015.

<sup>80</sup> Paun, A., and Hallifax, S., *A game of two halves: how coalition governments renew in mid-term and last the full term*, Institute for Government, 2012.

<sup>81</sup> Interview with a senior Liberal Democrat, February 2015.

<sup>82</sup> Paun, A., *United We Stand? Coalition Government in the UK*, Institute for Government, 2010, p. 30.

picture is less positive: all of the largest public service and the large spending departments were filled by Conservatives. The Liberal Democrats have since 2010 led only two of the 17 main departments in Whitehall and these are ranked sixth (the Department for Business, Innovation and Skills) and 13th (the Department of Energy and Climate Change) in terms of the spending they control.<sup>83</sup> At more junior ranks, the smaller party filled fewer than one-fifth of all jobs (in line with its share of seats compared to the Conservatives), leading one former Liberal Democrat minister to express ‘astonishment and dismay. I simply could not believe how few posts we had secured’.<sup>84</sup> In some important departments such as the Home Office and the Department for Communities and Local Government, the party initially had just one parliamentary secretary (the lowest rank of minister) and at the departments for Environment and Culture there were no Liberal Democrats at all.

Looking forward to 2015 it seems likely that the Liberal Democrats (or any other smaller coalition partner) would think more about the jobs they are most keen to take and might push harder in negotiations for particular portfolios, which could complicate the negotiation process. Agreeing on a formula and a process for the allocation of ministerial posts is important, but it would then be sensible again to leave the actual filling of seats to the two party leaders to agree on separately from the policy negotiations.

One critical question will be what job the leader of the second party in a coalition should fill. The 2010 approach was for the Deputy Prime Minister to be situated at the centre, with responsibility for constitutional reform as well as a remit to oversee the entire work of government. This was an unusual approach: in most European coalitions, the leader of the smaller party takes the helm at one of the large departments, alongside a wider deputy prime minister role. In Germany, the junior party leader is by convention the foreign minister, for instance. In Scotland, the Deputy First Minister in the first Labour–Liberal Democrat government was also Justice Minister.

One senior Liberal Democrat we spoke to now feels that, in hindsight, it may have been a mistake for Nick Clegg not to have taken a departmental job – although had he managed to deliver his major reforms to the electoral system, the House of Lords and party funding, the calculus might look different. Whether to seek a departmental job will be a big question for any smaller coalition partner in 2015. Whether to grant it to them will be a big question for any larger party involved in the negotiations.

Whatever ministerial posts a junior coalition partner takes, another clear lesson from the past five years is that sufficient support needs to be set up to enable them to do their job effectively. The Deputy Prime Minister was expected and entitled to maintain a ‘full and contemporaneous overview of the business of government’, but was not at first given sufficient support to make this a reality. His small private office was initially overloaded with work until additional resource was provided following Institute for Government recommendations.<sup>85</sup>

Junior ministers in departments headed by another party also need sufficient support, including that of politically appointed special advisers, to ensure they can keep the smaller party engaged in policymaking across government. Clearer rules and principles need to be published ensuring that the smaller party is kept informed of policy development and given sufficient time to have input. This has not always happened, as previous Institute for Government research has established.<sup>86</sup>

Effective coalition government relies on effective machinery for resolving differences between the parties. In 2010, the initial expectation was that a new ‘Coalition Committee’ of 10 senior ministers, chaired by the Prime Minister and Deputy Prime Minister, would meet regularly to take big decisions and resolve differences. In the event, this body has barely met, and instead the burden of resolving disputes that have not been dealt with at the departmental level has fallen on the Quad of Prime Minister, Deputy Prime Minister, Chancellor and Chief Secretary to the Treasury. This body is seen to have worked well, and is regarded across Whitehall as a central

<sup>83</sup> Freeguard, G., et al., *Whitehall Monitor 2014: A data-driven analysis of the size, shape and performance of Whitehall*, Institute for Government, 2014, p. 12. <http://www.instituteforgovernment.org.uk/publications/whitehall-monitor-2014>

<sup>84</sup> Harvey, N., *After the Rose Garden: Harsh lessons for the smaller coalition party about how to be seen and heard in government*, Institute for Government, 2014, p. 3. <http://www.instituteforgovernment.org.uk/publications/after-rose-garden>

<sup>85</sup> See Paun, A., ‘Governing in Coalition’, in *One Year On: The first year of coalition government*, Institute for Government, 2011, p.11. <http://www.instituteforgovernment.org.uk/publications/one-year>

<sup>86</sup> Paun and Munro, *Year Five*, op. cit., p. 25.

forum to which thorny issues can be referred for resolution. So a future coalition may well recreate something similar. The risk, however, is of overload. The four members of the Quad have extremely important jobs of their own, and in the event that a future coalition is marked from the start by poorer trust-based relations than in 2010, there may be a larger number of disputes to resolve. A larger dispute resolution body with a wider membership (perhaps including back-bench members from the two parties) might prove necessary.

A final unavoidable lesson from the past five years is that no matter what the party leaders agree in negotiations or later on in Cabinet or the Quad, the support of back-bench members from governing parties will still be needed to implement the deal. As Philip Cowley and Mark Stuart of Nottingham University have extensively documented, we live in an age of unprecedently rebellious back-bench MPs, and with coalition an unpopular option within both the major parties, this means that making a deal stick may be a tricky task.<sup>87</sup> Consulting at the outset and regularly along the way to ensure that MPs feel they have a stake in the party is likely to be a prerequisite for success, though it may be that back-bench (or wider party) dissatisfaction scuppers a potential coalition deal, and a looser co-operative arrangement emerges instead.

### ***A confidence and supply deal?***

An alternative to a full coalition, ruled out at an early stage five years ago, is a negotiated agreement setting out the terms on which one or more of the smaller parties will support the formation and/or continuation of a government that on its own lacks a parliamentary majority. Such formal agreements between parties that are not in full coalition have been termed ‘contract parliamentarism’.<sup>88</sup> This could take the form of a ‘confidence and supply’ agreement guaranteeing the government a supportive majority on crucial confidence and budgetary votes.

This is the direction of travel that New Zealand has taken over the past 15 years, having switched to proportional representation (PR) in 1996. The first two post-PR elections resulted in the formation of a full coalition between one large and one small party. In both cases, the governments collapsed and the small party was decimated in the subsequent election. Since then, there has been a succession of minority governments supported by published confidence and supply agreements, with an added tweak that smaller parties are sometimes offered one or two ministerial portfolios while retaining the right to oppose the government on all other policy areas.<sup>89</sup> The Australian minority government formed in 2011 likewise struck a set of short agreements with smaller parties and independents to shore up its position in exchange for specified policy concessions.<sup>90</sup>

For the larger governing party, entering into a confidence and supply agreement brings the clear benefit of peace of mind that it is not perpetually on the brink of defeat in Parliament on key votes. This can enable a clearer and longer-term political strategy to be formed. Compromises must be made to keep the support parties onside, but they tend to be smaller and more focused than in a coalition, where the entire government programme is the product of bargaining and compromise. Such a deal may therefore be easier to sell to sceptical back-bench members and activists. For smaller parties, agreeing to support a minority government from the outside can help them secure some important ‘policy wins’ and establish a reputation for facilitating stable government, while enabling them to maintain their separate identity and to oppose elements of the government agenda they and their voters disapprove of.

Even a formal confidence and supply deal may sometimes be considered too big a step for reluctant partners, so more limited agreements may emerge instead. For example, a ‘contract parliamentarism’ arrangement could be made for a specified time limit – as with the Lib-Lab Pact of 1977-78. This limited co-operation deal, struck in March 1977 to save the Callaghan government from defeat on a confidence motion, was initially scheduled for a

<sup>87</sup> For details on this research, see Philip Cowley and Mark Stuart’s website: <http://revolts.co.uk/>

<sup>88</sup> See Bale, T., ‘Captives no longer, but servants still?’, op. cit.

<sup>89</sup> See Yong, B., ‘New Zealand’s Experience of Multi-party Governance’, in Hazell, R., and Paun, A. (eds), *Making Minority Government Work*, Institute for Government, 2009.

<sup>90</sup> See Paun, A., ‘After the age of majority? Multi-party governance and the Westminster model’, *Commonwealth & Comparative Politics*, vol. 49, issue 4, 2011.

few months until the end of the parliamentary session, though in the event it was extended until October 1978 before expiring.<sup>91</sup> A co-operation agreement could be for an even more limited and specific purpose, such as the agreement between the SNP and Greens that led to Green MSPs backing Alex Salmond for First Minister in 2007. This did not develop into an ongoing, structured co-operative relationship.<sup>92</sup>

Whatever the nature of the agreement, a key challenge for smaller parties supporting a minority government is to ensure that they have sufficient access to information and resources that enable them to influence government policy on a continuing basis, or at least to be sure that they are sufficiently informed about policy that they may be expected to support. So in any negotiations leading to such an arrangement, thought should be given not only to policy but again also to the machinery and processes that will enable the external support parties to have a meaningful voice in the policy process. Formal rules around media and communications may also be required to ensure that the smaller party gets credit for the policies it has pushed for. Without these elements in place, they may struggle politically as voters and party members question what they are getting from the arrangement, and this may start to undermine their commitment to supporting the government at all. The story of the Lib-Lab Pact (remembered on the Liberal side as having delivered ‘responsibility without power’) illustrates this point, but smaller parties in Sweden and New Zealand have also learned the importance of agreeing on consultation and communication rights as well as policy concessions.<sup>93</sup>

### ***Unsupported minority government***

At the far end of the spectrum of co-operation, a minority government can be formed with no formal agreement to co-operate with any other party, in which case ministers (or whips) must build alliances on specific issues and votes to get the government’s legislation and other business through Parliament. This model of government is seen by many in and around Whitehall as the worst-case scenario, likely to provide unstable and ineffective government. Yet there are in fact plenty of examples illustrating how minority government can work well.

In Scotland, Alex Salmond led an unsupported minority government for four years until the SNP landslide victory of 2011. In Canada, Stephen Harper won a majority in the very same week as Salmond, after five years as a ‘pure minority’ government (the 13th minority cabinet in Ottawa since the 1920s).<sup>94</sup> In Scandinavia, minority governments have been even more common: Denmark and Sweden have been governed in this way for more than 70% of the past century.<sup>95</sup> International evidence also shows that while minority governments do have a shorter life expectancy than majority governments, they last nearly as long as ‘minimal winning coalitions’, which is the category into which the current UK Government falls.<sup>96</sup>

The evidence therefore illustrates that minority government can work, but it requires adaptation. To be successful, a minority government must learn to act accordingly, rather than seeking to govern in a majoritarian fashion. This means putting effort into developing relationships with other parties (especially via parliamentary business managers or whips), and being open to concessions on policy and spending decisions. It may require a different kind of leadership, with greater emphasis placed on building bridges beyond the party and on managing public expectations about what the government can and can’t do. It also requires a clear sense of strategy and purpose beyond day-to-day survival. In Scotland, the SNP minority government focused on improving social outcomes via

<sup>91</sup> ‘Joint Statement on the Lib-Lab Pact: Steel and Callaghan’, March 1977 (accessed 18 March 2015).

<http://www.liberalhistory.org.uk/history/joint-statement-on-the-lib-lab-pact-steel-and-callaghan/>

<sup>92</sup> Scottish National Party and Scottish Green Party Cooperation Agreement, 11 May 2007.

[http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/11\\_05\\_07\\_agreement.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/11_05_07_agreement.pdf)

<sup>93</sup> See Bale, T., op. cit.

<sup>94</sup> Chalmers, M., ‘Canada’s Dysfunctional Minority Parliament’, in Hazell and Paun (eds), *Making Minority Government Work*, op. cit., p. 26.

<sup>95</sup> Rasch, B., ‘Why Minority Governments? Executive-Legislative Relations in the Nordic Countries’, p. 27 (accessed 18 March 2015).

<http://folk.uio.no/berasch/Why-Minority-Governments-Nordic-Countries.pdf>

<sup>96</sup> A minimal winning coalition is a majority coalition that would lose its majority if any of the composite parties were to leave. A major study of governments in western Europe between 1945 and 1998 found that single-party majority governments lasted on average 878 days, minimal-winning coalitions 675 days, and single-party minority governments 575 days. Woldendorp, J., Keman, H., and Budge, I., *Party Government in 48 Democracies (1945–1998): Composition, Duration, Personnel*, Springer, 2000, p. 86.

a framework of strategic priorities and through partnerships with local government and other parts of the public sector.<sup>97</sup>

The biggest challenge for a minority government undoubtedly lies in the parliamentary arena, where bills and spending plans may be defeated, amended or talked out (if timetable motions are defeated). Yet minority governments are often far from impotent in the legislature. Instead, successful minority governments put together temporary coalitions with different parties on different issues, conceding enough to get their business through, and relying on the fact that the interests and preferences of opposition parties are rarely aligned.

Minority administrations hold an extensive set of powerful levers simply by virtue of being in government. At Westminster, the executive tightly controls the budget process, has the ability to block non-government legislation fairly easily, retains the sole right to introduce secondary legislation (which is rarely challenged in Parliament) and, despite recent reforms, can still determine the business of Parliament most of the time. It makes hundreds of important public appointments, can reorganise the structure of government departments and agencies largely at will, and retains important prerogative powers over defence, foreign policy and much more.

All of this illustrates that a government without a majority can still be a powerful and effective force, although its survival rests on the continued acquiescence of opposition parties. If all opposition parties unite on a no-confidence motion, the government will be brought crashing down. But experience shows that, especially in a more politically fragmented context, it is rare for all the other parties simultaneously to be in favour of an early election or change of government. This makes governing as a minority less perilous than it might otherwise be.

### **Conclusion**

One of the two large parties may yet win a majority on 7 May 2015. The first-past-the-post electoral system still holds out this tantalising possibility to them. In that case, things are straightforward. A government is formed the day after the election, there is no negotiation, no caretaker period, no period of uncertainty and no coalition agreement. Parliament will return as planned and the Queen's Speech will be a traditional outline of what the new government intends to achieve in the first parliamentary session. Any pre-election scenario planning or civil service contact with smaller parties will have been in vain.

But even if this is the outcome, and the polls continue to suggest that this is highly unlikely, the two large parties will surely not recapture the dominance they once enjoyed. The trend towards pluralism in the British party system is well-established and hung parliaments will probably become more frequent, even if majority victories also still occur. This will over time require the British political system to adapt in various ways, as discussed in this paper, so it is hoped that the evidence and conclusions we have presented in the preceding pages will prove useful over the coming years, no matter what the result in 2015.

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<sup>97</sup> See Paun, A., 'Learning from Scotland's parliament of minorities', in Hazell and Paun, op. cit.

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