



HOUSE OF LORDS

Unrevised transcript of evidence taken before

The Select Committee on Constitution

Inquiry on

CONSTITUTIONAL IMPLICATIONS OF COALITION GOVERNMENT

Evidence Session No. 2

Heard in Public

Questions 14 – 29

WEDNESDAY 16 OCTOBER 2013

10.30 am

Witnesses: Professor Robert Hazell, Barry Winetrobe and Dr Ruth Fox

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Members present

Baroness Jay of Paddington (Chairman)
 Lord Crickhowell
 Lord Cullen of Whitekirk
 Baroness Falkner of Margravine
 Lord Hart of Chilton
 Lord Irvine of Lairg
 Lord Lang of Monkton
 Lord Lexden
 Lord Powell of Bayswater
 Baroness Wheatcroft

Examination of witnesses

Professor Robert Hazell, Professor of Government and Constitution, and Director of the Constitution Unit, UCL, **Barry Winetrobe**, former Reader in Law, Napier University, Edinburgh, and Honorary Research Associate, Constitution Unit, UCL, and **Dr Ruth Fox**, Director and Head of Research, Hansard Society.

Q14 The Chairman: Good morning. Thank you for coming, and for the very helpful background papers that you gave to the committee, which have been extremely useful in our preparation. Given our conversation off the record just now, I will not ask you to make individual statements at the beginning of the committee. We will get straight on with the discussion of the issues that you have drawn to our attention and the particular points the committee wants to address. May I remind you that we are broadcasting this session so if you could identify yourselves when you first speak that is helpful for the record and makes it easier for those watching on the intranet. If I may begin with you, Professor Hazell—I am sure both your colleagues, Mr Winetrobe and Dr Fox, will want to join in—I have been interested in what I would describe as your somewhat sanguine approach to the creation of coalition government, which suggests that it involves very little constitutional change, and that the constitution—in so far as it exists—can be infinitely flexed to accommodate

whatever the politicians wish or feel suits them at any particular moment. I wonder if that is a fair description of your overall position and whether you think that there are any serious departures from constitutional practice that we are seeing at the moment or may see in future.

Professor Robert Hazell: Thank you, chairman. For the record, I am Professor Robert Hazell from the Constitution Unit at University College London. I welcome the committee's inquiry, which I think is timely and could prove very important, but, as I have indicated in my evidence, I do not think there are any very big problems that you are likely to unearth. I do not anticipate that the committee will make very sweeping recommendations in your eventual report. What I hope the committee will highlight is small particulars where current arrangements could be improved: very often the best work of select committees, especially committees like this, lies in small particulars. If I could at the beginning mention, too, that there are two respects in which I think the *Cabinet Manual* needs to be strengthened. I hope that those might find a place in the committee's eventual report. They are highlighted at the beginning of my written evidence. The first item is what I call the duty on the incumbent Prime Minister to remain in office. Here the *Cabinet Manual* is now rather ambiguous, in part because of a previous recommendation by this committee. In effect, I am slightly audaciously inviting the committee to revisit a previous recommendation. So far as I know, committees are not bound by previous reports and famously the Appellate Committee of this House, when the Law Lords sat here, decided that it was not bound by its previous decisions. If you felt able to revisit this, it is a matter—although seemingly small—of real importance if there is a hung Parliament after a future election and the incumbent Prime Minister remains in office. You will remember over the weekend after the last election in May 2010 some of the newspapers had headlines “Squatter in No. 10”. There was a really fierce and vicious campaign to try and persuade Gordon Brown to leave office, in my view prematurely. The

present draft of the *Cabinet Manual* in effect goes both ways. It says, “it remains a matter for the Prime Minister ... to judge the appropriate time at which to resign”. It refers to recent examples and then says, “It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention”.

It is ambivalent because this committee, having heard evidence on the point, did not make up its mind as to which set of evidence it preferred. I would invite you, if you felt so inclined, to revisit that evidence and support the evidence from four very distinguished members of this House—former Cabinet Secretaries Lords Armstrong of Ilminster, Butler of Brockwell, Wilson of Dinton and Turnbull—who were unanimous that there was a duty on the incumbent Prime Minister to remain in office until he was able to advise the Queen who should be appointed in his place, that person being the person who, in the new Parliament, could command the confidence of the House of Commons.

Q15 The Chairman: That is your first important point about changing the *Cabinet Manual*. May we pursue that for the moment and come back later to the other point you want to make? Dr Fox, do you have anything you want to add to that particularly?

Ruth Fox: No, I was going to address your point about the constitutional issue and whether we are sanguine.

The Chairman: Maybe you could respond in general to that point and then specifically if you had anything to add or detract from what Professor Hazell said.

Ruth Fox: On the wider point about the constitution, we know that the result in 2010 was unique and there has to be some flexibility for the political parties to address that. We cannot avoid that in terms of practical politics, realising the plural nature of politics, the fragmentation of support for the main parties and increasing support for the third party and others, that at the end of the day the political parties have to sort out a deal of some kind. While there have been problems with coalition government, there would equally be

challenges with minority government. I can elaborate on those in the context of the Lib–Lab pact later on. In terms of the wider point about the *Cabinet Manual*, I am probably a little less of a fan of the *Cabinet Manual* than Robert. In terms of the squatter in No. 10 issue, there is concern about, when the parties are negotiating, at what point the Government are formed and how that is identified in constitutional terms, particularly in the context of the impact of the Fixed-term Parliaments Act 2011 on the Queen’s Speech and its constitutional import. That is where I think an investiture vote would be useful. That would help address, identify and clarify for the public and politicians exactly what the situation is in those early days after the election once Parliament returns.

The Chairman: You have both made a number of points that I know members of the committee will want to pursue. Mr Winetrobe, do you have any general points about the wider constitutional implications that you would like to say now?

Barry Winetrobe: To introduce myself, my name is Barry Winetrobe. I used to work for many years in the research service of the House of Commons, dealing with constitutional and governmental matters. I then taught for a while in various universities, under both of your legal advisers, albeit briefly. I worked briefly in the Scottish Parliament when it was being set up. I think my general view is the same as Robert’s in the sense of being relatively sanguine. My only scepticism is the use of the word “flexibility”, if that has a normative sense of being a good thing. I think it is a euphemism for “things happen as a matter of practical politics in relation to the particular situation that arises”. The thing about constitutional practice and conventions, and things in between, is that very often there are various conventions or practices that are available on a pick-and-mix basis. They are suitable for particular circumstances and not for others. There is something non-transparent about that but my general view is that it is a matter of practical politics for each particular situation and that everything that anybody does in these circumstances, as in 2010 or whenever, is

potentially creating a precedent that may or may not be picked up, or may or may not crystallise into legislation, for example.

Lord Irvine of Lairg: You are saying that we should not try to create a spurious science out of it.

Barry Winetrobe: I am trying to say that you should not try to create a whole matrix of possibilities saying, “If situation X happens then these are the steps in this sort of flowchart to happen next”. There will always be a situation that comes up that does not quite fit. 2010 had its own specialities because of the economic crisis. Who is to say that things would have happened the way they did in “normal” economic circumstances? I am sceptical of trying to provide straitjackets, whether that is legislation which is explicit or in something like the *Cabinet Manual* which purports to be simply a description of what occurs but will inevitably be taken as official guidance by which those within the magic circle will operate. The more you bind and restrict discretion and scope for parties to do what suits best, hopefully in the public interest, the more risk that you are creating problems. Things like the Fixed-term Parliaments Act 2011, for example, crystallise in legislation one particular bit without thinking about what the knock-on effects and unintended consequences are.

Q16 Lord Powell of Bayswater: I share the chairman’s surprise at what seemed a rather complacent attitude about the degree of change that the coalition involves. I am not suggesting that anyone in the coalition violated any constitutional principles. But it seems to me, as someone who worked for quite a long time at the very heart of government—in a humble position, but nonetheless with a good view of it—that the way government is conducted today is almost unrecognisable compared with single-party government and how that works. Seeing the collective responsibility suspended, either by agreement or sometimes randomly, the constraints on the powers of the Prime Minister and the constant bargaining that goes on over policies, it seems to me that an accumulation of exceptions,

taken together, involves considerable change to the practice and process of government. For me, that shades into constitutional change: when you have more exceptions than rules the change is significant. I do not quite understand where you are coming from on this. Is it because you think that coalition government is a good thing to be encouraged, and therefore you find lots of reasons why this is not very significant in our constitutional terms?

Professor Robert Hazell: Where we are coming from is a fairly detailed research study that we did for 18 months, published in a book called *The Politics of Coalition*, which takes no view on whether coalition government is a good thing or a bad thing. Our single, overarching question was “How does coalition government work?” To that end, we interviewed about 100 people in the first 18 months of this coalition Government, so mainly in 2010 and 2011. We found some quite striking things. First, from all the officials—like you, I am a former civil servant—there was a very strong welcome that there had been a return to what they called proper Cabinet government. The Cabinet system, in their view, was working much better than it had in the Blair/Brown years. Cabinet committees were regularly meeting and cabinet committees are the main forum in which, formally, the coalition parties sign off the deals that they agree. As you may know, every cabinet committee has a chair from one coalition party and a deputy chair from the other. The other striking thing that we found in our interviews was that—contrary to what you might expect, but again this will not surprise you as an old Whitehall hand—the disagreements within the Government were more often between ministers of the same party than between ministers of different parties. They were classic Whitehall interdepartmental disputes, which are the core business of any government. Whitehall departments in effect represent different interests and those differences of view always have to be resolved. The Cabinet machinery is the classic way in which that is done so, in our study, we found no significant difference between coalition government and single-party government. Our interviewees told us that the coalition, certainly in its first couple of

years, worked more effectively as well as more harmoniously than the previous single-party Labour Government.

Lord Powell of Bayswater: Perhaps it is unlikely that civil servants would rubbish the serving Government. After all, it is not their job to do so. I still do not think you answered about the totality of the changes amounting to significant change. If you take them all together, they really are quite significant. You could look at each one and find a justification for it but it is a different way and process of governing. Maybe you think it is better. The fact that there is a chairman and deputy-chairman for every Cabinet committee may, in your view, be better. It is different, and because there are such a number of differences one cannot avoid the conclusion that, taken together, it amounts to significant constitutional change.

The Chairman: Mr Winetrobe, I think you wanted to come in on that point.

Barry Winetrobe: Just briefly. First, I should have added to my rather rambling CV that I am currently an honorary research associate at Robert's Constitution Unit but I am speaking purely in my own capacity. I was not involved in any of these particular studies but I should have mentioned that at the beginning and I apologise for not doing so. To answer Lord Powell's point, as alluded to earlier, my concern primarily is issues of public accountability and transparency, especially in this modern age where there are greater expectations as well as a greater capacity and ability for the public to be involved. Therefore, I am not saying that one view is right and one view wrong, that one type of government is right and one wrong, or that the *Cabinet Manual* is a bad thing or good thing. I am saying that we have evolved. You called it constitutional change. I think the constitution is constantly changing. Changes of government or of the format of government give an opportunity for more obvious change. To some extent, we have evolved a system of the incoming government saying "Here are the rules by which we will be playing over the next five years". The government after that

can make up their own rules, subject to whatever constraints there are in legislation or really binding convention, such as the prerogative and so on. I think it is very important to make clear what those rules are or how the game is played through these programmes for government, coalition agreements and so on, and that governments, in terms of their outward-facing actions, do what they say they are doing and operate in the way they say they are. There should not be some written constitution in somebody's textbook or whatever while things are actually operating totally differently from that.

The Chairman: I think we shall return to that. I take your point strongly about public accountability. That is the point that Lord Powell and I have been trying to get at: the sense that we do not want, in today's age, to be in a position where it looks as though it has all been fixed up in a way that is untransparent.

Barry Winetrobe: It is not so much fixed up. It is more than that: that you operate one way and say you are doing something else.

The Chairman: Not necessarily. It is just that it is unclear.

Q17 Lord Lang of Monkton: To make it plain, the committee is a broad church and is not deeply divided or deeply on one side or the other. I was struck in a positive way by the introductory remarks of Mr Winetrobe and Professor Hazell. Coalitions come and go. They are all different and have different circumstances. We find distasteful some of the things that they do but that is not a reason for changing the constitution on a permanent basis for something that is essentially ephemeral. I think the strength of the constitution is that it is durable; the underlying structure is intensely flexible and durable. It would be a mistake to throw up things that could turn out to be irrelevant, such as—some might say—five-year Parliaments. I would like to focus on the investiture point, which has been touched on. Professor Hazell, I read your paper and found myself almost cheering some of the things that you said. I put a tick against a large number of your comments. I would like to explore with

you the question of the investiture vote and the Prime Minister. There is a timing aspect to that. It seems to me that there is also great sensitivity over the position of the monarch. Is this not one of the few areas where the royal prerogative is truly royal? It allows flexibility for a person, the monarch, to try to break the logjam. If you start requiring the House of Commons to appoint the Prime Minister before the monarch is able to exercise that prerogative, I think there is a breach of that prerogative that might be more sensitive than you allow. You refer to Scotland as an example but there is a separate agenda there. First, it is a devolved and therefore secondary Parliament rather than a primary Parliament. Mr Winetrobe shakes his head but will have the chance to reply.

Secondly, there is an assertion within Scotland that power comes from the people whereas in England I think the general assumption is that power flows from the monarchy, the crown. That assertion is perhaps pursued by those who have other agendas in Scotland. It is not totally accepted in a widespread way any more than King James VI would have accepted it, but it is one of the reasons why Scotland is not a good example to pray in aid. Do you see the timing problem as being solved best by the monarch asking somebody to form a Government, then allowing the Prime Minister to go to Parliament and then possibly seeking a vote of confidence, but not doing it the other way round?

Professor Robert Hazell: May I deal with the position of the monarch first and then come to the timing problem? On the position of the monarch, yes, this is a prerogative power but if you were to have as a witness in front of you anyone from Buckingham Palace I think they would be insistent that this is an area where the monarch seeks no discretion. The constitutional convention is now quite clear that the Queen shall appoint as Prime Minister that person who commands the confidence of the House of Commons. In discussions I had before the last election with members of the Royal Household I got the understanding that they were quite anxious that that should be clear and publicly understood. They regard as

dangerous the suggestion that the monarch has any remaining real discretion. Those days are gone. On the timing, I acknowledge that this is the one weakness of the investiture vote proposal, which let me hasten to say that I strongly support. I agree with everything Ruth Fox said. The difficulty is partly one of what we are used to. Following previous elections, we are used to the removal van in Downing Street and a very rapid change of government. That is not the way it happens in many other Westminster systems where they allow for a longer transition. They allow the previous Prime Minister—the incumbent—to remain in office. What we propose is that the first item of business in a new Parliament should be for the newly elected House of Commons to nominate that person who commands the confidence of the new House so that it is abundantly clear who commands the confidence in the new House of Commons and how that has been arrived at. The one advantage in terms of accountability and public understanding of how our democracy works is that, when we vote in general elections, we are voting in a parliamentary election. It is a two-stage process. We, the voters, elect a Parliament and it is then up to Parliament to decide who shall form the government. I believe the investiture vote is a much clearer and more transparent way of making that two-stage process clear than the traditional five-day debate on the Queen's Speech with a vote of confidence at the end of it.

Q18 The Chairman: I think, though, that Dr Fox added to that the idea of a vote on the coalition agreement. Do you want to address that point?

Ruth Fox: At the next election, because of the Electoral Registration and Administration Act 2013, we are potentially going to have a much extended timetable. We are looking at potentially 51 days if the changes are implemented for a 25-day election timetable. That would be the longest period since 1924 between dissolution and the assembly of the new Parliament. If you were to add on a period of potentially a month after that to the Queen's Speech—the point at which you would identify formally, in constitutional terms, the

Government and the meeting of Parliament—that is a huge amount of time. I think there are advantages in having the investiture vote at an earlier stage, shortly after Parliament has assembled and when it is clear what the identity of the Prime Minister and the Government will be. Then you have a period of time before the Queen's Speech. In fact, you could delay the Queen's Speech a little to give the parties more time to determine the detail of their programme. In a sense, the Queen's Speech is then not a confidence issue any more but a point at which there is a debate and vote about the programme for the coalition Government. The investiture vote helpfully addresses the points about public clarity, identification of the Government and the moment of transition. I fully agree with Robert about the royal prerogative and keeping the monarch out of this. This is a political problem for the politicians to resolve, not to bring the monarch into. An investiture vote would formalise that process and give the coalition parties more time to sort out their legislative programme. Given the extended timetable in future, that will be incredibly helpful and much more understandable for the public.

Q19 Lord Crickhowell: Dr Fox, you brought me neatly to the point I was going to come to: the question of timing and the purdah period. The Prime Minister is the first person entitled to try and form a government. Assuming he fails, we then go into negotiations. As you said, we could have a very long period while the former Prime Minister is sitting in No. 10 before we have a government. My memory of being in government during election periods is that the powers of government during elections are extremely tightly constrained in terms of what you can do and say. We are moving into a situation where the former Prime Minister is sitting for a very long time powerless to govern and we do not have a Prime Minister with the authority to take measures until you have had this investiture period. Are we not moving into a situation, which we have not had before, where not just during the period of forming the government—five or 10 days, the kind of situation we had

last time—but for 51 days plus, effectively we do not have a government in this country that can actually do things? Is that not so, and how do you overcome that problem?

Ruth Fox: The 51 days would be from dissolution to the assembly of Parliament, whatever happens and whatever the outcome of the election. That assumes that there would be around 12 days from the election to the assembly of Parliament. We will not know until the proclamation what that length will be but that was the length last time. I think it unlikely that that will be reduced by the Government. There are 12 days from the point of election to the point of assembly where you have that purdah/caretaker period, whatever happens. That would give parties time to negotiate, to work out the identity of the government and Prime Minister. Prior to 2010 the arrangements were three days for negotiations in the 1970s; you then had five days in May 2010. It may take longer next time—who knows? But then, once Parliament has assembled, if it has settled on the identity of the Prime Minister and government, and there is an outline agreement, you could have the investiture vote shortly thereafter. You would not be extending much beyond the 51 days. You elect the Speaker, members takes their oaths and the investiture vote would happen soon after that. You are not talking about extending beyond that. What you are probably looking at is something like two weeks where, if the incumbent Prime Minister is not going to be the new Prime Minister, he or she will be in office waiting until the investiture vote. But the alternative is that they may need that time anyway to negotiate. Who knows? It would depend on the electoral arithmetic. It may be quick; it may not be.

Lord Crickhowell: I do not think you have fully answered my question. I understand all that. In the past, as soon as the Prime Minister or someone has decided that he can form a government and before the Queen's Speech or anything, you have ministers in office, you swear in the Privy Council and so on, and you get into departments. You are actually running the country during this period. My question is that it seems you are creating a situation

where there is a potential vacuum. We might be in the middle of a financial crisis, a middle east crisis or all sorts of things. I worry what happens to government during this period when effectively ministers are not allowed by the civil service—enforcing the rules during a purdah period—actually to run the country.

Ruth Fox: I do not think that that is entirely true. They have to observe discretion about how they conduct things and the consultation between parties, but that is the reality through the 51 days of the election period. The same things would apply. If there was a crisis—say Syria—in week three of the election period, shortly after Easter, you would be in the same circumstances. The parties have to resolve that. In the event of an emergency, the Prime Minister is still the Prime Minister and the Government are still the Government. They would act, in consultation with the opposition.

The Chairman: Do you not think it would be worthwhile at least to try to establish some way of dealing with that before the situation arose? The difficulty is that you all say “Well, who knows? We have to find out”, and “Maybe this or that”. This is exactly the question that Lord Crickhowell and others are asking: surely there should be some predisposition as to what the theoretical possibility might be and the potential solutions.

Professor Robert Hazell: Could I answer that with a solution? It brings me to the second respect in which our *Cabinet Manual* could usefully be strengthened. First, under the old rules, if I can call them that, the Queen’s Speech was prepared in the most ludicrous hurry. To have a little more time is a good thing. Secondly, we will have a government. We need, as you say, always to have a government. This is where I hope the *Cabinet Manual* might be strengthened: we will have a government that, until it is clear who can command confidence in the new Parliament, govern subject to what I call the caretaker convention. There was a very good example of that. You asked what would happen if there was a crisis. On the Saturday two days after the general election in May 2010, there was a very important

meeting of European finance ministers: the first bail-out. It was very important that the UK Government be represented at the meeting. It was represented by Alistair Darling, then Chancellor of the Exchequer. Following the caretaker convention, he consulted his opposite numbers, the Treasury spokesmen in the Conservative and Liberal Democrat parties, about what line he should take at that important meeting. That is how a caretaker convention can operate and governments can still be effective and make decisions. The key principle behind the caretaker convention is that, wherever possible, they should not make a decision that will bind the hands of a future government—the government that can command confidence in the new Parliament. In other countries, it is perfectly normal to have a period of several weeks before the new government are formed. They manage perfectly well. It is only for us that it feels unusual and uncomfortable because we are so used to the removal van in Downing Street.

The Chairman: If you want to strengthen the *Cabinet Manual* to cover that sort of eventuality, how do you do it?

Professor Robert Hazell: By using the term “caretaker convention”, which at the moment the *Cabinet Manual*, for reasons I do not understand, feels uncomfortable about. At the moment, it confuses the restrictions on what a government can do, using the words of Lord Crickhowell, with restrictions on what a government can say. Those are two different things. The purdah rules, as they are called in the manual, restrict what a government that cannot command confidence can say. A caretaker convention describes a caretaker government that is restricted in what it can do. It is conceptually distinct, but in terms of practical importance and clarity for all those involved it is very helpful to have two different terms for those two different kinds of restriction.

The Chairman: That is very helpful.

Q20 Lord Irvine of Lairg: It is hard to invite you, Professor Hazell, to draft on your feet, as it were, or from a sedentary position, but could you define for us as best you can the essence of this so-called caretaker convention?

Professor Robert Hazell: Yes. That is slightly easier because it is the term they use in two other Westminster systems: Australia and New Zealand.

Lord Irvine of Lairg: So be it, but could you define it for us?

Professor Robert Hazell: Yes. When a government remain in office as an incumbent government but it is not yet clear who can command confidence in the new Parliament, then that government do not have full political authority to govern. They have the legal authority—they are still the lawful government and they can and must make decisions as the lawful government—but the principle behind the caretaker convention is that they do not have the political authority to exercise full power and introduce new policies, make important decisions over public appointments and the like. Those are things that, wherever possible, they should defer so as not to bind the hands of a new government that command confidence in the new Parliament.

Lord Irvine of Lairg: What may it do and not do during the caretaker period?

Professor Robert Hazell: May I give you an example from New Zealand to try to crystallise that? Forgive me, I cannot remember the date but it was at the time of a general election. In New Zealand they have a relatively small air force. They had put on sale their fighter aircraft. A Labour Government had been in office and it looked as though after the election a National Government—the Conservative Party in New Zealand, who are rather more hawkish on defence and foreign affairs—might assume office. As luck would have it, there came a bid for those fighter aircraft and the Ministry of Defence was very tempted to sell them because they had been on the market for some time. It was advised by the Cabinet Secretary in New Zealand, who is the guardian of proprieties, “No. Although I understand

that it must be very frustrating for you because you have been longing to sell these aircraft, there may be a change of government. The new government may have a different view about defence capacity and therefore we should not sell the fighter aircraft from under their feet". That is how, in one small example, it can crystallise in practice.

The Chairman: Let us assume that somebody has met Parliament or there is some understanding of who the Prime Minister will be in a coalition arrangement. Can we move on to the formation of the Government? I think Lord Cullen wanted to ask about the appointment of ministers.

Q21 Lord Cullen of Whitekirk: Actually what I wanted to ask about is the idea that the coalition agreement should be submitted to the House of Commons as a means of avoiding the complaint that no one voted for the coalition.

The Chairman: Yes, that is also important.

Lord Cullen of Whitekirk: If Parliament is hung, it is plain that the electorate has spoken but has spoken giving a mixed message. Compromise is obviously going to be necessary. No doubt, every effort will be made to form a stable government in those circumstances. The coalition may well command a clear majority of votes as opposed to the individual composition of seats. In those circumstances, why should it be appropriate or necessary for the House of Commons to have submitted to it the coalition agreement for the next five years of the Parliament, knowing as we all do that manifestos are not written in stone?

Professor Robert Hazell: I support what Dr Fox said in suggesting that the coalition agreement should be subject to a vote and approved by the House of Commons. That is a more modest proposal than our proposal for an investiture vote, which would come first. I would float the idea that instead of the traditional vote on the Queen's Speech which sets out the government's legislative programme for the first session of the new Parliament, given that if there is a coalition the parties will have negotiated a coalition agreement it might be

more suitable for there to be a debate and vote on that agreement as a programme for the whole Parliament. That is the suggestion being floated.

Lord Cullen of Whitekirk: I am concerned by the justification for that.

Professor Robert Hazell: It is to do with transparency and the point that you made at the beginning: “no one voted for this”. It makes clear to electors that in parliamentary elections it is a two-stage process. In voting, we elect a Parliament, the Parliament then chooses the government, the government then decide on their programme and it is then up to Parliament to approve the programme as a whole. Traditionally that is done in the Queen’s Speech when it just approves the legislative programme in year one. The proposal is that if Parliament had a vote on the coalition agreement in effect it would be voting to approve the overall policy programme for the whole Parliament.

Lord Cullen of Whitekirk: But in practice majority governments frequently diverge from their manifesto statements and sometimes add to them unexpectedly. I am concerned about the situation in which you do not get a clear-cut result and compromise is necessary. Why do we not leave the politicians to get on with that, knowing very well that the result may be some form of mixture between the policies of one party and those of another?

Professor Robert Hazell: Forgive me, I may not understand your point. Are you suggesting that when there is a coalition and the parties have negotiated, they should not necessarily have a coalition agreement at all?

Lord Cullen of Whitekirk: Oh no, I am not suggesting they should not have it. They may or may not publish it, I understand. But if they have published it I want to know why it should be necessary or appropriate for it to be vetted by the House of Commons as a new part of our constitutional system.

Professor Robert Hazell: I am not arguing that it should be necessary. Forgive me: do not let me overstate this. In my mind, it is a modest and desirable improvement on the

traditional Queen's Speech debate in the first session, which is just about the first year's legislative programme.

The Chairman: Forgive me, Lord Cullen, if I have misunderstood the point you wanted to raise but because of time constraints we need to move on to the operation of the government rather than its formation. Lady Falkner, you wanted to address the question of appointments and so on.

Q22 Baroness Falkner of Margravine: Yes, could I start by saying that we are a broad church in this committee? I have great sympathy with what all three of you have said. Perhaps that is because I worked on democracy and governance at the Commonwealth Secretariat. I saw a lot of Westminster systems in operation that, as Professor Hazell pointed out, encompassed flexibility. I say that not in a judgmental way. I am sympathetic in practical terms to what you are talking about. As Mr Winetrobe said, stuff happens. I want to take you on to prerogative powers of the Prime Minister. To use a recent case in the media, we had the appointment of someone at the Department of Energy and Climate Change where there was some controversy because the preferred candidate of the Secretary of State was not approved. In another example, in the recent reshuffle there was a candidate appointed without the wholehearted endorsement of the Secretary of State at the Home Office—from what we hear. I want to explore the extent to which, in a coalition, the Prime Minister should make all appointments in his party and the Deputy Prime Minister make the appointments in his party. Or, should they have a more formally embedded system of consultation where, in other words, the appointments that come out evolve from consensus on both sides rather than my man or woman versus yours? I wondered if you had any thoughts about that.

Barry Winetrobe: To go back to what we said at the beginning, I am fairly relaxed about that. The coalition partners should decide that for themselves, as long as they publish it. We

have a few fixed points. We might get to a situation like that—forgive me if it already happens and I am not aware it. The traditional thing is the Prime Minister being the Queen's first minister and the sole conduit to the monarch. That still exists and the Deputy Prime Minister does not have an independent right of access to the monarch as I understand it, even under the present system.

The Chairman: Except if he is Lord President of the Council, as he is at the moment.

Barry Winetrobe: Yes, but in the sense of appointments, giving advice on making recommendations or sackings and so on, everything flows formally through the Prime Minister. If that is the way they want to do it, that is fine as long as everybody knows that is how it works. If there are other situations that do not suit that, then presumably one or other party will regard it as a deal-breaker. If the two parties want to come to the point where their continuing existence depends on one appointment or other, which I doubt would happen except in a very extreme situation, then so be it. It has to be on a government-by-government basis and that might well encompass the idea of “We have decided the proportions, we have then decided which ministries, who goes in which ministry and then the individuals”. There are various layers of this allocation process. If you have a situation that allows the two parties to select and fill their posts with whomever they wish and the other party just has to swallow that, then fair enough. You could argue that does not make for good government within a particular department, but that is how they have chosen to do it. Similar things happen within single-party governments. Different people in different wings of a party are put in government departments to keep an eye on the other, or whatever. I do not think in principle that there is anything really different there that requires formalising.

Ruth Fox: I broadly agree with Mr Winetrobe. At the end of the day, it is a matter for the parties, the Prime Minister and the other party leader to negotiate and decide between

them. As Barry said, if that is transparent then it is fine. On the point about a secretary of state not being comfortable about ministers inserted into their department without prior consultation, that can happen in single-party governments where Prime Ministers put in people that the secretary of state might not like for political reasons. That is just reality and one of the discomforts of coalition that the parties have to live with.

The Chairman: I know that Lady Wheatcroft wants to raise the question of collective responsibility, which comes, I imagine, from what you have just said.

Q23 Baroness Wheatcroft: Absolutely, and I appreciate the response you gave that governments have to be pragmatic in these circumstances. I go along with that but when I read your responses to the issue of collective responsibility there seemed to be a theme that, on the whole, the sanction would be public opinion. Public opinion does not like it when governments are split; this helps enforce collective responsibility. I wonder whether that really applies once you lose single-party government. It seems to me that the doctrine of collective responsibility is fading fast. I understand that when Professor Hazell interviewed people the divisions seemed stronger within parties, but nevertheless they felt obliged, during the lifetime of governments, to abide by the doctrine of collective responsibility. We have seen examples under this government where that is not the case. I wonder if it reaches a stage where you think that is potentially damaging.

Professor Robert Hazell: May I mention a core document for your inquiry in terms of the operation of this coalition government? That is the document published on 21 May 2010, the *Coalition Agreement for Stability and Reform*. It is a very short, very clear three-page document setting out the principles and procedures by which the two parties in the coalition would manage the collective business of government.

To go back if I may to the previous discussion about the appointment of ministers, it has two sentences on that which are very clear. It says: “The Prime Minister, following consultation

with the Deputy Prime Minister, will make nominations for the appointment of ministers. The Prime Minister will nominate Conservative Party ministers and the Deputy Prime Minister will nominate Liberal Democrat ministers”.

Coming to your point about collective responsibility, there is a quite a long section, section 2—

The Chairman: I think we are familiar with it.

Professor Robert Hazell: The point I am making is that the coalition government are very clear how the principle of collective responsibility applies.

The Chairman: They were in principle. This is the point we are making. They were in May 2010 but the point that Lady Wheatcroft is making is that when there are obvious divergences from even that agreement, which was as you said relating specifically to a particular situation, at what point does the doctrine—as Lady Wheatcroft appropriately called it—of collective responsibility simply need to be abandoned?

Professor Robert Hazell: Forgive me but I think it has a lot more elastic in it yet. Under the previous government led by Tony Blair as Prime Minister for 10 years, collective responsibility was frequently quite conspicuously absent in terms of the relationship between No. 10 and the Treasury. This is nothing special or unique about coalition governments. In terms of the doctrine potentially having a lot more elastic, forgive me for harking again to Commonwealth examples but it is helpful to see how other Westminster systems have adapted to coalition government. In New Zealand, collective responsibility has been relaxed a lot further than we have seen here and the government have been able to operate perfectly effectively.

Baroness Wheatcroft: My point was that both of you, Dr Fox and Professor Hazell, argued that the public do not like ministers misbehaving—I suppose that is the way to put it simply—and therefore they respond at the ballot box. That is a sanction held over

government and collective responsibility. But I wonder whether that is the case when you have not just the Brown/Blair axis but a government effectively split between two parties that have major disagreements and it becomes apparent that that affects the doctrine of collective responsibility. Will the public be much more indulgent?

Professor Robert Hazell: A criticism that you could make of our study is that we only looked at the first 18 months of the Government. That is true and maybe we caught them at their most harmonious moment. Recent contacts I have had in Whitehall suggest that it is still the case that many of the most important differences within this coalition Government are those between ministers of the same party, not between the coalition parties. On the whole, the Government have shown a lot of discipline in relation to their collective responsibility. You might have a different perspective because, as one of our interviewees famously said to us, we have a coalition Government but not a coalition Parliament, so the differences between coalition parties are much more closely visible to you as parliamentarians—it is the same in the other House—than perhaps they are to those working in Whitehall.

The Chairman: In a sense, that is what we are addressing: parliamentary responsibility.

Barry Winetrobe: I think this is a situation where you have to think what “collective” means: collective in facing whom? Collective responsibility grew out of the idea of a group of ministers having a collective purpose against the monarch, whereas that was not the original idea. Then it was collective vis-à-vis Parliament: it was the confidence principle, to use the traditional constitutional jargon. A great part of the traditional doctrine was all this notion of confidentiality, secrecy and privacy—a lot of which has been modified drastically in the last 10 or 15 years. People do not really see that as a core part of it. When I was doing some work on it in the devolved Parliament of Scotland—which contrary to what Lord Lang said, is for these purposes a Parliament in the same sense that this is one—there was clearly a

fear that if collective responsibility was not imposed the two parties might split within the government. Therefore, in addition to the traditional notion of collective ministerial responsibility, i.e. holding all the ministers together whether of one party or not, there was need for a further layer which I called—although it did not take root—a collective coalition responsibility. That was the idea of binding, in addition, the two parties together.

As it turned out, certainly in the early days of the eight years of coalition government, that did not arise as a problem. The issues and controversies about collective responsibility and whether ministers should resign were in traditional areas of disagreeing on a constituency basis and so on. The notion of it being necessary to bind the coalition together did not really arise so clearly in those days. I am not saying it will not arise now. If I remember correctly, the Scottish guidance in the guide to collective decision-making and in the ministerial code did not say when it should be set aside, whereas the present agreement does. I do not really think that makes much difference. Again, it is the transparency. If everybody makes clear that this is what they are doing and that there are set points at which there are disagreements, the public accepts that. What I think is the problem is if you are pretending one thing and doing another. I do not think that the idea of speaking out against things is really undermining. The media, the rolling news and all that, might make a great song and dance about it but I do not think the public is that worried. There are obviously some key situations—similar to what happened in 1989 with Nigel Lawson—when you have divergent advice in the perception of the public in terms of core economic policy or things like that. Obviously, you have to have a collective, unified voice to the outside world in core areas like defence, national security and core economic and financial questions. But other than that, I do not see that there is anything particularly different about being a coalition government and collective responsibility, other than that use of the doctrine to try and bind the parties together, as well as the individual ministers.

Q24 Lord Crickhowell: A number of those who have given evidence so far have suggested that breaches of collective responsibility should be exceptional rather than frequent and be made clear in advance, and that it is very desirable that they should be the result of collective Cabinet decision rather than that of an individual. Professor Hazell, you referred back to the coalition agreement and what was said at the start. You talked about the strength of Cabinet decision-making since the agreement. To take one obvious example, following the collapse of House of Lords reform we had a decision by the leader of the Liberal Democrat party that was certainly not envisaged in the original agreement: not to proceed with legislation that had passed through both Houses. It was not a collective decision taken in advance with plenty of warning or the result of collective Cabinet decision-making. Surely that is a fundamental change. I am less concerned by statements by ministers trying to strengthen themselves: “I am really a very powerful chap and I think things differently”. I am concerned about the role of collective Cabinet decision-making. We have a strange anomaly. We have the quad, and I am not sure how it relates to collective Cabinet responsibility. Is not something to be said for a system in which you say, “We are going to do this as an exception, we will announce it in advance and we would like it to have the full approval of a collective Cabinet decision”, rather than “I am in a huff and have not got what I want so we will breach the previous agreements”?

Professor Robert Hazell: Forgive me, I am at a disadvantage: because this fell outside the period of our study I have not done any interviews about this particular episode so I genuinely do not know what kind of notice, if any, the Deputy Prime Minister gave before he said he was withdrawing support from the other side of that.

The Chairman: Frankly it is the principle, whether or not the notice was given. As Lord Crickhowell said, there have been previous instances where that kind of policy disagreement within a one-party government has led to resignations. That has been, whatever we are

going to call it, the convention. What we are trying to establish is at what point you feel—you have all talked about flexibility—these conventions and understandings, whether they be about collective, Cabinet, government or ministerial responsibility, are pushed to such an extent that there are real differences in the way we are governed.

Professor Robert Hazell: That was a seismic political event because it followed a very serious parliamentary defeat and therefore setback for the Liberal Democrats as one partner to the coalition.

The Chairman: But it did not lead to the kind of results which, in a one-party government, one would have expected.

Professor Robert Hazell: Are you suggesting that the Deputy Prime Minister should have resigned?

The Chairman: That would have been a more normal expectation historically of that level of policy disagreement within a one-party Cabinet.

Baroness Falkner of Margravine: May I come in on that, after we have had the answer from Dr Fox?

Ruth Fox: Going to Baroness Wheatcroft's point, public opinion constrains but does not enforce with regard to collective responsibility. In my submission to the committee I point out that the one area in terms of collective responsibility where I have a concern is exactly this one. Lord Crickhowell has slightly stolen my point. There seem to be three circumstances in terms of collective responsibility. There are those you can set out at the beginning of the coalition, where you can clearly state them and that is very public and transparent from the outset. Secondly, there is response to events—Leveson, for example—where there can be an agreement within the coalition, whether it has gone through the Cabinet machinery or is an agreement between the Prime Minister and the Deputy Prime Minister, to set aside collective responsibility publicly and openly from the outset. I think

there is a problem with setting it aside once you have gone through a legislative and policy process that has gone through collective decision-making. There is an issue about accountability but there is also an issue about good governance and effective use of resources. The amount of parliamentary time and money spent on that is a serious problem. The problem is how you constrain that because the only option is essentially capital punishment for the coalition. That then brings you back to the politics. Unless as part of the coalition agreement there are clear rules set at the outset about those circumstances and what would happen, it is really for the parties in the current circumstances to determine what to do. I do not want to reopen the issue of the caretaker and purdah period, but if the coalition does not dissolve before the election—who knows?—how does collective responsibility hold during that long purdah period? I do not know what the answer is because I have only begun to think about it. It might be worth thinking about what kind of rules could be needed by the coalition to set out how it will deal with issues in the most highly partisan period, to address that collective point if it continues as the incumbent legal government.

Q25 Baroness Falkner of Margravine: We obviously come from two different perspectives on that particular example, but I want to go to the principle behind it, unedifying as that example was. One can look at what happened there and draw the general conclusion that Lady Wheatcroft started with: that the public would not be pleased to see what happened there—for all the reasons you gave, the waste of resources and so on—as a general principle and that they will punish the perpetrators of that lapse of collective government accordingly when the time comes. I would see that as part of the negotiation of a coalition. There were two promises, pledges or agreements made. One side thought that one was contingent upon the other and the other side did not. As a side decided to abandon one aspect of it, they would have known what the consequences were. It would have a

grown-up discussion. Do you feel that in your description of flexibility, and the transparency and accountability angle as well, that the public would expect people to have known the consequences of what they do, and will therefore take a view on that when the time comes?

The Chairman: That is a political judgment.

Barry Winetrobe: In an ideal world, you write down every eventuality in an early agreement or as things arise, in particular Queen's Speeches or when new circumstances arise. But you cannot get away from realpolitik. You are not in a coalition in a wartime or quasi-wartime situation where party is put aside. You are in a coalition of parties competing for their best result at the next election. The whole coalition is predicated on that. It is not a putting aside of party; it is accommodating parties. Therefore crises like House of Lords reform or boundary changes are just one of those things—*In place of strife* in the late 1960s—where collective responsibility was not enforced in terms of a sanction. James Callaghan did not resign or anything—

The Chairman: He was demoted.

Barry Winetrobe: My point is that I do not think—

The Chairman: He was moved sideways.

Barry Winetrobe: He was moved sideways after the devaluation, but anyway he then became Foreign Secretary and Prime Minister so it did not do him that much harm.

The Chairman: That was because it was a position of principle.

Barry Winetrobe: Sorry, can I just make one point? It goes back to the point of what collective responsibility is for. Some of the comments around the horseshoe implied that, like other constitutional conventions or rules, this is somehow an external, scientific law of nature and therefore events, circumstances and conduct have to follow it to keep that rule going—whereas it is the other way round. The rule is there because it happens to be convenient in normal circumstances for good government.

The Chairman: I cannot believe that. Lady Wheatcroft.

Q26 Baroness Wheatcroft: I am interested in Dr Fox's point that it is an issue of governance if Parliament spends a great deal of time and money pursuing something that was in the Queen's Speech. Should there be a mechanism, agreed at the beginning of a Parliament, that if a coalition agrees a policy and puts it in the Queen's Speech, they are then bound to follow that through? Should it at least be something that goes into a manual?

Ruth Fox: Well you could, but the question then is: what is the sanction? Essentially it is the collapse of the arrangement between the parties. If you want to put that in at the outset, then do, but be very clear between your parties that that is the sanction. That will act as a possible constraint, but it depends on the third party's perspective on the political interest. Nick Clegg feared, so it is said, that he would not be leader of his party three months down the line if he did not do it. It is a political judgment for the party leader.

Professor Robert Hazell: This was an episode of parliamentary government. The plans to reform the House of Lords were in the coalition agreement. We know that many people in the Conservative party had their own doubts but, faithful to the coalition agreement, the Government did introduce their Bill for Lords reform. It did not get through Parliament. As parliamentarians, I would expect you all to say, "This was Parliament showing its strength and its value".

Baroness Wheatcroft: Absolutely.

Professor Robert Hazell: The question then follows: what should the coalition have done following the defeat of quite a flagship measure? Forgive me, but I do not think anyone should have or needed to resign. I know of very few precedents where ministers have resigned following a significant policy defeat. Just take the history of Lords reform and the Labour Government's Bill in 1968, which took up huge amounts of parliamentary time—

many more hours, I think, than this Bill last year. The lead minister did not resign, so I would have been surprised, startled, amazed if Mr Clegg had felt obliged to resign.

Lord Crickhowell: But the boundaries changes legislation had gone through Parliament. It had been approved by both Houses—

Professor Robert Hazell: Indeed.

Lord Crickhowell: Rather like President Obama's healthcare. It is then, subsequent to that, that we say, "Oh well, it is the law. It has been passed, but we are going to ignore it. We are going to do it in our own way". It is a difference. That is the point, not the overthrow of the House of Lords reform, which was Parliament acting as Parliament is entitled to. The point is that the other action was in fact not a part of any agreement. It was an action taken not as a result of collective discussion or Cabinet discussion.

Professor Robert Hazell: We genuinely do not know. I do not know.

The Chairman: In that case, let us move on, because we are short of time because this has been so interesting. Lord Lexden wanted to raise some points about the implications for the House of Lords, reformed or unreformed, of coalition.

Lord Lexden: Forgive me, I have to leave fairly shortly. Could I take you to the important area of coalition government and party manifestos that precede its formation?

The Chairman: Could we focus on the House of Lords just for the moment, if you do not mind Lord Lexden, simply because we are going backwards if we discuss that question. I know you want to raise points about party manifestos, but maybe we should do that with the parties.

Q27 Lord Lexden: On the House of Lords, I have a very simple question: how, in your view, does its role change under a coalition government, if at all?

Professor Robert Hazell: I do not think it does change significantly. This House, since the big reform of 1999, has been a House in which no single party has a majority. That is of

enormous value and a great strength of the reformed House of Lords. Depending what kind of coalition government is or might be formed in future, the strength of the parties in government may wax or wane, but even with the Liberal Democrats supporting the Conservatives as part of a coalition government, the Government do not have a majority in the House of Lords. It is that principle which it is important to hang on to.

If you are asking about the Salisbury convention, as you know this was looked at very extensively by a joint committee of both Houses in 2006. They revised and slightly rearticulated the convention to state that they felt that in future this House should not block or wreck government bills rather than simply manifesto bills.

The Chairman: Lord Lexden wants to follow that. Then we will hear from Lord Lang.

Lord Lexden: There was a suggestion in one of the submissions made to us that it might be sensible to look again at the 2006 discussions and conclusions that emerged. Would you support that, or do you believe that what was settled in 2006 can remain?

Professor Robert Hazell: I thought it was an extremely detailed and thorough piece of work, as you would expect from a joint committee, and I see no need to revisit it.

Lord Lang of Monkton: I was going to ask about that. It was not totally settled because it is still not accepted universally. Passing references were made to it by the last Leader of the House, and I think by the Prime Minister at some stage. I do not think this is a coalition issue at all; I think it has stuck with the coalition. Would it not be sensible that somebody in the House of Lords should set down precisely where we have got to on this so that it becomes a more established convention, and do you think that it should also extend to wrecking amendments, which destroy a bill not at second reading but later on?

Professor Robert Hazell: It is not settled, you are quite right, because the joint committee in 2006 did not feel it right to try to codify in hard, concrete, very precise terms, for reasons I hope you will understand and understand much better than I do, because it goes to the

self-restraint which this House, as an appointed unelected House, shows in giving way to the wishes of the elected chamber. That is not something which it is at all easy to crystalise in sharp terms. It is a matter for constant negotiation.

The Chairman: Dr Fox, did you have anything to add?

Ruth Fox: I broadly agree.

The Chairman: Mr Winetrobe, do you have any points you wanted to make?

Barry Winetrobe: No.

The Chairman: I think we are drawing rapidly to the time when we need to close this fascinating discussion, but I wonder whether any member of the committee feels that there is some point that they definitely had not had covered? Lady Falkner.

Q28 Baroness Falkner of Margravine: My question is about the role of the civil service. Professor Hazell, you have said in your written evidence that Whitehall has been considering a protocol whereby a junior minister can commission a briefing for his or her eyes only, with the agreement of the secretary of state. This is a broader point about how policymaking is explored when you have a secretary of state from one party and a junior minister from another. I wonder whether you would elaborate on this protocol and how it would work.

Professor Robert Hazell: As I understand it, they have decided not to have such a protocol. This is a really important issue and it is a pity that we have come to it right at the end. It is something that I hope this committee will explore further with other witnesses, and better witnesses than me. It goes to the pre-election contacts that traditionally have been allowed with the opposition party or parties in the run-up to an election. We know the date of the next election, in May 2015. We know that conventionally those contacts will be authorised about 12 months beforehand, so from around the spring of next year the Cabinet Secretary will be contacting the opposition parties and saying, "Would you like to start pre-election contacts?"

The issue, and it is a really difficult one, is how to ensure a level playing field between the parties that are currently in government and the opposition parties. This brief paragraph that you have alighted on is Whitehall's first thoughts, which as I say have not been put into effect, as to how the parties in government might try to get briefing that will help to inform their plans for the next Parliament.

Baroness Falkner of Margravine: It is not just the parties in government versus the party in opposition, it is also a question of the more significant party in government versus the junior partner. The secretary of state can authorise any policy issue to be examined and a paper provided. A junior minister has to stick to their portfolio responsibilities; they cannot range over the breadth of the department, and that creates its own problems.

Professor Robert Hazell: Indeed, and in that respect there did not appear to be a level playing field between the junior party in government and the senior partner. Again, I have no inside knowledge, but my guess is that when the idea of this protocol was first floated, that might have been a reason why the Liberal Democrats, as the junior partners, would not have been very attracted by it.

The Chairman: Thank you, Lady Falkner. As you say, we are going to pursue this with other witnesses, but I am grateful to you for putting that on the agenda, as it were. Lord Crickhowell had a point.

Q29 Lord Crickhowell: Dr Fox made a number of interesting points about coalition in the last parliamentary session, particularly if the coalition broke up, and whether we need to have some thought, and perhaps rules, in advance about financial issues, ministers departing, compensation and the rest, which would be extremely sensitive, touchy even, if they were not looked at in advance. We do not have time, I suspect, to pursue it now, but you might comment briefly. It may be something that we ought to think about rather more during our inquiry.

Ruth Fox: I wholeheartedly agree. Depending on the point at which the coalition might dissolve, if it dissolves, there are issues about what kind of support would be available to the third party as it goes back into opposition and about how rules, processes and procedures in the House of Commons would adapt back to the arrangements of previous Parliaments. There would be issues about what would happen with ministerial resignations; with new ministers from the main party being appointed to positions for a set period, which could be anything from a year to two or three months depending on the point of dissolution; with ministers being in office and departing ministers having severance payments; with the new ministers coming in, and if they are not part of the next government then also having severance payments. You can imagine the media headlines. It would be pretty horrendous. There are some very practical issues that need to be thought about, and perhaps the coalition needs to reach an agreement in advance on how they will handle them.

Equally, if the coalition does not dissolve—I think the working assumptions of everybody have been that it would in order to give the third party an opportunity to re-establish its identity—that caretaker period is worth thinking about.

The Chairman: Thank you very much. This has been a fascinating discussion. You have given us very helpful written evidence and I know that we have not covered everything that you addressed in them. I hope you will have a chance to keep an eye on the other evidence that we take over the next few weeks, because some of the points—the one for example which Lady Falkner raised at the end about the civil service—we will develop with other witnesses. If you feel, looking at it over that period, that we are missing some important and worthwhile fact or issue that we have not discussed, please be in touch. We are very grateful to you for your continuing involvement in this discussion. Thank you, all three of you, very much indeed. It has been very interesting.

Professor Robert Hazell: Thank you very much. We wish you well with your very important inquiry.

The Chairman: Thank you.