

HOUSE OF LORDS
MINUTES OF EVIDENCE
TAKEN BEFORE
THE SELECT COMMITTEE ON THE CONSTITUTION

CABINET OFFICE INQUIRY

WEDNESDAY 1 JULY 2009

LORD TURNBULL and SIR ROBIN MOUNTFIELD

Evidence heard in Public

Questions 138 - 182

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WEDNESDAY 1 JULY 2009

Present

Goodlad, L (Chairman)
Lyell of Markyate, L
Morris of Aberavon, L
Norton of Louth, L
Pannick, L
Peston, L
Rodgers of Quarry Bank, L
Rowlands, L
Shaw of Northstead, L
Wallace of Tankerness, L
Woolf, L

Witnesses: **Lord Turnbull**, a Member of the House, former Cabinet Secretary (2002-05) and **Sir Robin Mountfield**, former Permanent Secretary, Cabinet Office (1995-99), examined.

Q138 Chairman: Lord Turnbull, Sir Robin, thank you very much indeed for joining us. We are being televised, so could I please ask you to formally identify yourselves for the record?

Lord Turnbull: I am Lord Turnbull, a retired civil servant. I was at one stage, between 1998 and 2002, the Permanent Secretary of the Treasury. Prior to that I had worked in Number 10 under two Prime Ministers; then, from 2002 to 2005, I was the Secretary of the Cabinet and Head of the Home Civil Service. I have therefore spent about a third of my career in the centre.

Sir Robin Mountfield: My name is Robin Mountfield. I have spent most of my career in DTI and its forebears; three short years in the Treasury, and then I moved to the Cabinet Office as Permanent Secretary of what was then called the Office of Public Service. I ended up with the slight misnomer of a title, the Permanent Secretary of the Cabinet Office, in my final year. It is ten years since I retired and I feel very much out of date.

Q139 Chairman: Can I begin by asking which constitutional issues you think are the most important for this Committee to enquire into in our inquiry into the work of the Cabinet Office and central government.

Lord Turnbull: I think that the previous witnesses from the Cabinet Office all believe that cabinet government is an important principle; that the source of a great deal of good government needs to be nourished, nurtured and strongly supported by the Cabinet Office. A number of trends have been identified which in some way threaten this great institution and system, in particular the growth in profile of the Prime Minister. I would not call it “presidentialism”; it is a strong Prime Minister. Some of those things are inevitable. Robert Armstrong referred to a growing international role, a growing media role, the fact that the Prime Minister attends the G8 summit and the European Council. All those things will tend to push the profile of the Prime Minister and the danger, the temptation, is that the Prime Minister then seeks, in a sense, to go it alone, does not involve colleagues and does not build up the status of secretaries of state and their departments. The danger I would therefore want to avoid is the do-it-all Prime Minister.

Sir Robin Mountfield: I would draw a bit of a distinction between constitutional concerns and the administrative or how you organise the thing. The constitutional issue is what Andrew has described. There is some sort of spectrum between a very orthodox, old-fashioned, collective responsibility approach to the Cabinet at one extreme, to what is loosely called “presidential” at the other. I am not sure I quite agree with Andrew that there is a great difference between a dominant Prime Minister and a presidential style, but there is a spectrum between the two. We move along it and sometimes we move back. There is probably a secular trend towards a more dominant or presidential style. The constitutional issue is where that balance is most appropriately drawn in modern circumstances. There are certainly some long-term pressures that point in the direction of a dominant head of government. The G8,

the global visibility thing, is clearly one; the 24-hour news cycle is another. I think that there is also a growing awareness, not just in this country but in many countries, that many of the great issues that face the modern government are ones that span organisational boundaries; that therefore there needs to be a stronger co-ordination, maybe a stronger direction, than was perhaps was conventionally the case in the past. That is the main constitutional issue. There is a subsidiary one about how important the secretaries of state are; whether they have actually lost the departmental sovereignty that is the conventional position. I would also treat as a constitutional issue the role of special advisers, which I think has become a growing problem. A good special adviser is gold dust, but they can be an awful nuisance and they change the nature of the animal, many of them treating themselves as unaccountable junior ministers. I think that has become a very serious problem, which verges on the constitutional rather than the organisational.

Q140 Lord Lyell of Markyate: You mention co-ordination. Is that one of the central purposes of the Cabinet Office? I certainly have always thought that it was supposed to be. Was it working in your days? Is it working now?

Sir Robin Mountfield: I certainly think that it is the central function of most of the Cabinet Office. At the very least, it is a dispute resolution mechanism. That is the conventional view that, for example, is in the Ministerial Code. At the other extreme, as I think I have suggested, there is a growing need for something a little bit more than dispute resolution: a pulling-together of the interests and the agendas, if you like, of different departments across the great issues. Social policy, for example, spanning crime, housing, education, et cetera. Criminal justice policy, spanning the Home Office, increasingly the Ministry of Justice, the Prosecution Service, prisoners, probation, et cetera. There are all sorts of things of that kind where the issues are increasingly visible as cross-departmental issues. “Co-ordination” is too

loose a word for what is emerging in that area. I coined the phrase “joined-up government” ten years ago, which has been much abused since, but that is what I am talking about.

Q141 Lord Lyell of Markyate: It sounded wonderful, did it not, but was it joined up when there was a complete mess-up over the changes to the Lord Chancellor in 2003? Was it joined up in 2007 when the present Prime Minister did not understand the position of the Attorney General? Was it joined up when nobody told them that the law on official secrets had been changed, at a time when they were arresting Damian Green? Were those not all serious errors, which one would have expected the Cabinet Office to have warned about?

Sir Robin Mountfield: I am in the happy position of not having been there!

Q142 Chairman: Lord Turnbull, some of this was on your watch – the question of the Lord Chancellor.

Lord Turnbull: I will deal with certain aspects of the Lord Chancellor change. I think that the substance of what was done was absolutely what needed to be done. The role of Lord Chancellor was hopelessly compromised by being a sort of holy trinity of all sorts of conflicting functions. On the day, it was a complete mess-up. There are various reasons for this. First, it was very difficult to produce the change when the incumbent Lord Chancellor was strongly against what was being done; so you got no co-operation from him. Secondly, this was the week in which we published the five tests for the euro. It may seem history and academic now, but the first two days of that week the Prime Minister spent his time announcing that and going round the various media outlets and Parliament. On the Wednesday he flew to Paris to talk to President Chirac. Thursday morning he came back and launched straight into this Cabinet reshuffle and machinery of government change, and it was very poorly prepared. As a result, one of the things that went badly wrong was not just the Lord Chancellor’s office: it was the so-called “abolition” of the Secretary of State for

Scotland. The Secretary of State for Scotland was not being abolished. The Secretary of State for Scotland exists in statute. The job of being the secretary of state was being attached to someone else who was a secretary of state for something else. Someone probably went to Helen Liddell and said, "I am terribly sorry that you have to leave the Cabinet, but the job is being abolished". If you do not have the time to do it, you are deciding what to do at the same time as you are doing it, and at the same time as you are explaining to people what you are doing, in the end you get in a terrible mess.

Q143 Chairman: Can you say what consultation took place and with whom before the decision was taken to allegedly abolish the role of the Lord Chancellor? Was the Leader of the House of Lords consulted? Was the Lord Chancellor consulted?

Lord Turnbull: The Lord Chancellor was consulted. The problem was that he disagreed with it.

Q144 Chairman: Was the Leader of the House of Lords consulted?

Lord Turnbull: I do not know. Probably not, actually.

Q145 Chairman: Do you think that the practice of changes in the machinery of government being taken exclusively by people in 10 Downing Street is adequate in the modern world?

Lord Turnbull: In general, no. Although Richard Wilson explained some reasons why this very frequently needs to be conducted as part of a reshuffle, because that is the point at which the Prime Minister can say, "This is the job I am appointing you to" and there is not any argument about it. For example, there were months and months of extremely acrimonious argument about whether benefits and providing services to the unemployed should be brought together, back in the Department of Employment. They got nowhere, until the election of

2001. At that point, the Prime Minister was able to say, “I have decided it will be resolved in the following way”. There were therefore extensive discussions on that.

Sir Robin Mountfield: I have a slightly more sceptical view of this. There clearly have been a number of important departmental changes, which have been done after very serious study. DWP was one; I think Revenue and Customs was one, and so on. However, there have been an awful lot that seem to me to have been made on the spur of the moment in order to meet the exigencies of meeting individual people’s *amour propre*. For example, what has happened to the universities seems to me absurd: to have changed it 18 months or two years ago and then to change it back again, into a different situation. I cannot believe that those issues have been properly explored. There used to be a unit in the Cabinet Office, and maybe still is, called the Machinery of Government Division, which was charged with very serious study of these things and they would result eventually in well-considered changes. However, these things should not be made just on the basis of making a nice package of responsibilities for an incoming minister.

Q146 Lord Pannick: I have two questions to Lord Turnbull relating to the abolition of the role of the Lord Chancellor. The first is whether the senior judiciary were consulted. The second is whether you would agree that that unhappy episode, of abolishing the office of the Lord Chancellor, demonstrates the dangers of profound constitutional change without proper groundwork.

Lord Turnbull: One of the changes was the creation of a Supreme Court, by moving the Judicial Committee of the House of Lords into its own persona and location. We made the mistake of thinking that we knew that there was backing for this in the House of Lords Judicial Committee. It turned out that they were deeply split.

Q147 Chairman: Did you consult them?

Lord Turnbull: Not explicitly but I think that there were soundings going on, conducted through the then Permanent Secretary of the Lord Chancellor's Department. I think we kind of thought that we knew that we were doing something that they wanted. It turned out that we were not.

Lord Lyell of Markyate: It would have been better to have asked them expressly, would it not?

Q148 Lord Morris of Aberavon: Is not the truth of the matter, coming back to the change in the Lord Chancellor's Department, that the centre was just not up to speed to meet prime ministerial demands, and that there should be a reservoir of knowledge within the Cabinet Office – despite the need to avoid taking other people into one's confidence – in order to ensure that the Prime Minister of the day, on this issue and the other issues mentioned by Lord Lyell, is able to be properly advised? I can tell you that in 1992, through the grace of the then Prime Minister, I was allowed as the chief legal spokesman to consult with the new department of the Lord Chancellor. Sir Thomas Legg came along with his two henchmen and explained to me all the problems which arose in the time the Lord Chancellor was changed. They knew it all in that department. The reservoir was there. Haydn Phillips claims he knew. I think that it is questionable. Why was there not this reservoir of knowledge, so that the Prime Minister did not put his foot wrong?

Lord Turnbull: There was a reservoir of knowledge, in the sense that we were doing this in conjunction with the senior officials of the Lord Chancellor's Department; but they were constrained, since their boss was seen as obstructing this change.

Q149 Lord Morris of Aberavon: That does not stop them telling the Prime Minister, or the Cabinet Secretary grabbing the chief civil servant in the Lord Chancellor's Department and

telling the reality of the position: that the Lord Chancellor must sit on the following morning on the Woolsack and have a wig and not borrow a wig, as he did, from somebody else.

Lord Turnbull: We consulted the officials in the Lord Chancellor's Department. Maybe we did not get the right advice.

Q150 Lord Morris of Aberavon: The result was ludicrous.

Lord Turnbull: It was for a time, yes.

Q151 Lord Lyell of Markyate: You got rid of somebody like Sir Thomas Legg, who understood the position to his fingertips, and you put three permanent secretaries in succession heading the Lord Chancellor's Department, none of whom have any legal background whatever.

Lord Turnbull: I cannot remember who the three are, but the one we would ---

Q152 Lord Lyell of Markyate: They are Haydn Phillips and then the excellent ---

Lord Turnbull: I am not going to accept the denigration of Haydn Phillips. I think that he is capable of grasping these issues.

Q153 Lord Lyell of Markyate: He is a very capable man indeed but he has no legal background whatever, has he?

Lord Turnbull: No. I do not think I accept the proposition that the head of that department has to be a legally qualified person, as opposed to having access to legal advice.

Q154 Lord Morris of Aberavon: It should be some person who has knowledge of the practicalities and is able to tell the Cabinet Office.

Lord Turnbull: Where does this lead you? Does this mean that the Permanent Secretary at Health has to be a doctor and the Permanent Secretary at Defence has to be a military man? It is not a principle that I am going to sign up to.

Q155 Lord Lyell of Markyate: Lord Turnbull, you are shifting the ground. We signed up to the fact that you could appoint somebody who was not a lawyer to be permanent secretary, and that required a statutory change. We are not going back on that but, if you are going to appoint somebody with no legal background, good government requires that that very capable fixer, as it is sometimes said of Sir Haydn – a very capable civil servant – should have immediate access to somebody who does understand the position. That does not seem to have happened, does it?

Lord Turnbull: I think he had access to legal advice in the department. I am sure he did.

Q156 Lord Woolf: Obviously I have been closely involved with these matters for a little time. On the question of Sir Haydn Phillips's knowledge, I have to say that I thought he was an absolutely first-class permanent secretary. He picked up the position remarkably rapidly. I had opposed in the House the taking away of the parliamentary requirement that he should be a legally qualified person and I acknowledged in due course that, so far as Sir Haydn was concerned, he had shown that it was possible for a general civil servant to do that job. Forgive me, My Lord Chairman, I thought that I should just say that. However, I would like to add to it and see what Lord Turnbull's views are. On a different matter, I do know that there had been deep concern expressed by the judiciary in respect of the idea of taking responsibility from the Lord Chancellor's Department and giving it to the Home Office at an earlier stage.

Lord Turnbull: First, may I add this on the question of Haydn Phillips? You and he, as I remember it, negotiated very successfully the entire framework around judicial appointments.

That shows that co-operation between the senior judiciary and the senior Civil Service can work. Your second question...?

Q157 Lord Woolf: I wanted to put it as part of the picture, so as to understand the question. These constitutional changes had already been the subject of very serious discussion. What had not been discussed was the abolition of the office of Lord Chancellor.

Lord Turnbull: You are correct that, prior to the 2001 election, Richard Wilson, then in the Cabinet Office, had extensive discussions about changing the boundaries. I think that you basically won this argument. It was agreed that police and the judiciary could not live under the same roof, and that was accepted. At that stage, the dismantlement of the conflicted position of the Lord Chancellor was not discussed in 2001; that came later.

Q158 Lord Woolf: What I was really saying was, with that history, do you not agree that it should have been seen that to take an even larger step than had been proposed in 2001 without consulting at least the judiciary was remarkable, bearing in mind that if you remove the Lord Chancellor that had an effect on the three Lord Chief Justices in the system – and they knew nothing about it.

Lord Turnbull: It would have been much easier if, say, we had been able to go what is called “the conventional route” of the relevant Cabinet minister – in this case the Lord Chancellor – producing a Green Paper; it is discussed and he is prepared to act as the advocate of change. This was not possible and I think that is where the problems stemmed. The Prime Minister nevertheless wanted to proceed.

Q159 Chairman: Why did it not happen in the form that you think it should have happened?

Lord Turnbull: Why did it not happen? Because the then Lord Chancellor disagreed with the proposal. He wanted to be the Speaker of the Lords and the senior judge, and so on. I think a lot of constitutional theorists thought that this did not make sense and I agree. I do not think that it did make sense.

Q160 Chairman: So that precluded proper consultation?

Lord Turnbull: The then Lord Chancellor was not prepared to lead it. That is where the problem originated.

Q161 Lord Rowlands: We have been trying in a number of sessions to find out how much 1997, and since 1997, has been a watershed in either the development of greater prime ministerial power, presidential – the term you used, Sir Robin, but Lord Turnbull does not use that phrase. Can we get an assessment from you both, not just about the fact that it was a question of the power of the personality but how much institutional change followed the power of the person, of Prime Minister Blair, and has altered the balance of the centre?

Sir Robin Mountfield: I am doubtful about whether 1997 was a real watershed. There is a longer-term trend that goes back certainly to the Thatcher period. It is not a consistent trend, however. If you think, for example, of the position of Churchill during the war – was that presidential? It is certainly not a conventional, Attlee-type administration. I think the thing fluctuates a bit. If you look at particular decisions – for example how did Eden at the time of Suez react with the rest of his Cabinet? It certainly was not a conventional, “Let’s get round a table and agree, chums”. There is a longer-term trend, which has probably been accelerated since 1997.

Q162 Lord Rowlands: So an acceleration?

Sir Robin Mountfield: Yes, that is how you would judge it. Whether that is a permanent effect or whether it can be changed back again, I think remains to be seen.

Lord Turnbull: In my valedictory lecture I produced some figures which showed the frequency of Cabinet meetings in 1978-79 and what they had become by the tail end of the Thatcher-Major era. That is the era in which we went from meeting often twice a week to meeting 38 times a year, and much shorter meetings. Prime Minister Blair basically adopted that same structure. I think the difference lies with what was happening at the Cabinet committee level, where you had one person who was a regular Chairman – John Prescott, the Deputy Prime Minister. An absolute stalwart of the conventional view about the importance of committees of Cabinet; a strong defender of the idea that you have a properly identified membership; you circulate papers; you have a discussion; you record the decision, and you do not announce the decision until all that has taken place – and he got very cross with some of his colleagues who did not adhere to that. Those committees that were chaired by the then Prime Minister and the now Prime Minister did not thrive in the same way. That, I think, was the difference between the two eras; not what was actually happening at Cabinet itself.

Q163 Lord Rowlands: Was it because there was this drive in Number 10 for not only initiating policy much more but also ensuring delivery of policy?

Lord Turnbull: I think it reflects a kind of condition of impatience really. Tony Blair wanted a low-friction Government, where decisions would get taken and then they would happen quickly, and did not want a lot of argument and discussion – just “Get on with it”. That was the philosophy. The sense of urgency. “We have a big programme to get through. We don’t want to get bogged down in all this Cabinet committee stuff.”

Q164 Lord Rowlands: So it was a sea change in that sense?

Lord Turnbull: At that level but, as I say, I do not think it was the Cabinet itself. I think that had happened some time earlier.

Sir Robin Mountfield: The difficulty is to determine whether these are matters of personality and personal style or whether there is a real, permanent change in the way the machine works. It was complicated in the Blair period by the apparent tension between him and his Chancellor, which perhaps is not quite the same now. A lot of it is not all one-way. This Committee is looking particularly at the Cabinet Office, but of course the centre is a broader concept. The relationship with the Treasury is hugely important and you really need to look at all three of them together to get a sense of how the thing is working. If you look, for example, at what I think is still called the Prime Minister's Delivery Unit, which was established originally in the Cabinet Office, I think I am right in saying that that has moved essentially into the Treasury now.

Lord Turnbull: Yes.

Sir Robin Mountfield: One therefore sees a clear need for these bits to work sensibly together. It is how the thing is run rather than the actual structures that really matters.

Q165 Lord Rodgers of Quarry Bank: We talk about 1997 and changes of Prime Minister. Could I ask about the significance of the Cabinet Secretary himself? We have talked about events and about the role of the Prime Minister himself, but what about yourself, if I might put it that way? I had a feeling, when we had the Lords Armstrong, Butler and Wilson here, that they were rather a team together and had similarities in their approach to the matter. Could you say a bit about yourself, about your contribution? Also, is there any event about which you could say, "I am very proud that I did this" and one event when you said, "I am afraid I was a failure"?

Lord Turnbull: First of all, they have produced a memorandum, which you notice does not have my name on it. There is a huge amount of common ground about the importance of

cabinet government; the importance of the Cabinet Office; what Robin called avoidance of treating it as a “dustbin”; and that none of us like dual-hatting. The point of difference between them and me comes in one particular phrase. They say, “The Office of the Prime Minister and the Cabinet Office are functionally distinct”. I think that there is some danger in this. Oddly enough, there has been very little discussion so far as to what does the Cabinet Office actually describe its own mission as. That is, (1) supporting the Prime Minister; (2) supporting the Cabinet; (3) strengthening the Civil Service. In my view there should be a fourth, which is maintaining the ethical framework of the public sector. If you say to the Prime Minister, “We in the Cabinet Office basically work for the Cabinet and you, in so far as you are a part of the Cabinet”, I think that you will be inviting the Prime Minister to say, “I will create my own apparatus”. The big danger is that, instead of treating the Cabinet Secretary and his staff as his life support system, his absolute, number one, turn-to-first adviser – which is what I think should happen – he then creates an apparatus of his own of vastly inferior quality. That, to me, is the big danger. The danger they seem to be addressing is if the Prime Minister – as in Australia, the Prime Minister and Cabinet – takes over the Cabinet Office, will he in a sense steal that apparatus from his colleagues? I think that creating a strong bond between the Cabinet Secretary and the Prime Minister is the way to ensure that the interests of the rest of Cabinet are properly looked after and defended, and a go-it-alone, poorly advised Prime Minister is the biggest danger that we face. The second thing about my position was this. The discussion always comes up about a Cabinet Secretary/Head of the Civil Service. History tells us that it has been tried twice and it was a flop both times. If you talk to the people who got the job as Head of the Home Civil Service – Douglas Allen and, if you could, the late Ian Bancroft – I think that they would probably say, “I wish I’d never done it”. They got very badly isolated. I do not think you can distinguish the job of the business of government from the capability of it. In no other

organisation in the private sector or elsewhere would you expect the guy at the top just to run the business and someone else looks after the people, appoints them, motivates them, pays them, and so on. I think those two things absolutely go together. The clear message I got from the Prime Minister when I was appointed in 2002 was that he wanted to put more weight and drive behind the improvement of the Civil Service and the public services. My particular solution was that there is a third job, which is a Prime Minister's principal security and intelligence adviser. I happened to have available a man who could do that job many times better than I could do it, who was David Omand, who was then succeeded by Richard Mottram, who was also eminently qualified for it. So instead of having a Cabinet Secretary who then had the job that Robin filled, which was delegating the development and the capability of the Civil Service to another permanent secretary, that was the bit of the work that I took and, in exchange, the second permanent secretary in the department was the intelligence and security co-ordinator – particularly because I had someone who was available to do it. Maybe it was an *ad hominem* solution, but it worked for me. Gus has reversed it slightly; he has taken back the accounting officer role and the SIV. If you have the right person, it is an alternative which works admirably; but I would definitely not split the role.

Q166 Chairman: Following Lord Rodgers' question about what happened in the past, when you told the Committee a few moments ago that you do not know whether the Leader of the House of Lords was consulted about the proposed abolition of the Lord Chancellor's role, do you think you should have known?

Lord Turnbull: I think I would say that I do not remember. Who was the Leader of the House of Lords?

Q167 Chairman: Lord Williams.

Lord Turnbull: Probably.

Q168 Chairman: It was Lord Williams, yes. You said you do not know.

Lord Turnbull: The answer is that I will stick with “I do not know”.

Q169 Chairman: Do you think you should have known?

Lord Turnbull: I think probably I should. This is one of those things where I will defend very strongly the outcome we have achieved. I do not expect anyone ever to go back on that. Are we going to go back to ---

Q170 Chairman: We are looking at the process.

Lord Turnbull: Okay, but right at the outset, as I said, the process was flawed – for a variety of reasons.

Q171 Lord Shaw of Northstead: Sir Robin, in your paper which you kindly sent to us you have a heading “The ‘dustbin’ function” and you go on to say that “The Cabinet Office has from time to time been seen as a home for special units or other activities for which no other natural home had been established”. With experience, do you feel that this has led to problems? Has it always worked in a satisfactory way? Could there be improvements?

Sir Robin Mountfield: No, I do not think it has worked satisfactorily. I do not think it should be a dustbin. I think that alternative homes should be found for most of these activities. Some of them were related to the Civil Service – the Civil Service College and some of the other things that Michael Heseltine had me privatise before the 1997 election, and some he failed to get done in time. I think that it was reasonable for those to be there; but others – the Women’s Unit, the Deregulation Unit and things like that – I do not think are really appropriate to the Cabinet Office. Others grew out of what Andrew called the ethical and propriety kind of role. For example, our initial interest in freedom of information, which grew originally out of the guidance on freedom on information pre-1997. That was taken

away from us and given to the Home Office initially, and then into the Ministry of Justice. Whether that was the right thing or not I am not sure; I think it is arguable. I think that the “dustbin” function should be kept to the absolute minimum. For example, I cannot for the life of me see why the third sector should lie in the Cabinet Office. It seems a wholly inappropriate place.

Q172 Lord Pannick: Could I ask one further question about the abolition of the office of Lord Chancellor? As I understood your evidence, you told us that the problem was that Lord Irvine was opposed to the policy and therefore proper consultation could not be carried out. Was consideration given by the Prime Minister, was advice given to the Prime Minister, that an option would have been to appoint a new Lord Chancellor sympathetic to the proposed policy and then conduct the necessary consultation with the judiciary, the Leader of the House and all other interested persons? What was the urgency? That is what I do not really understand.

Lord Turnbull: It was an option and, in retrospect, it might have been a better option. Who was the ideal person to do it? I suppose he was succeeded by Lord Falconer, who probably would have been happy to take it on. This reflects the then Prime Minister’s view that you get on with things, and we have seen the results – for both good and ill.

Q173 Lord Pannick: Were these problems in any way contributed to, do you think, by what Sir Robin describes as the massive burden on the Cabinet Secretary? Do you think the Cabinet Secretary can effectively, efficiently, perform the role of Head of the Civil Service and also policy adviser to the Prime Minister in today’s world, with all the demands that those posts entail?

Lord Turnbull: I think they can. I do not think they can do the three roles, of being the Prime Minister’s security adviser as well. However, you have some exceptionally able people

supporting the Cabinet Secretary; for example, the heads of the various secretariats. In my experience, these have almost always been absolutely the best civil servants that Whitehall could produce. You have to use those. Part of the reason I did not like dual-hatting was that, for example, what would have been called the Foreign Affairs Private Secretary was then called the Foreign Affairs Adviser, and then became the head of the relevant secretariat – the Overseas and Defence Secretariat. That I think weakened the Overseas and Defence Secretariat and that was not a good idea. I think that it has largely been reversed.

Sir Robin Mountfield: I am a little more ambivalent about the combination of the two roles. I am genuinely ambivalent, meaning that I can see advantages both ways. I do not think it is a law of nature that the two should be combined. In fact, before 1981, when Robert Armstrong took on the role initially of Joint Head of the Civil Service as well as Cabinet Secretary, there were only two very brief periods when the two roles had been combined. Bridges had it from 1945 to 1947 and Brook had it from 1956 to 1962, or something of that kind. So this is not a law of nature and there are advantages and disadvantages. The prime claimed advantage, which I think Andrew and his three predecessors would all hold very dear, is the need for somebody with frequent access to the Prime Minister to be there to lead and represent the Civil Service, the reform of it, and so on. The contrary argument is that he may be somewhat conflicted. Unlike, for example, the Chiefs of Staff, he might be slightly hesitant about representing the interests of the profession rather than the priorities of the Government of the day, and I think that they are slightly distinct functions. There is an argument on both sides of this debate, therefore, and it seems to me that you could run it either way.

Lord Turnbull: There are other models. New Zealand and Australia are interesting. My Lord Chairman, you will be familiar with Australia. New Zealand is the more extreme. They have a Public Services Commissioner, who is the appointer, the objective-setter, an assessor of performance of the permanent secretary cadre. I think it is slightly odd if you are agreeing

on behalf of the Prime Minister what you want the permanent secretaries to be doing and then someone else assesses whether they have done it or not. This is absolutely central to what the Prime Minister's interests are, and I think that the splitting of the "what" from the "how" and the capability is a rather strange way to do it. However, those two countries have divided these functions in ways which leave the Cabinet Secretary as still the more important figure but the Public Services Commissioner is a bigger figure, has a bigger scope, than the Civil Service Commissioner in our system.

Q174 Lord Peston: Following on David Pannick's general area of enquiry and doing it in a dynamic context, Dr Heffernan told us that he thought that the personal authority of the Cabinet Secretary had diminished over the past ten years. My view, going back to when I was a very junior economist in the Treasury in the Sixties right through to the Seventies, is that there has been no decline in the senior people in the Civil Service at all, but there has been a major decline in the personal authority of senior civil servants over the last ten years. I do not mean a minor decline; I mean a major decline, compared with the people as they acted in the early Sixties, when I was very young and junior, and even in the Seventies. Do you agree with that?

Lord Turnbull: Yes, I do. It sometimes comes up in a similar debate over whether civil servants have been politicised. You say to people, "What do you mean by 'politicised'? Do you mean that we are chosen because we are sympathetic to the Government in power?" I do not think that there is any evidence of that at all. Indeed, the Civil Service Commissioner plays a bigger role in appointments now than ten or 15 years ago. "Do you mean that they behave partially? They get too sucked in?" – a bit, but people get pulled up. The real issue is not that civil servants have been politicised: their work has been politicised. More of the things that they used to do have now gone through political channels. This comes back to Robin's point about special advisers. In the departments I have worked in there was a

balanced triangle of the minister, the special advisers and the civil servants. The special advisers supplemented the advice available to their minister. They could criticise it; they could suggest alternative things; but they did not try to suppress or supplant that advice. That is the respect in which I think the authority and closeness of civil servants has diminished. If you read Douglas Wass's excellent book on the whole 1974-79 IMF crisis, he was much closer to Denis Healey – in the trenches with Denis Healey – than any of his successors have managed to achieve.

Sir Robin Mountfield: I agree with that.

Q175 Lord Rowlands: Was that an exceptional circumstance or do you think that is institutionally so?

Lord Turnbull: I think it reflected the way the minister wanted to work. It is reversible, I think.

Sir Robin Mountfield: There are the short-term personality reasons, as always, but there are also some longer-term trends. When I joined the service, which is nearly half a century ago, the Civil Service was a monolithic provider of advice. There was nobody else; there was nobody was consulted – think tanks or universities or anything of that kind. That was thoroughly bad. There was not the contestability of advice, which has been one of the necessary challenges. The introduction of special advisers of various kinds from the 1960s on has been to my mind a benign thing, provided it is kept under control. It seems to me that increasingly – it was happening certainly in my last few years in the service and, as an outside observer, it seems to me to have happened a lot more since – the Civil Service advice, instead of being seen as perhaps the primary synthesizer of advice in a number of places, has been effectively sidelined, at least at the top. I think that is a very serious problem. It seems to me that if your Lordships have a role, if we ever get the Constitutional Renewal Bill on the Civil Service activities, that is a thing that needs to be looked at very carefully. The powers and

duties of special advisers have not been adequately defined in the draft. There is no control on what they can do or even on their numbers. In principle it would be open to a Government of malign intent to replace the Civil Service entirely with special advisers, to manage everything and run things, without any control. That is a crazy situation and there needs to be either a control on numbers or a control on function, or both. The function ought to be to supplement advice, not to provide the primary source of advice or to act as a filter. That is wrong.

Q176 Lord Woolf: May I move on to a rather different matter? Perhaps I should address this to Lord Turnbull initially, but I am sure that Sir Robin has something to add. Over the period that you were in office as Secretary to the Cabinet, did the relationship between the Treasury and the Cabinet Office create any particular difficulties for you?

Lord Turnbull: I think the relationship between the Treasury and the Cabinet Office at official level was trying to correct the problems of relationships happening elsewhere. There were many conversations saying, “I’m not supposed to tell you this but...” It is well documented that there were difficulties in the relationship between the Prime Minister and the Chancellor, but all the people I dealt with – whether I was in the Treasury trying to deal with the Cabinet Office or in the Cabinet Office dealing with the Treasury – we were trying to maintain a good, co-operative relationship, and often we consoled each other on just how difficult it was going to be. It is a very important relationship. The relationship between the Treasury and the Cabinet Office I would describe as the San Andreas Fault of government. If governments collapse, that is where it happens. When Mrs Thatcher fell out with two Chancellors, that was a very important weakening of her position. Oddly enough, in the Blair-Brown years, in some ways they worked very closely together but the way they worked together made a lot of difficulties for those working around them. It should be absolutely part

of the Cabinet Office's job, not just with the Treasury but any other department – and Robin may have worked for the Secretary of State for Energy ---

Sir Robin Mountfield: I worked for 29 Cabinet ministers in total!

Lord Turnbull: In the Seventies there were problems in that relationship and the Cabinet Office has to try to keep the show on the road.

Q177 Lord Woolf: Would you describe those tensions, as Sir Robin I think has, as desirable in the sense that they are creative?

Lord Turnbull: There will always be an element of tension with the Treasury and the rest of government when resources are scarce. In the last 12 years they have not been but we could be getting to that point. There will always be disputes to be resolved, sometimes between the Treasury and departments; e.g. the foundation of hospitals dispute between the Treasury and the Department of Health. The Cabinet Office has an absolutely central function to try to find solutions to those things and keep the officials working, even though there is intense rivalry and suspicion between their political bosses.

Q178 Lord Woolf: Sir Robin, would you want to add anything?

Sir Robin Mountfield: The crucial thing is that people have to make the situation work. The boundary is bound to exist. If it becomes competition or duplication, as has happened sometimes in the past, particularly with Number 10 rather than the Cabinet Office, I think that has been a very serious problem. For example, there was a long period at the beginning of the Blair administration when the Treasury had hugely complicated PSAs with departments and Number 10 was setting strings of separate objectives for the Health Service, or whatever it was, which were overlapping. It is a crazy situation. That was done primarily by special advisers in Number 10, to my recollection. The thing has to be made to work.

Q179 Lord Norton of Louth: This follows on from the very point you have made, which is the relationship between the Cabinet Office and other departments and how that has changed. A previous Cabinet Secretary we had before us generally took the view that the role of individual departments and ministers heading those departments had diminished over time relative to the centre, and rather regretted that. I think that is the point you touch upon in your paper, Sir Robin: that the centre has perhaps become a bit too strong in relation to departments.

Lord Turnbull: I think there is truth in that but that was not the fault of the Cabinet Office specifically. The creation of a number of units in the centre that did not necessarily need to be there may have contributed to it, but it is the process of the way in which policy gets reviewed. The classical way would be that the Prime Minister says, “I am getting very concerned about X, a planning system. We are not getting enough land clear for house building. You, Secretary of State, please go away and establish a review. You can appoint an outsider to lead it if you want, but basically I am holding you responsible for coming up with a set of proposals”. Too often we have seen announcements coming, either from the Prime Minister prompted by the strategy or the policy unit, or from the Treasury, saying, “I have appointed Mr X to review such-and-such”. Kate Barker reviews planning and housing; Rod Eddington does transport. I think that this is very belittling. I do not think that departments will get good at doing policy if they do not get the chance to practise it. Why, for example, was the late Derek Higgs asked to review the Combined Code? Corporate governance is an absolutely standard DTI function. It just was not necessary. You would ask the DTI to do it. In the review group you would seek representation of the Number 10 interests and the Treasury. Over time, it is that process of the centre setting something up which may duplicate something or a sense, as it were, of the secretary of state having their

homework marked in public. “You did this strategy on drugs. It wasn’t really very good, so I have set up another one and I have asked someone to do it.”

Sir Robin Mountfield: I do not altogether agree with that, because I think that so many of the really important issues span departmental boundaries. The problem seems to me to be that those have been resolved top-down by groups in the Cabinet Office. The right solution would be for the Cabinet Office to establish a structure, whether it is the Strategy Unit or the Social Exclusion Unit or whatever, that is owned jointly by all the departments concerned and they are represented on it. They share in the development of the policy; they contribute to it. If you look at drugs, for example, that spans five or six departments, one way or another. I do not know how that is dealt with now. There was a drugs unit in the Cabinet Office which made some progress; it was not wholly successful, for different reasons. These big issues are the real meat of modern government, and I do not think that we have found a wholly satisfactory way of doing it. The need to span the horizontal interests and to optimise it – I describe this as optimising it – with the vertical responsibilities and accountabilities which have to be there, is the nub of the problem of how to organise modern government.

Q180 Lord Norton of Louth: Basically it is out of kilter. I think Lord Turnbull’s point was essentially about it being overly vertical.

Sir Robin Mountfield: It is overly vertical and overly directed from the top, rather than co-operatively resolved across the boundaries.

Lord Norton of Louth: So it is as a consequence almost of that point about “presidentialisation”; there is that degree of detachment, of wanting to do everything at the top, rather than leaving it to departments.

Q181 Lord Wallace of Tankerness: Sir Robin has already expressed his views on the relationship with special advisers. Perhaps I could ask him if he thinks that this has been a

trend over many years and has there been acceleration since 1997? I would also be interested in Lord Turnbull's observations on the role of special advisers and if he thinks that there is also a need to have some legislative framework within which they operate.

Sir Robin Mountfield: I think that it has accelerated. Some of this existed in Mrs Thatcher's time, for example. Even under John Major the influence of the Policy Unit in Number 10 on education policy was contrary to the view of the department, and the curious continuity between John Major's Policy Unit and Blair's Policy Unit on that very issue – in conflict with the department's policy as it happened. It has accelerated but I do not accept the watershed proposition.

Lord Turnbull: Robin Butler gave you some figures: roughly 40 in 1997, 80 now. There used to be something called the "two-per rule" – two special advisers per secretary of state. By and large, out there in ordinary departments there has been a bit of grey drift. Maybe it is now three. There are not great staffs of special advisers out there. The massive increase, of this increase of 38 or 40 I would say that 26 has been in Number 10. Also, Gordon Brown when Chancellor created this thing called the Panel of Economic Advisers. It was just a smokescreen to get more special advisers. He had something like nine and Number 10 was thick with special advisers. What has happened is not that more special advisers have been appointed but the place where they have been located has had a particular effect. It has increased the strength of the centre on policy and on its presentation. There is also this growing sense of "the political career". Leave university, lick envelopes at Central Office for a year; then get into a think tank; appointed as a special adviser; get into Parliament and, by the time you are 38, you have got into the Cabinet without touching the sides of real life. Last week I met Nigel Lawson. I said, "How old were you when you became an MP?" He said, "I was 44". I happened to go into the corridor and I put the same question to Douglas Hurd. He said, "I was 42". Nowadays – and it is as true of the current Opposition leadership as of

the present leadership – they have got into politics very early and have specialised very early. It tells you something about what experience they have as special advisers. They are not the Pestons, the Godleys, the Robert Neals and Michael Posners. They are not people of that seniority and wisdom. They are political animals from the start. So a combination of the number, what kind of people they are and what kind of experience they have, and where they have ended up in the system has had a particularly strong effect.

Q182 Lord Rowlands: A last question from a guy who got elected in 1966 at the age of 26, I will defend youth or just say that I have grown older and wiser as a result of it! With all these changes happening, what about the issue of parliamentary accountability? Do you think that as a result of all these changes there has been a blurring of accountability and therefore a blurring of the ability of Parliament to supervise, oversee and scrutinise?

Sir Robin Mountfield: I think there has but I am not sure that I could identify exactly how or why, and whether this is merely a reflection of, recently, Prime Ministers with very large majorities. Probably accountability, or at least responsiveness to Parliament, was stronger during the John Major period, when he had a relatively small majority, than in the Thatcher period or the Blair period, for example. I think that there has been a tendency to ride roughshod over accountability, at least at the ministerial level. I can vouch for the fact that permanent secretaries still regard the PAC with considerable fear.

Lord Turnbull: I think there are problems here about Parliament and the sense that the Government is too controlling. We regard as an advantage that, because the executive and the legislature are fused, the Government can get its legislative programme through and can get the money that it wants. Not even American Presidents can guarantee that. However, as I wrote in my article in the *Financial Times*, there are downsides to it. If you are an able person, you are quite likely to get called up into the Government. If you are young and aspiring, which is more attractive, you can become a committee chairman and you will get

paid £14,000 extra. You would probably get three or four times that if you become a junior minister, which seems a very odd incentive structure. A few weeks ago, at the height of the expenses crisis, people were beginning to talk about some of these things, and I just wonder whether this issue has gone off the boil as that particular crisis abates somewhat. I think that it is something that Parliament needs to address, and the committee structure should be beefed up in importance. I think that the Lords committees – I will flatter you here – bring so much more to the party than people, many of whom are wishing they would get a telephone call and be asked to become a parliamentary under-secretary at Communities and Local Government.

Chairman: My Lord Turnbull, thank you very much indeed for joining us this morning. Time precludes us from debating your proposition that the executive and the legislature are fused, but thank you very much for the evidence you have given us. Sir Robin, on behalf of the Committee, may I also thank you.