

TUESDAY 23 OCTOBER 2007

Present

Bledisloe, V
Goodlad, L
Holme of Cheltenham, L (Chairman)
Lyell of Markyate, L
Morris of Aberavon, L
O'Cathain, B
Quin, B
Rowlands, L
Smith of Clifton, L
Windlesham, L

Witness: **Rt Hon Jack Straw**, a Member of the House of Commons, Lord Chancellor and Secretary of State for Justice, examined.

Q1 Chairman: Lord Chancellor, welcome. It is very good to see you here, thank you for coming. Just as a matter of protocol, given you are multi-hatted, would you prefer to be addressed as Lord Chancellor or Secretary of State?

Mr Straw: It depends on your point of view. I am here really as Lord Chancellor. I have two jobs – I have three, one is representing my constituents – but the Lord Chancellor's role is a distinct role within the law in terms of responsibility for the court system and in respect of the Judiciary – I am not responsible for them any longer – so by all means call me that, or you can call me Jack, if you want, whatever suits you!

Q2 Chairman: You are in the House of Lords, so a certain measure of formality reigns!

Mr Straw: I am in favour of formality but in these circumstances some others are not.

Q3 Chairman: Given that we established a good precedent with your predecessor of regular chances to have this sort of discussion, we will stick with Lord Chancellor, if that is agreeable.

Mr Straw: That is absolutely fine, my Lord.

Q4 Chairman: Thank you. I am told there is about to be a vote so we may have to adjourn, but let us make a start anyhow. I should just say that the proceedings are being televised, so would you be kind enough for the cameras to identify yourself.

Mr Straw: Of course. I am Jack Straw, I am the Lord Chancellor.

Q5 Chairman: Indeed, you are the first Lord Chancellor - this historic role that goes back hundreds of years - to have been a Member of the House of Commons. I wonder if you feel that having an MP rather than a peer as Lord Chancellor is likely to have any significant impact on a role that goes way back in British history, and whether already you have encountered any practical or procedural difficulties exercising this role from the Commons?

Mr Straw: It does make a difference, first of all. It would have been impossible, in my judgment, to have had a Lord Chancellor as head of the Judiciary prior to the 2005 Constitutional Reform Act, who was in the Commons. I am living proof of the fact that it is not impossible to combine being a Member of the House of Commons with the new responsibilities. But I should say – and I said this before the Lord Chief Justice in his court when I went to swear the three oaths that Lord Chancellors are required to make – that I am very conscious of the responsibility that I have as the first Member of the Commons and senior politician to have this role, of the importance of me ensuring that I not only follow to the letter what is required of me in the Constitutional Reform Act but to the spirit in terms of protecting and sustaining the independence of the Judiciary. I am very conscious of that. I have said in other contexts as well that I am conscious also that, whilst I cannot ordain the future, the practices and precedents that I set for this job with luck should be able to set a baseline for how others comport themselves in the post in the future. In terms of practicalities, the only practical problems – that would hardly be worthy of a footnote in

history – have included the fact that the ancient ceremony by which I communicate Her Majesty’s consent to the election of Lord Mayor of London had to be moved from the Princes Chamber, which I am told is part of the House of Lords, to the Robing Room, which everybody said was a much better room and why had they not used it before. And there have been some navigational problems over whether I, as a Royal Commissioner, could deal with the prorogation, which we have passed on for this year and it may be sorted out for next year.

Q6 Chairman: Thank you for that. Can I ask specifically whether – and even this Committee gets confused and if we get confused I daresay other Members of both Houses will be confused – your responsibilities in respect of constitutional reform come under your Lord Chancellor hat or your Secretary of State for Justice hat?

Mr Straw: In terms of legislation essentially I wear, I suppose, the Secretary of State for Justice hat, although it is pretty fungible. Lord Irvine had direct responsibility for some aspects of the 1997 to 2001 constitutional programme. He chaired the Constitutional Affairs Committee in those days and although formerly the Human Rights Bill was my Bill because it was introduced into the Commons we shared responsibility for it. I put it this way, Lord Holme, that until the legislation goes through it is a Secretary of State role. I think it is neither here nor there, to be honest, but sometimes once it has gone through and if it impacts on the role of the Judiciary then it is a Lord Chancorial role.

Q7 Chairman: I suppose a relevant supplementary to that is can you personally, as a senior member of the government and with a responsibility in this area, envisage that at any point the post of Lord Chancellor and Secretary of State for Justice might be split up?

Mr Straw: I am not a soothsayer, a foreteller of the future. It is possible but I think that it is very unlikely. My own sense is that the Ministry of Justice is going to last. There was quite a debate post 9/11 about whether the Home Office was too big. The Conservative Party

proposed that there should be a minister for homeland security. Essentially what you now have in the Home Secretary is exactly that. He is still called Home Secretary and I think that is appropriate. The Home Office has very important responsibilities but they are much less diverse than they were when I was Home Secretary or predecessors of mine were, so all those constitutional responsibilities, most of those were transferred actually in 2001 after I moved on, mainly to what became the Department of Constitutional Affairs but some, for example, in respect of gaming, horseracing, licensing, that sort of area went off to the Department for Constitutional Affairs, and some race relations went to what is now the Department of Communities and Local Government. Then with this big change, which took place and was announced in early May, responsibility for everything really that happens from the door of the court was transferred to what has now become the Ministry of Justice, and I get no sense that that is going to be disturbed. It could be, but I do not think it will be.

Q8 Chairman: The particular anxiety of this Committee, which we have expressed in more than one report, is that constitutional affairs, although high in the new Prime Minister's list of priorities, could find itself in the reorganisation a poor relation. Do you think there is any danger of that happening?

Mr Straw: I think there is no danger of that with this Prime Minister at all; quite the reverse because it is a very important priority. My Lord Chairman, obviously I cannot speak for future Prime Ministers, it depends on the relative priority that it is given, and in any case we have periods of constitutional change in this country and we have periods of consolidation. We had quite a significant period of constitutional change, just going back during our administration, between 1997 and 2001 and a period of consolidation for six years after that and there is now a further period of change, so it is going to go like this. It will not be relegated because even once it has been passed there is a continuing responsibility to

maintain, for example, the freedom of information regime, the data protection regime and the whole human rights and responsibilities agenda, even once the changes are agreed.

Q9 Chairman: Could I move on to a question which we asked your predecessor and we had an interesting answer both from him and from the Lord Chief Justice, which is how would you personally, now that this weighty, historical role has descended on your shoulders, define the Rule of Law? And you will recall in the Constitutional Reform Act that you have a constitutional role in relation to the principle of the Rule of Law. How would you define that?

Mr Straw: I am glad you have asked me that question. The way I would define it is by recommending that those who wish to have a better understanding of the concept should read Lord Bingham's excellent lecture that he gave a few months ago – the Sir David Williams lecture. He has a far better legal mind than mine and I think his exposition of the Rule of Law, his eight sub-rules, is brilliant. Lord Bingham in this lecture, for those of you who are familiar with it, refers to somebody of whom I have not heard, called Brian Tamanaha, who described the Rule of Law as "an exceedingly elusive notion" giving rise to a "rampant divergence of understandings" and "everyone is for it, but have contrasting convictions about what it is". One of the points that Lord Bingham makes is that of course you can have the Rule of Law also within an entirely authoritarian context, and so you have to ensure that the Rule of Law operates in a democracy with proper checks and balances and so on, and he sets out these eight conditions for it, and I defer to him on that. For those who have not read it, it is a really interesting lecture.

Q10 Chairman: I will bring in Lord Morris in a moment, but one way of expressing the purpose of the question is: over and above the independence of the Judiciary, which let us assume is common ground, what do you think is crucial or not?

Mr Straw: I will tell you what I think – and this is where I am extremely conscious of my own responsibilities – which is that fundamental to the operation of the Rule of Law within a democracy is that there should be an understanding about the separation of powers and particularly the separation between the Executive and the Legislature on the one hand and the Judiciary on the other hand, and a mutual respect about the different roles that each has. That therefore requires there to be a responsibility on politicians, those in the Executive and Legislature – and of course in our system we are all mixed up – to respect the role of the courts, to appreciate that in a democracy the courts are not only arbitrating between private individuals, private citizens and also between the State – the Crown in our case – and those who are alleged to have transgressed, through criminal proceedings, but crucially the courts are there to arbitrate and moderate on disputes which arise between citizens and the State, the other way, and that we are regularly going to be respondents to actions and quite frequently will lose those, and we have to take it on the chin without a huge amount of complaint. We may regret a particular decision and we are entitled to say that, but not to do that in a disrespectful way. On the other hand, there is also a *quid pro quo* for this and Lord Bingham said, “Thus one can agree with Justice Heydon of the High Court of Australia that political activism, taken to extremes, can spell the death of the Rule of Law.” So there needs to be an understanding about where the role of the court ceases and the role of political decision-making takes over. I think in this jurisdiction that we have the balance pretty well right.

Q11 Chairman: If you felt as a member of the Cabinet, and a senior member at that, that the government was in danger of infringing the Rule of Law, what would you see your responsibility as being?

Mr Straw: To say so, first of all privately to colleagues, and then publicly, if necessary.

Q12 Chairman: Publicly as in Cabinet?

Mr Straw: No! Surprisingly enough, notwithstanding rumours to the contrary on the whole what happens in Cabinet does not get broadcast, especially not these days actually, if I can put it that way. If necessary publicly, in public – go on the record on it.

Q13 Baroness O'Cathain: On the floor of the House of Commons?

Mr Straw: On the floor of the House of Commons or in the public print, yes; I am quite clear about that.

Q14 Lord Morris of Aberavon: Lord Chancellor, I supported the maintenance of the title of Lord Chancellor ---

Mr Straw: Thank you!

Q15 Lord Morris of Aberavon: ... in the House of Lords at the time and it has been a pleasure if not relief that a senior politician like yourself was appointed to it, being the first from the House of Commons. But having reflected now on part of the statutory responsibilities which could easily be amended is there any real reason for maintaining this strange distinction between Secretary of State and Lord Chancellor? Do you adopt the same approach as your predecessor? We noticed that the opening of the new session was a bit different from what your predecessor did. Is there any real purpose now in maintaining this position?

Mr Straw: Ultimately it is for Parliament and not for me to decide. I certainly do not think it is a priority to go through that great argument that took place in 2004/2005 and change it. As I say, I think I have a responsibility to show that this arrangement with the Lord Chancellor in the Commons is workable; and, as I have again said publicly, may paradoxically work to enhance the independence of the Judiciary because if you are down in that end you have to be very conscious of the need for separation. I also think, Lord Morris, that since the role of

Lord Chancellor is embedded in all sorts of statutes and procedures it would be a huge amount of trouble, which is partly why the last effort was abandoned to seek to abolish it. This is purely at a personal and historical level – I would be rather sad to see the post being abolished having survived through the vicissitudes of time since the seventh century. It is a rather quaint relic. As I say, there is a purpose, however, with it, which is that I think that it is worthwhile having a distinction in terms of role and title in respect of the Judiciary from the other functions. I really do think that is important.

Chairman: Thank you very much. Lord Lyell.

Q16 Lord Lyell of Markyate: Lord Chancellor, you emphasised, and I agree with you very strongly, I think, about the importance of separation of powers and both historically and, as I understand it, still under the Rule of Law today and black letter law today, there is a separation which gives a particular role both to the Lord Chancellor and to the Attorney General to ensure the purity, the complete absence of party political influence on both the Judiciary, which must be totally protected, and the purity of the prosecution process. I was somewhat surprised to hear the Prime Minister in July, when he talked about Executive changes, lumping the Attorney General in with 11 other items of the Executive. Would you not agree with me – I hope you would – that the Attorney General is not in his prosecutorial or advice-giving functions a member of the Executive? He is the first Law Officer of the Crown, appointed under the Great Seal, with the same seal that a judge has, and acting as independent he is appointed by the Prime Minister but he is Her Majesty's Attorney General not the Prime Minister's Attorney General, and although the Prime Minister can sack him, if he wishes, he cannot tell him what to do. Do you agree?

Mr Straw: All that is true, Lord Lyell, but the Prime Minister did not lump it in. What he sought to do was to deal with some present issues and a perception which has been there from time to time and going back that there needed to be a greater clarity about the role of the

Attorney General. Lord Goldsmith is both a friend of mine and someone for whom I have the highest regard in terms of his integrity, but it is just a matter of fact that some of the decisions and processes in which he was involved became quite controversial and the Prime Minister thought – and so did Baroness Scotland – that it was sensible to try to ensure that there was stronger protection for that role, and maybe in some respects to separate the role or to make it clearer.

Q17 Lord Lyell of Markyate: Is not the problem when you have what are – and you used the word “perception” – perceived to have been mistakes – some of them wrongly – that instead of changing the office you should look into what went wrong. The importance of the independence of the prosecuting authorities and the answerability of government in its widest sense, through the Law Officers or the Lord Chancellor, for that integrity are things not to be lightly got rid of.

Mr Straw: I agree with that entirely and I have made the point myself that there has to be – and you, Lord Lyell, know this much better than me – a point where the prosecutorial role and the role of senior adviser to the government has obviously to come into the counsels of the Executive – there is no way out of that.

Q18 Lord Lyell of Markyate: The counsels of Government, if I may say so.

Mr Straw: That is what I meant, yes, counsels of Government. Also, because there is a public interest test as to prosecutions in our jurisdiction as well as an evidential test there are going to be some occasions where what is judged to be the public interest will be quite widely defined, not least in terms of national security and so on. The other thing I would say, having, as it were, served with Lord Goldsmith during Iraq, where there is a highly controversial decision which has to be made and advice given as there was in respect of military action in Iraq, whether it was inevitable that the process and maybe the individual giving the advice

becomes subject to some controversy is beside the point, but in this case the process did and so did the person, and it was reflecting on that and some other issues. There was some controversy about the decision in respect of the Serious Fraud Office and BAES but the main controversy has arisen over legal advice, as you know, but there is a consultative document being issued on the role of the Attorney General and we are currently in the process of receiving comments on it.

Q19 Lord Lyell of Markyate: Can I ask you for your reply on these observations? First of all, the Attorney General over Iraq asked the Prime Minister, Tony Blair, for an express written assurance that Britain's immediate national interests were under threat, and he got it. That was described later by the former Secretary of the Cabinet, Lord Butler, as disingenuous. The second point is that over BAE, whilst very senior public officials, our Ambassador in Saudi Arabia and the Director of the Serious Fraud Office, looked at this matter most carefully the Director of the Serious Fraud Office took the decision and was very careful not to do what I am about to say, the Prime Minister suddenly weighs in saying that a good reason was because we were going to lose a lot of business, which is unlawful. If you get the Prime Minister of the day saying unlawful things at the time of a highly important quasi-judicial decision that needs to be brought into the public eye and seen for what it was.

Mr Straw: If I may say so, I do not have the Butler Report in front of me and nor do I recollect exactly what the Prime Minister said – it was words to that effect – but the issue was generally more complicated and the central issue, which I do recall very acutely in respect of the legal position on the Iraq war, went back to whether there was an original decision by the Security Council under Resolutions 678 and 687, which allowed for military action and whether, as it were, that had since been refreshed by Resolution 1441 and whether the conditions in 1441, which could provide for that refreshment to become active, had been fulfilled. I am happy to spend the next hour explaining why in my judgment the decision that

was reached by Lord Goldsmith was correct, and that was basically where we had got to. The Prime Minister is on the record in public as saying what he thought the nature of the threat was. As far as the SFO decision is concerned, again I am sorry I do not have the text of what Mr Blair said at the time, but what I do recall was that there were – I think it was on 16 December – linked statements, one made by the head of the SFO and another one made by the Attorney downstairs here and repeated by Mike O’Brien at our end, which set out the circumstances in which it had been decided to finish the investigation. It probably would have been better if that is all that had been said, is the answer to your question.

Q20 Chairman: We will have to move on, Lord Lyell. In fact it may interest you to know, Lord Chancellor, that this Committee is planning – I am afraid probably without the period of consultation that you have established for the role of the Attorney General – to issue a short report setting out some of the issues about the future role of the Attorney General, which I hope will be found helpful.

Mr Straw: Thank you, that will be very helpful because the consultation process is still continuing.

Q21 Chairman: Since we have got on to the question of war-making via the Iraq war, can I be clear – and I know that you have had a chance to study and indeed have responded to our report on war-making powers – do I take it that despite the solid opposition we had from your predecessor Lord Chancellor to any question of Parliament making the ultimate decision approving any significant deployment of the Armed Forces into armed conflict that it is now the irreversible position of the government that that is a decision for Parliament?

Mr Straw: The principle is, yes, to that, and I expressed that in the debate that we had in mid-May – I think it was 17 May – when we had a debate in our House on an Opposition motion and I moved a amendment to do that, and we were informed both by your report, which

recommended the convention route and also by the Public Administration Select Committee report from our end, which recommended a more legislative route and, as you know, we are currently preparing to produce a consultative document which sets out in more detail the government thinking for consultation.

Q22 Chairman: As things stand today which route do you tend to prefer, the convention or the statutory route?

Mr Straw: This is a consultation so you cannot have a consultation and then say, “It is what we have decided and we are not take any notice of things.” If ever you are labouring away and you think that what you are doing is not making a difference then you need to reflect on why there has been a shift within government on the principle. The principle has been conceded and it is jointly because of the work of this Select Committee and the one at our end, because people think and read these documents and can see a strong case. Also the fact that it was two authoritative Select Committees where you are able to say, “We have thought about this and we have to take very full account of the anxieties we all share that the military action should not be inappropriately constrained, that our commanders and troops on the ground should not be compromised but we think there is a way through this,” is very influential. It is fair to say that the balance of opinion is in favour of the convention approach, but when you pin it down it is not just that a textbook would write that this has become a convention but pin it down in resolutions of the House of Commons and its Standing Orders. A possibility of a hybrid approach maybe but with some serious misgivings about a wholly statutory approach, but that is where we are.

Q23 Chairman: We will await the consultation with great interest. I have to say that a big shift in the government’s thinking is a masterly understatement for what was really a 180

degree change, and I know that you yourself were part of that and this Committee certainly welcomed the change in the government's response.

Mr Straw: Thank you. We can argue about the angle of the change, but I would say in the government's mitigation that the major change took place in advance of Iraq because I do not know what decisions would have been approached 30 or 40 years ago but it certainly became first off to the late Robin Cook and myself that we could not possibly make decisions which were legitimated in those circumstances unless there had been not just one but a series of debates and decisions in the House of Commons, and whatever else you say about that there was a whole series of explicit, substantive decisions taken.

Chairman: Indeed. Lord Rowlands.

Q24 Lord Rowlands: May I just say, Lord Chancellor, when we started our inquiry I was a passionate supporter of the statutory approach but during the course of our inquiry, frankly, from the evidence one has heard and tackling the actual way you drafted it I became a convert to the convention because I could not quite see how you could pin down in statute all of the range of possibilities that would arise. Do you think you can crack it statutorily?

Mr Straw: I do not know, is the answer. I have set out, Lord Rowlands, where the government is coming from and what the Prime Minister has said in the House and also what is said in the Green Paper that I published alongside the Prime Minister's statement on 3 July was pretty clear. It tilted pretty strongly ---

Q25 Lord Rowlands: But you also floated the idea of a hybrid.

Mr Straw: You will have to wait, if I may say so. Just as there are various forms of a convention which could just be we have changed our practice and it is reflected in the exposition of Erskine May, to actually putting it down in at least grey letter law in Standing Orders, there are possibilities that we have tried to adumbrate in the consultative document.

What we say at paragraph 29 of the Command Paper to 7170 is that, “The Government will propose that the House of Commons develop a parliamentary convention that could be formalised by a resolution. In parallel, it will give further consideration to the option of legislation,” and that is what we are seeking to do to flesh out in the consultative document. Can I say, Lord Rowlands, that I hope very much that whether as a Committee or whether as individuals you are able, given your own interest and knowledge in this area, to contribute directly to the consultation because it is really important we get this right?

Chairman: Indeed. Lord Bledisloe.

Q26 Viscount Bledisloe: Lord Chancellor, your Green Paper talks only about the role of the House of Commons in dealing with this. What role do you see for this House in this matter?

Mr Straw: We thought about this a great deal – and it is not in any sense to be regarded as an insult or impertinence towards this House – and we are clear of the fundamental principle that decisions about going to war have to be made ultimately by the elected chamber. But I think there is every argument in favour of those debates in the Commons being informed by debates here in the Lords, so it is a question of making sure that the one comes before the other.

Q27 Viscount Bledisloe: So you see that this House having a role to play and then the House of Commons having a debate in the light of that and making a decision which is then binding?

Mr Straw: Yes. You can have a debate simultaneously but then people can rightly say that apart from voicing opinions what exactly is the point of the debate. I think it is far more satisfactory – it is obviously a matter for you – for the debate here to precede the debate in the Commons.

Q28 Chairman: Could I move the questioning on to a different area, which is the still regrettably outstanding question relating to the creation of the Ministry of Justice in terms of unresolved issues between the Executive and the Judiciary. This is a saga that seems to have been going on forever. The negotiations were supposed to have been concluded before the introduction of the Ministry of Justice, but they were not, and when you came in as the new minister you quite understandably said that you wanted time to understand the issues. We are now three months later and I think there is a great deal of curiosity as to where exactly we have got.

Mr Straw: I said this when I gave evidence to the Constitutional Affairs Select Committee at the other end a couple of weeks ago, I see it as part of a process – obviously with products from the process – but not as a single event. There is one issue, Lord Holme, on which progress is being made – and I cannot say when there is going to be a final conclusion – which is in respect of the formal organisation of Her Majesty’s Court Service, which I think is a matter which particularly exercised the Judiciary. We have had a working party which has been led jointly by Clare Sumner, who is a senior official in the Ministry of Justice, and Michael Walker, who is a well known and experienced District Judge, who came forward with a series of option papers which both the Lord Chief and his colleagues are looking at and so am I, and Alex Allan, the Permanent Secretary of the Department is trying to bring together in the judicial working group. So that work is continuing.

Q29 Chairman: I am sorry to interrupt, that is specifically on the Court Service; is that a sub-group of the larger negotiations?

Mr Straw: It is a rather key issue because the working party, which is at an official level, which Clare Sumner and Michael Walker are leading feeds in ultimately to the Lord Chief and myself, but also through this judicial working group as well. There are a variety of options ranging from leave things where they are to establish the Court Service as a non-

departmental public body, almost wholly at arm's length from ministers. It may not come as any great surprise for your Lordships to learn that I favour something somewhere in the middle because there is no question about any interference with judicial decisions. There are issues which inevitably impact on the Court Service as an administrative body, my department and me as the department responsible for the Court Service and me particularly as the minister who has to go to the Treasury to negotiate for more money to be able to show that this is an effective and efficient public service, and there is a complicated set of relationships there. There is also a very large number of non-judicial staff working in the Court Service, who are the direct responsibility of my department and of me. So it is squaring that circle against the background in which the Court Service has only recently been established. But that work is going on. There is a second area of very considerable frustration for the Judiciary, which is over judicial appointments and over the tardiness of the process and what was seen as some gratuitous interference in the process. I have sought essentially to extract myself from any unnecessary involvement in the process, so that my involvement for the vast bulk of judicial appointments is at the minimum required under the Constitutional Reform Act. I cannot obviously break the law, but I have been endeavouring to improve the processes between the Judicial Appointments Commission and my own department and the Director General which covers that to stop second guessing and shadowing by each, to get clarity about respective roles and to sort out some of the problems that have arisen simply over what used to be called manpower planning – I suppose forecast of staffing levels – for future demand for Recorders here, Circuit Judges there and High Court Judges there, and to encourage, to put it mildly, the Judicial Appointments Commission to reduce the time that this process is taking. It ought to be very straightforward but the fact is that it is taking eight weeks to get medicals done after an appointment is otherwise ticked off, so just trying to compress these processes and also making sure that my office and also that I

turn round the decisions as quickly as possible. It is for the senior Judiciary to say what their perception is of this but I hope they would say that they think there has been some perceptible improvement.

Q30 Chairman: Perhaps if we have time we could come back to the issue of judicial appointments later, but as I understand it that was not one of the main bones of contention in the spring between the Judiciary and your department around the creation of the Ministry of Justice; that was not one of the big bones of contention at that time anyway.

Mr Straw: It certainly was when I became Lord Chancellor, let me say. I genuinely was not present at those discussions. There was very great frustration by the senior Judiciary about the manner in which the announcement had been made about the establishment of a Ministry, which was made over one weekend in January, and then the subsequent speed with which it took place, and from their point of view they are concerned that they have been presented for the second time – I paraphrase what they are saying but I think very accurately – in the space of three years they have been presented with a *fait accompli*. Your Committee made some fairly strident comments about that.

Q31 Baroness O’Cathain: You are right; our recommendation number four was the one that dealt with that.

Mr Straw: What I have had to deal with is the consequences of that and that is what I have been seeking to deal with. There is a concordat which was there before I took over this job. A very key issue is obviously to do with the relationship between the Judiciary and myself and my department. There are general aspects to that but there is also this particular thing about the role of the Court Service and, Lord Holme, the issue of money.

Q32 Chairman: Indeed.

Mr Straw: I have made a joke of the fact that I swear three oaths – two are in rather fine prose because they are written at about the time of the Prayer Book, one is in the most constipated prose because it was drafted in the Committee of both Houses and that is the oath that I have to make under the Constitutional Reform Act, but anyway that one talks about ensuring a sufficiency of resources. The joke I have made is that I have sent a copy of that highlighted to the Chancellor of the Exchequer. However, that has not resolved the fact that the CSR settlement was actually agreed before I took over and it is tight, as it is for most departments. What I have said – and I am prepared to repeat again here – is that I intend to move heaven and earth to ensure that what happened a couple of years ago, where the Court Service took a hit because of pressures on the legal aid budget, will not happen again, and I have explained to both the Chairman and the Chief Executive of the Legal Services Commission and to representatives of the Bar and the Solicitors that legal aid has to be kept within its own budget. That is that and I feel wholly comfortable about that; I am not willing to see particularly the Court Service and the Judiciary pay for increases in legal aid. Although I understand the pressures on the legal aid budget and the concerns of solicitors and members of the Bar it is a fact, which no one can avoid, that we spend more per head on legal aid than any other jurisdiction in the world and the figures are very stark, at £34 a head in England and Wales, £27 in Scotland, and dropping very rapidly even in comparable common law jurisdictions to around £10 – and I can give you the exact figures if you wish them – in respect of New Zealand or Ireland. There has also been a fivefold real terms increase in legal aid spending since 1980. I think we would be hard put to find another public service that has increased by that amount; and a threefold increase, or getting on that way, in the number of practitioners who are reliant on legal aid in the same period. So what we have to understand as far as legal aid is concerned is that savings will have to come from within that budget and everybody – and this includes those who represent defendants, has a responsibility to improve

processes because a huge amount of the money does not go on, as it were, advice or on law – it goes on processes.

Q33 Baroness O'Cathain: Waste.

Mr Straw: Baroness O'Cathain says waste and, yes, it is waste; it is wasted in terms of the inefficiencies and disconnections in the system.

Q34 Chairman: So it sounds as though some of the elements of what I will call an agreement with the Judiciary are gradually coming into place, but the question I would like to ask you, given that government has willed greater separation of powers, would you now personally, as Lord Chancellor, feel some sense of urgency to get a proper settled agreement with the senior Judiciary so that what is at the moment a running sore and been running rather a long time is ended?

Mr Straw: It is wrong to say that it is a running sore – I do not get that sense from them and they have certainly not used that phrase with me, that it is a running sore. I did act pretty quickly. We have this review being run by Clare Sumner and by Michael Walker. There is other work going on in hand and I am absolutely nailed to the floor in terms of the undertakings I have given about their budgets, and everybody understands this. All of us are stuck with public spending settlement and it was ever thus, and I may say that even were the Court Service an entirely arm's length non-departmental public body it would not be immune from cuts if they were to happen. May I just make this point because there are those who think if you are running an NDPB you end up with greater immunity; it is not the case. The Environment Agency belies its name – it is a non-departmental public body and arm's length from government, but when the money needed to be found because there was a hole in the Rural Payments Agency budget that NDPB took part of the hit. Meanwhile, what I have been doing is saying that I am not going to either take money out of the courts to pay for the other

two big areas of spending, one of which is legal aid and the other is the Prison Service, and actually if you read at the small print of the settlement they both have some more money and also undertakings of more in respect of prisons.

Q35 Chairman: Would you like to venture a prediction when you will have all this tied up?

Mr Straw: As I say, I obviously note what you say, Lord Holme, on the issue of judicial appointments and I can tell you that when I spoke recently to a group of senior members of the Judiciary – I had a meeting with them for two hours – a large part of the time was spent over problems of judicial appointments, and that was their preoccupation. So there is that and what is seen as a major issue is the relationship with the HMCS and I am hoping to bring that to a conclusion as quickly as I can, but I do not want to put a date on it. I have to do it in a cooperative way. There are also issues of the broader relationship with the Judiciary, including issues like proper consultation with them over what goes into Bills, taking proper account of their views. I will give you one example where I have sought very actively to take account of their views and other practitioners, in the current Criminal Justice and Immigration Bill, clause 26 in respect of quashing convictions, quashing convictions whether the power of the Court of Appeal to quash convictions where the guilt of the accused is not an issue – so in other words the issue is that of process – whether that should be constrained to prevent them in general from issuing an acquittal where the guilt of the accused was not really in question. We had a lot of responses to the consultation document, including from the senior Judiciary. As I told the House on the Second Reading, all the responses were critical of the original drafting, so I have sought to change it and I think these things are important.

Q36 Baroness O'Cathain: In that response to our recommendation four you are actually saying that the parameters for discussion with the Judiciary over the Ministry of Justice have now been “broadened”. Can you give us some indication of what the parameters are?

Mr Straw: The background to this – and I am trying to find what I said in respect of your recommendation four – is that there was a suggestion that there was an unwillingness by ---

Q37 Baroness O'Cathain: It is your paragraph 8.

Mr Straw: I have it now, thank you. That there was some unwillingness by government to talk about these issues in the round, the wider issues, and that is what I have sought to do. I have been ready to consider all issues which are of concern to the Judiciary. I made it clear to them as I do to your Lordships that it is a self-evident truth that we may come to the conclusion where we have to beg to differ, but I hope that if we do – and I hope we do not – that we do it in a respectful manner with an understanding of each side's position. But I am not trying to constrain discussion in any way.

Q38 Baroness O'Cathain: Lord Chancellor, you have not agreed to the Judiciary's seemingly reasonable request to have a fundamental review of the situation following the creation of the Ministry of Justice. Would you say that you are likely to do that and, if so, when do you think you might do it?

Mr Straw: I have not established a big-ticket Review, with a capital R, into relations with the Judiciary. I am open to persuasion on this but I happen to think at the moment that there are better and speedier ways of achieving the same end. First of all, crucially by the approach I take – and at the risk of repetition I have spelt out the nature of the approach – by dealing with things that I can deal with which are causing real frustration, which were on judicial appointments, I promise you – and why should I make that up? – and they are continuing to exercise me as well as the Lord Chief, but I am working very hard with the Judicial Appointments Commission to speed things up. There is this issue, which I think is the main issue for which they said they would like a Review, with a capital R, which is the constitutional position of the Court Service, and I think the review, with a small R, that has

been established, the Clare Sumner/Michael Walker group and the iterative process we have is a better way through because we are more likely to reach agreement with that. It is easy to say, “Have a separate NDPB with a judicial chairman, it is entirely separate”, but then this body will still require public money; there will still have to be some way in which people in my department, with the Lord Chancellor of the day, and with the Treasury can work out whether they need more money – what their efficiency and effectiveness is. So there has to be – and there is in all systems in the world – a relationship between the administrative side of the Judiciary and the Executive and it is working out the best relationship there, so I think it is better to do an iterative process. But I am open to arguments if this one does not work.

Q39 Baroness O’Cathain: Can I pursue this for one moment and that is do the Judiciary buy in to your way of dealing with this fundamental review?

Mr Straw: You would have to ask them.

Q40 Baroness O’Cathain: Because you are talking to them at the moment.

Mr Straw: I know. Sorry, I do not want to put words into their mouth. They are working very cooperatively on this; whether they would prefer a different approach is a matter I do not want to answer for them. But they are working very cooperatively on this and if we can reach agreement I think that is better.

Q41 Viscount Bledisloe: I am glad to see, Lord Chancellor, that the government has ruled out the idea of American-style confirmation hearings for judges. Do you contemplate any other form of parliamentary involvement in the judicial appointment process and how could that be without encroaching on the independence of the Judicial Appointments Commission?

Mr Straw: There is a consultation on this whose publication is pretty imminent and what we sought to do in that document is obviously to analyse where we are at the moment. There is a

good deal of foreign example given, which I thought was important, from major EU and OECD countries, to look at what happens elsewhere, including in respect of America. My starting point on this, I may say – and I am still on record as saying this – is to allow what is in the Constitutional Reform Act for some years before you change it, and the Lord Chief Justice in a lecture he gave in Kenya a couple of months ago made some interesting observations about this, where he said that the Executive should not be involved directly in making the appointments, and indeed I am not, as you know, because the power I have is very much a back-stop one and working with the senior Judiciary not against them, save in respect of the very senior positions – and I am paraphrasing what the Lord Chief said – where he said words to the effect that it is important that at the very least that people who hold these very senior judicial appointments should have some broad confidence of the Executive, and I think that is true. And that does not detract from their independence in any way, so it is squaring that circle. This is an issue, that if you were to go down the route of some parliamentary involvement it would have to be post-appointment, it would not be pre-confirmation.

Q42 Viscount Bledisloe: May I venture to suggest that you are amalgamating somewhat the Executive and the Parliament. I agree obviously that you have a role in that you have a right to approve or disapprove recommendations; I was asking more whether you saw any parliamentary involvement.

Mr Straw: All I would say is that you could have a role. I expressed my personal opinion but we have said we will have a consultation about this. We are going to give a good deal of information about what happened in other countries. You could do, but whether it is desirable or not is another matter and we will look forward to the current weight of opinion. But my assessment of the current weight of opinion is that people think it is not such a good idea, but if we are opening up a constitutional debate we need to be open to other people's ideas even if we are not persuaded of them at the moment.

Q43 Chairman: You will have noticed that this Committee was distinctly unenthusiastic about the idea of parliamentary confirmation hearings.

Mr Straw: Yes, I did, and I think we will find that is probably true the other end, but since practices vary in OECD countries it is quite important that this should be brought out, and if both Houses come to the view that it is not desirable that is really important because it is their decision then, not the Executive's for them.

Q44 Lord Rowlands: Can we go back a fraction on the question of the role of the Court Service and its status. As a former member I took a very active interest in the state of Her Majesty's courts, my Crown and County Court – they were part of the community fabric – and I hope you would not come across to any decision which would stop a Member of Parliament, for example, making representations about the state of the buildings or the performance of the court at any particular time.

Mr Straw: Lord Rowlands, if I may say so, that is a very important point. If you take the issue of the state of buildings, of amalgamations, court closures, these ultimately are political decisions and I think that the Court Service which was an NDPB at arm's length which has to make those decisions would find that extremely uncomfortable. I also think that the system would not work. There are five Members on this side, Lord Holme, who have served quite a long time down the other end, and with respect to each of them if there had been a proposal to close the courts in your areas, regardless of whether there was an NDPB officially making that decision, it would have been raised in the House of Commons, the minister responsible would have been on the rack and ultimately, whatever the formalities, it would have had to go to ministers for a decision. So I want to make sure that in any rearrangements of the relationship between the ministers, the department, the Court Service and the Judiciary we reflect the reality of where decisions ought to be made and the difference between the decisions which are ultimately political – which of course impact on the Judiciary, such as

where you put courts. Let me say with the public in East Lancashire there is quite an argument going on in respect of the future of the courts and their physical condition for some time, and I am expected to sort it out, as a local Member of Parliament.

Q45 Lord Smith of Clifton: Lord Chancellor, if we could move on to the Green Paper, is there an underlying philosophy or intellectually coherent thread which ties together the proposals in the Green Paper on *The Governance of Britain* and, if so, how would you define it, please?

Mr Straw: The answer is yes and you would expect me to say that; it would be a career shortening answer if I said no. How would I define it? In a nutshell it is about making the Executive much more accountable to Parliament and Parliament more accountable to the people, and I really mean that. The accountability of the Executive has shifted over time compared with when I was serving as a special adviser in the mid-1970s Labour Government – ministers and officials are infinitely more accountable than they were. For example, there were virtually no Select Committees – there was the old Trade and Industry one and there was a science one and for two years there was an education one and there was also a Public Accounts Committee, but ministers with whom I worked, Barbara Castle and Peter Shaw and their juniors, never ever had to go before a Select Committee and have a grilling – ever. Yes, from time to time they went to the Commons and answered questions but it was a “thank you very much” and a rather benign session, but I have been to less than benign sessions – two hours being grilled is a very different circumstance from the repartee of the Commons. Both are important, but that is freedom of information which has made ministers much more accountable, with many other changes. But it is still the case that in some areas ministers are not as accountable as they should be and the Prime Minister is very alive to that, which is why he made, to many people’s surprise, the whole constitutional agenda such a key part of his set of priorities, worked on it for some months before his election as Labour Leader and then

incoming Prime Minister, and it was the first big announcement he made. That is what we are trying to achieve.

Q46 Lord Smith of Clifton: Lord Chancellor, I think many of us were enthused by that statement and the subsequent Green Paper. Since then there has been a perceptible lack of momentum in that – it has been “Events, dear boy, events” and all that – how do you see that momentum being maintained?

Mr Straw: I beg to differ because there has been no lack of momentum in my department and I am sitting with some officials behind me who I could bring to the stand and ask them whether they have been doing nothing since 3 July, and I promise you that they have not been. What has been going on is that there has been very heavy work on a series of consultative documents on war powers and treaties, upon the appointments to the Judiciary, elsewhere in government, on rights and protest and a huge amount of work going on in respect of the British Bill of Rights and Responsibilities. It is true that there have not been any major announcements, except that we published two statements at the end of July. One was a consultative document in respect of the role of the Attorney and the other was the draft Queen’s Speech, but I promise you, Lord Smith, that it is a great deal of work and that will continue.

Q47 Lord Rowlands: In that case can you give us an update on where the Constitutional Reform Bill stands? We know there have been several consultations but are we going to get this Bill published in a draft and are we going to have pre-legislative scrutiny with a Bill of this importance? Can you give us an idea first of all of timescales?

Mr Straw: The publication of three of these consultative documents is pretty imminent, and I think the consultation period lasts for three months so by the turn of the year they will feed into the preparation of the Constitutional Reform or Renewal Bill, which will be published in

the New Year – I cannot give you an exact date – and that will be published in draft and for sure there will then be a period of consultation and pre-legislative scrutiny. The current aim is to have that include the provisions in respect of the Civil Service which have been the subject of quite longstanding consultation, so we are not intending to publish a further consultation on those because you will recall the response to the Select Committee at the other end. But the government back in 2005 or 2006 published its own draft Bill in respect of the Civil Service, so that forms a template for that part of this draft Bill.

Q48 Lord Rowlands: That touches upon a point about which the Committee have been rather concerned, that this sort of jumbo Bill, which would have the ratification of treaties, the role of the Attorney General and the Civil Service Bill all rolled into one is really not a satisfactory way to proceed, certainly not including the Civil Service Bill.

Mr Straw: It would include the Civil Service Bill.

Q49 Lord Rowlands: But we are saying why?

Mr Straw: Why? Frankly, because these are cognate in the sense that they are all to do with constitutional renewal and it makes sense that if you want securer form to have them in one Bill rather than in a large number of Bills.

Q50 Lord Rowlands: They are very disparate issues.

Mr Straw: They are and they are not. With great respect they are within the overall framework of making the Executive more accountable to Parliament and perhaps we should call it that, and reducing the effect of the prerogative. So rather than calling it the Constitutional Reform Bill maybe I should call it the Executive Accountability Bill because that is what it is all about. Then you will have different parts of it. Could I just make this point to Lord Rowlands to try to persuade him that this is a better way of proceeding? First, it

would be faster because there would be a draft Bill, but everybody who has had experience of legislation knows – and there is a former Chief Whip sitting there – that five separate Bills takes a lot longer than five cognate subjects put into one. It is a choice but if there is a broad consensus behind this, as I think there will be, it is better to have it in one Bill. The other point is this – and this is a point that has been made against me for having one Bill – that it would be very wide in scope, so if others wish to raise other issues on the constitutional change and accountability of the Executive they could do that and these will be in scope. So the paradox of this is that there will be greater opportunity for both Houses to discuss other issues which are within that overall framework.

Q51 Chairman: So you see it as a positive advantage that it is a portmanteau Bill and people can put other things in the portmanteau?

Mr Straw: I do.

Q52 Chairman: So that might not be compatible with the government wanting urgently to get the Bill through.

Mr Straw: That is the point made by business managers to me so I hope that the business managers do not hear what I am saying. It happens to be true and we are alive to it, but I think overall it is better to have it in one Bill than a number.

Q53 Lord Lyell of Markyate: If I may come back quickly? Lord Chancellor, you keep saying that all these three aspects are to do with the Executive. You, Lord Chancellor of Britain, are not saying that the Crown Prosecution Service with its independent prosecuting duties is part of the Executive, are you?

Mr Straw: No, I have never said that.

Q54 Lord Lyell of Markyate: You have just said it is part of a Bill to deal with the Attorney General ---

Mr Straw: I am sorry. It was not I who mentioned the Attorney, with great respect, I do not think. I talked about the Civil Service, war powers, treaties ---

Q55 Lord Rowlands: The Attorney General will not be in this jumbo Bill?

Mr Straw: It is not a jumbled up Bill, Lord Rowlands.

Q56 Lord Rowlands: A “jumbo” Bill.

Mr Straw: It is a coherent Bill. I really resist that description. It is wholly coherent Bill, or will be, to do with holding the Executive better to account.

Q57 Lord Lyell of Markyate: Then why does the Attorney General come into it?

Mr Straw: On the Attorney that consultation is continuing – it may or may not. I have never ever suggested that the CPS is, at the point where it is making decisions about prosecutions, an arm of the Executive – it is obviously a department of government but it is at arm’s length from the Executive, and the announcements that Baroness Scotland made on 3 July actually strengthen that independence.

Q58 Lord Lyell of Markyate: They did not actually. No Attorney General sitting in this room and none that I can think of has ever taken a prosecuting decision which was not required by statute. So she just does not do it. The Prime Minister said she did and he told her to say it but it was wrong.

Mr Straw: It was a more complicated process than the Prime Minister telling her to say it, let me tell you.

Chairman: We have to move on. Lord Rowlands.

Q59 Lord Rowlands: Can I finally press you on the question of legislative scrutiny? First of all, to have an assurance that all constitutional issues of any significance will be the subject of pre-legislative scrutiny? Secondly, we have been very disappointed, and in fact we have relayed our disappointment to the former Leader of the House about the number of Bills that have been subject to pre-legislative scrutiny. I know that the principle has been accepted but the actual practical aspects of it, very few Bills have actually been subject to pre-legislative scrutiny. Can we have a principle about how many Bills and the type of Bills that are going to be subject to such scrutiny?

Mr Straw: On the first it is our hope and intention that Bills in this area will be subject to pre-legislative scrutiny, and I cannot think of any area which would not be. It is not in my gift to give an absolute promise that there are no circumstances in which we would not introduce a constitutional change without pre-legislative scrutiny, but it obviously makes sense to have it. Actually the record on that has been pretty good; if you look at going back over the last ten years in this field on the whole we have consulted widely on these issues.

Q60 Lord Rowlands: I think there is a difference between consultation and specific request.

Mr Straw: And had pre-legislative scrutiny. On a wider issue, I was concerned as Leader of the House and so have business manager colleagues at this end about the fact that a number of Bills which have been subject to pre-legislative scrutiny had dropped off. Business managers are always anxious to see Bills go into pre-legislative scrutiny because it makes them on the whole better Bills and it improves their chances of going through. The problem is, however, one of actually managing them through. It is hard to pin this down exactly but there was a point where we had a lot of Bills coming through which were candidates for pre-legislative scrutiny and we have got into a position now, as we come into the eleventh session, where there seem to be fewer. I think it may partly be to do with the cycle of each Parliament. We are now looking at the third parliamentary session and that third session is always an

important one because it may be the last full session before a general election. That is the reason I suggest. There is no hostility to pre-legislative scrutiny whatsoever, it is just that there have been some practical problems with it.

Q61 Lord Rowlands: Does there seem to be a principle behind which Bills you chose to do so?

Mr Straw: We had a meeting this morning which I happened to chair in the absence of the Leader of the House about next year's legislative programme. The decisions are – and you have been involved in this, as others have been round the table – that you look at the programme, you look at the balance of the programme, you also look at the time available. As it happens we are more likely to, because of other pressures on the programme, to put some Bills into pre-legislative scrutiny than would otherwise be the case for next year. But you have to have a programme that makes sense, that keeps both Houses occupied. I am serious here because there are twice as many candidates for legislation as ever there is time. We have to take account of the EU Treaty Bill, which is going to take up a tidy bit of time, so we have to put those in the pot. As I say, I think we will find that there will be more candidates for pre-legislative scrutiny than there were.

Q62 Chairman: One theme that comes out constantly from the Green Paper, perhaps in response to a perceived democratic deficit, is the need for new and inventive forms of consultation and one could consider this as a subset of pre-legislative scrutiny, but clearly the government feels impelled – and I must say personally I am very sympathetic to it – to the idea that you have to find ways of consulting and involving people on the fundamental issue of how their democracy works, so in respect of the Legislative and Regulatory Reform Bill, the Constitutional Reform Bill, the Government of Wales Bill and so on, there is specified that there should be consultation and all sorts of forms of consultation are proffered. Citizens'

Juries, your colleague, Mr Wills, at a seminar the other day was talking about the idea of a citizens' summit, whatever that is, but I gather that the Prime Minister does not like the idea of the great and good coming together in a constitutional convention, so can you tell us what you call the principles of engagement that are going to be worked through because if we are saying that there needs to be a democratic public involvement, whether we can think of it in parliamentary terms as pre-legislative scrutiny or whether it is a good thing in itself, it seems to be that we are inventing it as we go along and I would be very interested to know, given your leadership, how we are going to get to settled principles of engagement so that we are not just reaching for a new gimmick every day.

Mr Straw: The principle is easy to state and I think we have already, which is that we need better to involve people in the decisions which affect them. I am more on the optimistic side of the curve as to whether or not there has been less engagement or more in recent years – I think in many ways there has been more, although that has been disguised by something else that has been going on, which is a decline in deference. I am absolutely serious, Lord Lyell, and there is a very interesting book written by a man called Kevin Jefferys, called *Democracy – People and Politics Since 1918*, which charts this. It is a good read, I have just finished it, and I think it puts a kind of pessimism about the state of our democracy into a better perspective, because we have always been pessimistic about it. I think our democracy is certainly healthier than it was in the 1970s when I still had this ringside seat in government. All of us are searching for ways of engaging people in these decisions. I have told the Prime Minister that in my constituency, which has the benefit of being a compact, single town with a strong sense of itself, I have long engaged in what I would described as citizens' juries, with a small c and a small j, in which I continue to do open air meetings in the town centre, as I did on Saturday and I did two weeks before that. I had a very serious conversation, as they now call it, with my electors; and I do residents' meetings and so on. I do not regard those as

gimmicks, I regard those as processes better to engage people and ultimately to give them a sense of control over what is happening in their lives, in their streets. With some of these more abstract issues, like the British Statement of Values, I think it is right to think about whether there are more formal methods of open-air meetings and residents' meetings where we can bring out issues that people are not used to discussing. I can only say to those who are cynical about these processes that about 18 months ago I had a real concern in my constituency about the growing divide between the white community and the Asian community – a real concern. The local authority on an all-party basis said, “We have to have some process for bringing people together; we cannot just stick them in a room and say that they must like each other because that is not going to work.” So, yes, consultants were employed to do this, to work out ways in which you could bring people better together, including people who have absolutely opposed views. So with these consultants based in Manchester what was called “100 Voices” was developed. It started off on a ward basis and then people finally came together at a two-day conference in the meeting rooms at Dene Wood Park, and it really worked and I have seen that process then continuing to have all sorts of spin-offs as people who had not previously been involved in politics, with a small p, suddenly found that they found it very interesting and were involved. With the Statement of Values what we are trying to do here – both simple and also very difficult – is to articulate what we all think are British values and to see whether we can arrive at a consensus. It may be we cannot, in which case I do not think we should legislate on the Statement of Values unless there is a consensus, but to have a process which is moderated by people who are reasonably expert – maybe what has been called the Citizens' Summit – to argue this through; and citizens' juries, if they are properly used, as the 100 Voices was, can work. The last point I would make, Lord Holme, is on the issue of a convention of the great and the good. I will tell you why I am opposed to that, which is that we have what is called a convention of the

great and the good, which is called the Houses of Parliament. We undermine our democracy and our Parliament if we try and invent a convention to do the job which is ultimately ours. The reason why the convention had to meet in Philadelphia – and met for an awful long time and mainly in secret – was because there was not a Parliament over there. That is what they were seeking, and had there been they would not have had to have the convention. The reason why in Scotland that convention got going was because there was not the machinery for having a Scottish Parliament and it helped to develop the idea of Parliament up there. I am very much in favour of others holding their own scrutiny of these ideas and that is a good idea, but ultimately it has to be for this Parliament to make decisions.

Q63 Chairman: It is very difficult to argue against consultation, it is like arguing against motherhood and apple pie, but I think perhaps what people will begin to expect from the government is to set out what the principles of engagement are and what form of consultation is appropriate for what sort of measure, rather than it simply being whatever happens to suit the convenience of the government of the day. But the danger always, which I am sure you will concede, is that who asks the question controls the agenda and you have to have a process which people believe is genuinely consultative and appropriate to the measures concerned and that is the vacuum at the moment.

Mr Straw: I do not think there is a vacuum but I accept that people may come to this whole agenda with some scepticism, if not to say cynicism. I do not think we are going to get over that until we give them confidence about the product and show to people that the process has not been a sham and that we are ready to listen. Ultimately there should not be an escape from this sort of democracy; it is for ministers to propose and for Parliament to dispose – that is called democracy. We should not pretend that we are subcontracting out our decision-making to some kind of Athenian democracy because that cannot work, but we should assert that the process between ideas and law is a long one and a complex one and that the more

people are involved in that the more they can be pretty well assured of being satisfied either with the outcome or the reasons why they do not have the outcome they want. It may be the latter rather than the former.

Q64 Lord Goodlad: Lord Chancellor, what do you regard as the main benefits of the new practice of publishing the government's legislative programme in draft form?

Mr Straw: The main benefits are that as well as consulting over the individual measures and whether or not there has been a draft Bill for pre-legislative scrutiny there has almost almost been a statement of principles, a White Paper or Green Paper preceding a Bill, almost always, you are able to consult over the balance of the programme and people who look down it say, "We think that rather than having that there should be something else in it."

Q65 Lord Goodlad: Do you think it will help pre-legislative scrutiny on a more methodical basis?

Mr Straw: It could do. Bear in mind, Lord Goodlad, that this particular programme for consultation was announced very late in the session and that was because the Prime Minister only took office at the end of June and the Leader of the House made her announcement in the third week of July, I think. In normal terms our intention would be to announce it at an earlier stage, and you will be familiar from your time as Chief Whip that we are now in a cycle where already ministers are thinking about the legislative programme which starts in 14 months' time.

Q66 Lord Morris of Aberavon: The point I wanted to make was is there not a real danger that some of these juries or whatever they are called – I use that as a shorthand point – can be hijacked by minorities? I have been to an American town meeting and are they different in substance to that?

Mr Straw: I would not put the danger all that high. On the whole these juries or panels are chosen for balance; they are not chosen at random, necessarily, but they are chosen to reflect a balanced range of opinion. If I can use the example of the 100 people involved in 100 Voices in Blackburn who were chosen, as it were, by category so that you had a reflection of the balance within the white community and within the Asian community and you had a balance of political opinions, a balance in terms of people who were involved in voluntary organisations and people who were not involved in anything at all, and there were some people there who might have voted for the BNP and some who might have voted for extreme parties on the Trotsky left. It was not really possible to hijack that. If, however, they had come out with the consensus that emerged as an extreme one we would have had something to worry about. On the town meetings, as I say, with the Police Chief and Chief Executive and Leader of the Council I run these regular residents' meetings – and have done for the last four and a half years. They are not decision-making although they are phenomenally influential as to what happens in their area, and we have not had them hijacked. Just making a point to you, Lord Holme, what has been crucial about this was when they first got going people were very cynical about them and thought they were simply a single event for people to let off steam and be told to go away. Because people have understood that it is part of a process in which they are told what formal decisions are made following it and what action is happening and there are follow-up meetings where they can put us to proof again, people's sense of confidence in the process has greatly increased.

Q67 Chairman: Can I ask you a timing question, Lord Chancellor? You have been very generous with your time; can we plan that you would stay with us until half past five?

Mr Straw: Let me just turn behind me. Could we make it 25 past?

Chairman: A good compromise; thank you very much. I have several colleagues who would like to ask you questions. Lord Smith.

Q68 Lord Smith of Clifton: Lord Chancellor, I noticed earlier that you talked about a Statement of British Values, which I can understand, but officially it is a British Statement of Values, which I cannot for the life of me understand. I commend you on your change in language and terminology. Could you explain to me why it is a British Statement of Values as opposed to a Statement of British Values?

Mr Straw: Not really! It is like the essay that I was set when I was a law student, to explain the difference between a breach of a fundamental term and a fundamental breach of a term and I have still been trying to find the answer. There is obviously a difference about the adjective but we are talking about British values, essentially.

Q69 Lord Smith of Clifton: What do you envisage as being distinctly British about the Statement of Values and the Bill of Rights and Duties? What are they likely to include which is not shared across Europe and the Commonwealth? And are there implications for the Human Rights Act?

Mr Straw: On the Statement of British Values, I would like to think that many values that we regard as being distinctly British are now ones which have been reflected elsewhere in the world, and we have had an evangelical role – we have, genuinely – when it comes to ideas of liberty and values. I cannot say what will be distinctive about this until this process is finished but I would like to suggest that personally I think one of the things that is distinctive about the United Kingdom – and is not exclusive, which is a different point, but is distinctive – is our tolerance. I think there is a remarkably high level of tolerance in this country. How will it differ from other statements? In France they have this very strong sense of what they call solidarity and we do perhaps have a vague idea of what it means but it does not translate very well – I am looking at Baroness Quin, who may have a stronger idea of what it means than do we – and I am always struck by that in Europe. So it may be the order in which the values are set out, the precedence it is given that is distinctively British as well as some of the

values themselves. On the Bill of Rights and Responsibilities, what I said in my speech at the Party Conference, in shorthand, as it were, is that we do not want to undermine the Human Rights Act and fundamentally the incorporation of the European Convention into British law, which I happen to think was a very important and a durable Act, and in the end it is worth recalling that after some changes were made in the Bill that we did achieve a broad party consensus – indeed, I remember Lord Lyell, I think, saying at the Third Reading that we had got it into better shape – and we had, on all sorts of parts of it. What that process on the Bill showed is that we have some choices when you come to incorporation; there are still some parts of the Articles of the European Convention which are not incorporated, most notably Article 13 on Remedies. The other point which again I made at the Party Conference speech is that I think we have learnt – and I have certainly learnt – over recent years that we need better to articulate into the equation the fact that with rights go obligations and responsibilities – they always have done. That side of the equation was taken for granted by the drafters of the European Convention, which were British lawyers – almost exclusively British lawyers – and I think that in today’s world we need to take better account of that, so that is what we are seeking to do and so not to undermine the Human Rights Act and still less the European Convention, but to see ways in which it can be supplemented and complemented and this crucial balance of rights with duties and responsibilities and a mutual obligation is brought out.

Q70 Lord Smith of Clifton: Might I ask what have been the reactions from the Scottish Executive, the Northern Ireland Executive and the Welsh Assembly Government to the proposed British Statement of Values?

Mr Straw: I do not recall, because it is an early stage preparation, that we have had a formal response from them, but we are a Union and I was privileged to take part in a ceremony today

where Mr Speaker unveiled a plaque in St Stephen's Hall to the three centuries of the Union. There are British values which transcend English, Scottish or Welsh or Northern Irish values.

Chairman: In the few minutes you have left I am anxious to get Baroness Quin and Lord Windlesham in, if I can.

Q71 Baroness Quin: The Green Paper contains the statement by the government that a written constitution might be desirable and achievable. Is this a strong view of the Cabinet? What has brought about this change of mind in government and perhaps in your own position too?

Mr Straw: Change of mind, this is not a 180 degree turn, but a sort of shift. Unless one considers that what one decided were ones view at the age of 22 would last one through ones decades one is entitled to keep thinking and modify ones opinions, and as Twain famously said, "If the circumstances change I change, what do you do?" One of the great attractions about politics is that you have to keep thinking, and the circumstances have changed. We have now moved on over the last couple of decades into a period first of all where we are a much more heterogeneous society – it is really marked when you look at the changes in the population, the fact that the ethnic minority population doubled in a period of ten years between 1991 and 2001 and that is going on. We are more heterogeneous. We have introduced a number of constitutional changes and we are proposing some more. There is also the issue of the House of Lords reform, which we have not referred to today, and I am very grateful to you for that, whether or not that continues, and that will also be a major building block. So, Baroness Quin, there may come a time – and I think it is at least some years, see me out of this job, probably – where we will think that we have had major changes, we have reached a settled state and is it not now time to codify those? I am personally not in favour of tearing everything up by the roots and saying that we should have a fundamentally

different relationship between the High Court and Parliament and the Supreme Court, but I think putting them in a single document would not be a bad idea.

Q72 Baroness Quin: I think you have partly answered my next question, which was going to be about the timescale you were envisaging. In terms of the constitutional reform that is likely in the near future, do you believe there is a case for a referendum in respect of any of the likely measures?

Mr Straw: If there were major changes, yes. For example, we as a party – and I think this is widely shared and always agreed – that if there was a change to the voting system for the Westminster Parliament there would have to be a referendum – it cannot be in the exclusive ownership of one party, it simply cannot be, in my view. If there were a change to change the sovereignty of Parliament, to, as it were, to set up an American-style constitution self-evidently we would have to have that agreed by some referendum and I suggest it would be with a qualified majority as well. Where I would go with this is that once we had got to a settled state on all the major changes – and as we saw in Victorian times there appeared to be intense constitutional change and then it settled. It is not to seek to codify where you have got to so you describe in the second document the arrangements rather than pull everything up by its roots.

Q73 Baroness Quin: Do you think we need to codify the circumstances in which referendums should be held before they are held?

Mr Straw: In terms of process they were in the 2000 Act, in which you and I played a role in the Home Office. The only way you could codify it is if you had a written constitution, you laid that down and then you have to have somebody arbitrating on it, which would be a Supreme Court. I think it is better to leave it to political judgment, in my personal view.

Chairman: I want to try to get two questions in and if we could ask them back to back and then allow you to respond to both of them. Lord Goodlad.

Q74 Lord Goodlad: You have very kindly referred, Lord Chancellor, to the House of Lords reform; would you envisage the House of Lords reform Bill being the subject of a referendum?

Mr Straw: I have not envisaged it, no. Just to add to that, I have certainly envisaged – and the Prime Minister made this clear in his speech – that any change should be the subject of a clear manifesto commitment.

Q75 Lord Windlesham: A novelty that has not been discussed so far is the notion of the Speaker's Conference, with which I was not very familiar before I read some of the information which is before us this afternoon. The Prime Minister has said that he wants to revive the idea of the Speaker's Conference as part of the search for solutions, but it does not look as though a decision is imminent just yet and there is still a great deal of discussion and so on and consultation to go along. Is there a case for this or do you think it would be a practical issue to have a Speaker's Conference and, if so, who are the members of such a conference, and how and why and how long will all this take if it were to be pursued? It is not something that I feel very strongly about but it was a suggestion that was just thrown around at the beginning of this meeting before you joined us.

Mr Straw: The proposal from the Prime Minister has been that there should be a Speaker's Conference covering certain areas of electoral law and practice. The Prime Minister recognises, as do I, that we have to be careful about the agenda for a Speaker's Conference because the Speaker is above the party battle so there need to be areas where one is searching for a sense of it, so that it includes, for example, the issue of how we extend the representation both of women and of black and Asian people within Parliament, on which there will be

different views but I think there is basically the beginnings of an all-party consensus and there are other areas like that. I personally would not – and we are not proposing to use it for much bigger and potentially contentious areas, for example the House of Lords, because it would not work. There is a footnote that I was looking for to say that Speakers' Conferences have not turned out to be spectacularly successful down the ages, but anyway we are aiming to improve the score on the positive side.

Q76 Lord Windlesham: Is there a commitment to it or are you still looking?

Mr Straw: There is work going on at the moment to establish it. If you have a Speaker's Conference it will not operate unless all the political parties are willing to agree to its terms of reference and to its modus operandi, including its agenda.

Q77 Chairman: Lord Chancellor, you have been more than generous with your time. You can tell that we would be content to keep you here all evening but I know how busy you are and we very much appreciate it. Despite our pinning you there for nearly two hours would you be willing to come back regularly?

Mr Straw: Of course, yes.

Q78 Chairman: Thank you very much.

Mr Straw: Lord Holme, I understand that this may be your last meeting in the chair and if I could, on behalf of those of us who take an interest in constitutional issues, thank you very much for your work. I do not want to sound impertinent but it goes well beyond the House of Lords and I am really grateful to you and also it has been reflected in the joint interest of the House, which is in the Hansard Society as well, so thank you very much.

Chairman: Thank you very much indeed.