



House of Commons
Political and Constitutional
Reform Committee

**Role and Powers of the
Prime Minister**

Oral Evidence

***Oral evidence taken on Thursday 7
February 2013 and Thursday 7 March
2013***

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Thursday 7 February 2013

Members present:

Mr Graham Allen (Chair)

Mr Christopher Chope
Sheila Gilmore
Andrew Griffiths
Fabian Hamilton

Tristram Hunt
Mrs Eleanor Laing
Stephen Williams

Examination of Witness

Witness: **Professor Robert Hazell CBE**, Professor of Government and the Constitution, and Director of the Constitution Unit, School of Public Policy, UCL, gave evidence.

Chair: Robert, how are you?

Professor Hazell: I am very well, thank you.

Chair: Very good to see you and welcome to the Select Committee. We are looking this morning, with your guidance and that of Professor Michael Foley, at the role and powers of the Prime Minister. This is one of our ongoing inquiries. You do not want to make any opening statements, so if you are ready, we will jump straight into the questions we have for you.

Fabian Hamilton: Good morning, Professor Hazell.

Professor Hazell: Good morning, Mr Hamilton.

Q67 Fabian Hamilton: To start off, what do you think are the positive and negative aspects of the effect of coalition government on the way that the Prime Minister carries out his role? How has it affected this Prime Minister compared to previous Prime Ministers who have had an overall majority in the House of Commons?

Professor Hazell: The main respect is the obvious one, namely that coalition has had quite a severely constraining effect. You can see that in a formal document that the new Government published, I think, on 21 May 2010: of the initial coalition agreements, it is the key procedural annex, called *The Coalition Agreement for Stability and Reform*. It sets out in three pages how the new coalition Government proposed to co-ordinate all major decision making and policy making between the two coalition partners. Critically, it constrained the power of the Prime Minister in relation to the way that Cabinet and Cabinet committees would operate, because no Cabinet committee can be established, or its terms of reference set, or its membership set, without the consent of the Deputy Prime Minister; and no ministerial appointments can be made without the consent of the Deputy Prime Minister, nor can Ministers be dismissed without his consent.

Q68 Fabian Hamilton: Are these positives, do you think?

Professor Hazell: I am saying these are all major constraints on the way in which a British Prime Minister can run the Government as head of Government. You will know that, compared with most other heads of Government, the British Prime Minister has, in large part thanks to our unwritten constitution, a relatively free hand. In our system, the Prime Minister's powers are very extensive and they are constrained largely by political constraints, in

particular the size of the Prime Minister's majority in Parliament, the Prime Minister's standing in his party and his standing in the country. So the Prime Minister's power and authority waxes and wanes depending on those political factors.

Q69 Fabian Hamilton: What I am trying to get at is how far has coalition had a positive effect on constraining those powers? Is that a positive in itself, and if it is, how can it be maintained in a majority government where there is no coalition?

Professor Hazell: Whether you regard it as a positive or negative depends on an individual's perception of whether the Government and the powers of the Prime Minister need constraining, whether we need more of a brake, more of a collective brake, on the way in which the Prime Minister operates and runs the Government. There probably has been, among academics certainly, a majority view that we do need a stronger collective brake.

In terms of how that brake is operated, you will know it is operated in particular through the Cabinet committee system, in that every committee has a Chair from one of the coalition partners and a Deputy Chair from the other coalition party. All the agendas have to be jointly signed off by both Chairs, so everything those committees discuss is jointly agreed and all the decisions made in those Cabinet committees are, in effect, jointly agreed. So that is how, at the apex of Government, through the Cabinet committee system, the coalition operates and all decisions in the new government are coalitionised.

You asked if that could be carried through to single party Government. The most effective way in which it might be carried through would be through the new guidance for the conduct of Government, which is called the *Cabinet Manual*. As you know, a chapter of that was published in draft before the May 2010 election, and the full *Cabinet Manual* approved by the new Government was published, from memory, towards the end of 2011. The expectation is that each new administration will revise and re-publish the *Cabinet Manual*. That is what has happened in New Zealand, and it was from New Zealand that we borrowed the idea of a *Cabinet Manual*.

Q70 Fabian Hamilton: Forgive me, but I am right in thinking that New Zealand also has an unwritten constitution?

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Professor Hazell: It does indeed, yes, and it has a detailed *Cabinet Manual*, not least because of the experience now of five coalition governments in a row. If this Committee wanted to recommend that the more collegiate style of cabinet government that has undoubtedly been practised under the coalition were to become a norm for future governments, including single party governments, I think the most promising vehicle in which to express that new norm would be a *Cabinet Manual*.

Q71 Fabian Hamilton: Thank you. In your book, *How Coalition Works at the Centre*, in chapter 4, you interviewed people. I wonder whether your views and conclusions have changed since those interviews took place in the spring and summer of 2011 and since you published the book, just over a year ago.

Professor Hazell: That is a very fair question to which I cannot give a terribly satisfactory answer. The book was based on very intensive interviews in 2011—from memory, we interviewed almost 150 people—but I have conducted no systematic interviewing since. I make occasional visits to Whitehall—I am going to the Cabinet Office today—so the impressions that I collect now are anecdotal rather than systematic. But the anecdotal impressions are that the coalition continues to operate in the more collegiate manner that I have described, despite its difficulties and disagreements that have surfaced in the press. It is still, I am told, a more harmonious and more collegiate style of operation than we saw under the single party Government led by Tony Blair, in particular because of the very well known deep divide between No. 10 and the Treasury led by Gordon Brown. There is no equivalent to that huge fracture in the Labour Government and the secrecy and very non-collegial behaviour that gave rise to.

The Government in certain respects has slowed down on big policy issues because the coalition partners cannot agree. These have been kicked into the long grass or, at any rate, beyond the next election. We do not know whether a single party Government might have been able to make decisions on some of those big things. On smaller things, the system is very slow. Public appointments, including surprisingly minor public appointments, all have to be jointly signed off by the Prime Minister and Deputy Prime Minister. The word in Whitehall is that those things take months and months, but again, that is not necessarily a feature just of coalition. Famously, under Gordon Brown's premiership, No. 10 also became a black hole into which things went for decision and did not come out for a very long time.

Fabian Hamilton: All right. Thank you, Professor Hazell.

Q72 Chair: Robert, if I can just leap to prime ministerial powers per se. You have studied these matters in other countries. I wonder if you feel that defining prime ministerial power is better done in other countries than the rather sketchy outline that we have in the UK?

Professor Hazell: I had not done a systematic search. We may be able to assist the Committee if you were interested in how Prime Ministers' powers are defined

in other countries' written constitutions, but on the whole, they are defined in very brief and sketchy terms. To give you an illustration from the post-war constitution of Japan, it says in Article 68, "The Prime Minister shall appoint the Ministers of State. The Prime Minister may remove the Ministers of State as he chooses" and then in terms of his functions, jumping to Article 72, "The Prime Minister, representing the Cabinet, submits Bills, reports on general national affairs and foreign relations to the Diet" that is the Japanese Parliament, "and exercises control and supervision over various administrative branches". It is pretty terse. From the written constitutions I have looked at, that is not untypical in terms of a general description of the functions of the Prime Minister. There may be other clauses in the constitution relating to specific matters that add a bit but, on the whole, the powers of Prime Ministers in written constitutions are not as extensively defined as they are, for example, in our new *Cabinet Manual*.

Chair: That is very helpful.

Q73 Mr Chope: You say there has been a revival of Cabinet Government because of closer working between the Prime Minister and the Treasury and the Cabinet Office, but is that not really just confined to what I describe as the Gang of Four—the Prime Minister, the Deputy Prime Minister, the Chief Secretary to the Treasury and the Chancellor of the Exchequer, the four of them together? Osborne and the Prime Minister, Danny Alexander and the Deputy Prime Minister, they are, effectively, deciding everything, rather than the Cabinet as a whole deciding on everything.

Professor Hazell: In the chapter of our book that Mr Hamilton referred to, which describes how the coalition operates at the centre, we describe in the first half of that chapter, the formal decision-making process through Cabinet and Cabinet committees that I have already talked about, and in the second half, the informal forums in which business gets brokered before it goes to Cabinet or Cabinet committee. You are quite right: the quartet that you just mentioned—known in Whitehall as the Quad—are a very important informal forum where a lot of business gets brokered initially, in particular any business that has economic or spending implications, hence the presence of the Chancellor and the Chief Secretary to the Treasury. But all that business subsequently goes to one or more Cabinet committees for formal discussion and sign off. This is not bypassing of collective Cabinet decision making; it is pre-cooking.

Q74 Mr Chope: I understand the distinction. I have a particular bee in my bonnet at the moment about collective ministerial responsibility and Mr Speaker has granted me a one and a half hour debate on it next Wednesday. I am looking for some material to fill up that time. I would be grateful if you could tell me what you think is the purpose of having collective ministerial responsibility at all.

Professor Hazell: I can certainly offer you, I hope, a little bit of help. Starting again with the coalition procedural agreement, the *Agreement for Stability and Reform*, section 2 is headed, *Collective Responsibility*.

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Let me briefly read from the beginning: “2.1 The principle of collective responsibility, save where it is explicitly set aside, continues to apply to all Government Ministers. This requires (a) appropriate degree of consultation and discussion among Ministers to provide the opportunity for them to express their views frankly as decisions are reached” and so on. I would maintain that under this coalition Government, the principle of collective responsibility, subject to a few exceptions, has been strongly observed. In particular, the sub-paragraph I read out, “appropriate degree of consultation and discussion among Ministers”, arguably was not observed under the previous single party Government, because we know—it is a matter of public record—that the Treasury in particular was not very open in discussing among colleagues some of their spending plans or plans for, occasionally, quite big changes of policy and sprang surprises on their colleagues.

Collective responsibility is a principle, and it is a useful principle and important principle, but the extent to which it is observed by different Governments does vary. What I am trying to say is that there is nothing inherent, necessarily, in coalition Government, which makes it harder to observe collective responsibility.

Q75 Mr Chope: You say in your updated memorandum, which you produced in response to this inquiry, under the “Conduct of Cabinet and Parliamentary Business” heading, “Deciding with the Prime Minister when the Cabinet is allowed an opt-out on collective responsibility”. Is there any evidence that this a joint decision, because the answer I got to a question I put down last week was that this was purely within the remit of the Prime Minister to set aside collective Cabinet ministerial responsibility. It was not a joint decision.

Professor Hazell: We have all observed instances—if I can go back to the beginning of the coalition, there were four particular items in the initial coalition agreement where the parties expressly agreed that they could disagree. From memory, those were Trident, civil nuclear power, tuition fees and—

Mr Chope: Transferable allowances.

Professor Hazell:—marriage tax allowances. But we have seen along the road since a few other instances: most recently, perhaps following the collapse of the Deputy Prime Minister’s plans for reform to the House of Lords last September, the withdrawal of support by the Liberal Democrats for the proposed reduction in the size of the House of Commons. That might be an instance where the Lib Dems decided to disagree; I doubt very much if that decision had the approval of the Prime Minister.

Q76 Mr Chope: Do you think that, if we do have a concept of collective ministerial responsibility that can be set aside, the Prime Minister should be accountable for giving information as to when and in what circumstances it is set aside? Obviously it was set aside in relation to the Electoral Registration and Administration Bill, but we were told that by the Leader of the House, not by anybody else.

Professor Hazell: I am not sure that I understand what lies behind your question or your concern, because I

cannot envisage circumstances where it becomes a secret that the coalition partners have decided to disagree, in particular in relation to their voting in Parliament. That is public and visible. We know that both the coalition parties’ backbenchers have voted pretty frequently against the Government line, often on different issues. It has been very rare that the two coalition backbenches have coalesced in a joint rebellion, because the Conservatives tend to rebel over some issues and the Lib Dems tend to rebel over different issues. But that kind of disagreement is very public and widely reported. Have I misunderstood something?

Q77 Mr Chope: I agree with you that there should not be any secret about this, but the reason I asked the question is that I asked the Prime Minister for what reason he set aside collective ministerial responsibility on the Electoral Registration and Administration Bill and when he set it aside, and he has not answered the question—he refuses to answer the question—so obviously he thinks that there must be something embarrassing or secret about this that he does not want to bring out into the open.

Professor Hazell: But—forgive me—it is possible that he did not set it aside. It is possible simply that the Lib Dems rebelled.

Mr Chope: The Leader of the House told me that he did set it aside specifically.

Q78 Chair: Just a general question, Robert, about what you think the impact of the coalition Government has been on the exercise of the Prime Minister’s prerogative powers in general?

Professor Hazell: Again, the exercise of the prerogative powers, to the extent that they fall, in effect, to the Prime Minister to exercise, is now subject to the same coalition constraint, namely full consultation, in particular with the Deputy Prime Minister, and signing off with the coalition partners where it is the kind of power that would go, before the decision was finally made, to a Cabinet committee.

Q79 Chair: Where do we find the Prime Minister’s prerogative powers?

Professor Hazell: You probably know that in the last Parliament, there were a couple of inquiries by the Public Administration Select Committee, under the chairmanship of Tony Wright MP, and that led to a very extensive and, I think, pretty exhaustive list of the prerogative powers. Again, Chairman, in preparation for this hearing, I have done a small search through some countries’ written constitutions to see whether they have the equivalent of prerogative powers. Most constitutions do have some kind of reserve powers, for example for use in national emergencies or the war-making power, and other things that equate to the prerogative powers like the power to confer honours or the power to confer pardons. The prerogative powers, I would suggest, are not as unusual as we suppose that they are. In all political systems, you have to have some kind of system of reserve power.

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Q80 Chair: I do not think it is a question of whether they are needed but whether you can find them in a handy place if you are an elector or a Member of Parliament—if they are summed up and collected either in a written constitution or a statute where you can say, “Right, I see that is the relationship of executive power to, for example, legislative power.”

Professor Hazell: Yes, but you will know that the Government headed by Gordon Brown was particularly interested in this. In the big initiative that Gordon Brown announced when he first became Prime Minister to tidy up some of these matters and to finish some of what he regarded as the unfinished business of the constitutional reform agenda left by his predecessor, there was a major exercise in Whitehall. Some of the prerogative powers that had not been regulated by statute have since become regulated by statute, in particular the Constitutional Reform and Governance Act 2010. Part 1 of that Act put the civil service on a statutory footing and part 2 of that Act codified and now regulates by statute parliamentary scrutiny of treaties that had previously been regulated by a convention known as the Ponsonby convention.

If there are prerogative powers that are the concern of this Committee that you feel ought to be regulated by statute, then that is the road to go down. It can be done and it has been done. The challenge, in a way, is for you to show which prerogative powers are still the subject of concern and propose ways in which they might be regulated by statute. You may remember that the Public Administration Select Committee, when it grew a little weary of foot-dragging by the Cabinet Office in relation to putting the civil service on a statutory footing, published its own draft civil service Bill. It is open to parliamentary committees to try to take a lead or show how something can be done in that way.

Q81 Chair: It is a question of transparency really, more than of what the powers are. It is a second issue at least that if we can see where those powers are, we can hold them to account, certainly as a legislature, a little more easily and explain it to the public a little more easily than if you have to do what John Smith used to call judicial archaeology to find out?

Professor Hazell: Forgive me, let me make my views a bit plainer. I think the concern about the prerogative powers is overstated. We do know what the prerogative powers are. They have been listed and it would be for this Committee, if you felt there were still serious areas of concern, to identify in particular which those areas are and to say how you think those powers should be better regulated because, for me, the task has largely been done.

Chair: Good advice, Robert, thank you.

Q82 Mrs Laing: Carrying on from exactly that point, and looking at the Fixed-term Parliaments Act 2011, it is often said that the effect of that Act was the Prime Minister relinquishing some powers, but is it possible to argue that, in fact, he has gained some powers as far as the codification of his prerogative powers are concerned?

Professor Hazell: No, it was a very significant surrender of prime ministerial power. You will know the advantage that it gave to the incumbent Prime Minister to decide the timing of the next general election—famously, someone once described that as handing the starting pistol to one of the runners in the race. In particular, it gave a political advantage to the incumbent: if he felt, during the second half of a Parliament, that they were suddenly doing rather well in the polls, he might call a snap election. That cannot be done now because under the Fixed-term Parliaments Act, Parliament can only be dissolved in one of two circumstances, both requiring a vote by the House of Commons, so it now rests only with the House of Commons to trigger a mid-term dissolution; otherwise Parliament runs for the full five years and we know the date of the next election. So the Prime Minister, to that extent, is boxed in in a way that previously he was not. For me, that is a very significant surrender of prime ministerial power.

Q83 Mrs Laing: Why would a Prime Minister want to surrender his power? I am asking it in a general way so I do not put you in a position of having to consider the specific issue that occurred in 2010.

Professor Hazell: Forgive me, that is a huge question that I think Tony Blair asked himself more than once, having embarked on a very major programme of constitutional reform, which you will remember.

Mrs Laing: But he did not surrender that power.

Professor Hazell: But he did surrender power in relation to the Human Rights Act that we know he subsequently regretted; the Freedom of Information Act that we certainly know he subsequently regretted; and devolution, which he may in some respects subsequently have regretted. It is too big a question for a parliamentary committee. It is perhaps one for an academic seminar—why do Prime Ministers surrender political power?

Mrs Laing: That is a very good answer, thank you.

Professor Hazell: I am sorry to duck it but there are more important things, if I may say so, to discuss about the impact of the Fixed-term Parliaments Act to which I hope we might get onto.

Mrs Laing: Indeed—please go on.

Professor Hazell: I think there is a really important issue as to whether one of the stated advantages of the Fixed-term Parliaments Act, namely that it might facilitate better long-term planning in Whitehall because we all know the date of the next election, has come about. That is a really important question to which I am afraid I am going to give a slightly disappointing answer, which is that I think it is too early to say, because it is only at the stage that we are entering now in the cycle of a Parliament—the second half of a Parliament—that, if we had not introduced fixed terms, we would begin to get into the debilitating season when the speculation commences, “Will he? Won’t he? When might he? Meet us at the church” or whatever the phraseology is.

Mrs Laing: Yes, exactly.

Professor Hazell: You will recall previous Parliaments where these guessing games were played.

Mrs Laing: Absolutely. Yes.

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Professor Hazell: I think we can say, in relation to the planning of one item of Government business—namely the legislative programme—that fixed-term Parliaments will provide greater certainty in the second half of this Parliament, because we know how many legislative sessions there are left to May 2015 and Whitehall can plan, reasonably confidently, that they will have a full cycle of five legislative sessions. In the past, they have never known whether there would be a final session and whether it might be a full session or just a six-month legislative session. In future Parliaments, if fixed-term Parliaments persist—we know that they will be subject to review at the end of the next Parliament, but if they persist—we will have five-year Parliaments with five legislative sessions. That will make quite a big difference to effective planning of the legislative programme.

Q84 Mrs Laing: It makes for better administration, but possibly not better political effect or political control. The Government, as an administrative body, works better with the fixed-term Parliament, but may work less well as a political body?

Professor Hazell: It will be easier for the parliamentary business managers, for parliamentary counsel, for the Legislative Programme Committee of Cabinet and for those Whitehall Departments that are bidding for Bills in future legislative sessions to plan the legislative programme. You probably know that typically the legislative programme is planned not just for next year but for the year after next, and they know that there will be a year after next in terms of a legislative session. All that makes for more effective planning.

The difficulty in this Parliament and in its second half will be to discern how much more effectively Whitehall can plan in the medium to longer term when there are, as you will know, huge wider uncertainties to do with the recession, the deficit, the continuing eurozone crisis. All that makes sensible planning—in particular sensible financial planning—in Whitehall, extraordinarily difficult. Those specific factors in this Parliament may outweigh the advantages that I still believe will flow from fixed-term Parliaments.

Q85 Mrs Laing: Thank you. Do you also consider that this might be seen as a precursor of further codification of prerogative powers of the Prime Minister?

Professor Hazell: In effect, the challenge that I threw out to the Chairman was that it falls to those who say the prerogative powers are still a serious problem to identify those prerogative powers that should be the subject of codification. The main one, and it has been very extensively considered, is the war-making power. In the last Parliament and I think the Parliament before that, there was a series of reports from Select Committees and from Government. The difficulty is well known: how do you codify a power that is, in modern times, quite often exercised in what you might call cold blood? The invasion of Iraq was premeditated and we could see it coming. You will remember there was a really important Parliamentary debate and at the end a vote on a substantive motion—**Mrs Laing:** Which had no effect.

Professor Hazell:—before the invasion took place.

Mrs Laing: Sorry to interrupt you but, just for clarity, that vote had no effect.

Professor Hazell: It, as I understand it, expressed Parliamentary approval for the planned invasion. Yes?

Mrs Laing: Yes. Of course, it expressed approval, but had it expressed disapproval, then it would have had no effect.

Professor Hazell: Oh, I see. That is a hypothetical that we do not know. I do not know what Tony Blair and his Government would have done if Parliament had voted against the planned invasion. I hope they would then have withdrawn support from the planned invasion, but none of us can speculate on that.

Q86 Mrs Laing: No, indeed. It was unfair to ask you that in this forum. They would not have been obliged to, though. The Prime Minister would not have been obliged to take any action as a result of that vote in Parliament.

Professor Hazell: No. He could formally, in terms of the exercise of the prerogative power to make war, gone to war with the Americans and the other allies against Iraq, but had the House of Commons voted against that in advance, for me, the political risks in the Government then going ahead without parliamentary approval would have been immense.

Q87 Chair: But the vote was not necessary in order to go to war. There was some argument among the hawks about why we were involving Parliament, and it took a great deal of effort—I was one of those putting the effort in—to ensure that Parliament at least made some sort of nominal debate that gave the chance of saying yes or no as a parliamentary forum rather than as a decision.

Professor Hazell: It was more than nominal, you will remember—

Chair: I can remember very well, yes.

Professor Hazell:—on previous debates, I think it is right to say that, technically, the debate was simply on an adjournment motion. One of the big differences in relation to the debate before the invasion of Iraq, and it is to the credit of Robin Cook, then Leader of the House, and Jack Straw, the then Foreign Secretary, that I understand they both insisted that it be a debate on a substantive motion, formally to express Parliament's approval and endorsement of this very serious, big decision.

Q88 Chair: But that was not a requirement. It was not necessary.

Professor Hazell: It was not a requirement and you will know that there has been speculation ever since on whether that one instance, in effect, has created a convention. I hope that it has, because it was a very important precedent, which no doubt will be referred to on future occasions when we might be planning to go to war. I hope that future Governments may feel bound by that precedent, but we will not know until that comes.

Q89 Chair: Unless we write it down in a war-making powers Act that is binding.

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Professor Hazell: Yes. In a way we need not go on about that particular, because that has been very extensively discussed and written about. There are reports, as I said, from parliamentary committees, Government responses and so on.

Q90 Chair: But no action.

Professor Hazell: No action, so the challenge, again, is to draft what might be either a resolution of the House or clauses of a statute that try to define the circumstances in which parliamentary approval would be required.

Chair: If I may just say I did that within weeks of the decision to go to war in Iraq and we still are awaiting a “yes”, in this case from the Foreign Secretary.

Q91 Mrs Laing: The Chairman has tried very hard on this issue. Looking at the argument from a slightly different angle, although there was no formal requirement for that debate or that vote or that substantive motion to be put before Parliament, would it be correct to say that there was a political imperative? The Prime Minister’s political judgment at that time was that he wanted to have the backing of the House of Commons to do this and so he put a substantive motion before Parliament. Sometimes the political pressure—the political necessity in any case—outweighs the formal necessity.

Professor Hazell: Yes, and we know quite a lot now about the political context, including the pressure on the Prime Minister from senior members of his Cabinet, from the memoirs that have subsequently been written. There was much greater concern among those colleagues to get a second UN Resolution, which ultimately failed.

Mrs Laing: Of course.

Professor Hazell: Then there was certainly concern to get the support of Parliament. I do not know how much persuading it took to get the Prime Minister on board for that. Forgive me, I have not read his own memoirs on that point.

Q92 Mrs Laing: But is that not irrelevant, the point being that although there is no formal necessity sometimes for the Prime Minister to take certain actions in Parliament like asking for approval, the fact that there are times when he would not exercise his prerogative because of political pressure—I am using the phrase “political” as shorthand for the prevailing mood of the country as reflected in the Prime Minister’s political judgment—shows that that is sometimes stronger than administrative pressure.

Professor Hazell: I think I am in agreement with you in that I do, myself, believe that the 2003 precedent has created a convention.

Mrs Laing: Yes.

Professor Hazell: For me, it is inconceivable that in circumstances similar to the invasion of Iraq where war-making is planned in cold blood, there would not be a parliamentary debate and at the end a vote on a substantive motion.

Mrs Laing: Thank you.

Professor Hazell: I think there is now a very strong political expectation that that is now a requirement before this country goes to war.

Mrs Laing: Thank you.

Chair: Maybe for the record, as a participant in this period, I have to say it was not the chaps who decided to have a debate to legitimise war, in my opinion. It was the fact that we had a majority of Members of Parliament, from all points in the House, who were prepared to attend a parliamentary debate to be held in Church House with Lord Bernard Weatherill, former Speaker, holding the Chair, with a standing order that every Member that attended that debate would have ten minutes, at least, to give their view and that what would be the killer, the clincher was that the BBC were prepared to cover that live from the opening to an open-ended close of that debate. After that became public, that was when the Government decided perhaps this is something that Parliament itself properly should consider.

Q93 Mrs Laing: Given what the Chairman has just said, would it be right to conclude that the evolution of the constitution takes place according to the prevailing public opinion of the moment and not just by what is written down?

Professor Hazell: It is both, and the Chairman has just given a terribly good example and a strong example of the political pressure that you were talking about.

Mrs Laing: Exactly, thank you.

Q94 Chair: Robert, do you think that the Prime Minister’s office would function more effectively as a separate department in its own right?

Professor Hazell: This is the hardy perennial: should we have a Prime Minister’s Department? Wrapped up within it is a question about the size of the staff and whole operation in No. 10, which you will know is, by comparison with other similar-sized countries, remarkably small. Although we have a Prime Minister whose powers are very extensive in terms of his leadership of the Government, he has a very small staffing operation to support him in that. That, in turn, makes it difficult for the Prime Minister himself to lead on more than a very few policy areas, because he just does not have the staff support to enable him to do so.

Famously, perhaps bizarrely, the most effective constraint on the size of the Prime Minister’s staffing is No. 10 Downing Street—the physical capacity of that building. In some respects we do have a Prime Minister’s Department and that is why I am, in a sense, not directly addressing your question about nomenclature. The real issue is the substantive support, and the Prime Minister does now draw more directly on the resources of the Cabinet Office next door. Tony Blair, when he was Prime Minister, in his first term, significantly changed his own description of the Prime Minister’s role and functions, in particular in relation to his leadership of the Cabinet Office which up to that time had been viewed, including by itself, as providing collective support through the Cabinet Secretariat to the Cabinet as a whole. It became more directly an office and set of units that provided support, in particular, to the Prime Minister, so a Prime Minister who wants to extend his staffing support can look next door to the Cabinet Office to do so.

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Chair: Robert, thank you so much for your time this morning. It has, as always, been fascinating, and we will consider your points in great detail. Thank you so much for coming in.

Professor Hazell: Thank you very much.

Examination of Witness

Witness: **Professor Michael Foley**, Professor of International Politics, Aberystwyth University, gave evidence.

Q95 Chair: Professor Foley—I sound like *Mastermind*, “Would you step up to the podium?” Welcome, Michael. It is good to see you. I understand you would like to say something to start us off, which would be very helpful, I am sure.

Professor Foley: Thank you. I understood that I had the privilege to make an opening statement.

Chair: Of course, indeed.

Professor Foley: I am going to make just a small statement concerning my work in the field, which points to shifts in political behaviour and organisational conventions and cultural customs within the British model of Government. In many ways, it can be encapsulated by the proposition of an emergent presidential dimension within our midst.

Basically the work that I have been engaged in for the past 20 years is about how, due to a range of factors, both inside and outside Westminster and Whitehall, there has arisen a highly advanced, sophisticated and influential politics of national leadership in the UK. It is competitive and it is highly contagious. It assumes many forms. It is evident in the normal channels of British politics but, more significantly, it also operates outside them and has been instrumental in creating a largely separate infrastructure of political projection, exchange and analysis.

I am well aware that at face value such a claim would appear to be at variance with the traditions and logic of a parliamentary system of elections, representation and accountability, yet, notwithstanding the formalities of the British system, substantive changes have occurred. They have led to serious speculation over the position of the Prime Minister in the political process, the role of political leadership within the UK system, the nature of the public’s wider relationship with politics and civil life and even the nature of the British constitution itself. The dynamics of these behavioural shifts, as well as the wider implications suggested by them, are arguably best conveyed through the use of analytical and developmental categories more commonly associated with the presidential politics in the United States.

The case for taking account of the presidential analogy in the UK system is primarily one of looking at the premiership from an altogether different perspective. It is a way of usefully navigating around what is rapidly developing as a hinterland of public politics that increasingly conditions the requirements and co-ordinates of contemporary political leadership. It is because of this hinterland that the worlds of Prime Ministers and party leaders are changing more rapidly than I think is often understood, and none more so than the Prime Minister.

Arguably in the spirit of the British constitution, the premiership has been and is undergoing change

through the force of practice and convention. The result, as I see it, is not a pure derivative of institutional authority or established arrangements of power so much as a qualitative shift in form and interior substance that, in a number of ways, transcend that formal infrastructure of Britain’s political system. Despite the fact that the presidential analogy in British politics is almost always employed to describe something that is new or unusual or unacceptably alien, the references to an emergent presidentialism have been a consistent feature of political commentary over the past 25 years. Consistency, however, has not always been matched by precision; on the contrary, the utility of the term has been compromised more often than not by its indiscriminate usage to cover a variety of conditions and purposes.

When the presidential analogy is properly used, it does introduce an entirely different perspective on the issue of prime ministerial status. In doing so, it establishes an alternative construction of the evidence surrounding the contemporary nature of the PM’s position and the categories by which the officeholder’s performance is understood. The references to presidentialism within the context of British politics continue to suffer from a good deal of misrepresentation, so I thought it important to be clear about the claims that are not being made. The argument is not that the British Prime Minister is moving towards a fixed condition or model of presidential government. The position is not that there is convergence between the British premiership and, for example, the US presidency. It is not seeking to claim an alien presence.

I see it as very much a British presidency grounded within the evolved practices of the constitution and the latitude provided therein. What is being suggested is that the properties and concepts associated with a US presidency, in particular, have a deep associative and explanatory resonance with the contemporary evolution of the premiership here. In essence, the allusion to the existence of presidential categories and imperatives reveal that the two offices can be seen to be moving along parallel lines of development. This may be a matter of concern.

There are positives, and I think I mentioned these in the written statement; there are positives and negatives in this. Whatever the position, these developments do raise challenging issues. It is not so much that answers are difficult. It is more that we are unaccustomed to know what the questions are in relation to such developments. There has traditionally been a reluctance to specify prime ministerial powers and rules within a constitutional order. If we add to this mix the underlying presence of prerogative powers, the new sources and arenas of power, and juxtapose

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the cited decline of parts of what used to be a confining landscape such as the widely cited erosion of the Cabinet, the marginalisation of Parliament, the decline of parties, the forces of electoral de-alignment, the persistence of distrust in Government and the increasingly opaque nature of policy formation and delivery, then prime ministerial pre-eminence may be said to signify a far more seismic shift than first meets the eye.

I hope these observations made in the written submission will be helpful in raising awareness and the direction of travel, and of providing a way of identifying issues and problems. It does ask serious questions of us, some very stimulating but also some very demanding questions. Thank you.

Q96 Fabian Hamilton: Well, you have certainly made it clear that you think there may be a problem with prime ministerial power, Professor Foley, and obviously how it is described in the exercise. I know you have summarised what you see as the problem. What is the root of the problem and, more important, how do you think we can address it and how do you think we have prospects for reform? What are the prospects for reform?

Professor Foley: It is very difficult.

Q97 Fabian Hamilton: Do we need a written constitution to reform it?

Professor Foley: I should point out that I come as an American specialist. The reason that I first started moving into observations of British politics was that I noticed a number of parallels going on. If I could just take you back to the US system: the American presidency was not expected to be a great public figure in many respects, but now we assume that it is. Starting with a very informative commentary by an analyst called Kernell, who wrote a book that is now in its fifth edition called *Going Public*, it is all about how presidents over the 20th century have had to go public, have had to engage in remarkable strategies of outreach in order to remain President. He shows all manner of graphs about presidents moving out of Washington and making speeches, engaging in larger and larger numbers of issues, that it was not just simply about a President being a chief executive, it was something so much more than that. I just felt that there were certain incidences that reminded me very much of the British system and how it was progressing. This is a different sort of conception from being a chief executive. It is almost trying to implant the chief executive back into civil society.

One of the pioneers that have been picked out is President Reagan, because what Reagan did as President was to start to create a distinction between national leadership and the Government. He would often talk to audiences as if he were part of that audience, not part of the Government. So it was not simply a matter of presidents having to go public. I guess it starts off with rhetorical licence at the beginning of the century with Presidents like Woodrow Wilson, and then FDR—President Roosevelt—felt that he wanted to use mass media to get around the intermediary institutional constraints and go direct for public appeals through the radio; that

then led off obviously to network television and where we are today, although that has gone much further on into the cyber world.

People like Roosevelt wanted to circumvent the process and get right around to the public, so you had this transmission line trying to deal with Congress but at the same time trying to circumvent Congress. I felt there were a lot of resonances with what was going on with parliamentary party leadership here. I grew up where the Cabinet—Wilson's Government—contained a lot of big beasts. These beasts were very well known publicly—George Brown, Crossman, Crosland, Barbara Castle and later on Tony Benn, Peter Shore—and you had a sense that the Prime Minister was constrained and constrained by very major big beasts, big figures in the party. So when you talked at A-levels and first degrees about collective Cabinet responsibility, it was credible, it was believable.

Then if you move on through Thatcher, Thatcher did have an alliance with Reagan on ideological grounds but she also had a relationship with Reagan in the way that they saw politics, I think, and civil society, that is that you can start to distinguish between politics and society. Increasingly I felt that Prime Ministers were inhabiting this space.

They seem to occupy a space that is unknown to the British constitution, in my view. You can try and specify what the constitution is, and many very able people have done that, not least Peter Hennessy and Professor Hazell. But coming from an outsider position, I tend to feel the resonance of prime ministerial pre-eminence more at the national level, more at the regional level. I think that is where the problem lies. There is a constitutional mismatch going on here with the British constitution, which certainly I was brought up with in terms of custom and convention. One of the problems of the British constitution is that it allows developments to occur; it allows developments to evolve progressively and to have legitimacy attach to them, but I think a certain point comes when there is something fundamental going on.

Q98 Fabian Hamilton: Professor Foley, you mentioned Peter Hennessy and, as you know, he provided us with a list of the Prime Minister's present day functions, which I think we sent you. Which of the functions that he records do you view as the most significant and which the most problematic?

Professor Foley: Thank you to the Committee for sending me these functions, I do know Peter Hennessy very well; he is an expert cartographer in the mapping of the major—

Fabian Hamilton: I was not sure you said, "cartographer", I thought you said photographer.

Professor Foley: No, cartographer—he is very good at maps. I do not disagree with anything that he says, it is just that I think I come from a different sort of tradition; I am more of a geologist or a meteorologist.

Fabian Hamilton: Not an archaeologist.

Professor Foley: Yes, I think there are a lot of things going on under the surface here. He labelled it prime ministerial functions, and when I read down them I thought of where that comes in in the British

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constitution a long time ago. There is not anything that you could contest about the enumeration of the functions; I just feel that there is an accretion of roles building up with the Prime Minister, again through constitutional means, by custom and convention. There does come a point where it becomes qualitative shift. In terms of the summation of powers, again the job specifications seem right, but I kept wondering where it was going to go into a different realm, the sort of realm that I am used to dealing with, and I didn't feel that it did. The functions are correct, but I just feel there is an enormous landscape here where the Prime Minister has generated and taken advantage of various developments to occupy, as I say, a different constitutional space. I think a PM operates and is in many respects defined by that different constitutional space.

If you ask me about what is missing, I would say that there are various political demands on the PM's position, representational demands. Going back to the US presidency, if you consider the way that that has graduated beyond just being a chief executive: you have to be—this is American-speak now—you have to be an explainer-in-chief to the public, you have to be an interpreter-in-chief of American society, you have to be a cultural icon, you have to be able to draw all manner of very serious concerns to you as if you understand them and that you have a narrative to explain them, and a sense of the story of where you are going. In many respects you are engaging in highly symbolic representation. I feel that is going on but it is not mentioned.

The other thing I would say, just in passing, is there is an allusion to international responsibilities but that is very short. Coming from where I come from, international politics, I would have to think that there are any number of roles that a Prime Minister has to play in terms of global governance, regional integration, regulatory regimes, policy networks and judicial decisions. All these are engaged in structurally. I guess if you were to ask me what is the one which worries me most, it is probably about the legal highs of prerogative powers.

Q99 Chair: I am sorry, the legal what?

Professor Foley: What I am saying is the one that concerns me the most is the legal highs of prerogative powers, especially in concerns with military deployments, peace and war and various things and how that is conducted.

Chair: Thank you very much.

Professor Foley: I do think it is one of the areas where there is a difference between the British and the American system. The American system provides through the constitution, which is a very broadly defined constitution—you might say very inadequate—reference points that you can argue over. So it gives you a grounding in the constitutional argument that can then translate itself into political arguments. That does not mean to say that it is all resolved, because I think there are any number of ways that a constitution can constrain executive power, and we have to remind ourselves that executive power is the keynote test of a constitution—"taming the prince" as it is often called. You can try and

specify it through law, you can do it from the other side and you try to establish a bill of rights, which comes to the problem from the reverse side, or you can create checks and balances.

Fabian Hamilton: Thank you, Professor Foley, that is very helpful.

Q100 Tristram Hunt: Professor, that seems a slightly strange argument to make on this day of all days, when we have read in the newspaper that the President operates what has been termed a "Tuesday Kill List" for drone strikes without any oversight over it at all. So the American presidential checks and balances seems a rather flimsy basis.

Professor Foley: There is a point in that but what it is it is announcing the beginning of a debate.

Q101 Tristram Hunt: Even though the events have been going on for four or five years.

Professor Foley: Yes, there is a good deal of latitude concerned with presidential power in the area of the foreign and defence policy and security policy, that is true, but if you wanted to make a counter-argument then you can, and it is just beginning to be made, about whether this is contrary to first of all constitutional law and whether it is contrary to civil liberties, as well, as to how you distinguish drone strikes and the indiscriminate nature of drone strikes. So it is already building.

Disputed boundaries is what you have in the United States. Now, if Members of Congress—and even the Supreme Court on occasions—feel that they wish to get involved in this issue, they can do. There is nothing to stop them doing it and I think they are beginning to do that. So yes, you are right, but on the other hand there is traction there that is missing here, because you do not have that codification. You could call it codification or you could call it a sense of what is legitimately correct in these sorts of issues.

Q102 Tristram Hunt: But isn't what you have explained about the cultural power of presidency, the power of leadership, and then the growth of UK prime ministerial powers along a British presidential model, that does not seem particular to the UK relative to the Italian premiership or the French premiership or, given the sort of enthusiasm for *Borgen*, the Danish prime ministership. This seems a modern cultural phenomenon that is uniform across both Continental democracies and Westminster style ones?

Professor Foley: Yes. I come from the American perspective in that respect, but I realise that there are trends that cross different regions, different areas of the world. I am always a bit wary about using comparative politics, where you can join in umpteen examples to show something, because if you dig away at them they are often quite different in respect of trying to make generalisations—take Berlusconi for instance. There is a view that this is the way Western democracies are leading in one respect. This whole set of issues is plagued with disjunction because on the one side you have leaders engaging in all sorts of narratives to do with national leadership, symbolic representation and engaging a civil society in all manner of different respects, and on the other side you

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have a very flat down view of politics that is concerned with what is often called in the US “post-electoral democracy”—that elections do not really determine anything; what you have is an ongoing set of substructures and sub-communities, policy communities, think tanks, judicial decisions, regional integration, which does not play into the notion of dramatic leadership or leadership that has a sense of direction and vision. That sounds to me very common in many Western democracies. It is just that I think the US has far more experience of that.

Q103 Tristram Hunt: Do you accept any of the argument that the Prime Minister’s office needs the flexibility that comes with the absence of those specific codifications?

Professor Foley: That is very difficult to tell because in many respects the Prime Minister’s office is a fiction, because it is so small. I think it has been recorded how small it is, which shows that the Prime Minister is not particularly powerful, and then you compare it to the US President, which has a high power rating but also has a huge office of 1,500 to 2,000 people. That is a very a good question, because on the other hand it shows the PM is different from other Ministers, because he or she does not have a department and depends a great deal on the Cabinet Office and civil servants on secondment. I think I would prefer greater clarity on that: just have a Prime Minister’s Department, so that you would know. It would try to lever us away from this notion the Prime Minister has no department whatever, which you find in constitutional textbooks. The big beasts in the jungle are still the Ministers, and the Prime Minister is apparently marginalised because the Prime Minister has no department.

Q104 Tristram Hunt: Does that not just depend on politics? We can set up as many systems as we like and all the rest of it, but it depends on the personal strengths of the individual people—even if you set up systems, actually politics is about who is up, who is down, who is in, who is out, and you cannot really provide specifications for that.

Professor Foley: That is supposed to be the great quality of the British constitution: it is a so-called political constitution and the constitution follows the wider currents of social thinking. I just think that where you get to areas of significance, it would help to inform debate and also provide the traction of debate if you had it somewhere codified what the Prime Minister’s powers are.

Q105 Tristram Hunt: We have Peter’s list, which you have issues with. How would you create a frame of reference? Is that something we should do in our Committee? You have explained how a debate can begin in America because you have what you regard as the explanation of limited executive power; how would you do that in the UK?

Professor Foley: I just think if you were able to codify it, even though it might be incredibly vague and had such broad reach, it would give those who are dissidents some traction as to how you could make what is immediately regarded as a party political

debate into much more of a constitutional political debate, which is what I think the Americans are particularly good at. They are used to that. We are not used to it.

You were talking with Professor Hazell about war powers. There is a constraint based upon disputed boundaries. You do not have to have, “This will not happen, this will not happen, this will not happen.” You can have a debate on disputed boundaries. Nobody knows the end result of disputed boundaries, but what it does mean is that the Congress can—and did in 1973—pass a war powers resolution. They have been arguing about that ever since. What has happened is a bit like the treaty-making powers in Congress: they often do not pass a treaty but they assume that they have to honour it, so that keeps the leverage there. That is very common actually. With war powers, Presidents have not accepted the War Powers Act but what they do is, in any particular declaration where they need to have a military force engaged in part of the world, they have gone through the motions of it. Specifically they do not say, “This is not to say that we agree to the War Powers Act but in the spirit”—this sounds very British constitution—“of the War Powers Act, we are informing you that within 48 hours ...”. That is the idea of it: you have to declare to Congress or Congressional leaders that within 48 hours you are about to attack a particular country. So they go through that and it remains in suspension all the time; it depends how the landscape changes. That has gone on since 1973. So no American President has approved of the War Powers Act, but what they do is try to comply with the spirit of it, which means that Congress has an ability to say, “This is not warranted. We will have to look at this carefully.” Also what Congress did in that War Powers Act is they engaged in a passive veto. There are two types of veto in Congress: an active veto where we say, “No, we don’t agree,” and a passive veto where “You have 60 or 90 days”—that is what it says in the War Powers Act—“to prove your point. And if we do not agree or we cannot find any sense of consensus on this and we do not act, that can be taken as dissent and you have to revoke what you have done.” That is the War Powers Act.

Presidents have had to move in and out of this for the last generation. You might say, “Well, that doesn’t add up to much because Congress has not done it” but Presidents know that and they know that Congress can root that back to the fundamenta of the US constitution, where Congress declares war but the President is Commander-in-Chief. So you have had that tension going on.

I do not think that is a major problem or that you have to decide all these issues—that it is either one or the other—but it is to try and generate that kind of debate that can go on and can be very effective.

Tristram Hunt: Thank you.

Q106 Sheila Gilmore: Professor Foley you said that it is a long-term process in the British political structure that has transformed the office of the Prime Minister in a more presidential direction. Can you give specific examples, just one or two of that change that you think are worth drawing out?

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Professor Foley: I think when I was growing up, doing A-level British constitution, the Prime Minister was one of the major players; and you tracked as to how a Cabinet was going to be formed—we all know that Harold Wilson spent more time deciding on how to construct a Cabinet than anything else, because it always had to be very carefully balanced between different wings and different persuasions within the party. The thing that I kept noticing was—this may sound rather insubstantial—I remember Harold Wilson as Prime Minister talking about “our people”. Now, “our people” meant the Labour Party supporters. That notion that you are only talking for your people has gone, as far as I am concerned. You are talking about us, the nation, the centre ground, even some sort of middle England. There is much greater use of the first person singular—it is “I”, it is “me”, it is “my vision”, it is “my background and how it was formed, how “I will never let the NHS down because of what it has done for my family”—that sense of personal vision, which has to be backed up by your sense of a personal journey. That is very strong.

Then I remember party conferences that used to be somewhat chaotic. They are not chaotic any more; they are very much like American conventions, as far as I can see—very stage-managed; it is as if you are on show. One of the stories that I always remember is I think in Kenneth Harris’ biography of Clement Attlee. Clement Attlee was most put out when he was staying with his wife in a bed and breakfast, probably in Blackpool, in which he was recognised as the Prime Minister and he thought this was a gross invasion of his privacy. That is just a small story but it stuck with me. David Marquand used to talk about “club government”—you are in a club but you do not expect people outside the club to notice you or even know who you are. Now you are on public display the entire time, and you have to be involved. This is where I did feel that things were changing quite rapidly, because of what you are expected to talk on and what you are expected to engage in—a huge array of different issues that I do not remember Prime Ministers in the past having to engage with at all. I started a log at one stage, but I had to give up because it had so many entries, of what David Cameron was engaged with on a daily basis. It was massive. I will not give you all the details but it ran over to two pages and you did feel that it wasn’t so much that David Cameron had a passion about these issues as it was that he had to be involved in these issues. These are often very minor issues; it could be racism in football or something like that.

Q107 Sheila Gilmore: A lot of these changes have been brought about by the mass media. When Attlee was Prime Minister, television was in its infancy or virtually didn’t exist so you did not have the kind of visual recognition that grows. Newspapers didn’t have many photographs either, I suspect. The mass media is driving a lot of this and a lot of people feel you have to comment on everything, because news goes on and on. Is there any way in which a constitutional change could counter that?

Professor Foley: That is a good question. I am not sure about that, because when I was thinking through

some of these questions, one of the things I came up with was how you could have a counter-platform rooted in Parliament. What Prime Ministers have been very good at and have to be very good at—I think maybe Gordon Brown is one of the best examples of how things have changed, because there you have one of the big beasts of the past who seemed highly unacclimatised to this kind of new politics. That was a three-year passage for me, which was quite difficult to witness because I can imagine that in the past he would have been a perfectly successful Prime Minister, but in the present, no. A lot of that was due to this massive exposure that Prime Ministers not only have but they are expected to have through their parties because they are the main promoters, I think, of this. You have to have a successful national leader with a sense of vision and to engage in all number of issues. You have to have a broad remit, a wide palette of issues to do that.

The only way that I could think that you could counter this in a parliamentary sense is to have a different platform. Thinking about what sort of platform it might be, because there is nothing wrong in pointing out constitutional uncertainty, I think it is harder when you do not have a codified constitution, but there is nothing wrong in doing that. It might well be—I am going back to prerogative powers because this is probably the keynote area here—that many websites and NGOs do watch searches; they are on watch. You could have a very successful parliamentary kind of NGO—a prerogative watch committee, which would look at how prerogatives are used. Again, this is something that Senators in the US pick up on very quickly, because they also have their own sense of prerogative, despite the fact that it is a republic: it does not come from the Crown prerogative, but over custom and practice and the constitution, there is something called executive privilege. That is what President Nixon used to constantly refer to—people are getting too close to the presidency, and they do not understand, or they do not satisfactorily reflect upon “executive privilege”. That is almost exactly the same as Crown prerogative. Nevertheless, there are movements, there are cases, there are currents within Congress that do that, and I think—even if it can only be done in a very broad way—it does give you that traction to have a look at what is going on. Whether it is in the security and intelligence services, whether it is engaging in a practice, or where the UK is involved in terms of foreign affairs. It is a way of opening up that debate.

Sheila Gilmore: Thank you. I am going to be very rude now, but I have to leave because I have to go to a Bill Committee.

Q108 Mrs Laing: It is interesting to hear your comparisons between what happens in the UK and in the US, and in particular the concept of the President being separate from both Houses and the other parts of Government. I happened to be in the US during the latter weeks of December and watched every hour of every day the unfolding chaos of what was referred to as the fiscal cliff problem. Surely that sort of separation within Government and the conflict that arises from it is no way to run a circus?

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Professor Foley: Probably not. However, it does create friction and within that degree of friction other things are probably beneficial.

Q109 Mrs Laing: Sorry, can we just go back? You say it is probably beneficial to have that friction?

Professor Foley: Yes.

Q110 Mrs Laing: But is it beneficial to have the world's largest economy teetering on the brink and people flying 3,000 miles to make a vote on the last day of the year, before the clock strikes midnight? This is the 21st century.

Professor Foley: Yes, it may be 21st century democracy. We have a coalition Government now. It would appear that another hung Parliament is likely. What we are not used to here is coalitional politics still, whereas I think in the US it is just regarded as meat and drink—that's what you do. If you had to go up to brinkmanship, they will go up to brinkmanship, even if the Government runs out of money. That does not mean to say that it is a particularly effective or coherent way of doing it but a lot of other issues get thrown out in that centrifugal force of getting up to the deadlines. So I am not sure about that. In a way it is the sort of political democracy that we are not used to and we find it difficult to take seriously. It is not particularly effective sometimes, but then challenge and dissent is not particularly effective.

Q111 Mrs Laing: Are there not ways of bringing about friction and challenge and dissent that do not have the dramatic consequences of the fiscal cliff type of situation?

Professor Foley: I think in the US where you have a Democrat in the White House and you have an increasingly polarised party system—which is, again, unusual—over the last 10 to 15 years, it does raise serious questions, yes. But to see the model in its worst sense is not to discard everything about it.

Q112 Mrs Laing: Looking at the whole point of prime ministerial powers from a different angle, when Margaret Thatcher was Prime Minister, in the latter years of her premiership, Cabinet meetings were quite short, sometimes an hour or less. An immediate difference was noticed when John Major became Prime Minister in November 1990: the length of Cabinet meetings immediately doubled or tripled. Would it be right to say that the issue of collective responsibility and the amount of discussion that goes on possibly depends on the style of a particular personality?

Professor Foley: Sure, yes, and also their standing and status. John Major, I think, felt he had to, Margaret Thatcher did not. I do not know about Cabinet responsibility because it is very difficult to know—you have to rely on memoirs and goodness knows what else—what did happen in Cabinet in many respects. John Major had a different style—he liked to listen to all manner of opinions first and then come to a decision—whereas Margaret Thatcher had an opinion to start with and everybody knew what that was and knew how to defer to a major force in that respect. So it does depend on personal style, I think,

but John Major was also faced with a very difficult situation, with having a very small majority. So when small majorities get even smaller, I think Ministers, and also Backbench key figures, get more powerful, but it can be very much the edge of dissent rather than being constructive. I think John Major's premiership probably showed that to full effect.

Q113 Mrs Laing: I wanted to refer to what you have written about possible forms of corrective rebalancing and the unbalanced and disproportionate positional influence of dominant prime ministerial figures—just what we were talking about. How would those rebalancing measures work in practice?

Professor Foley: Well, I am thinking that we are in a different kind of landscape, insofar as you have increasing prime ministerial pre-eminence but it is based on the notion of national and popular leadership. How do you bring this in line with the British constitution? One way you could do that is direct election of the Prime Minister. That is very radical, of course, but you could make a claim that that is bringing it into line with the position the Prime Ministers hold. You could claim that there is insufficient accountability of prime ministerial power without direct elections. You could claim also that prime ministerial elections could create a counter to the syndrome of hung Parliaments, especially for Parliaments now that run for five years. You have to get into the psychology of this. It may be that a Parliament is becoming increasingly dissent-ridden and even dissolute after three years, but you know you have to wait for the most part for five years. You could have another hung Parliament on that. That is also known to be five years. So you could create a sense of a gridlock in which a prime ministerial direct election might be the way of creating a dynamic leadership within Government.

That is very much how the modern presidency came to the fore, because you had the same thing in Congress, with four years, four years, four years and two years for the House of Representatives. The way you break that is having a sense of a vital figure at the centre of politics in the US. If you go to five year Parliaments plus five years plus five years, you open up that debate much more than you did before to people. When I say "people" I mean the citizenry could get fed up with five years, thinking, "After three years this Parliament is not really working, what we need is a Prime Minister who can sort them out." In a way it is just an antidote to coalitional politics but it is also an accelerant to coalitional politics. My own view is that it could be a corrective to what in the States is termed post-electoral democracy where so many decisions are not decided on the basis of elections at all.

Q114 Andrew Griffiths: Professor Foley, I think you were just saying there is a lack of accountability without direct elections of the Prime Minister or the President, but surely if there were directly elected Prime Ministers or a President, that would be less accountable because you would only have to be accountable to the electorate once every five years whereas the Prime Minister is accountable to

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Parliament and we see all too often that the Prime Minister is not able to get his way in Parliament because various Members of the coalition or Members of Parliament choose to disagree and vote against him.

Professor Foley: That does remind me very much of the American system: you can have a programme but you cannot get it through. That is what President Obama is facing on a number of counts. I just think if you had direct elections, you would at least have an argument going on.

Q115 Andrew Griffiths: Arguments are the one thing we are not short of.

Professor Foley: You could have an argument rooted through a sense of constitutionality. The big problem with the constitution in western democracy is always the Executive. What do you do with the Executive? It is often called “the prince” in the Machiavellian term. How do you control the prince? I do not know whether we have it right at the moment, I am fully conscious of the channels of accountability in the British constitution as it currently works. I am not sure with hung Parliaments where that goes. I am not sure—especially with a completely different dimension of politics that is expanding almost by the hour. Prime Ministers are very well rooted into this—they almost have to be.

One of the things I am looking at at the moment is Obama’s re-election in using cyber power. He is running circles around Opposition and around Members of Congress and the Senators by simply leaving them aside and going straight to the people with notions of populist interest. I think that is going on here as well. The Obama team were running the election 60 times a day through their computers and they had samples in various key states, marginal states, swing states and in the swing constituencies within the swing states, of incredible sophistication, so that they knew when things were moving slightly against Obama within 12 hours and then he made statements in order to bring them back. This will happen here, I would imagine. There is no doubt about it—in fact some of the Obama team is already coming in over here.

The British constitution, as it is designed, often works very well; it is when it does not that I think is a matter of concern. It is a matter of civic concern. Politics just seems to be taking the place so much away from the major institutions that we are used to. It is very sophisticated and it is very demanding, but it does seem to be very effective.

Q116 Andrew Griffiths: Just very briefly going back to something else you said earlier, you said that you were surprised that the Prime Minister had such a busy day, that there were so many variables. You talked about racism in football. Why does that surprise you?

Professor Foley: It surprised me because I do not think Prime Ministers in the past would be bothered by such things. It is because it is a 24-hour rolling news, and the Prime Ministers have to be so closely integrated with this in order to maintain their position of being on top of the major issues or having at least something to say. In the States they talk about

voices—what voters want to hear are their voices coming back. So I think one of the things like prime ministerial approval is a very interesting topic because what are voters actually approving of? Is it that someone like David Cameron says the sort of things that they agree with, or is it that he is saying things almost on an everyday basis that show that he has a commanding presence, he is in charge of events, he has a populist concern about people’s anxieties and concerns as they affect normal people.

I think one of the panel mentioned what is different. One of the things that I picked up that was very different is they do not mention the party very often. They see themselves as popular leaders. They are highly symbolic leaders—they are in a way explainers-in-chief, they are interpreters-in-chief and they are representatives-in-chief. The more you keep doing that and draw media towards you, then that is all people out in the hinterland see. They do not see much of Parliament, they do not see much of the House of Commons at all, they might see a bit of Prime Minister’s question time but they see David Cameron talking on the issues of the day on a rolling basis. That does have an effect. That is presidential politics.

Q117 Andrew Griffiths: Earlier you gave comparatives and you have written that the structures of power beneath the Prime Minister are utterly opaque. We have heard a little bit about the US but how does that compare to other western democracies?

Professor Foley: It is difficult, because they tend to operate under quite difficult localised cultures. If you want a generic trend, it is towards this notion of the Prime Minister as the key player, but it does not tend to come through institutional forces; it tends to come through the populist forces in that respect.

Q118 Andrew Griffiths: Would you say, for instance, that the President of France’s office is any more transparent than David Cameron’s is? Is Angela Merkel’s Cabinet more transparent?

Professor Foley: I have to be careful what I say because I don’t know the exact answer as to whether they are more transparent. What I would say is that they are more transparently integrated into a constitutional order. I think that is the difference. The British constitution is very flexible and that is its glory, but occasionally it has blind spots.

Q119 Andrew Griffiths: Just very quickly, how do you think we could improve the transparency? What would be your remedy?

Professor Foley: Well, there is a Liaison Committee, of course. There is something that I would like to see, which is a prerogative watch committee. I wouldn’t mind seeing a Prime Minister giving a state of the nation address to Parliament. I wouldn’t mind Parliament having a constitutional council. I just like the idea of constitutional uncertainty—that Prime Ministers cannot always assume that whatever they are doing is constitutional, whereas usually it is a matter of what they are doing is politically supported. I do think that in the US, albeit it can be expensive, it can be wasteful in terms of mixing politics with the

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constitution, which is what happens, it is what they are used to.

Q120 Stephen Williams: The problem with being last is everyone has asked everything that has been scheduled to be asked and has asked it more than once, so I'm winging it slightly here. Do you watch Prime Minister's question time?

Professor Foley: Yes, only in part.

Stephen Williams: Is that because you cannot bear it or—

Professor Foley: No, I am usually teaching.

Q121 Stephen Williams: I watched Australian Prime Minister's question time while on a visit to Canberra, so I know they do it. Do other comparable democracies put their Prime Minister through this weekly occasion?

Professor Foley: I am not qualified to make a big judgment on that because I do not know enough about different democracies around the world. There are occasions where there are Prime Minister's questions. That is not really answering your question but I would say whether that amounts to full accountability is open to question.

Q122 Stephen Williams: What I was going to try to lead you on to was whether you think Parliament effectively scrutinises the Prime Minister at the moment. Does the Prime Minister genuinely feel accountable to Parliament, or does he feel accountable to his parliamentary party, to the media, or to the country? Who do you think worries him the most?

Professor Foley: The country and media players, but increasingly it is not just media players like there used to be—the press barons or the network television. It is how you choose to play the social media. I know this is slightly getting off the point but one of the things that I was interested but also entertained by was that in the Vatican there are criticisms of the Pope of not engaging enough in public—not choosing the strategy of “going public” enough. The Vatican is very attentive towards mass media—it has its own radio station and TV station—but what they said the Pope had to do was to get onto Facebook and to get onto Twitter. Now that has happened.

Q123 Stephen Williams: Do you think anyone seriously believed that the Pope is currently with his iPad in St Peter's looking at tweets?

Professor Foley: No.

Q124 Stephen Williams: It is cosmetic. That is cosmetic accountability, is it not?

Professor Foley: Yes, but it shows the pressures, that is what I meant. It shows the pressures to conform to this new kind of engagement and communication.

Q125 Stephen Williams: That is being seen to be making an attempt at being accountable but I am talking about genuine accountability. Who should be feeling the collar of the Prime Minister, who should be breathing down his neck, who should be making him afraid? We have heard that in the past Prime Ministers were terrified of Prime Minister's question

time—before parliamentary occasions I think Macmillan used to throw up or something. Do you think recent holders of the office have been scared of Parliament?

Professor Foley: I think they are scared because it could be a source of public embarrassment because it is televised. I am sure they work very hard at Prime Minister's questions—as you know they try to predict what is coming up and have an answer for it. So I have no doubt that that is a conditioning factor. But 30 minutes a week? I do not see it as very profound.

Q126 Stephen Williams: Do you think Parliament should perhaps change that? The Prime Minister is the only Member of the Cabinet who answers questions every week. Other Cabinet Ministers do it once a month for an hour; do you think that would be a better model?

Professor Foley: Sorry, the model of?

Stephen Williams: The Chancellor of the Exchequer or the Home Secretary appear before Parliament once a month to answer departmental questions but it is for an hour and it is a mixture of tabled questions and topical questions. Do you think that would be a better model?

Professor Foley: I doubt it.

Q127 Stephen Williams: Is that because you think Parliament is not up to scrutinising each other?

Professor Foley: I think they are, but I think they are inhibited by the constitutional imperatives. That is the problem. That is trying to square the circle. I would like to see the Prime Minister facing a Committee like this, talking seriously about how you make decisions—very significant strategic or national security decisions. All right, maybe he is here for 30 minutes, but I think it would make a big difference.

Q128 Stephen Williams: That leads me to think about the Liaison Committee, which I think Blair was the first to appear before, but it is only twice per year. Do you think that should be more frequent?

Professor Foley: Yes.

Stephen Williams: The Deputy Prime Minister, while we were more concerned about same-sex marriage—rightly so I think—on Tuesday has now set the precedent of appearing before that Committee as well.

Professor Foley: It all helps to call what is a very significant player in politics to account, yes.

Q129 Stephen Williams: What about scrutiny from people outside Parliament? Comparing it with the American President, obviously the President does not answer questions in Congress, but he has frequent press conferences in the White House Press Room.

Professor Foley: Exactly, yes.

Stephen Williams: Whereas if you listen to journalists here they are moaning quite a lot at the moment that this Prime Minister seems to have abandoned monthly press conferences that Brown and Blair did before him.

Professor Foley: Yes. That is where conventions can work both ways, because they developed a convention, Blair and Brown, and the British constitution is good at taking conventions but then not

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really complying with them later on. I think if the conventions worked, there should be far more frequent press conferences.

Q130 Stephen Williams: Does that not take us back to the heart of this inquiry: that the practices of the Prime Minister, the conventions, are the property of the officeholder rather than the property of the people or Parliament? So this Prime Minister decided, “I am not going to be scrutinised every month by the press,” and who can tell him that he should be?

Professor Foley: Yes, that is the problem because the trump card is parliamentary sovereignty—there is accountability through Parliament and the next election. It is a very broad-brush stroke of accountability to do that.

Q131 Stephen Williams: A final thing that occurred to me when you were talking about how the Prime Minister has morphed into the same sort of person as the President, being expected to comment on everything—the latest tragedy that has taken place somewhere in the country, and knowing all about trivia and TV soap operas or whatever. Maybe we can’t stop that because of the age in which we live, but for the issues that are under our control in Parliament, do you think it is right that the Prime Minister should be expected to know everything about what is potentially taking place in streets in major cities? Effectively, it is almost like questions to the Mayor of Bristol on many occasions, rather than questions to the Prime Minister. Should there perhaps be more of a parliamentary rule that you ask the Prime Minister about things that he is responsible for and not play the game of thinking he should comment on whether there should be a new set of railings outside a school?

Professor Foley: That is a very good point: try to concentrate the accountability aspect into areas that are central to the Prime Minister. The trouble is you have this extensive remit that goes on all the time because journalists expect the Prime Minister to have a statement on what is happening out there at the moment, and they will and so will the Leader of the Opposition, because it is the politics of national leadership. It is a good point, yes, I like that point.

Q132 Chair: Michael, does it amuse you that the Executive, whether it is Mr Blair or Mr Cameron, think it is something for everyone else that there should be direct elections in Bristol for the Mayor, or in Nottingham, but when it comes to their own front door and a Mayor for the whole of the United Kingdom—an elected Prime Minister, directly elected by the people—they seem to draw the line? It is good for everyone else but not for them?

Professor Foley: That is right, yes. Yes, I have noticed that.

Q133 Chair: I could really get into the stuff that you have mentioned on effective accountability rather than formal and nominal accountability. I might even argue that there is too much formal accountability when I look at the Ministers rolling up to do endless adjournment debates, I am therefore clearer as to why

departments do not have a strategic view very often. However, that is not an argument against accountability; it is an argument for effective accountability. You did touch on the idea of having slightly more intimate exchanges with Ministers and indeed the Prime Minister.

Just for the record, the Liaison Committee has 25 Chairs all around the table, all desperate to try to get in their two-pennyworth, which any effective politician can dodge or divert. It could be that more effective accountability is being a bit more disciplined and having three people going at it for a full hour, and they would have to be properly briefed as well as the Prime Minister. Is that something that might be useful in examining prime ministerial power?

Professor Foley: I think so. The arena is there; it is a matter of how it is used, how it is set up and whether it attracts public attention as well. It should do. As I think I mentioned to you when we talked on the phone, one of my first introductions to separation of powers politics was seeing Ted Kennedy in charge of the health committee in the Senate and he was being advised by probably 100 staff as to the questions he needed to ask the Secretary of Health, Education and Welfare at the time. It was quite clear that the power of information was dominant there. He had better information than the Secretary of Health and he was just pummelling the Secretary of Health. He would take another question from behind him and say, “I would like to ask you about this.” Then he had the drug companies in and he just made mincemeat of them as well. It was a very small committee—probably the size of the Committee that you have here—but supremely well staffed and well informed. I saw the CEOs of drug companies outside in the gents and they were being sick, such was the fear factor.

Q134 Chair: This was in America?

Professor Foley: Yes.

Q135 Chair: Not just before this Committee started? Michael, we will have to be very quick on my questions and answers because we are overrunning just a little bit. Do you think it is appropriate for the British public to know what the powers of the Prime Minister are?

Professor Foley: Yes, I do think that is right.

Q136 Chair: Do you think they, or indeed Members of Parliament, know what they are?

Professor Foley: Of course, yes, naturally.

Q137 Chair: Are they on the list that you were provided with from Professor Hennessy?

Professor Foley: Some are getting near it, but I think I could devise another list.

Q138 Chair: Do you think one of the ways to move this forward is to define all the powers of the Prime Minister and put them in one place, so that anybody can pick up that statute and know the Prime Minister’s powers and the relationship to other parts of the constitution?

Professor Foley: I think it is essential really. It does not mean to say that everything will be resolved, it is

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merely going back to, I suppose, what I am used to in the American system, where there are disputed boundaries. It opens up debate and it opens up the traction of political dissent and argument as to what these boundaries are and how they impact on certain particular occasions. I do not know now if David Cameron wanted to engage in military incursion perhaps in North Africa. I do not know what the convention is, or whether it is a convention, or whether it is a sustained convention as to going to the Parliament, I do not know.

Q139 Chair: We heard earlier in discussion with Professor Hazell that somehow the politics will take care of this. I have to say in getting Government to bring a resolution, a motion, on the Iraq war, the politics were incredibly difficult—getting enough people to put that pressure on, organising to set up an alternative Parliament if it was not done and, may I say, suffering pretty serious collateral damage to a number of careers, perhaps including my own. We got

it done but it was not done as of right because Parliament could say to the Executive, “You need to discuss this with us at some point in the action.” It was by energy and by a particular group of personalities probably.

Professor Foley: I can well imagine behind the scenes, yes. But there are costs. That is the problem.

Chair: Michael, it has been incredibly helpful, there was one very useful answer that I do not think we quite teased out from you, which you gave to my colleague Andrew, where you were discussing some of the specifics. You mentioned the watch committee concept, a constitutional council and codification. Perhaps we could take the liberty of writing to you and just pushing you a little further on Mr Griffiths’ question?

Professor Foley: I am happy to be pushed.

Chair: Michael, thank you so much for coming this morning. It’s been a great pleasure to see you.

Professor Foley: And a pleasure to be here.

Chair: Thank you. Thank you, colleagues.

Thursday 7 March 2013

Members present:

Mr Graham Allen (Chair)

Paul Flynn
Sheila Gilmore
Andrew Griffiths

Tristram Hunt
Mr Andrew Turner

Examination of Witness

Witness: **Dan Corry**, former Head of No. 10 Policy Unit, gave evidence.

Q140 Chair: Dan, welcome. We are here to talk about the role and powers of the Prime Minister. You have been nicely located in your various roles over recent years to give us some good advice and evidence on that. We are, as you know, the baby of the Select Committee structure but we are a healthy, bawling, shouting baby. This is all very important stuff from our point of view because we are particularly interested in the connection, or lack of it, between the legislature and the executive, and particularly the powers of the Prime Minister, which sometimes are very evident but quite difficult to define. We are very grateful, Dan, that you have come to us this morning. Would you like to open up with a little statement or shall we jump straight into questions?

Dan Corry: No. You can ask questions.

Q141 Paul Flynn: You describe the Cabinet as an accountability check on the power of the Prime Minister. How does this work?

Dan Corry: In a sense I am slightly trying to counter the idea that the Cabinet is just a non-event and does not influence in any way what the Prime Minister is trying to do and, in that sense, hold the Prime Minister to account. The Cabinet will usually be a collection of people who represent different bits of a party—I will talk about my experiences rather than what it is like with the coalition—so all the different views of the party are there somewhere. There are usually quite a few big beasts who are quite capable of looking after themselves and making a fuss if things are not going the way they want and so on.

I don't think that the idea that the Prime Minister can just ignore Cabinet is right. On the one hand, it is a positive sounding board as to how people are feeling about certain policies. Therefore are they ones you want to keep pursuing or do you have to change and so forth? Then in a more negative way, certainly in my experience, there will be times when there is something that the Prime Minister may want to do but the advisers and all the conversations suggest that there are some pretty serious figures in Cabinet who are not going to be happy with it. It does not mean you necessarily say, "Well, we are not going to do it", but you will then start having bilateral discussions trying to work out why that is.

I have always felt with a lot of Cabinet and Cabinet Committee meetings that the fact that there was going to be a meeting where potentially things could come up and conflicts would arise meant that a lot of the discussions behind the scenes happened between some of the key players but also between some of their

officials, so that compromises and deals were done. Ultimately, in my experience, there were pretty rarely rows at Cabinet because you went out of your way to avoid rows at Cabinet, but you had to do a lot of work. In that sense it is an accountability check—a forum where that is all manifested. In many ways that is the reality of life as a politician, as a Prime Minister anyway. You have to get things through the House, you have to get it through the verdict of public opinion and so forth, so you are constantly checking these things and being accountable in that sense. That is what I mean.

Q142 Paul Flynn: This sounding board, could you give us some idea how long it was before there was a vote in the Blair Cabinet and in the Brown Cabinet?

Dan Corry: I didn't attend the Blair Cabinet. I did attend the Brown Cabinet.

Paul Flynn: No, I appreciate that.

Dan Corry: I can hardly remember votes at all, to be honest. I remember there was the very contentious issue about whether the minutes of the Iraq Cabinet should be released and that was an important issue because they were setting precedent. The Cabinet Secretary kept advising them they had to have a vote and record it, and that it was important constitutionally. But I can hardly remember a vote at all, to be honest. There were some issues that came, to some degree, for a rubber stamp—if it was a big issue. If, say, the Government was about to announce a big change in energy policy, the Secretary of State would come to the Cabinet and present what they were talking about, but by the time they had done that there wouldn't be major conflicts left that somebody was going to vote against. In my experience now, running a charity with a trustee board and so forth, there are disagreements but they very rarely vote on it, they sort it out. But it is a check.

Q143 Paul Flynn: Is the Prime Minister responsible through this accountability check? We hear stories of the Cabinet being sounded out and that they speak three-quarters against a proposal and a quarter for and the Prime Minister will go for the quarter for. Does the Prime Minister feel bound by the majority of the voices that are supporting him or not?

Dan Corry: As I said, because there are not often votes, it is always a little bit hard to work out exactly where everybody is. If you have a Prime Minister who thinks that three-quarters of his Cabinet is against something that he wants to do and only a quarter for, he will have weighed up pretty strongly what the

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implications of going against those three-quarters are. If some of the big players are in that three-quarters he certainly would not do it, but it may be that the three-quarters on balance are against what he is about to do and the quarter feel incredibly strongly, just as with the public. If you ask everyone about capital punishment they all want it but they don't want it enough to vote for a party that believes in it. I think you would weigh all those things up. If you had three-quarters of your Cabinet against what you were trying to do in general—there may be foreign policy issues where it is different—you wouldn't continue that. Obviously the Prime Minister determines the agenda of Cabinet, but you can never stop a Cabinet member speaking up and saying, "This is outrageous. This decision has just been made by the Prime Minister when most of us are against it". You can always do that and Prime Ministers know you can always do that.

More to the point, in a lot of issues that go on in Government I would say a lot of Cabinet Ministers are not that interested in what is outside their own department. They care desperately about trying to push their policy through. There will be another department to whom it is relevant. They will always be in fights with the Treasury and trying to get No. 10 on their side against the Treasury, and vice versa at times. And you would go round the table. If you have, say, a new education policy, most Cabinet Ministers would not be particularly interested. They might say, "Well, this has an implication for me at FCO or something", and they would care about that bit. It was different when you had people—to use that example—who had already been Education Secretary and they had views, but on most issues it never felt like that.

Q144 Paul Flynn: Obviously not all subjects can be discussed, and the choice of subjects to be discussed at Cabinet is entirely in the hands of the Prime Minister. How does that work? Is the Prime Minister going to be affected by the number of people involved or just the big beasts? If one of the big beasts wants something to be debated in Parliament, what chance would they have if it is not on the agenda?

Dan Corry: There were some issues, from my memory, that the Prime Minister definitely wanted on the agenda. There were others that we as advisers or the Permanent Secretary in Downing Street or the Cabinet Secretary or someone thought had some kind of constitutional significance, or they had such a wide range that they ought to be brought up in Cabinet. As you say, sometimes members of the Cabinet would want something brought up.

Reflecting on the earlier question, I think often the disputes were slightly more about the politics of the decisions that were being made than the actual decision. In my experience, there was always a lot of discussion about where the party was, and how these things were going to play through. Even where people were not necessarily disagreeing with the policy, you would then have quite a discussion about the context in which the policy was being put forward, because they are a bunch of politicians. We used to have quite regular political Cabinets where civil servants weren't

there, but even in the non-political Cabinets everyone is coming together collectively to think about where the political positioning of the Government is going. Some of the arguments were more about that. For instance, in the period when we had the banking crash and the economy was clearly heading down, there was a lot of activity going on to try to keep firms going and avoid repossessions and so forth, and there was a strong feeling that what the Government was trying to do was not getting across to the public. There would end up being quite a lot of discussion about why that was and what you could do about it. Implicitly they were putting pressure on their colleagues who were responsible for some of those policies to get out more. That often was more controversial.

I am sure some of your discussions will end up being about the Blair Government's decisions on Iraq and all the rest of it. In the period I was working for Gordon there was not a foreign policy issue of that kind of importance. I can see there that people were then talking off their portfolio and were much more passionate, but it didn't really arise in the period I was there.

Q145 Paul Flynn: What would you sum up as the strengths and weaknesses of the Cabinet system as it operates now and what improvements do you think you would make if you were Prime Minister?

Dan Corry: Some of it was papers being put out too late so Secretaries of State were often not that well briefed. I think that is true in Cabinet Committees as well. There is a problem in Cabinet Committees that the brief you get from your department will usually talk about the departmental interests in the particular topic, whereas you as a politician, an individual, may have some other views about the topic, but you will not get a brief about that. You are going to have to do some extra work or get some of your advisers to do extra work, and I think that is a problem.

Ultimately the Cabinet is only as powerful as its members and the way they choose to exercise their power. If you have people who, for one reason or another, don't want to use the leverage they have then it gives the Prime Minister a much freer hand. I think some people fetishise Cabinet's collective responsibility—that this bunch of people the Prime Minister happens to have chosen are uniquely the best set of people to make the actual decision. I have always thought that the key thing in decision-making is that the right people are involved in the discussion so you are getting all the different perspectives. You are not making decisions that have impacts somewhere else that you have not thought about. It gets dangerous when it is just a narrow set of people making decisions.

Often you want to discuss things in Cabinet, get a feel and get all the intelligent views from people. Sometimes there are members of Cabinet who, quite frankly, do not play much of a role in Cabinet and I think it is a problem if you have an awful lot of them doing that. Just like any organisation anyone is involved in, there will always be two or three that speak up about everything.

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Q146 Paul Flynn: I think we are all familiar with papers deliberately arriving late, so that people are under-informed. There has been heavy criticism of the time before you were involved with Cabinet of how supine the Cabinet was on the Iraq war. Peter Hennessy had some very strong criticism to suggest they should have been more active and should have examined the evidence for the war in more detail than they did. Do you think that is a fundamental weakness, if we have a body discussing things in very general terms that they do not get down to—

Dan Corry: I do remember that there were times when we would think that a Cabinet meeting had something on the agenda that was going to be very fiery, and an incredible number of times it wasn't. With the people we thought—we sort of knew—had some doubts about it, we tried to find some compromise so they were okay with it, but you still thought some of them might kick up and quite often they didn't. I don't know why that is, whether it was the culture or whether they made the decision, "Look, I am the only one that seems to care a lot about this and I am not going to make a big fuss in front of my peers and colleagues. I have other fights to fight at some other time and it is just not worth it". I think that can be a problem.

I have read Peter's stuff about that decision-making, but whether some of those dynamics were going on at the time—if you look at that Cabinet in those days, there were a lot of still pretty heavy players. There is an interesting issue when you get towards the end of a Government. I remember vaguely looking round at the last Cabinet meeting, knowing it was a sort of historical moment. They were very good people but compared to, for instance, the original Labour Cabinet in 1997 who did not all love each other but there were some incredibly strong and powerful characters, a lot of that had gone and we had a bit more—I don't know what you want to call it—middle management or something, which I think happened to the Conservative Government after 18 years as well.

Q147 Paul Flynn: I am sorry to go on so long with this question, but how much is it due to the fact that you have a very strong personality as Prime Minister and weak personalities in Cabinet? In the days of Thatcher, and possibly Blair, you had the Prime Minister dominant in that, and it takes them into the poll tax and the Iraq war, which in retrospect may not look to be the best ideas.

Dan Corry: Yes, that is true. When you look at it from No. 10 you worry when you hear that different Secretaries of State are getting together behind the scenes to have a conversation about something that is going on that they don't like. You only need two or three of them to agree, "We don't like this and at the Cabinet meeting we will talk about it" and that is a powerful thing. They can always do that.

Q148 Paul Flynn: Can you think of instances when it might have changed the opinion of the Prime Minister, when the Prime Minister was diverted from their course?

Dan Corry: Yes. I think if the Prime Minister knows that that is happening or might happen he will,

certainly in my experience, try very hard to avoid it. At the very least I do remember delaying an issue. We would take an issue off the Cabinet agenda late in the day because we knew that there were some heavyweight people who were not happy with it and wanted to speak up. They would often use that leverage. They would know that we wanted to change things. Nobody particularly wanted a row and votes and all the rest of it in Cabinet, not least because, as it does with this Government, it leaks like a sieve if you have rows, and people don't want that. The idea that Cabinet will ever itself, actually in the Cabinet room at the meetings, be the place where a lot of these conflicts play out—there will be some issues where they do and I think foreign affairs is a particular one, but most of it happens elsewhere. You are quite right. At the end of the day, if you have members of the Cabinet who are weak and won't stand up and say what they think, then of course it will be a weaker check, just like in any other accountability structure.

Q149 Paul Flynn: Thank you very much. How did the No. 10 Policy Unit operate in relation to other Government Departments and the Cabinet Office during your period there?

Dan Corry: In the period I was working there, in the Brown premiership, the Policy Unit, which had chopped and changed in the Blair years as to how it worked, was basically about 10 political appointment special advisers, and they were all policy experts. Most of them had been special advisers in other departments, so they were rather experienced. We worked very closely with the Private Office, as you have to, and with Jeremy Heywood and so on. Yes, we did work closely with the Cabinet Office. The Cabinet Office would tend to talk to the relevant Policy Unit person about agendas for Cabinet Committees and so on. They would not determine it but they would discuss it.

We had the Strategy Unit, which is very important, as an independent set of people who could do analysis for us, because beyond the 10 of us and a few people in the Private Office there was nobody else in Downing Street. If you wanted to ever do any work and have some independent work you needed somebody to do it. Often you ask the departments to do the work, but they have their own agendas. So the Strategy Unit was very important. We also had the Delivery Unit, although in the Brown period it reported to the Treasury as well as to Downing Street, and that was powerful. We had bits and pieces of units; it was close working.

The Cabinet Office are always split. Are they there to help manage the Cabinet Committees and all the rest of it, to help the Prime Minister see his agenda through, and to what extent are they the honest broker between all the different departments? I think they are a bit of both, to be honest. There were certainly very good people there in my time and they could balance those two. In my period we had the National Economic Council, which is a slightly different thing, run out of the Cabinet Office but staffed by Treasury, so it was Cabinet Office people and secondees. Again, that was a mixture between helping see the Prime

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Minister's agenda through and some kind of collective decision-making.

Q150 Paul Flynn: If we see the influences of the ministerial interests working in their silos, the principles and prejudice of the Prime Minister and then the independence of the Policy Unit, how effective was the Policy Unit when confronted with those other two powerful influences?

Dan Corry: On the one hand with the Policy Unit you are working for the Prime Minister. You are appointed by the Prime Minister and your job is to help him and also tell him when you think he is going wrong.

Q151 Paul Flynn: How often did that happen and how effective was it?

Dan Corry: Well, lots. Quite often. You are partly generating ideas. Certainly my team did when I was running the Policy Unit, which I did for the first 18 months. Sometimes your team are generating ideas and then putting them to the Prime Minister and seeing if he agrees, and then you can try to push them. Sometimes the Prime Minister just has ideas, as Prime Ministers do. Sometimes it is just an idea and you work it up, talk about it with them and see if it has legs. Sometimes they get a bee in their bonnet about something and you try to persuade them not to do it and they still do it. You are an adviser. At the end of the day you work for the elected politician, not for yourself. I have worked as a special adviser in departments and that is the way it goes there too.

The other role was that we were trying to find out what departments were doing all the time, working very closely with departments, avoiding some of the mistakes that I think the coalition has made where it turns out that nobody in No. 10 knew about something happening. I think we were pretty good at knowing what was going on.

Q152 Paul Flynn: We have seen Prime Ministers have three-word wheezes, like the Cones Hotline or the Citizens Charter or the Third Way, if anybody can remember that, and of course the Big Society now. It seems to be part of the problem of being a Prime Minister. Most of the ideas that were promoted by Prime Ministers were run into the ground and then quietly forgotten about by their successors and everyone else. What role would the Policy Unit take on something like that if he came up with a new wheeze?

Dan Corry: I think they are very different. Sometimes there is a little wheeze and, to be honest, this is true with Cabinet Ministers. I have worked for a variety of Cabinet Ministers in different departments and they have a speech coming up or something and they want a wheeze. It is quite hard to put them off their wheeze, even if, as you say, a year later you discover it didn't work or nobody remembers it or something like that. Prime Ministers fall for that as well. You try to say, "This is crazy. We don't know if it will work. It will be a complete nightmare. Give us some time to do some analysis", but the speech is being given tomorrow so you do it.

I think the others, though, are different. You mentioned the Big Society and Third Way and those

are attempts to create a narrative, and I think that is an interesting role for Downing Street as opposed to departments: "What is the overall narrative of the Government?" Some narratives work and click in and some fall by the wayside. As a policy person you say, "Well, if you are going to announce Big Society, Prime Minister, what on earth does that mean and what are we going to do?" You will probably be just as influenced by your comms people who have probably done some polling and focus groups to see whether people like the sound of the thing. Probably if people like the sound of the thing you will go with it and then the poor old policy people have to work out what on earth it means and bring in some policies.

Q153 Mr Turner: Do you approve or disapprove of what they call pre-investiture votes when the Prime Minister is appointed by the Queen?

Dan Corry: I think it is a really interesting idea, and clearly it has been suggested as a legitimacy concept. What worries me about it is that while it is making clear the truth in our unwritten constitution, that the Prime Minister is elected by the MPs as the person who commands the House, I don't think that is what the public think. The public think they vote for the Prime Minister. I know they don't actually, they vote for their local MP. I think the coming of the leadership debates, which I presume will continue for ever now—I think the public would be furious if they don't, even if they didn't like watching them, but they think they are voting for the Prime Minister. The issue came about when Gordon Brown became Prime Minister and there was a view, "Well, hang on, we didn't elect him. How can he become Prime Minister?" Of course, constitutionally there was nothing wrong with what happened. Would it have helped if there had been a vote in the House? I don't think so because the public would still have said, "We voted for Tony Blair to be Prime Minister and we did not vote for this other guy". People were unhappy with that concept. I don't see that having a bunch of MPs who also voted for Gordon Brown would have made a lot of difference to them.

Q154 Mr Turner: It is quite interesting because in 1990 the same happened with John Major becoming Prime Minister and then Jim Callaghan was in the same position. There did not seem to be the opposition that there was when Gordon Brown took over. Do you know why?

Dan Corry: It is a very good question and I am sure there are probably academics who have looked at it, but I think partly the whole thing has got much more personalised. From the public's point of view, they are voting for a particular person to be Prime Minister and that was less true in the earlier days. In a sense maybe they felt a difference. Thatcher was removed by her party and the public could see that obviously someone from the Conservative Party would take over. Tony Blair chose to step down, so maybe that felt a bit different to the public. If you go back a long time I think it was much more a party system and that people were not thinking quite so much about individuals.

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Q155 Mr Turner: Between 1929 and 1935 Ramsay MacDonald changed party but did not change as Prime Minister. How would you play with that?

Dan Corry: I would be very interested in how that would have worked with our 24/7 media of today, and tweets and all the rest of it. I don't know. Again, I am sure there are people who know, to the extent that there was public opinion polling then, whether people thought that was a scandal. Obviously they did in the Labour Party. I think legitimacy comes not just from your unwritten constitution. It is what the public think is right and fair and that is the key question you need to ask yourself as to whether—

Q156 Mr Turner: How do we get from the current position? I think almost everyone believes it is likely that the Liberals will run away from the coalition at some point five or six months before the general election and say, "We had nothing to do with this". They believe they will persuade people of that and I don't. If David Cameron wanted to remain as Prime Minister, and I hope he will, and he got fewer votes than Labour and the Liberals together—

Dan Corry: Constitutionally it is very interesting. From the public point of view if he said he was continuing as Prime Minister and the Lib Dems withdrew, I think the public would feel—the public think he is the Prime Minister. Well, he is the Prime Minister, so there is no change from their point of view. He is then going to be having each vote trying to put together a coalition to get things through the House, although usually by the last six months you are not doing an awful lot; you are in full-time campaigning. From a public legitimacy point of view, my guess is it would not have an enormous effect on what people felt.

Q157 Mr Turner: Once you are Prime Minister you are pretty safe? It is before you become Prime Minister?

Dan Corry: Yes. I think there is a problem when we switch Prime Minister, particularly if the Prime Minister chooses to resign and they had not said anything about that in the election a couple of years before. People feel they are being short-changed and that is not what they voted for. I am not saying a vote by Parliament wouldn't be an interesting thing to do. I am just not sure it would buy the public legitimacy that I think is the missing link.

Q158 Mr Turner: Somewhere you suggest that the Liaison Committee could be more effective. How?

Dan Corry: Working for the Prime Minister, it was quite good news. Certainly Gordon Brown was very well prepared for it and spent a lot of days, which is a good thing. If nothing else, there were issues he had not known about that he suddenly knows about and says, "Why on earth aren't we doing something about this?" There are some very good things about that, but ex-post he always walked through the things, and I think David Cameron does as well. I am not saying that the aim of the Liaison Committee is to bloody the Prime Minister, but I think there are too many people there asking too many diverse questions. They are not really digging into things. Prime Ministers—I am sure

David Cameron is as well—are very well briefed and they are good at this kind of stuff. I don't know. I can't think of much that has come out of the Liaison Committee. I think it is important symbolically for the House to hold the Prime Minister to account in a public way, and to some extent it shows the power of the committees. The symbolism is important and it was a really important innovation, but if a test of its being useful is that sometimes the Prime Minister has an uncomfortable time, I don't think Prime Ministers have had an uncomfortable time.

Q159 Mr Turner: What about the Permanent Secretary being given the same sort of treatment?

Dan Corry: It is a very interesting issue as to whether special advisers and Permanent Secretaries should have to give evidence to Select Committees. It is a weird thing and I guess it is still the case—it was a couple of years ago—that the Permanent Secretary in Downing Street does not really appear before them. He has recently about the Andrew Mitchell thing, but in general he does not appear. That seems a bit strange and I think that is important. I don't know quite whether what has happened with Jeremy Heywood, who is a unique individual, will survive him, and that now we will always have a Permanent Secretary in No. 10. It was not the original idea. In the Brown era he was Permanent Secretary in the Cabinet Office and moved in. He is just a bit of a unique individual in the way he does the job, but the way he does the job means he is an incredibly important player. He is a civil servant and therefore it seems to me he should come into all the accountability frameworks. In my experience, Jeremy also has a foot in just about every policy, so he should be appearing before every Select Committee. Therefore why not the Liaison Committee?

Q160 Mr Turner: You feel that the experience, presumably of Labour particularly, is that you are a keen eye, that the Prime Minister can gauge pretty well what is the current feeling among Back Benchers in particular. What would you say about the current Government and in particular about the difference between the Conservative Party and the Government?

Dan Corry: I think things get very confused. For instance, naturally enough after the Eastleigh by-election there were different statements about human rights and so forth. If I had been a member of the public I would be very confused as to whether, for instance, the Home Secretary was talking as a member of the Government or a member of the Conservative Party. If they were talking as a member of the Government—back to our discussions—I am sure they had conversations about human rights, but was there ever discussion at Cabinet about the policy that was in a sense floated after the Eastleigh by-election? I doubt that there was and if there was not, that is a problem for Cabinet government. But if the Home Secretary, as a member of the Conservative Party, is talking about what might be in the next manifesto, then that is probably all right. From the public's point of view I think distinguishing between those two is pretty tough. I don't think there is any way through that and I guess it is unclear with all coalition

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Governments across the world. In an ideal world you would have a rule that whenever any Secretary of State is speaking they always make clear whether they are speaking as a member of the Government or as a member of their party. There will be moments when that is very blurred, of course. But I do think it is quite confusing.

I guess we will get more of this as the two parties try to differentiate themselves as we go forward. What is this? Is it the Government's collective responsibility, discussed at a Cabinet Committee and the Cabinet, or is it as a party person? I think you also get some issues here as well. Some of the Education announcements over recent times were first floated in the papers and so forth, and I would be amazed if they were discussed at Cabinet Committee before they were floated there. But in a sense the Secretary of State was probably slightly acting as a Conservative person rather than as a member of the Government, so that is reasonable. But if you go back to Cabinet discipline, those things should not be happening.

Q161 Chair: The Prime Minister is the most important political figure in the United Kingdom. The Prime Minister is elected by the public through the mechanism of an electoral college. A general election takes place and you tot up the line-up in the electoral college and by osmosis, through the night of the general election, a Prime Minister is born, and yet the electoral college is not allowed to meet to say, "We would like this person to be our Prime Minister". Is that not odd and British and not a democratic way to do things?

Dan Corry: It is odd. It is how we have always done it. That does not mean it is necessarily the right thing to do. But I always come back in these things to just keeping an eye on what the public think. We could design a perfect constitution that we are all happy with but leaves the public cold; they don't understand it and it is not what they thought. For good or bad, we have a situation where when you go out and cast your vote, I suspect most people on election night say, "I voted for David Cameron or Ed Miliband".

Q162 Chair: Could we make this honest? Could there ever be a time when the British public were capable, as the French, American, German, Italian public and many others in western democracies are, of electing the most important political figure in their country? Are we up to it, or do we need people to look after us just in case we get it wrong?

Dan Corry: We could do that. I think most people's view is that our system has all sorts of problems but it basically works okay. There are checks and balances.

Q163 Chair: Works okay for—?

Dan Corry: From the public point of view. They are not screaming out for a directly elected head of the Government, and the division of powers and all the rest of it. At times we have had swings when people felt that prime ministerial power was so enormously strong that it was a threat to governance—in the 1970s, all the Hailsham stuff and so on. I am not sure the public tended to share that. There were other times when Government never seems to be able to get

anything done; it is too weak and it can't get things through Parliament and the public gets frustrated with that.

Q164 Chair: Is it possible to do these things because they are right and democratic rather than because there is enormous overwhelming public demand? Is that the measure politicians should now look to, to create public annoyance to such levels that policy will inevitably follow?

Dan Corry: You always have to balance everything. You have to design a system that is democratic, has the checks and is constitutionally right. But at the end of the day we are doing all this not just because it looks nice in a textbook, we are doing it because it delivers good government that the public feel happy with. They have to feel the whole system is legitimate, because there will be laws that are made and taxes brought in that they do not agree with. They have to feel that the system was in some way reflecting what they thought, and that it was a fair system. That is the number one thing you need in a democracy.

Q165 Chair: This inquiry is about the role and powers of the Prime Minister. Could you tell me where I could find a list of the powers of the Prime Minister?

Dan Corry: I have no idea. But there is the issue about prerogatives and all the rest of it.

Q166 Chair: We have asked the clerks to do that and they have not been able to come up with it.

Dan Corry: I have been reading the evidence you had from somebody about lists of prerogatives and so on. We had lists because Gordon Brown was trying to get rid of some of them. Some of them were pretty weird ones that nobody even knew existed and we abolished them, but I don't think that made lots of difference to anybody. There were some big changes. That list obviously exists. We kept having lists given to us by somebody in the Cabinet Office or somebody who does these things.

Q167 Chair: Perhaps we could put it in the public domain and put it in statute so every citizen in the country knows what those powers are. I know there is one about looking after the Queen's swans, which is obviously very important.

Dan Corry: Yes. The swans always come up.

Chair: Might things like going to war or deciding the economic direction of the nation be found in statute and help everybody out a little bit?

Dan Corry: The war thing is a particular point that I know you have discussed before, and people have given evidence who know more about it than me. The economic policy of Government is the whole set of decisions that Government makes. You have a spending review coming up, you have tax decisions made and technically Parliament gets a say in these things. It does get a say in all these things.

Q168 Chair: A lot of members of the public might say, "That is what Parliament does" or they might say, "No, the judges will decide on whether it is right to go to war" or, "The executive will decide". Even in

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the House of Commons there are conflicting views about who does what. Aren't members of the public to be excused when they do not quite know or they blame Parliament for things, for example, that the executive have done or the Prime Minister has done? If these things exist and they are out there, why not put them down so we can all see what's what?

Dan Corry: I think if those things exist then of course they should be, but I very much doubt there is a hidden paper that they are just not showing you.

Q169 Chair: Sadly you are probably right, there is not even a hidden paper. But we would like to maybe have a look at having something on paper, not hidden from anybody so we all share the rules of the club. Dan, excuse me having a bit of fun at your expense.

Dan Corry: That is all right, Graham. You always do.

Chair: Dan, very nice to see you. Thank you for your time this morning and thank you for your very expert evidence from the inside. We really appreciate it. Thank you.

Examination of Witness

Witness: **Dr Mark Bennister**, Senior Lecturer in Politics and International Relations, Canterbury Christ Church University, gave evidence.

Q170 Chair: Mark, how are you? Did you want to say something to start us off?

Dr Bennister: Thank you, Chair, for giving me the opportunity to make a short opening statement.

The Prime Minister has resources, both formal and informal, that are not available to other actors at the centre of the British political system. Prime Ministers have formal resources that are structurally defined. We are aware of some of those, such as patronage, control of the Cabinet agenda, and use of the Prime Minister's Office. They also have informal resources such as the ability to intervene in policy matters, and broad collective oversight.

Political leaders, including Prime Ministers, gain and lose authority and generate political capital from their leadership style, policy choices and strategy. In academic circles there is much debate on the power of the Prime Minister, and it has swung between those who are very interested in the institutional models that analyse and assess power resources and the way that key actors exchange these resources—the core executive scholars—and others that take a more personalised approach and emphasise the power of the individual officeholder.

The British Prime Minister operates in a famously flexible context, making of the position not only what he or she wants but what they are able. A Prime Minister may have a strong hand in some areas but be constrained in others. Powers are conditional and depend on a range of factors that are contingent and, as we have already heard, quite contextual. With the British system, though not exclusively, the Prime Minister has demonstrated that he or she can stretch the resources that are available to them in terms of bringing in new policy units, greater capacity and so on at the centre.

It can be that personal political skill can impact on the office itself, so a dynamic, charismatic leader can have an impact on the office itself. The Committee will have heard about George Jones' classic elastic band idea that helps us to understand that Prime Ministers are only as powerful as their colleagues in Cabinet allow them to be. There are more nuanced theses, such as the presidentialisation thesis, which help us to see prime ministerial power as more than just an institutionalised issue for Government. Although we accept that the Prime Minister cannot jump the species

barrier to become a president, this type of analysis has been useful for scholars.

Rather than institutionalised or presidentialised, I see prime ministerial power being one of potential predominance. It is the effective use of the potential power resources that make a Prime Minister powerful. They operate within a context that he or she can often do little to alter but can, if sufficiently skilful, play to his or her advantage. Personal influence, persuasive capacity, charisma can be as valuable as formal authority. Gordon Brown had the resources but could not use them effectively. David Cameron may appear to be more constrained by working with and through coalition partners, yet he retains the flexibility to control the agenda and may not be more constrained by the smaller coalition partner than if he had a powerful intra-party rival in Cabinet. Indeed at the moment it is the party that may be giving him the headaches.

Ever-growing complexity, greater interdependence and global crises have turned the spotlight on political leadership. This is magnified by 24/7 media coverage, increased leadership visibility and hence public expectations. Such individualisation has prompted not only greater scholarly study but also a questioning of this prominent role. This is the context that forms the backdrop of the Committee's welcome investigation. There is now growing literature on comparative political leadership. I slightly differ from Michael Foley, whose work I greatly respect, in that I believe comparative study has much to offer in this field. I started thinking that the Australian Prime Minister, whom I have studied, had greater constraints than the British Prime Minister. As I researched it I realised that this is not necessarily the case.

To conclude, I think there are three key things to bear in mind when looking at comparative prime ministerial power. Firstly, politics; we need to look beyond the institutional mechanisms, important though they may be. Secondly, personal; the officeholder matters as much as the office itself. Thirdly, and of particular interest to the Committee, Parliament; Prime Ministers need to be made more accountable and responsible to Parliament.

Q171 Sheila Gilmore: You have made the distinction between personal and institutional resources. How do

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they work together to produce strong or weak Prime Ministers?

Dr Bennister: Essentially, the way academic study has been going is to understand that personal resources are particularly important in terms of prime ministerial power. It is the effective use of personal resources. It may be the ability for a Prime Minister to demonstrate their skill in a particular context; it may be an economic crisis or it may be in foreign affairs. That can impact on the institution. For instance, if there is a need, as there was in Australia, to set up a national security committee, it may be that the personal force of a Prime Minister says, "We are going to develop an institutional capacity to help us in this particular area". Another example might be the way a Prime Minister uses or manages Cabinet. A particular personal skill in using Cabinet, managing Cabinet, may then impact on that particular institution.

Q172 Sheila Gilmore: On balance do you think that the personal can outweigh any institutional problems we may have?

Dr Bennister: Can it outweigh something?

Sheila Gilmore: Yes.

Dr Bennister: The management of the institutional arrangements around the Prime Minister is important. That is the decision-making process that a Prime Minister needs to work through. I don't think they can outweigh. But often scholars talk about how those institutional resources can be stretched so that you can divert capacity in some area. It may be a policy unit to support you to develop a particular area. It could be, as under the Blair Government, looking at blue skies thinking, looking at strategic thinking for the future. Those are a function of the personal desire. Thinking back to the Blair years, in the early years it was very much "Tony wants" and the institution around the Prime Minister, people within policy units and so on, would then respond to that sort of personal directive.

Q173 Sheila Gilmore: You said that codification of all aspects of the prime ministerial role would be problematic. Are there some areas that you think would be less problematic to codify?

Dr Bennister: I think codification is problematic. As we have already heard a little bit, you would have to pin down which areas to start with. How would this conformity with codification be achieved? How could you tell that the Prime Minister is responding to the codification? There are arguments for strengthening codification in some areas in terms of strengthening the Cabinet Manual. But I would draw attention to some countries where the roles of the Prime Minister have been codified. For instance in Germany, in article 65 of basic law, "The Federal Chancellor shall determine and be responsible for the general guidelines of policy. Within these limits each Federal Minister shall conduct the affairs of his department independently and on his own responsibility. The Federal Government shall resolve differences of opinion between Federal Ministers. The Federal Chancellor shall conduct the proceedings of the Federal Government in accordance with rules of procedure adopted by the Government and approved

by the Federal President." That is pretty much it in terms of the German codification. The powers are around German policy, leadership, responsibility to the Bundestag and being kept informed of all policymaking matters.

In answer to your question, I think where we could make some progress with codification are the areas that have already been mentioned in terms of war-making powers. There was some discussion with Professor Robert Hazell in evidence a month ago about whether this has become a convention or whether there is still a need to put war-making powers into formal statute. I think that would be a helpful area in terms of codification. Perhaps another area could be the powers of patronage of the Prime Minister, whom the Prime Minister could appoint and to which positions. That might be another helpful area that perhaps the Committee could look at.

Q174 Sheila Gilmore: Is there anything we can learn from other countries on this?

Dr Bennister: In terms of broad codification, I think Germany is a good example; where you have the Chancellor principle, you have a strong constitution. However, the Chancellor has still managed to develop a power base beyond the constitution and it raises some tension between the constitutional role of the Chancellor and the powers that the Chancellor may be able to develop.

My main area of research is looking at the Australian Prime Minister and, interestingly, the Australian Prime Minister is not mentioned at all in the Australian constitution. While you have a formal constitution, the role and powers of the Prime Minister are not set out or outlined there.

We could look at the Japanese constitution, which I think Professor Hazell referred to in evidence to the Committee. But I would caution looking at the Japanese constitution in terms of codification because there have been, I think, seven Prime Ministers since 2006. So the simple fact that the role and power of the Prime Minister are codified in the Japanese constitution does not necessarily lead to more stable and more effective government at the top.

Q175 Sheila Gilmore: In your written evidence you said that the Australian example had shown that a formal prime ministerial department could be compatible with collective responsibility and functioning Cabinet government. Do you think that a UK Prime Minister's Office would be more effective if it was a separate department?

Dr Bennister: That is a really interesting question. It is one that comes up constantly. It has been said in much of the discussion about whether the Prime Minister needs or would desire a Department of Prime Minister here in the UK that it does exist in all but name. I think former Cabinet Secretary Andrew Turnbull said the only barrier to having a Department of Prime Minister and Cabinet here is the claim that it would increase the sense of centralisation around the Prime Minister. It does already exist.

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The Cabinet Office supports the Prime Minister and Cabinet here. There have been various estimates of how many people within the Cabinet Office work directly to the Prime Minister, and it is currently estimated that there are about 100 in the Cabinet Office working directly to the Prime Minister. However, that is not the same as the Australian case. In Australia there is a formalised Department of Prime Minister and Cabinet, which is there to support the Prime Minister. It has considerable resources—600 staff—plus Prime Ministers can use it as a major resource to drive policy for strategic direction for the Government. The Australian example is quite instructive because it demonstrates how the power resources are loaded towards the Prime Minister by having a formal institutionalised resource.

Q176 Sheila Gilmore: Does that undermine the concept of Cabinet government?

Dr Bennister: In Australia it does not undermine it. In many respects it strengthens it because the Department of Prime Minister and Cabinet supports the functioning of Cabinet government in Australia. When I started looking at the two countries, it was most interesting because Cabinet government, certainly under Prime Minister John Howard, looked very formalised. There are formalised submissions that are managed by the Cabinet Secretary, who is the head of Department of Prime Minister and Cabinet. Cabinet meetings are much longer than here. They are much more structured and formalised. Certainly under the period of John Howard, there was very little leaking from Cabinet. Cabinet government functioned and was very formalised; it was a mechanism for the Prime Minister to derive a level of power in the Australian system.

Q177 Sheila Gilmore: Obviously one of the biggest concerns people have about whether prime ministerial power is codified or separate is this disproportionate power that appears to lie, at least in certain Governments, with the Prime Minister as opposed to Cabinet, that Cabinet has become a weak body. You don't think having a separate office is really the thing that makes that happen?

Dr Bennister: Looking at the Australian example, the Department of Prime Minister and Cabinet has existed for over 100 years there. The prime reason for setting it up under their Labor Prime Minister at the time was to operate as a counterbalance to the power of the Treasury. I think that is where the power distinction lies, empowering the Prime Minister against Treasury. It strengthens the functioning of Cabinet government. An interesting difference in Australia is that you have two Cabinet Secretaries. You have the Cabinet Secretary who is also the Permanent Secretary of the Department of Prime Minister and Cabinet, so the most senior civil servant, but you have a political Cabinet Secretary as well and they both take minutes in Cabinet meetings. You have to remember that the Australian system is highly politicised in many areas.

There are many more ministerial staff, the equivalent of special advisers, throughout the system, supporting Ministers and supporting the Prime Minister. That has a strong impact as well.

Q178 Tristram Hunt: Is there anything in and of itself wrong with the Prime Minister having powers of patronage?

Dr Bennister: I suppose you could say that the important aspect of having powers of patronage is that they are properly accountable and transparent. The power of patronage to be able to choose your own Cabinet is an important prime ministerial power—prerogative. You want the people that you want in Cabinet. Many of the weaker Prime Ministers that we see in comparative study have had to work with Cabinets that are not of their own choosing. That is one of the problems in Japan: the Cabinet around the Prime Minister is chosen by particular factions within the party. That can be the case in Australia; factions, particularly within the Labor Party, are able to have an impact. The powers of patronage are important to have the Cabinet that you would like for effective government.

Q179 Tristram Hunt: What about the broader role within civil society? We seem marginally obsessed by Prime Ministers' roles in terms of historically choosing deans or presidents of colleges, all the sort of area that is not listed and some people worry about. Is there an argument for the Prime Minister, as the leader of the nation, to take a broad view on these institutions of the state rather than letting them become closed organs to their own professional officer class?

Dr Bennister: I would argue perhaps whether it is necessary for the Prime Minister to get involved in those areas of patronage. As the public may become more aware of the areas that a Prime Minister has the ability to appoint, you may think is it really necessary for a Prime Minister to appoint in those areas? Could we not have more independent appointment bodies that assist in appointments in those areas?

Q180 Tristram Hunt: I think it is one of the last powers left to a Prime Minister. In terms of the coalition, we had some interesting evidence from Gus O'Donnell last week that the power of the Prime Minister, in terms of appointments to Cabinet and reshuffling, was markedly limited by the nature of coalition government. In 2011 you said, "It is not obvious that a Prime Minister is greatly constrained by coalition arrangements". We are now three years into this epically long Parliament. Do you want to revisit that statement or do you hold to the view that it is still the same situation in terms of prime ministerial power?

Dr Bennister: The point of saying that a Prime Minister is not more greatly constrained is if we think back to some of the problems of dysfunctional government during the Blair and Brown years where you had competing policy units and quite a sense of

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difficulty for Government moving forward. We say: is coalition Government constraining the Prime Minister any more than having an intra-party rival there? There is certainly not an intra-party rival within Cabinet in terms of the relationship between the Prime Minister and the Deputy Prime Minister, but the Prime Minister is clearly constrained in terms of the ability to appoint and reshuffle. We have had fewer reshuffles—that is clear—but many would say that is slightly more effective government in terms of less change at the top being helpful to the bureaucracy and so on. But certainly there is a constraint in the powers of patronage around the Cabinet.

There is one thing I would draw attention to. Professor Hazell referred to the pre-cooking of policy by the Quad¹ in his evidence to the Committee. This gives the idea that while there was an assumption, certainly in the first year of the coalition Government, that we have more formal Cabinet mechanisms that are laid out—Cabinet Committees were functioning and there was more work that had to go through this area; we had a dispute mechanism for the two parties to potentially resolve any disputes—but now we are understanding that the informal mechanisms are just as important as the formal mechanisms. The meetings of the Quad may be pre-cooked, but it may be that the Prime Minister and the Chancellor are able to pre-cook those meetings in advance as well. Informality is still particularly important.

Q181 Tristram Hunt: But in terms of the raw business of government, getting your business on to the statute book, which is what Prime Ministers should be in the business of doing, do you sense there that coalition has ultimately hindered prime ministerial power?

Dr Bennister: We can see that the Government was very active in the first 18 months, so you could say it has not hindered in that respect. While you could argue that the coalition agreement hinders in some areas, there are many areas where policy has been driven forward that are not in the coalition agreement. Coalition itself may not be constraining as much. It may be useful for the Prime Minister having a coalition partner to be able to manage the broader party. I would be cautious about saying that coalition in itself is constraining. There are parts that are clearly constraining and that may have slowed down the progress of legislation, but I don't think in itself it is constraining.

Q182 Tristram Hunt: You had this nice phrase about the Prime Minister not being able to make the species move, or something, back to being a president. Do you have any views on that old humdinger of direct election of Prime Ministers?

Dr Bennister: I take the points that were made earlier in terms of the greater personalisation that has been going on. We understand that the public look at party leaders now and consider they are placing their vote for party leaders. However, I would urge caution in terms of heading down that route.

The main reason I would urge some caution is the example of Israel, which is the only one we have to

draw on in academia. From 1996 to 2001 they had direct elections for the Prime Minister, but it is interesting to note in the case of Israel that it was mainly to enhance the power of the Prime Minister, who had become weak. It was not to try to confirm what already existed. It was also to try to reduce the number of parties in the Knesset, and it had the opposite effect in both cases. It made the power of the Prime Minister even weaker by meaning the Prime Minister had to draw on a Government of a different political persuasion, which really struggled to get its legislation through and, rather than reducing the number of parties, it increased the number of parties because the electorate were happy to split ticket and vote for different parties. I think there would be a lot of potential negative effects. Split ticketing, governability—there could be problems with governability—and negative public opinion are consequences. If we look at Israel, the public were very much in favour of direct elections for the Prime Minister but within a couple of years public opinion had swung the other way.

I would favour making the Prime Minister more accountable to Parliament, drawing the Prime Minister back into Parliament a little bit more, developing positive parliamentarianism. In previous evidence you were talking a little bit about investiture votes and so on. This would be an important thing to consider: to legitimise the Prime Minister through the consent of Parliament, and that might be a balance against the growing development of a sense of personalisation.

Q183 Chair: So we should not directly elect the key political figure in our politics. Do you think it is a bit dodgy directly electing MPs? Is that a little bit too far also?

Dr Bennister: You would have to look, in terms of reform, at the broad electoral system. When we look at a range of different countries we have to look at how the electoral system functions and I think that would be moving on to different territory in terms of moving to a potential electoral reform. I think drawing the Prime Minister into Parliament a little bit more and developing more accountability mechanisms would be helpful if there were another coalition Government in terms of asserting the will of the House to support a new Prime Minister. It would help to legitimise the position of the Prime Minister and also return some power to Parliament.

Q184 Chair: Can you possibly have a pluralist democracy if you do not elect at least the executive and the legislative branch? By drawing the Prime Minister yet closer to Parliament, are you not strengthening a unitary state rather than trying to build a pluralist one?

Dr Bennister: That really looks at the fundamental way that the political system is managed in the UK. Obviously it has its strengths and weaknesses. One of the important aspects of the British political system is the way that the Prime Minister relates not only to Cabinet but also to Parliament by being accountable to Parliament. We have seen successive Prime Ministers trying to appeal directly to the electorate in a

¹ Q 73 (7 February)

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presidentialised fashion. We see electoral campaigns that are based more on personal appeal and personalisation. I think formalising that through direct elections would be to the detriment of reinvigorating Parliament.

Chair: Very interesting. Thank you very much, Mark; it was very helpful, always illuminating. Thank you for sparing the time to come and see us this morning.

Examination of Witness

Witness: **Dr Michael Pinto-Duschinsky**, Senior Consultant on Constitutional Affairs to Policy Exchange, gave evidence.

Q185 Chair: Michael, welcome. How are you?

Dr Pinto-Duschinsky: I was wondering how to answer that question without the usual, “Very well” or “Fine”, so I will say both. But it is a pleasure to be here and thank you.

Q186 Chair: I understand we do not need to have you here this morning as a witness because if we read the *Telegraph* tomorrow—is it—we will get this unmediated by the Committee? Is that right?

Dr Pinto-Duschinsky: There is a little article in view of the importance of this hearing.

Q187 Chair: You should be a politician, Michael. Very nice to see you. Would you like to say a few words to start or shall we jump straight in?

Dr Pinto-Duschinsky: Yes, I will do it quickly. Again, thank you for asking me to give evidence, Mr Chairman. I would like to say three things. One, I do not believe that there is a public demand, or a need either, for a constitutional convention or for the radical reform of a separately elected Prime Minister. Two, under the Westminster model the main mechanisms of executive accountability are political and not formal. Providing that the chief executive, the PM, has reason to fear dismissal either by the withdrawal of support by MPs or by the voters, the presence or absence of codified formal legal restraints is not decisive. Three, rather than examining the virtues and drawbacks of coalition government in general, I have attempted, in my memorandum, to look at a few concrete issues relating to the current operation of our central Government.

Q188 Tristram Hunt: When it comes to the question of checks and balances on the Prime Minister, for all the supposed science of the scholarship does it ultimately come down to whether people believe the Prime Minister is too weak or too powerful, therefore the checks and balances are too weak or too powerful?

Dr Pinto-Duschinsky: I would go back quite simply to the thesis of R.T. McKenzie in *British Political Parties*, that as long as a Prime Minister has a majority in Parliament and the support of MPs the Prime Minister is powerful, but there is plenty of precedent for that support being withdrawn, and the threat of that withdrawal does act as a very strong brake on the power of the Prime Minister. His classic work gives a whole set of examples of that from history.

Q189 Tristram Hunt: Which is absolutely clear. The scholarship also suggests, for example, that the

Thatcher prime ministership was the high point of the extended premiership of the late 20th century. On the other hand, if you look at the late 1980s, the withdrawal of support by her Members of Parliament finished the prime ministership.

Dr Pinto-Duschinsky: This is a very good example that she could be very powerful as long as she is successful, as long as a modicum of support is there. But when that support is withdrawn for various reasons the power evaporates. It must be remembered that the Thatcher premierships, though, were marked by her obligation to include in her Cabinet numbers of the wets, as they were called, so she could only remain powerful by sharing power with different parts of her political party.

Q190 Tristram Hunt: Yes, at the beginning. In terms of the function of the media, and thinking about the presidential nature of the prime ministership, if we see how the media influence and control the power of the Prime Minister, when all is said and done is it the media's influence on MPs that then influences the capacity of the Prime Minister that shapes it, or is it the office of the Prime Minister dictated to by the 24-hour news cycle and articles in the *Telegraph* and all the rest of it?

Dr Pinto-Duschinsky: There is a lot of loose talk about the power of the media. It is very difficult to make a historical comparison between the power of media now and the power of different media, say, in the 1880s. But what I would say is that insofar as the PM is the focus of media attention, this both strengthens and weakens the holder of the position; stronger when coverage is good, weaker when it is not. It can work both ways.

Q191 Tristram Hunt: The British media are more feral, advanced and aggressive than other international media. Does that affect, in terms of international comparators, the highs and lows of the ability to rule as a Prime Minister?

Dr Pinto-Duschinsky: These are very complex questions for just a one-sentence answer. I don't want to keep saying it depends or that it is a very difficult question but that is the reality, as I think you would probably agree. What I do not think is the case is that the power of the media is so absolute and so lasting that it means that the Prime Minister is head and shoulders above colleagues. Your example of the Thatcher premiership is a good example of that.

Q192 Tristram Hunt: Where do you stand on the question of coalition Government in terms of the

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powers of the Prime Minister? You suggested Mrs Thatcher had to run a *de facto* coalition in her later years by including the wets. How has the creation of a proper coalition Government affected the roles and powers of the Prime Minister?

Dr Pinto-Duschinsky: I think when you have two different parties in office, which are going to be competing against each other at a coming election, you have a very different situation. The argument that all Governments are coalitions is, again, true but misleading. We are in a very different situation now than we have been in modern times in peacetime.

Q193 Tristram Hunt: If you were feeling generous, are there any learnings and new conventions that have emerged from coalition Government for the functions of Prime Minister that could then be replicated in single-party Government, or have we seen aberrations that are specific to coalition Administrations?

Dr Pinto-Duschinsky: I would like to answer that question indirectly. Before you can have an answer you must have a question, and underlying a lot of this inquiry is some floating set of assumptions and questions that are there but are not stated. I think one needs to look at those before one can come to sensible answers to the question. It seems to me that there are two core assumptions that you need to examine. One is that we have an over-powerful head of Government and the head of Government needs to be restrained, whereas the other argument could be that we do have political mechanisms that work and that very effectively restrain a head of Government—if Tony Blair can get away with the Iraq war in 2003 he is out in 2007. There are so many precedents for that. We already have self-correcting mechanisms. I would not deny that the Prime Minister can be very powerful but I do not think we have an imperial prime ministership and one that is so out of control that we have a real problem that needs answering. That is the first issue.

Q194 Tristram Hunt: Not even a Napoleonic one?

Dr Pinto-Duschinsky: There are certain MPs who are very wise on these things. I think Dr Hunt is one of those, so I will not attempt that.

The other question that we have come across in the evidence of both the witnesses so far is the question of formal versus real powers. I think that the advocacy of rules of major constitutional change is based on the assumption that rules and written rules matter a great deal and that by writing things down you improve things, whereas another more cautious view is that you change rules when there is a real problem about the existing ones. In other words, you have to look for what is so intolerable now that you need to change it before having codification or change for its own sake. So often we have seen that codification and change for its own sake throws up many unanticipated problems. Unless there is some disease that you need to cure, you do not want to give strong and uncertain medicine in pills whose effect you do not know.

Q195 Tristram Hunt: Finally, how many in the Cabinet now? Forty or something? Do you think the coalition Government has put Cabinet discussion back into government? Do we now have a more collective

Cabinet-focused way of running the country? If we have gone from sofa government to the Brown era to now, it seems to me, more ruled by Quad than Cabinet, what is the role for the Cabinet in this coalition Government?

Dr Pinto-Duschinsky: I would tend to follow the words of Dan Corry who was really saying that these terms do not capture the complexity of what goes on, that you can have collective and accountable government by people chatting beforehand or by avoiding quarrels or by having a universe of discourse, rather than saying, “Here every day we have to take a vote”. If you had even 20 or 30 people voting on every issue that comes before the country, most of them will not care about many issues because they have been up until midnight doing their red boxes or things to do with their ministries, I am not sure that is the ideal. Collective decision-making means that if there is real opposition there will be a way for it to be expressed rather than people’s views being ridden over roughshod. Dan Corry was saying that a Prime Minister will usually try to avoid quarrels, as will his colleagues, but that does not mean that anybody necessarily wins. They discuss matters but it is a universe of discourse, with the committee system and then the Cabinet. The power at any one time varies according to the players—according to their personality, according to their guts and determination. At the time of the Iraq war, there were only four members of a Government of about 100 who resigned. Had there been more, the power of the Prime Minister would have been weaker. It was no good looking at why documents were not put forward, because if any member of the Cabinet said, “I don’t trust this; I demand to see the documents and I will resign if I don’t,” you show them. I don’t think it is the rules but the way in which the personalities and the system works out, the politics of it, that are important.

Tristram Hunt: I agree.

Q196 Chair: Just for the record, there was a majority of the governing party’s Back Benchers, that is the free men and women of the then parliamentary Labour Party in Government, that voted against going to war. It is probably easier to exercise your individual political liberty and political entrepreneurship if the structure is one that facilitates it rather than one that doesn’t. Would you agree with that, Michael?

Dr Pinto-Duschinsky: I am not at all sure about that. I think this is where the base working assumption of this inquiry rests—and I believe in a lot of the work of this Committee: how far a change of formal rules makes the core difference. If we take, for example, something like a War Powers Act or, say, the power to make treaties, there are various limits in the American constitution that mean that the Senate has to approve the one and the other. So what you have had happen is that treaties are not called treaties but executive agreements and wars are not called wars, they are just not declared. If you had a War Powers Act you would then have a question of whether a war is a war or is not. You do not get around the real problem, the substantive problem of accountability just by a form of words. That will lead always to evasion—what is the meaning of war, what is the meaning of treaty. We

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have a very healthy and, I may say, well paid profession of constitutional lawyers that is much larger in countries where there are constitutions, and there is good reason for that. I just don't think it is so simple. I felt, for example, that looking at Lord Hennessy's back of an envelope list of prime ministerial powers—

Chair: It is the best we have, apparently.

Dr Pinto-Duschinsky: It was extremely interesting, and I think worthwhile, but not as a formal document because as soon as it was a formal document then you would have people say, "The Prime Minister makes or co-ordinates policy. What is policy?" You could have lawyers arguing in cases that the Prime Minister has exceeded his or her powers because of this, and then they would say, "No, it was not policy, it was implementation" or something. That is the systematic problem of trying to codify.

Q197 Chair: But you seem to regard it as a bad thing that people should have debates and arguments about the extent of prime ministerial power or what the Prime Minister is or is not entitled to do. Many people would regard that as a good thing. Are we not able to have these debates and discussions in a democracy, or are we not quite capable and should leave it to people who can interpret these things for us better than we can have a debate as Members of Parliament and have disagreements?

Dr Pinto-Duschinsky: The problem I felt, and I felt this in reading some of the evidence of colleagues, is that we were writing answers to exams, "Power of the Prime Minister is *primus inter pares* or is presidential. Discuss". You make two or three points one way and you make two or three points the other way and none of the points is capable of evidence-based answers.

Q198 Chair: Therefore we should not have the debate or—

Dr Pinto-Duschinsky: No, so that you give examples. I spent a lot of my career with students asking them these questions, receiving answers. I did exams of my own, as I think many of us have done, asking and answering those same questions. The issue is how close it gets to the real problems of government and I think that a Political and Constitutional Reform Committee, such as this—you said it was a young committee and I think a very successful one, if I may say so, because of the quality of the members and of the Chair—needs to choose not abstract questions but actionable, immediate questions: what are the real problems now that need answering? If one can do that, I do not object to these other questions about, "What is the power of the Prime Minister? Discuss". It is just that it does not seem so valuable within the context of a Parliament and a parliamentary committee that wants to have an impact on issues of the greatest moment to our political life now.

Q199 Chair: One last thing, which is about the four people who resigned from the Government. Does that mean it was a particularly depoliticised Government? There were no constraints whatsoever on the Prime Minister's power of patronage. He could have just fired them all had he felt that they were not going to

toe the line. Not just resigning on an issue but therefore casting yourself outside the pale of being in government in the Prime Minister's eyes was a very strong reason. I don't believe that only four people out of 115 felt that there was no reason to go to war in Iraq. What was the explanation for the other people? Was it that they lacked what you are saying is the backbone of all this, personal political courage or fibre, or are there some institutional constraints that we should recognise, be aware of and have out there in the open?

Dr Pinto-Duschinsky: One could go back to another example, which is the selection of a Prime Minister in the days when the Conservative Party did not elect but a Prime Minister emerged, and Douglas-Home emerged in 1963. There was this famous interview in which Enoch Powell said to R.A. Butler, who had been the front running candidate who really wanted the job, "Here is a pistol. All you have to do is to fire it, namely say I won't join, I resign", and then Douglas-Home would not have become Prime Minister but he did not have the muscle to do that—George Bush would have another word for it. If you have people who have feelings but for various reasons do not have that backbone to express them then they can't really complain afterwards. It is the duty of senior political leaders in Cabinet, if they have real convictions, to act according to their convictions and to give up their jobs if that is the case. Now, I had a friend once—

Chair: Michael, I am going to have to stop you because I do need to bring other people in, if you will forgive me.

Dr Pinto-Duschinsky: Okay, sure.

Q200 Paul Flynn: I am sorry you were interrupted when you said, "I had a friend once". I hope you have some friends now and even more after this. The fascinating document, the Cabinet Manual, is not a page-turner but it is a matter that you have said some very interesting things about. I am particularly interested in your idea that it somehow benefits the third party and is likely to have that effect in future, if after another general election they would be aided. But is that not a reasonable balance as the electoral system at the moment, disgracefully, is prejudiced, without a proportional representational system, against the third party? If the Cabinet Manual is doing that, it is probably doing something that is just and right.

Dr Pinto-Duschinsky: You can take two views. One is to say, "God forbid that anybody should suggest that it is politically biased". The other view that you have had is of course that it is politically biased but in a way that is desirable. If you agree that it is politically biased or has political implications, that is fine. That is the only point that I want to make. Whether you like it or not, at least recognise that it is not some desiccated document. It is a potential Trojan horse as far as our constitution is concerned and that raises the question that if you have potentially important constitutional innovations, is this the way to do it in a rather indirect way? I would point out to you that although it was supposed to be not a legal document, Lord Pannick, one of the most

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distinguished lawyers in either House of Parliament, did point out that non-legal documents inevitably come to have legal implications. When the former Cabinet Secretary, Lord Armstrong, was asked, he said, “It is not rules, it is guidelines”, followed by another Cabinet Secretary, Lord Wilson, who said, “It is not guidelines but outlines” and then Sir Gus O’Donnell said, “It is not that but it is a reference tool”. The Government’s website itself said it is not a reference tool, it is a user’s guide but with the potential to become a useful reference tool, whereas the subtitle of the final document declared that it was a guide to the laws, rules and conventions of the operation of government. Now, what is it? If we do not know what it is, how can it be a clarifying document if it can’t clarify what it is trying to do anyway?

Q201 Paul Flynn: I am familiar with this argument because another Committee looked at this in October before it went out and I am very familiar with the contradictions involved. Part of the area it attempts to define is the role of the Head of State. Robert Rhodes James, the historian and previous MP for Cambridge, talked about the clutch of fear of the Tory party in 1990 when the skids were under Margaret Thatcher and the horrid—

Chair: I am anxious about the time.

Paul Flynn: Okay. The possibility then was that Margaret Thatcher could have called a general election. The Government couldn’t have stopped her, the Cabinet couldn’t have stopped her; only the Head of State could have stopped her. Do you think that is something we should define, in that particularly as—no worries about the present Head of State—possibly King Charles II might not have stood up to a Margaret Thatcher or a Tony Blair? Do you think that needs to be defined?

Dr Pinto-Duschinsky: I tend to feel the same as Professor Bogdanor, that this is very largely a political matter. As soon as you have civil servants come in and say that the rules, which are perfectly clear, about the formation of Government are not clear and then attempt to introduce a New Zealand model under guise of saying that is what we have had in any case but haven’t known it, that is a very dangerous situation. The effect is to reduce confidence between Ministers and their senior civil servants. Although I would not claim to have any real inside knowledge of this, it is my strong impression that the effects of pushing through this manual, against a lot of criticism in parliamentary committees and, I believe, some doubts within the Cabinet itself, has had a very undesirable effect on the workings of our Government because it has made Ministers mistrustful of the political neutrality of senior civil servants. That is a very regrettable result of all this and it is one reason why I do not want to see this happen again with future editions of the document.

Q202 Paul Flynn: No written constitution, no Cabinet Manual, best to make it up as you go along?

Dr Pinto-Duschinsky: That sounds very good. We have a lot of legislation that relates to things. We have a great deal of precedent. I think first one needs to

look at where problems are, and there are areas where we do face constitutional problems. I think probably one of the main ones is whether Parliament has lost sovereignty to the European Court of Human Rights. I do not think anybody wants to reject the actual rights but the question of where the last say comes is a basic question of sovereignty that was never discussed. That is a practical issue because we have the prisoner vote and I think the theories behind that do need to be worked out. So that is a real issue. The others, about the powers of the Prime Minister, are probably less pressing.

Q203 Andrew Griffiths: Apologies for my late arrival. Something that is topical, and appears in the newspapers fairly regularly, is the lack of party political people within No. 10. You argue for a partisan policy unit within No. 10. Can you give us a little bit of explanation about why you think that is important?

Dr Pinto-Duschinsky: Yes. Before that, I would say that I think there are many excellent civil servants there. The technocrats, as I may call them, within the current No. 10 policy and implementation unit are very high quality people and there are numbers of people who have worked for previous Governments on issues that are not party political issues. I would have no difficulty with that and I think they add a great deal. I don’t have any criticism of the current technical policy unit, but there are many issues that are political and the Prime Minister needs to know what is happening with Ministers in different departments, but politically, and he needs to put together some coherent political package to bring together the different Ministries. That can involve highly political judgments that, frankly, people would rather discuss at a party level, so for co-ordination’s sake on some major issues I think that you need capacity to do that. What you have had, I have the impression—I must say that this has no pretension to the kind of insight that Dan Corry had in his evidence—that the sheer task of reading through papers and giving advice is very difficult if you have very few political friends who can read. I have the impression that an adviser in No. 10 may have to cover several departments.

Although you do not want that unit to get too large, I think that coherence and leadership is the other side of the coin to accountability and one does need the tools for that and, indeed, forward planning. I think that a Government does need to have a narrative, a plan, an ability to lead, and for that you need some political capacity.

Q204 Andrew Griffiths: I think there are a number of people on the Back Benches who might agree with you on that, Michael. If we had such a partisan policy unit, do you think there would then be a requirement to have written down the responsibilities and the powers of the Prime Minister? Do you think that would need to be a counterbalance?

Dr Pinto-Duschinsky: We have had such units in the past. Dan Corry, who came today, was the head of such a unit and he described that there were 10 party political people, and that most of them had been

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special advisers in departments so they were very useful as antennae and for co-ordination. I think that he also described that the ability to discuss informally did resolve many problems or gave a warning that certain problems would arise, and so were a very useful co-ordinating mechanism. We are not dealing with more than 10 people, he was saying, so one does not need a new constitution for a development of that size.

Q205 Andrew Griffiths: Do you think there would need to be an ability, for instance, for Parliament to be able to scrutinise the work of a political policy unit in No. 10?

Dr Pinto-Duschinsky: I find that a rather difficult question; it has slightly stumped me and I would like to go away and think about it. The reason why I say that is as follows. In many ways a Government is very subject to strong feeling in Parliament. We have known that in this Government, shall we say on Europe, the policy not only of the Government but of all 27 countries in Europe has been affected by the feelings on the Back Benches in the British Parliament. If there is a will to express feeling, the potential power of our Parliament is already very great. That is the political mechanism. On the other hand, you are thinking about something else, which is questioning the day-to-day working so that there is a different kind of accountability, of being able to answer questions about the detailed working of institutions. I would like to think about how well that can work. The problem is—

Q206 Chair: Please do that, Michael. Please think about that and drop us a line.

Dr Pinto-Duschinsky: I will. If it saves your time now while I am thinking out loud then I would welcome doing that. You are looking as if you would not mind me saying a word or two more. If one is in the middle of work that is going on you may not want to talk too frankly about the problems that you are having in real time. It is like asking the general to say how the battle is going when the battle is going on. That not only may be unreasonable but it also may be unproductive. On the other hand, I do agree that if certain things need looking at that somehow those in Government are too busy to look at, scrutiny by Parliament may be a very useful input in certain circumstances. I think it has to be calibrated right, and how that can best be done is something that I really am not going to answer on the trot.

Q207 Andrew Griffiths: The analysis originally was that a political policy unit was not beneficial to the

coalition because of the nature of coalition and that not having those political people there would bind the coalition together, if you like.

Dr Pinto-Duschinsky: Yes, that is right.

Q208 Andrew Griffiths: In hindsight, do you think that being able to have those robust discussions of special advisers in a policy unit in No. 10 might have been beneficial to a coalition? Secondly, and finally as time is pressing, do you think there are any lessons that could be drawn from the United States of America where, of course, these kinds of political appointment within the Administration are just taken as read?

Dr Pinto-Duschinsky: May I answer the second question? I think that having a few people at No.10 is one thing, and I am in favour of it. In Canada, for example; I met a Minister the other day who said, "I have 25 political advisers in my small department alone". In other words, it is a complete difference of system, where you essentially employ several hundred party political people on the public payroll when you get into Government and they lose their jobs when you are out of Government, and so it has very profound effects. In the United States, of course, you do not have our kinds of parties, so you just have a personal patronage that grows up. People take part in a presidential campaign with the knowledge that they will get an appointment, or they give a lot of money to the campaign.

The effect of having such a highly politicised set of advisers and officials is that it undermines the permanence of the service. We are having a problem with our civil service now in that both the terms and conditions of the civil service have been under attack, but also a high proportion of the senior jobs are going in open competition to outsiders. Although outside competition is a desirable thing, if we reach the position that nobody wants to enter the civil service because they know that the plum jobs are going to go to people who have worked in banks or universities or other things, I think that will be a huge loss, so I am in favour of a traditional, non-political and powerful civil service. We need to maintain that. The special adviser element is very limited and small. The decline of the traditional civil service is a part of our constitution that I think also needs to be examined, as does the way in which appointments are made.

Chair: Michael, thank you very much indeed, and thank you, colleagues, for your attention this morning. Michael, you are always fascinating and challenging.

Dr Pinto-Duschinsky: Thank you very much.

Chair: We can rely on you. Thank you so much for coming today.

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