



## Constitution Committee

### Corrected oral evidence: Executive oversight and responsibility for the UK Constitution

Thursday 28 November 2024

10.15 am

Watch the meeting

Members present: Baroness Drake (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Lord Burnett of Maldon; Lord Falconer of Thoroton; Baroness Finn; Lord Foulkes of Cumnock; Baroness Goldie; Lord Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 3

Heard in Public

Questions 60 – 88

#### Witness

[I](#): Rt Hon Michael Gove, Former Minister and Editor, The Spectator.

## Examination of witness

Michael Gove.

Q60 **The Chair:** Good morning, everyone. This morning, the Constitution Committee will be taking oral evidence on its inquiry into executive oversight and responsibility for the constitution from Michael Gove, editor of the *Spectator*, former Secretary of State for Levelling Up, Housing and Communities, and Minister for Intergovernmental Relations.

Mr Gove, thank you very much indeed for being with us today and adjusting your diary so that we could talk to you. Hopefully, you have an indication of the questions we are interested in raising. I know time is a constraint, and I am going to start losing some committee members to a debate in a little while, so if you are content, I will open with the first question.

Just to set a bit of context, what were your constitutional responsibilities in your most recent ministerial role, as Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations? Could you explain them to us?

**Michael Gove:** Yes, of course. The Department for Levelling Up, Housing and Communities, now reinstated as the Ministry for Housing, Communities and Local Government, has principal responsibility for relations between the United Kingdom Government and local government. During the time that I was there, I wanted to make sure that we had responsibility not just for relations with local government in England but across the United Kingdom. That was partly because of my parallel role as Minister for Intergovernmental Relations. That was a role I held when I was also Chancellor of the Duchy of Lancaster and in the Cabinet Office.

The committee may well want to ask a question about the appropriateness of this role moving from department to department, but it was principally there to ensure that the United Kingdom Government had the best possible relations with devolved Administrations, and that there was a ringmaster, or mistress, who was responsible for making sure that UK government departments were in close touch with their counterparts in the devolved Administrations.

The role was a response, in a way, to recommendations that were set in train under Theresa May as Prime Minister. Theresa wanted to make sure, particularly in the aftermath of the Brexit vote, that the inevitable tensions that existed between the political positions of the leaders of devolved Administrations and the UK Government could be managed effectively.

Q61 **The Chair:** Looking back, what were the advantages and disadvantages of managing those intergovernmental relations from that Secretary of State position rather than, say, from a more central, Cabinet-type position?

**Michael Gove:** There are arguments either way. The advantage here was that the Department for Levelling Up, as I mentioned, had responsibility for relations with local government, and it also had responsibility for a variety of initiatives that operated UK-wide. So, for example, when it came to the decision over where new freeports, or investment zones, or any other tools of industrial strategy could be deployed, it was that department that was responsible. That meant that I, as Secretary of State, and other Ministers in the department, would regularly be talking to Ministers in the devolved Administrations—Vaughan Gething, Kate Forbes and others—about practical day-to-day matters, such as how we could ensure that UK government spending in the nations and regions was deployed effectively. That practical conversation about pounds, shillings and pence complemented other conversations we could have about the constitutional machinery of intergovernmental relations.

Q62 **The Chair:** Was there any evidence of potential risk, or emerging risk, in having that responsibility at the department you headed, such as losing coherence around a more central control over issues relating to the constitution and intergovernmental relations, or devolution?

**Michael Gove:** There is always that risk and there is an argument for the position being in the Cabinet Office, as it was when I was Chancellor of the Duchy of Lancaster.

I would draw an analogy with the Minister for Equalities in the Government Equalities Office. That role is attached to a Cabinet Minister, but it is being held by people who, at various times, have been Business Secretary, Education Secretary, and so on. It is an additional responsibility that should be exercised by someone at the Cabinet level, but there is no canonical reason why it should be in one department rather than another.

The broader point I would make is that responsibility for the constitution will always be dispersed in certain ways. There are certain constitutional responsibilities that the Secretary of State for Justice and the Lord Chancellor will have, some that the Prime Minister alone can exercise, and one or two which belong to the Chancellor of the Exchequer. So, one can look at the different aspects of our constitution and see responsibility for it being exercised, at the coalface, in different departments. It is theoretically possible to consolidate all those, but it might be more trouble than it is worth.

Q63 **The Chair:** The Constitution Committee has on record a working definition of our constitution, as follows, “We take the view that the five basic tenets of the United Kingdom Constitution are: Sovereignty of the Crown in Parliament; The Rule of Law, encompassing the rights of the individual; Union State; Representative Government; Membership of the Commonwealth, the European Union, and other international organisations”. Do you think that is a correct definition, and if so, does it remain valid?

**Michael Gove:** It is, but one of the virtues of our constitution is that all attempts to codify it cannot do it justice.

**The Chair:** All right, I will not ask you to elaborate. Baroness Andrews, I will call you in as you had a point on a common framework.

Q64 **Baroness Andrews:** Yes, but may I precede that, Chair? Good morning, Mr Gove. On the disadvantages of your role, did you find that there were any issues around its status because of the way that you had to build up relationships with the Devolved Administrations, who were used to dealing with the Cabinet Office, rather than DLUHC? Did they think it might have changed because it was suddenly located in a department rather than in the Cabinet Office itself?

**Michael Gove:** I do not think so. There are three things. First, a lot depends on personal relations. Perhaps it should not, but it does. The personal relationship that the Minister in the UK Government with responsibility for these areas has with the First Minister, Deputy First Minister or other Ministers in Devolved Administrations is, to a significant extent, what makes things work or not. With no disrespect to any of the individuals concerned, the dynamic between a UK Government Minister and Kate Forbes or Humza Yousaf will be different than the dynamic between a UK Government Minister and Nicola Sturgeon. I can expand on that point if you wish me to.

**Baroness Andrews:** I think we get that point.

**Michael Gove:** The second thing is related to personality, and that is the degree to which individuals lean in. So, you could have someone in the lofty position of Deputy Prime Minister who might have a detached or aloof attitude, rather than being someone who mucks in and really cares about it.

Thirdly, there is the quality of Civil Service support. I was fortunate in that, both in the Cabinet Office and in DLUHC, I had a very good team of civil servants who really cared, not just about keeping the constitution functioning but also about genuinely approaching the position of the devolved Administrations with a level of empathy. That did not mean they were arbitrating between the UK Government and the DAs; they were on the side of the UK Government, but they sought specifically to empathise.

Without wanting to trespass into an area of current political interest, I should say that I was very well served by Sue Gray when she worked in that role.

**Baroness Andrews:** Do you think you could have been less lucky and had people who did not know much about devolution and what the implications were?

**Michael Gove:** There is that risk. One of the characteristics of the Conservatives in coalition between 2010 and 2015 is that the Conservatives tended to subcontract a lot of these issues to Liberal Democrat colleagues. Those Liberal Democrat colleagues did a very good

job—people like Danny Alexander were excellent in that role—but there was a sense of “devolve and forget” on the part of Conservatives. One thing that Theresa was very anxious to do when she was Prime Minister was to make sure that, when it came to the constitution, the Conservative Party exercised its muscle memory.

**Q65** **Baroness Andrews:** When the Common Frameworks Scrutiny Committee was in existence, you and I had correspondence about it. We arrived at a common position by the end that it could have been better served and more engine power could have been put behind it, possibly, if it had stayed in the Cabinet Office because it is such a dispersed exercise across government. On reflection now that you have been out of government, do you think that is still a position you might have held?

**Michael Gove:** It is arguable either way and again so much depends on the individual filling the role. You can have an individual with experience who cares, with a good Civil Service team in another department responsible for cross-cutting areas. The Government are currently looking at how mission boards can work. The Government’s missions depend—as the Government have explicitly stated—on people working across departmental boundaries. The success of those mission boards will depend on whoever is chairing them having the knowledge, authority and support required in order to bring people together. But it is entirely possible that you can have a mission board chaired by the Secretary of State for Health, for example, which is successful even though it is chaired by the department and not the centre, provided it is done in the right way.

There is an analogy, though a loose one, with what happens at COBRA. In the event of there being a flood, and it is a one-off event of course, the Secretary of State for Environment, Food and Rural Affairs will chair COBRA. Normally that Secretary of State is pretty low down the pecking order, but at that moment the Secretary of State for Environment, Food and Rural Affairs is the person telling the Local Government Minister or telling the Treasury what is required to deal with the crisis.

So, a lot depends on the capacity of the individual, the training and commitment they have, and the support that they receive. But all other things being equal, yes, there is a case for having it in the Cabinet Office.

**Q66** **Baroness Andrews:** Finally, would you agree that there is more to the role that you held? It was particularly true of common frameworks: they needed to be pushed; they needed to have an advocate so that they would do the role they were intended to do to bring the union closer together. There is a difference between co-ordination and advocacy.

**Michael Gove:** Yes, that is absolutely right. One of the complaints that I would sometimes receive from the Devolved Administrations is that some government departments did not lean in in the way that they hoped. Departments tend to have their own characteristics and culture, but Secretaries of State can mould that as well. It would sometimes be the case that fair and honest concerns would be expressed by Ministers in the

devolved Administrations, such as that department A would always attend meetings, always turn up, always be keen on consultation and conversation, even if there were big ideological differences, and department B was less keen or attentive.

One thing that I sought to do was to say, "We have a responsibility to make the United Kingdom work". Forgive me for making a political point, but if you do not lean in and you do not engage with the Devolved Administrations, then you can potentially feed a grievance narrative that makes people say, "Actually, the machinery of the United Kingdom is not working". That does not mean that you are soft, it does not mean that you meekly agree to everything that devolved Administrations want, but it does mean that you show courtesy and attention and you attempt to understand their point of view.

**Q67 Lord Burnett of Maldon:** Good morning. Can I ask you about two particular roles you occupied? I start chronologically with that of Lord Chancellor, which is the only role that has a statutory constitutional responsibility with regard to the rule of law and the independence of the judiciary. Could you explain to us how those statutory responsibilities played out in practice during your time as Lord Chancellor between 2015 and 2016?

**Michael Gove:** I was very conscious of having sworn an oath in that role. Every Minister has to take the rule of law seriously but there is a particular responsibility on the Lord Chancellor—alongside the Attorney-General of course—to remind others in government, without wanting to be a nag, of their obligations in that regard.

I was fortunate that there was no major clash or tension between the judiciary and the executive branch during the time that I was Lord Chancellor. I was also very fortunate that the then Lord Chief Justice, Lord Thomas, was someone who went to great lengths to establish cordial relations with me and my Ministers. I hope he would attest that things worked well between us most of the time. There have been other people in that role who, because of events, found the situation more difficult.

There is no perfect way of navigating all these tensions. Some would argue that the original role of Lord Chancellor, prior to the 2005 Act, was anomalous but in some respects there was a virtue in having someone who perforce had to be a lawyer of great distinction in that role. The fact that the Secretary of State for Justice role changed meant there were residual responsibilities that came from being Lord Chancellor, but—to my mind rightly—the responsibility of choosing the composition of the Bench went to an independent committee. Some might argue that was a mistake; I think it was the right thing to do. I know I am not a lawyer, and it is undoubtedly the case that a Cabinet would pay more attention to a Mackay of Clashfern than a Gove of Aberdeen when discussing these really weighty and significant matters. It is one of the things about the constitution: you win some, you lose some. Modernising the role of the

Lord Chancellor has brought some benefits but I also think that we have lost a certain something as well.

**Lord Burnett of Maldon:** You have been very fortunate in not having any clash during your time as Lord Chancellor. Perhaps you got out just in time.

You make an important point about the weight of the Lord Chancellor's view when expressed either directly to the Prime Minister or in Cabinet. Do you agree that the Lord Chancellor has to sometimes be in a position to say to his Cabinet colleagues, and, if necessary, the Prime Minister, "You cannot do this"?

**Michael Gove:** Yes, and as a result of the role of the Lord Chancellor having changed, in my observation, slightly more responsibility now devolves on to the shoulders of the Attorney-General. I know, for example, that during the period when Geoffrey Cox was Attorney-General his words carried great weight; partly because of the force of his personality, partly because of his undoubted expertise and the respect in which he is held by the legal profession as well as politically. I mean no disrespect to any of the people who were Lord Chancellor during the time that he was Attorney-General, but we knew that if Geoffrey issued a warning note in legal terms that had to be taken exceptionally seriously, even if it was short of formal legal advice to the Cabinet. If he was offering a gentle nudge or even a shot across the bows, that was taken exceptionally seriously.

Q68 **Lord Burnett of Maldon:** Can I move on to when you were Chancellor of the Duchy of Lancaster? You had broad constitutional responsibilities there and you were there at what might be regarded as the most turbulent constitutional times that we have had in recent years. When you took office Parliament was—how can I put it politely?—rather disorganised. Prorogation came along and there were all the complications of exiting the EU.

So, again, can you just give us a flavour of how engaged you were in the constitutional issues that all those problems threw up, and how they were dealt with in government?

**Michael Gove:** During the period from July 2019 to December—after Boris became Prime Minister and right up until the general election—my role in the Cabinet Office was narrower than most people who have been CDL. I was given the title, but my principal responsibility was to prepare the country for Brexit, whether deal or no deal, by making sure that everything from the operation of HMRC to the protection of our fisheries was shipshape. It was very narrowly but intensely focused during that time, and discussions about Prorogation were kept relatively tight.

I have just been reading the first few chapters of Tim Shipman's new book, *Out*. To the best of my knowledge, it gives a very good narrative account of the discussions that went on with the Prime Minister, his advisers, the Attorney-General and others during that time.

It may sound as though I am trying to distance myself from it, but my view is that Prorogation put an enormous amount of strain on the constitution, although in the end it worked. Everyone around this table will have very different views, and maybe the Prime Minister should not have pushed things in the way that he did. Maybe the Supreme Court should not have treated Prorogation as a matter which was justiciable, but it did. Each side, while disagreeing, respected one another and in the end the single most important thing in the British constitution, which is the accountability of the Executive to the people, resolved the situation. That is not to say it resolved all the details but within that there was an exceptional set of circumstances.

One of my roles during that time was to try to keep the Devolved Administrations informed about the preparations that we were making. They were violently opposed to Brexit, obviously, and to the manner in which Boris was pursuing its conclusion, but on a day-to-day basis we were able to carry on constructive conversations about fisheries protection and so on.

**The Chair:** Lord Falconer is going to take us further on responsibility for safeguarding the constitution. I will let him decide whether he wants to pick up the Prorogation issue here, or whether he wants to leave it until later.

Q69 **Lord Falconer of Thoroton:** I will pick it up here, if I can. First, thank you very much for coming. We are really grateful that you have come and your experience is really important.

Could I just talk briefly about devolution and relations with the devolved assemblies? You told us that you were responsible for it, first as the Chancellor of the Duchy of Lancaster, which you became in 2019, and then when you went to the levelling-up department and that continued from 2019 to 2024, with a break in the summer of 2022 when you were not a Minister at all. Am I right in assuming that nobody had that responsibility prior to 2019?

**Michael Gove:** Not as such, no. The main reason for this responsibility being given was the response to Andrew Dunlop's report.

**Lord Falconer of Thoroton:** So, nobody was responsible for what you have very clearly described to us as promoting good relations between the Westminster Government and Scotland, Wales and Northern Ireland's Governments.

**Michael Gove:** No. As I mentioned earlier, between 2010 and 2015 the relationship—particularly but not exclusively—with the Scottish Parliament and the Scottish Government was not left to but was principally managed by the Liberal Democrats and it was done on a party-to-party basis. We had very little parliamentary representation in Scotland and they had significant.

You will know far more than me about this, but prior to that one of the things that was characteristic of devolution from 1999 until 2010 is that



quite a lot of the mediation was carried out at a party-political level rather than a governmental level.

**Q70 Lord Falconer of Thoroton:** Putting that to one side, from 2019 onwards you personally, to your credit, are very interested in promoting good relations. So you get that responsibility after Dunlop's report and you actively pursue it. Who supports you at an official level within the Cabinet Office?

**Michael Gove:** There were two dedicated teams; people who were responsible for the constitution, who had been responsible for the constitution throughout and who were responsible, for example, for electoral legislation and for relationships with the Palace, Privy Council and all the rest of it. We built up a team that was specifically equipped to better understand and to provide better support across government for dealing with the Devolved Administrations.

**Lord Falconer of Thoroton:** Would you resolve disputes, for example, between the territorial departments and individual sector departments when there was a dispute about how to deal with a devolved issue?

**Michael Gove:** Often, yes.

**Lord Falconer of Thoroton:** When you became the Levelling-Up Minister, did that group of officials travel with you?

**Michael Gove:** Yes.

**Lord Falconer of Thoroton:** When you resigned in the middle of 2022, did the responsibility remain with the levelling-up department?

**Michael Gove:** No, it went back to the Cabinet Office and Nadhim Zahawi was Chancellor for the Duchy of Lancaster at the time.

**Lord Falconer of Thoroton:** He did not have any background in this particular area, presumably.

**Michael Gove:** No, but to be fair some initiatives that we set up—for example, the Islands Forum—he absolutely lent into. When I was in government, until the summer of 2022, we had set up this initiative; I was out and Nadhim went to Orkney for the very first meeting. Everything I have heard led me to understand that, while not intimately involved in these issues beforehand, he was enthusiastic to make them all work.

**Lord Falconer of Thoroton:** You came back in October 2022, or something like that, 2022 as Levelling-Up Minister; did the officials go straight back to levelling-up?

**Michael Gove:** Pretty much, yes.

**Lord Falconer of Thoroton:** So, it all depended on you. Do not feel flattered. I greatly admire you, but I am making these points because it

looks like it depends upon one individual, which is not necessarily a good thing.

**Michael Gove:** It is not a good thing. If I had never existed I am sure that there would have been a Minister or Ministers who could have done the job as well if not better. It started with Boris. Theoretically, one can argue that a lot of these responsibilities should be exercised direct from No. 10. Boris's view, certainly at the beginning, was, "I have to deal with Brexit, that is big potatoes, there are all sorts of other things that flow and I know Michael takes an interest in these things so, in the apportioning of other responsibilities, I know that I can leave it to him to deal with that and if there is a crisis that requires my attention he will escalate it very quickly".

Q71 **Lord Falconer of Thoroton:** Can I move on to not just the devolved issues but the wider constitutional issues? In your experience within government, who, first at ministerial level and secondly at official level, was responsible for safeguarding the constitution? By that I mean making sure that the Government did not do unconstitutional things?

There is a separate issue about whether we could change the constitution, and the constitution can be changed, but I am talking here about staying within the limitations placed upon an Executive by the constitution.

**Michael Gove:** I mentioned briefly earlier that responsibility is dispersed in different ways.

**Lord Falconer of Thoroton:** Yes, you mentioned three people: the Lord Chancellor, PM and Chancellor of the Exchequer.

**Michael Gove:** I would also add the Attorney-General and Foreign Secretary. I am sure there are some others within government that I am forgetting, just because of the dispersed nature of the constitution. The Chancellor of the Exchequer safeguards the relationship between the Government and the Bank of England. It is the case that the Lord Chancellor, as well as having the responsibilities that Lord Burnett mentioned, is responsible for relations with the Crown dependencies, and so on.

**Lord Falconer of Thoroton:** But all you are saying there is that everybody, when they are doing their job, has to not break the constitution. If there is an issue about whether the constitution is being broken, for example, in relation to Prorogation, who is responsible?

**Michael Gove:** The Prime Minister and the Attorney-General, principally.

**Lord Falconer of Thoroton:** Right. As far as the Attorney-General is concerned, he presumably deals with issues of law.

**Michael Gove:** Yes.

**Lord Falconer of Thoroton:** If he says it is not allowed, it is not allowed.

**Michael Gove:** One would hope that that would always be the case, yes.

**Lord Falconer of Thoroton:** Could you describe circumstances when the Attorney-General said that something was not lawful and yet the Government went ahead, in your experience?

**Michael Gove:** No, I cannot think of any circumstances where that has occurred. Everyone is subject to the law, but as you will know far better than me and as the current Attorney-General has made clear, there are different conceptions of the rule of law. The advice that you might get from one Attorney-General may be different for another Attorney-General, so the law is the law is the law.

**Lord Falconer of Thoroton:** It may be, but if the current Attorney-General says this thing is against the law, then presumably the Government could not do it.

**Michael Gove:** I am sure there are exceptions, but I cannot think of what they might be.

**Lord Falconer of Thoroton:** Can you think when the matter was debated in your experience when you were in government between 2010 and 2024?

**Michael Gove:** It was always the case that every Prime Minister I knew, however exasperated they might have been, sought to ensure that everything that they did was lawful. There is a distinction, of course, between domestic law and international law because we have a dualist system, but I was not aware of any Prime Minister who was dismissive of that.

Without wanting to give him too much airtime, in Tim Shipman's book there is an account of the debate surrounding Prorogation in which the role of Helen MacNamara as Deputy Cabinet Secretary is foregrounded. The other person who is there to ensure that the constitution is observed is the Cabinet Secretary.

**Lord Falconer of Thoroton:** Yes, and I am very interested in that. Tell us about the role of the Cabinet Secretary and the Deputy Cabinet Secretary in the case of Prorogation in preserving constitutionality.

**Michael Gove:** Like any good civil servant, they are there to seek to serve the Government of the day to the very best of their abilities but always to bear in mind that their ultimate responsibility is to the Crown.

**Lord Falconer of Thoroton:** What is the level of ability on their part to stop things happening?

**Michael Gove:** Pretty significant. And almost by its nature, some conversations where the Cabinet Secretary or Deputy Cabinet Secretary most lean in would be conversations to which I was not party and should not have been, and indeed some conversations where the Attorney-

General, short of giving written legal advice, plays the most important role.

**Lord Falconer of Thoroton:** In his book, Tim Shipman refers to Helen MacNamara advising the then Prime Minister, Boris Johnson, that he is not entitled to ignore the Act of Parliament that had been promoted by Hilary Benn and Alistair Burt. She said, "I can't work with you if you go on breaking Acts of Parliament". That is not a question simply of legality; it is also a question of constitutionality.

**Michael Gove:** Yes.

**Lord Falconer of Thoroton:** And he ignored her.

**Michael Gove:** I do not think that is quite right. I have not read all the book.

**Lord Falconer of Thoroton:** I do not want this to be like a courtroom but you were telling us a moment ago, Mr Gove, what a marvellous book it was.

**Michael Gove:** I am 120 pages in but it does deal with the conversations between Helen and Boris. There is an anguished conversation about whether the Prime Minister should write a letter requesting an extension of our membership of the European Union as required by the Act to which you refer, and Boris, for all sorts of understandable, well-advertised reasons, does not want to do it. There is a debate and Helen and others make clear that he must. In the end he did, albeit—as he would consider it to be—under duress. So, he did submit both to Helen's arguments and to the law. One of the characteristics of working for Boris is that, in debate, he would put forward a variety of positions. You were not sure whether they were necessarily sincere or not, but what he liked doing was to test the rigour of a particular argument; he liked to push things in debate so you thought, "Is he really going to do that?"

**Lord Falconer of Thoroton:** "Is he really going to do that? Is he really going to prorogue Parliament for six weeks?" And he did. So it was much more than just about testing things in debate.

**Michael Gove:** Exactly, but there are two different, although related, issues—first, the adherence to the Benn Act, which he absolutely did, and secondly, whether he was within his rights to prorogue. The position of the Court of Appeal and the first judgment of the Court of Session, was that he absolutely was. I would not want to relitigate it. Obviously, the Supreme Court came to its judgment, but as an individual, not as a Government Minister, I completely agreed with the Court of Appeal and not with the Supreme Court. But the Supreme Court decides, and that is the law of the land, so after that I and others have to wind our necks in.

Q72 **Lord Falconer of Thoroton:** We have discussed those two issues: the Benn-Burt Act and the Prorogation Act. Do you think it is an effective governance model to safeguard the constitution? It appears to be random and depend upon no particular person having responsibility beyond the

Prime Minister, and the Prime Minister has responsibility for everything.

**Michael Gove:** Yes, and that is a good thing. It comes back to an earlier point: even if you draw up a perfect constitution—take the constitution of the Philippines, which is a beautiful document—

**Lord Falconer of Thoroton:** I am not really acquainted with that. I am sure it is.

**Michael Gove:** It has not prevented either Mr Marcos or Mr Duterte doing the sorts of things that you or I might consider to be regrettable.

The constitution, as this committee knows, is made up of a variety of things. It is made up of statutes, precedents, customs. It also depends on the character of individuals. There is a quote from Montesquieu, “The spirit of the law matters more than textual guarantees”.

**Lord Falconer of Thoroton:** I am sorry to interrupt you but focus on the issue. Within the Executive, who is responsible? You need to have somebody responsible—even just for helping the Prime Minister in this respect—for ensuring that the constitution is not broken. What is the answer? I think you are saying every Minister, or many, many ministers, and it seems an obtuse and unsatisfactory answer, if I may say.

**Michael Gove:** No, not quite but almost. It is a system. Look at any institution. Who is responsible for making the House of Lords work? Well, to an extent, it is the Lord Speaker. To an extent, it is the Leader of the Lords. To an extent, it is the Leader of the Opposition. Ultimately, it is all the Members. Custom, ceremony, precedent and tradition all help guide how an organisation works.

One could seek to codify exactly how every aspect of our constitution should work down to the last detail, but as soon as you do that new circumstances arise. One of the glories of this country is the common-law tradition. By definition, the common-law tradition is about evolution: regard for precedent but flexibility. I personally think that is a virtue in allowing liberties to flourish and allowing the balance between legislative intent and judicial interpretation to come to a proper understanding of how the country should be governed.

**The Chair:** Staying with Lord Falconer’s point, you stressed the primacy of the Attorney-General in giving advice to the Prime Minister. In our rather heavy report on the rule of law—which took over a year—we spent some time pulling out the issue of the Attorney-General understanding the primacy of their responsibilities for the rule of law and the threshold for advising that something is lawful, because we were concerned about that and the reasoning is in there.

Do you want to comment on whether, given what you say is the role of the Attorney-General, there is an issue around ensuring that they are the right person for the job in understanding those responsibilities?

**Michael Gove:** By definition the Attorney-General will be a lawyer, ideally a lawyer who is widely respected within the profession. They will have access to the Government Legal Department and they will have access to advice from the Treasury counsel and so on. No Prime Minister I can conceive of would proceed on a course that was legally risky without the advice of the Attorney-General, and without the Attorney-General having sought the advice of outside expertise, whether that was Lord Verdirame KC, or Sir James Eadie KC. In that sense, the system broadly works well. As ever, there might be a better way of doing it. However, everyone I have seen exercise the role of Attorney-General has taken it seriously and has recognised that their role is, of course, to serve the Government, but they serve the Government not by subordinating their understanding of the law to the Prime Minister's will, but by making sure that whatever the Prime Minister or the Executive want to achieve is lawful.

**The Chair:** It does require the person occupying the role to fully understand and accept those responsibilities.

**Michael Gove:** You cannot design a system so perfect that people do not need to be good. The role of Health Secretary is hugely important and if a Government were to appoint a buffoon or a villain to that role then we would all suffer, as would the Government.

**The Chair:** Lord Foulkes, has your question been answered?

Q73 **Lord Foulkes of Cumnock:** No. I wanted to follow it up. This has been fascinating, by the way. However, I hope over the next few years we are not going to experience the kind of turbulence that you experienced in government, and that we might have a little more stability. Rather than safeguarding—which my colleague Lord Falconer dealt with—I want to ask about overseeing or co-ordinating. You said it is always dispersed, and we got that indication last week from Pat McFadden. But then you said there should be a ringmaster, which implied that you think there should be someone other than the Prime Minister—who has so many responsibilities—to keep an eye on everything and co-ordinate and supervise. Is that right?

**Michael Gove:** With respect to the relations between the UK Government and devolved Administrations, it is, absolutely. In terms of responsibility for the rule of law, as we discussed, the Lord Chancellor and the Attorney-General are the ringmaster or ringmistress there. Then it is the job of whoever is Minister for Intergovernmental Relations—it is a relatively new job of course—to ensure that they put manners on any UK government department that is not engaging properly with devolved Administrations.

**Lord Foulkes of Cumnock:** Last week, when I pressed Pat McFadden and said, "Who is de facto rather than de jure that co-ordinator or ringmaster?" Pat McFadden said, "I am". I got the impression you were and that is why, when you moved from one department to the other, the civil servants moved with you.

**Michael Gove:** Exactly.

**Lord Foulkes of Cumnock:** So you were the ringmaster on the constitution, effectively.

**Michael Gove:** I think Pat has more responsibilities for the constitution than I had when I was at DLUHC. I was responsible for elections, the Electoral Commission and the devolved Administrations, but Pat has additional responsibilities that the Prime Minister has given him, and he is more than well enough equipped to do that job brilliantly.

**Lord Foulkes of Cumnock:** That is very interesting. Thank you very much.

**The Chair:** Lord Strathclyde, you are going to take us into the policy and decision-making process.

Q74 **Lord Strathclyde:** Thank you very much for coming along and for the admirable clarity of the answers that you have given so far. The question I am going to look at is really about mechanics within government, both formal and informal, through which Ministers engaged with each other about constitutional matters. You have spoken about your personal commitment, and others no doubt work well together. I would like to extend that into the other forums that existed. I know this is all backward looking, but there is an inevitability about that. In terms of the period of pandemic and the relationship with Nicola Sturgeon, we had some very powerful testament from the Secretary of State for Scotland a few months ago, before the election. How did all that work? Going back to the first question, how stressed were the formal and informal mechanisms? How able were you to manage the competing demands of individual Ministers and people from outside in the devolved Administrations, for instance?

**Michael Gove:** There is so much to say. First, there is an inherent difficulty if the head of a Devolved Administration is someone who actively wants to break up the United Kingdom. That is different from someone who is of a different party but who accepts the broad rules of the constitutional game. Even during the pandemic, when most of the time almost all Ministers were thinking about saving lives and making the NHS work well, there was still a conversation in which Nicola Sturgeon discussed with her adviser Liz Lloyd how to make political capital by generating a rammy with the UK Government. It was one lapse, but it was reported in front of the Covid inquiry.

All politicians are subject to temptation, but you have a situation which would not have occurred if you had a Labour First Minister at the time. They might have argued vigorously with me, or whoever the Tory was, about resourcing and prioritisation within the NHS and so on, but you would not have had a Labour First Minister who thought of a situation like that as an opportunity to generate constitutional friction. That is the first thing.

However, within that, you can develop a relationship over time. The relationship is more difficult to deliver if every contact is on Zoom. It helped if you could have personal contact. In my role in DLUHC, I was responsible for the distribution of funds to local government within Scotland. On a couple of occasions, I therefore had the opportunity to visit projects with Kate Forbes, whom I got to know and had conversations with. She is every bit as sincere in her desire to see Scotland independent as Nicola Sturgeon, but her approach was, “We have to work together. My job is to concentrate on securing the best possible investment for people in Aberdeen or Cromarty Firth” and so on. So, it is partly ideology, partly personal attitude, and it is also partly having the opportunity to meet.

Forums such as the British-Irish Council, which was set up as part of the Good Friday agreement, allow Ministers from the Devolved Administrations, plus folk from the Crown dependencies, plus the Dublin Government, to meet with the UK Government every six months. Even though they are not decision-making bodies, they are vital in reinforcing those attitudes.

I spent a number of occasions with Mark Drakeford. He comes from a very different part of the political spectrum from me. He has a very different worldview, but I developed a lot of respect for Mark because he took the job seriously, and he could draw a line between Mark Drakeford the socialist and Mark Drakeford First Minister. Again, so much depends on that variety of factors. If you have someone like Nicola Sturgeon—who is a formidable politician—bent on the break-up of the United Kingdom then, whether you are Tory, Labour or Lib Dem, it is much more difficult to manage those relations in Westminster. But Nicola was an exception, not the rule.

**Lord Strathclyde:** Following on from that—I think I know the answer to this—would additional mechanisms have been beneficial? The answer is probably no. It is not about mechanisms; it is about people, personalities, role, and a certain amount of politics and wanting to get the job done. Obviously, the pandemic was an extremely unusual event that had deep effects.

**Michael Gove:** Yes, precisely. Again, there is no institution that can make Michelle O’Neill not an Irish Republican. There are decisions that can be made by Sinn Féin if it wants to show that now it is committed to democracy and to exercising executive power in the interests of all the people of Northern Ireland. And if it is, then any UK Government Minister will be a willing and enthusiastic partner. But ultimately, the real pressure control valve is democratic. So, if you go into an institution, achieve office, behave like a hooligan, are disdainful of the institution, and people think “That was a mistake”, you will pay the electoral price.

**Lord Strathclyde:** That is extremely helpful. Thank you.

Q75 **Baroness Finn:** During your time as Minister, how effective did you find the Cabinet and Cabinet committees in co-ordinating and raising



constitutional issues across Government?

**Michael Gove:** I was fortunate in that both Prime Ministers I served after 2019, Boris Johnson and Rishi Sunak, took seriously the whole question of the constitution, and in particular the health of the union. We had Cabinet discussions about those matters. It was also the case that when we needed the Cabinet committee structure to work, it did. A lot of the time there were informal conversations between me and Secretaries of State and others, but there was a formal committee meeting that we were required to have before we triggered Section 35 of the Scotland Act in order to challenge the legislation that the Scottish Parliament had put forward on gender recognition.

We had a Cabinet committee meeting, which I chaired, where the then Business Secretary—now leader of the Opposition—explained why we needed to act. She was speaking as Minister for Equalities. Other Ministers offered their view, and then it was up to the Secretary of State for Scotland to determine whether it was appropriate to act. That worked like clockwork, not because of my chairing but because of the willingness of all the other government departments to lean in. So, internally, both the formal mechanisms and the informal mechanisms worked pretty well.

**Baroness Finn:** Would any additional engagement mechanisms have been useful?

**Michael Gove:** Again, so much in government and in Cabinet depends on people being reasonable, which they generally are. The Secretaries of State for Scotland, Wales and Northern Ireland all took their roles exceptionally seriously, as did other Government Ministers. Occasionally, one or two departments were a bit offish in their handling of the DAs. I could have a word with them, or with No. 10's chief of staff or deputy chief of staff, who could then have a word with them and jolly them along, as they would in other areas where they were not necessarily being as co-operative as they might be.

**The Chair:** I am conscious of time, but I would like to focus more on policy-making—where that does or may give rise to constitutional implications. You dealt with this in part in some of the previous questions. Lord Thomas, did you want to ask a question on this?

Q76 **Lord Thomas of Gresford:** Good morning. Would you describe the way in which constitutional concerns were raised as ad hoc?

**Michael Gove:** Some of the time, yes, it was. As I mentioned to Baroness Finn, sometimes there would be Cabinet items for discussion involving all Cabinet Ministers, particularly about the health of the union and the UK's constitutional arrangements. There would regularly be meetings with me and First Ministers or with the Secretaries of State in government departments and their respective counterparts, and every six months we published an update on the frequency and the outcomes of those meetings.

Sometimes there are constitutional issues that arise as a result of events, and they have to be considered like anything else in government when a challenge or a crisis emerges. Again, sometimes it can be the case that, as a result of judicial review or action in the courts, a constitutional issue arises that requires the Prime Minister and others to reflect and respond. In that sense, the response can be ad hoc.

**Lord Thomas of Gresford:** Who would take the decision to say, "This is for the Attorney-General; we must call him in on this particular ad hoc issue"?

**Michael Gove:** The Prime Minister would normally have a very keen instinct for that but would be advised by the Cabinet Secretary or by other Ministers. If, for example, I was Environment Secretary, and a judicial review said that a particular decision I had taken ran contrary to the habitats directive—an inherited EU law—and the decision I had taken was in line with what we had said in our manifesto we were going to do, in such circumstances, having taken legal advice beforehand, I would almost certainly say to No. 10, "We've got a problem. Either we change the law in order to be in conformity with our manifesto commitment, or we drop the manifesto commitment and accept the law. But if we're going to change the law, this isn't just changing a piece of secondary legislation; it's challenging inherited EU law. You've got to realise this is big potatoes, so we will need the Attorney-General and others to reflect on what the legal ramifications of this would be".

Q77 **Lord Thomas of Gresford:** We understood from a previous inquiry that the test the Attorney-General would apply to a particular issue would be whether there was a respectable argument, not necessarily the best argument or his overall opinion, but whether there was a respectable argument. Do you think that was a sufficient safeguard?

**Michael Gove:** Yes. If you are contesting something, the Attorney-General has to be able to say there is case that can be argued and that you would not be laughed out of court for arguing it. But within government, there is this curious mixture of art and science in assessing whether you are likely to win a case. So a Minister is told, "If you proceed along this basis, there is a moderate-to-high risk of a judicial review being brought, 50 to 70 per cent". What happens then? There is a low-to-moderate risk of losing, so 30 to 50 per cent. That is helpful on one level, but it cannot be precise. I remember on one occasion being told, "You will almost certainly lose this case. It's as close to nailed on as anything will be. There is a case that we can make, if you'd like us to but, Minister, there will some expense in instructing lawyers and going to court, and since you're almost certainly going to lose, you will have to explain afterwards why you pursued this cockamamie course of action". And we won.

**Lord Falconer of Thoroton:** That is lawyers for you.

**Michael Gove:** So, yes, you have to listen, but ultimately if they say, "No one—not even the most desperate, briefless barrister—would argue

this case because everyone would consider it to be outrageous”, it is only in those circumstances that you say, “Okay, of course”.

**Lord Thomas of Gresford:** Do you agree that it is almost the lowest part of the bar in a place you could put a bar?

**Michael Gove:** This is a legitimate area of political debate, and the Attorney-General has entered it with his fascinating Bingham lecture. The Attorney-General, to my mind, appears to be arguing that there should be quite a high bar.

**Lord Thomas of Gresford:** Yes.

**Michael Gove:** That is legitimate. My view is different. My view is that we elect people on a manifesto to deliver. You should never break the law, but you do not know whether a particular decision will be unlawful, or if the court will find against you, until something is decided. There is a broader problem in western democracies at the moment, which is—it is just a matter of opinion—electorates are increasingly annoyed when Governments do not deliver and say, “We can’t do this because of this code, this custom, this body, this quango, the courts” or whatever. One thing that feeds populist extremism is that democratic Governments are not always as responsive as they should be. But it is an opinion and it can be shot down. The Attorney-General has put a broadly contrary view in a very persuasive way.

**Lord Thomas of Gresford:** Take the Brandon Lewis matter, where he said he was going to break international law in a “very specific and limited way”. Was that as a result of advice he had received? Did it come to you in a constitutional way?

**Michael Gove:** Brandon would certainly have received advice. But again, to the point we discussed earlier, there is a difference between domestic law and international law. We have a dualist system. International law only applies when it is there in statute.

**Lord Thomas of Gresford:** We disagree on that.

**Michael Gove:** Of course. To put me in my place, so does the current Attorney-General. I am straying into other territory, but my argument is: sovereign is he who decides the exception, and Parliament can decide not to abide by international law if it so chooses. That is absolutely at the heart of our constitutional principles. There are interpretations of international law, but the Attorney-General’s view broadly—I do not want to caricature; as I say, he is a very thoughtful, sophisticated, brilliant lawyer—is that the UK Parliament should accept international law when it comes to questions like the jurisdiction of the ICC, or decisions over what happens to the Chagos Islands. I think he is wrong, not because he is wrong in law, but because, politically, Parliament can decide, not international courts.

**Lord Thomas of Gresford:** You would you take the view that the Crown could breach the King, if you like, where the royal prerogative has been

used to enter into international obligations? Do you think the King or the Crown in Parliament could ignore that?

**Michael Gove:** It is always open to a sovereign nation to abrogate a treaty.

**Lord Thomas of Gresford:** I have to say I disagree with you entirely on that.

**Michael Gove:** It is a Diceyan view of the constitution, which is very traditional. There is a marvellous book about perspectives on our living constitution, written by two people—one from the left, one from the right—Richard Johnson, who is a Labour don, and Yuan Yi Zhu, a Canadian-Chinese lawyer and a Conservative. I recommend it because it makes the case for a broadly Diceyan view of the constitution. For example, the NHS could never have been created if we did not have a Diceyan constitution. The confiscation of the assets of private hospitals and the way in which it was done was only possible as a result of parliamentary sovereignty. I strongly take that view.

**The Chair:** I do not think we are looking at arguments for overriding parliamentary sovereignty. That is not before us, and this committee has not sought to address it either.

**Michael Gove:** Forgive me.

**The Chair:** I am conscious of other reports the Constitution Committee has published, and your “And we won” case. Exceptions do not make good governance; they happen.

**Michael Gove:** Yes.

**The Chair:** But another stress on respectable legal argument is that the Government do not communicate to government lawyers that the bar for respectable argument is so low that it becomes the cultural norm, which was a concern. Did you experience that? Do you fear that could be a risk?

**Michael Gove:** My general fear, actually, is that Ministers are too cautious, as a rule. The revealed preference of most Ministers is that, when told there is a reasonable chance of JR and of losing, they tend not to go ahead. One has to look at the specific circumstances, but if the question was, “Are Government lawyers too muzzled and therefore Parliament too reckless?” I would say quite the opposite.

**The Chair:** Let us move on to long-term and strategic thinking about the constitution.

Q78 **Lord Falconer of Thoroton:** Do you think that long-term strategic thinking about the constitution takes place in government?

**Michael Gove:** Not nearly as much as it should.

**Lord Falconer of Thoroton:** Does it take place anywhere?

**Michael Gove:** Yes, in academia, in the Civil Service, and in Parliament.

**Lord Falconer of Thoroton:** Into the Civil Service, where does it take place?

**Michael Gove:** It depends on the individual, but it takes place through the Cabinet Secretary and in the Cabinet Office.

**Lord Falconer of Thoroton:** What does he or she do in relation to promoting long-term thought, in your experience?

**Michael Gove:** I think they take the opportunity to study past precedent, reflect on potential future crises, and discuss some of these questions with the Prime Minister's principal private secretary and that of the monarch. One question that came up when I was in the Cabinet Office was as we repealed the Fixed-term Parliaments Act. The Minister of State at the time who took the legislation forward, Nick True, who was subsequently Leader of this House, assembled a team, including talking to historians from outside, to assess the Lascelles principles and on what basis a monarch could refuse a Prime Minister a Dissolution.

By definition, you learn as much from hearing from Peter Hennessy or William Shawcross, because they have been involved in studying the constitution or have been through the papers to write a biography of the monarch, than one might from even the most assiduous serving civil servant, because, in some of these big constitutional questions, history teaches you as much as the Cabinet manual can.

**Lord Falconer of Thoroton:** That is interesting. The question of long-term consequences arose in the context of the repeal of the Fixed-term Parliaments Act. My friend Lord Thomas raised with you the question of what Brandon Lewis had said in the context of the internal market Bill. If you remember, the Bill basically created an internal market for the United Kingdom, in effect overriding what appeared to be the settled principles of the devolution settlement, and, what is more, specifically giving the Executive power to override an international law agreement that they had made not months before. It raised two incredibly important constitutional issues. What advice and what process were adopted in the Government when considering the internal market Bill to focus on what the constitutional aspects were?

**Michael Gove:** A significant amount of advice was given, including by civil servants, in the business department and in the Cabinet Office.

**Lord Falconer of Thoroton:** What does the business department know about the constitution?

**Michael Gove:** The key thing here was that the Internal Market Bill was intended to ensure that the Cassis de Dijon principle, which operated within the EU, operated within the UK. The principle that a good placed on the market in Europe is capable of being sold anywhere within that market had supplanted the pre-existing constitutional principles of the UK. Once we left, since we could no longer use EU law—we could use it

theoretically—in order to do that, there had to be a way of resolving that. And there were different arguments.

**Lord Falconer of Thoroton:** We understood the effect of it. We understood the effect of removing ourselves from the European Union. These things were part of the landscape. I am sure the business department—I cannot think of a better department—did not really have much constitutional expertise.

**Michael Gove:** No, but it was thinking about the effective operation of how it would work.

**Lord Falconer of Thoroton:** Where would one be looking for the constitutional expert? Would it be the Cabinet Secretary?

**Michael Gove:** Yes, the Cabinet Office. There was a team of officials in the Cabinet Office looking at how this would work. Indeed, I remember having conversations with officials who would run through what the argument would be for a simple reliance on common frameworks by agreement and whether one would need—to coin a phrase—a legislative backstop that you could provide it.

**Lord Falconer of Thoroton:** Yes. Presumably, in considering that—for example, in relation to international agreements, which my friend Lord Thomas asked about—you would have regard to the United Kingdom's commitments to international agreements. Those are matters of the constitution.

**Michael Gove:** Yes, they are.

**Lord Falconer of Thoroton:** We have signed up to something called the Vienna convention, which means that you cannot just abrogate treaties unless there is a series of reasons that are satisfied. Is that constitutional, in your book?

**Michael Gove:** It touches on the constitution.

**Lord Falconer of Thoroton:** Is it a code that we are bound by?

**Michael Gove:** Well, it is a code that we seek to abide by.

**Lord Falconer of Thoroton:** Seek to abide by? When we signed it, and we have remained committed to it? How reliable is Albion in these matters?

**Michael Gove:** More reliable than almost any other country, but ultimately, to take two figures who are emphatically not English, both Bismarck and de Gaulle made the point that, at moments of crisis, at exceptional moments, it is within the power of a sovereign state to operate outside the international treaties that it may have signed up to.

**Lord Falconer of Thoroton:** The Vienna Convention provides for emergencies.

**Michael Gove:** Exactly, but ultimately even that is a convention about how you get out of conventions. On the whole, it will always be a good thing to be a reliable, predictable partner and to take seriously every undertaking and convention into which one enters. But you must have the capacity to exercise that exception in extremis.

**Lord Falconer of Thoroton:** The worrying thing about your evidence is that you say that people are getting rather worried in the world about being restricted by codes. That is one strand of your evidence. The other strand of your evidence is that our constitution is marvellous.

**Michael Gove:** Yes.

**Lord Falconer of Thoroton:** Our constitution is more, is it not, than just parliamentary sovereignty?

**Michael Gove:** It is much more than that. Many of the efforts by people to look for constitutional perfection and to put forward constitutional innovations misunderstand the essential nature of parliamentary sovereignty. One of the problems in, for example, the debate over the use of Section 35 of the Scotland Act is that people had the impression, supported by folk behind the Claim of Right and so on, that the constitutional position was that the Scottish Parliament could do absolutely anything that it liked in the areas of devolved competence. The legislation was so set up to ensure that there would be exceptional circumstances where the UK Government was legitimately allowed to step in, and it was therefore constitutionally the right thing to do. By definition, any UK Government should exercise that power sparingly. If it is exercised promiscuously and wantonly, people in Scotland will think, "This is outrageous", and they would have every right to move towards agitating for a different set of constitutional arrangements, although I hope they would not. Because that power was exercised soberly and thoughtfully, it was the right judgment.

**Lord Falconer of Thoroton:** I do not think that gives rise to much of a problem, because there is a specific statute that allows an intervention of that sort.

**Michael Gove:** Yes, exactly.

**Lord Falconer of Thoroton:** You are saying that you are not bound in emergencies by the codes. An example of a code would be that you should not introduce legislation that says that we are going to lock everybody up if they disagree with our parking policy. Obviously, that would be an unconstitutional thing for a Government to do. I am really worried by somebody like you saying, "Because populism is so wild, we can ignore codes that limit the way Governments behave if it is justified by politics". That is what you are saying. Or give us what you think your limits are on ignoring the codes?

**Michael Gove:** Everything depends on the particular set of circumstances.

**Lord Falconer of Thoroton:** That is the worry, is it not? So where is the certainty?

**Michael Gove:** There can never be certainty. It is an illusion. In politics, you place your hand in a stream and you do not know what the consequences of that will necessarily be. It is not given to us to have certainty. One of the virtues of our constitution is that over time we have developed a set of processes and conventions that people broadly understand. The ultimate judgment is the people's, so if I bend or even break the constitutional principles, and it is necessary to do so to save the country from some dire peril, judgment will follow at the general election about whether that is the case.

This may be helpful. One of the other big debates we had in government during Covid was whether to use the Civil Contingencies Act. In the end, we felt that it was too draconian, and the use of it could be challenged; I can explain why. So we went down a different route for parliamentary legislation. You would say that this in itself is a piece of statute, but it gives the Government capacity in extremis to operate in a way that none of us would consider to be at all desirable.

Q79 **Lord Falconer of Thoroton:** In relation to the constitution, take the issue of the Prorogation. Put aside the question of the legality. There is a separate question of constitutionality. Did you think there was an emergency that justified non-compliance with what had become the convention that Parliament would sit quite regularly and not be prorogued for six weeks? This is a constitutional question, not a legal question, that I am asking you.

**Michael Gove:** The Attlee Government used Prorogation in order to subdue this House towards the end of their time in office, in order to ensure that—

**Lord Falconer of Thoroton:** That is not an answer. They did it in order to use the Parliament Act. That is a different question.

**Michael Gove:** Yes, but it was the right thing to do.

**Lord Falconer of Thoroton:** You have been saying that it is the people who will determine. They are represented in Parliament. How could it have been constitutional to put them to one side for six weeks?

**Michael Gove:** I disagree with the six weeks point.

**Lord Falconer of Thoroton:** I do not know whether I am right on that. How long was it?

**Michael Gove:** It was the equivalent of seven working days more than we would otherwise not have sat. More broadly, if it were considered by the public to have been an outrage, the Conservatives would have lost the 2019 election.

**Lord Falconer of Thoroton:** Is everything judged by elections?



**Michael Gove:** Ultimately, yes. The other thing I would say is that I was personally irritated by some the innovations—and they were innovations—that the Speaker of the House of Commons used in order to discipline or constrain Theresa May’s Government. But I have to accept that, in the constitution, it is the Speaker who decides in the House of Commons on these things. I might think it is unprecedented and outrageous, but ultimately he was operating within the remit of his office, and then the ramifications work out.

The essence of it is that a referendum on something as momentous as whether we should stay in the European Union will inevitably have profound ramifications and will take some time to work through. Whether people think that it was an absolute disaster that we left or a great liberation, the truth is that our constitutional arrangements went through a lot of turbulence but, in the end, the plane landed intact.

**Lord Thomas of Gresford:** But with the unlawful act of Prorogation.

Q80 **Baroness Goldie:** Mr Gove, good morning. You explain that you are cognisant of the power of the people as a bulwark of what Governments ultimately decide to do and how countries are run. But, of course, this includes people like Gina Miller, who can go to the courts as an additional protection.

**Michael Gove:** Completely, yes. Again, that is one of the strengths of the constitution. If the Government overreach, they do things in a way that is procedurally flawed or that is outside their competence—an individual goes to court, there are judicial reviews, government can contest, ultimately it goes to the Supreme Court, the Government have to obey the law. If governments ask Parliament, “Shall we change the law so it is in conformity with our original intention?”, that can be done. It is not necessarily fun for everyone along the way when that goes on, but that is how things should work. People should have the capacity to judicially review government decisions. That is one of the ways in which the Executive are held properly accountable.

Q81 **Lord Anderson of Ipswich:** You have spoken about moments of crisis. I would like to take you back to the Covid crisis, where once again you were absolutely in the centre of the cockpit. For reasons that you may say were unavoidable, we ended up in a very strange situation where the Prime Minister was on television ordering us to do things for which, at the time, there was no legal authority that would follow. Draconian regulations were coming in before Parliament had had a chance to debate them. Indeed, sometimes they had been repealed by the time Parliament had a chance to debate them. Did that prompt any reflections on your part of a constitutional nature about the relationship between the Executive and Parliament?

You described the Civil Contingencies Act, which was available to you, as too draconian. Of course, one feature of that Act is that although it gives Ministers the power to issue regulations on pretty much any subject under the sun, it also gives Parliament the power to amend those

regulations, very unusually. How would it have been more draconian had you used the Civil Contingencies Act, and do you have any general reflections on that process?

**Michael Gove:** It is a huge and very important matter. You are absolutely right that although the Civil Contingencies Act empowers the Executive in very powerful ways, it is subject to parliamentary review. That is one of its advantages, and the original legislation designed by Douglas Alexander is very robust. However, one of the other factors is that to use the Civil Contingencies Act you have to say, as I recall, that the disaster to which you were responding was unforeseen. Therefore, some of the legal advice that we were given was, "You may not have been able to foresee quite how devastating Covid was, but you were given fair warning that a pandemic was coming, so you can't necessarily reach for this lever and be certain that it won't be challenged". It is arguable either way, but in the end we chose to go down the route that you describe.

Secondly, there is a lively argument about the distinctions between our approach and, say, the approach of Sweden. The distinction, which I know this committee appreciates but not everyone outside does, is that Sweden asked its citizens not to mix socially. We initially asked and then required them to. The effect was broadly the same. The judgment was made that in some societies the culture of that society will mean that a government request, injunction or plea will be adhered to. The view here was that unless people are clear about what is legal and illegal, that will lead to confusion.

**Lord Anderson of Ipswich:** But we were not clear, were we? We had the Prime Minister on television saying, "You must stay at home", at a time when no such regulations existed. Was that constitutionally acceptable from your point of view?

**Michael Gove:** It is absolutely constitutionally acceptable for a Prime Minister, in a crisis or an emergency, to issue a plea from the bully pulpit. That takes us precisely to the second question: is the best way of dealing with a crisis to use legislation to restrict liberty, rather than asking people to behave in a public-spirited way? The argument that prevailed was that legislation brings clarity in people's minds.

I think there were certain unhappy consequences of that, including the police moving people on from sitting on a park bench, or drones flying over Derbyshire fields in order to monitor people. So we moved from a situation where the law was meant to bring clarity to one where it turned the police into curtain-twitching agents of enforcement to the nth degree. That was regrettable, absolutely.

**Lord Anderson of Ipswich:** Yes, and it may have had something to do with guidance overlaid on law, but I do not want to get distracted by that. Can I go back to the point you made earlier? You rightly said our constitution is not codified, and no serious body of opinion in this country thinks that it is currently ready to be codified, but to a large extent it

already exists in statute. Since you have been so strong on the need for flexibility to react to things on a case-by-case basis, do you think it is already over codified? Do you think, for example, that the Constitutional Reform and Governance Act 2010 or the Constitutional Reform Act 2005 are excessive? Have you ever felt in government that you are constrained by hard lines around the constitution from doing things that it would have been right to do?

**Michael Gove:** Whenever I chafed, I do not remember thinking, “I need to go back to this piece of legislation”, or, “We should go back and change it”. I mentioned earlier the pluses and minuses of the 2005 Act with respect to the role of Lord Chancellor. But no, I do not recall feeling that strongly. I will have a look back, and anything occurs particularly, I will write to the committee with an example.

**Q82 Lord Anderson of Ipswich:** That would be fascinating. Finally, bearing in mind public attitudes towards standards in public life—there is a degree of cynicism, whether warranted or not—are there any other areas, particularly regarding for example what are sometimes called the constitutional watchdogs, that might benefit from being put in statutes? I am thinking of things like ACOBA, which may advise people on business appointments but does not have any coercive power; or the Commissioner for Public Appointments, who is there to ensure that the playing field is level when it comes to appointments to these very important jobs, perhaps even to the House of Lords Appointments Commission.

Is there anything to be said for giving statutory force to those bodies, and perhaps to some of the codes that they have to apply, just so that we all know where we are, and people can feel confidence that Ministers will be properly constrained from any possible abuse of their power?

**Michael Gove:** I am deeply sceptical about going down that route. There may be an individual case, but I think that the Executive and the legislature have ceded too much authority to other bodies. I can understand the individual case in each example, but, ultimately, accountability matters. My friend and colleague Charles Moore has made the point that we have now reached this terrible situation whereby MPs and the Government, by dint of being elected, feel less confident about the exercise of their powers than an independent body.

There are bodies that quite properly should be independent, that have particular functions. When I was Education Secretary I was very glad that Ofqual was an independent body monitoring the quality of examinations, so that Ministers could not debauch them. However, overall, my view, as you can tell, is that MPs should be more assertive and the Executive, if they have a majority, should be more confident than has often been the case in the past.

**Lord Anderson of Ipswich:** If an incoming Prime Minister—not from your party, I am sure—came along and said, “I don’t need an independent adviser on ministerial interests. We’re not going to bother

with this useless quango, the Advisory Committee on Business Appointments, we don't need anyone to ensure a level playing field on public appointments. I'm simply going to abolish all three quangos, and I don't even need to consult Parliament because they don't have statutory force". Would you view that with equanimity, or are you saying that it is simply never going to happen because we are all decent people?

**Michael Gove:** I do not view it with equanimity, but I think the Prime Minister would be within his rights so to do. Then we would form a judgment about whether the Government were better for it.

**Lord Anderson of Ipswich:** They might pay the electoral price five years down the line.

**Michael Gove:** Yes, absolutely. In terms of its practical operation, the Advisory Committee on Business Appointments does a very good job. I have been on the receiving end of advice from it, and it does an excellent job as things are. I would not change anything particularly there, but if a future Prime Minister decided that he or she wished to dispense with it, he or she would be entirely within their rights.

Q83 **Baroness Andrews:** How do you now view what was attempted through the Public Bodies Act 2011, when there was a very strategic and very serious attempt to strip the public bodies of their independence and powers. It partially succeeded—not entirely, as you know—but it did not result in MPs becoming more assertive. There is a difference between MPs knowing how to be assertive and having the right to be assertive. I agree with you about the Civil Service; I think the quality is more to do with diffidence and confidence. How you create and encourage confidence and challenge to Ministers is a really serious business. But whatever happened to public bodies, it was a pretty serious attack on that fourth estate.

**Michael Gove:** I would have to go back and look again at the legislation, which Oliver Letwin was in charge of. You touched on a very important point. Sometimes, particularly from my side of the political aisle, you have people railing against quangos. As you can tell from what I just said, I am not a huge fan of new ones. However, there are different types of quango. There are regulators that should properly exist: Ofsted, Ofqual, Ofwat. There are other bodies that exist at one remove to give advice to Ministers, whether it is Natural England or the Environment Agency on environmental matters. Parliament has made a decision, our Government have made a decision, which I think is right, that when you are disbursing money to cultural organisations it should be the Arts Council that does it rather than the Culture Secretary. All those are defensible.

Having a proper rationale for why certain public bodies should exist, and why others or their functions should be subsumed within government departments with direct ministerial accountability, rather than just saying, "We need to have a cull. We need to reduce it by 20% or 30%", is very necessary. I would defend some quangos very strongly and

question the wisdom of others. I worry that the debate, particularly on the Tory side of the argument, is sometimes reduced to the idea that they are all bad.

**Q84 Lord Beith:** I would like to look at a couple of issues that are constitutionally significant, just to know whether your experience throws any light on them. One is the use of skeleton legislation, leaving even major issues of policy to be determined through the use of delegated legislation at a later stage. I am not aiming at any particular Government, because it is a common trend of different Governments. In your experience, was that discussed at any stage as a constitutional issue, or did it remain what it often appears to be: simply individual departments seeing what they can get away with when they do not have the policy ready, or they would just prefer in the future to have untrammelled freedom to do things with only an attenuated parliamentary process?

**Michael Gove:** In a way, both. The Parliamentary Business and Legislation Committee—the committee within government that is responsible for acting as the gateway to deciding whether individual departments can proceed with legislation and bring it forward—would constantly remind departmental Ministers of these questions. The Leader of the House of Lords, the Lords Chief Whip, the Leader of the Commons, the Commons Chief Whip, the previous Scotland Secretary, Alister Jack, were very tenacious in saying to Ministers, “You’ve got to take account of the need to have your legislation ship-shape. You can’t simply bring forward skeleton legislation. You can’t rely on Henry VIII powers. You can’t colour in the picture later. That will lead only to trouble. The legislation will not proceed as quickly as you want, and there could be perverse consequences”. So, within government, there was a group of Ministers who would assemble and make that point.

Secondly, parliamentary counsel would do Ministers’ bidding. They would often say, “We can make this work for you, but there’s a real problem”. The problem often lay within individual government departments, in that Ministers would insufficiently hold to account the policy civil servants for the pace of detail that they were providing in order to allow parliamentary counsel to draft the legislation. It is not the fault of civil servants, it is the fault of the Ministers or Secretary of State in not saying, “What we’re attempting here is really big or complicated. I’m going to bear down on it, I’m going to be on it, and I’m going to pursue that detail”.

An individual Secretary of State may on occasion not have done that work on that detail, but they will say to Number 10, “Look, this is really important legislation. We’ve got to try to get it through”. Then Number 10 will lean on PBL so that that Bill has its Second Reading before it is truly ready in all its additional elements. That is part of the political dynamic, but serious consideration is given.

**Lord Beith:** You have been party to discussions at the Legislation Committee that dealt with the constitutionality of the shift of power that

was involved, rather than merely the difficulty the Bill would encounter in the Lords if they did not change it.

**Michael Gove:** The two would be conflated, but yes.

Q85 **Lord Beith:** There is another issue, which obviously has constitutional implications and on which you have a lot of personal experience. Can you foresee a coherent constitutional role for the Council of the Nations and Regions, given the very serious difficulty that is faced in trying to devise a system that deals with England in a way that gives it proper representation in these inter-nation discussions, while recognising that it is so much bigger than the other parties?

**Michael Gove:** The Council of the Nations and Regions is a good initiative. Britain is not a federal state. Maybe it should be. I do not think it should be, but there is a respectable argument for that. Given that we are not, and given the nature of England's position within it, this council is worthwhile. It should be a complement to other existing ways of the UK Government interacting with the devolved Administrations, not a replacement for it. It should concentrate principally on investment and economic growth. That is the lead responsibility of metro mayors. There are other issues that should be dealt with because the devolved Administrations have a broader array of responsibilities elsewhere.

I can completely understand the argument for a federal UK, but it just does not seem to resonate with how people in England feel about how they want to be governed. I have one mea culpa: in the aftermath of the referendum on Scottish independence in 2014, there were a number of Conservative MPs—I was Chief Whip at the time—who felt that too much had been granted to the Scottish Parliament through the vow and the legislation that followed, and that England's interests were being sidelined.

We brought forward in the coalition the arrangement "English votes for English laws", and I said to the Prime Minister, "This is very much what our Back-Benchers think". I think it was a mistake. We subsequently repealed it, I think because England's weight in the constitution and in Parliament is such that it should tread more lightly. It was my mistake, and I felt that both in detail and in tone it was not true to the traditions of Parliament and it was disrespectful of other parts of the United Kingdom. I just mention it, because, given the nature of England if you are not going to have a federal state, a lot of the balances in the constitution rely on judgment, which may not always be there.

**Lord Beith:** Interesting confession on which to end there.

**The Chair:** The Constitution Committee is on record as supporting you on your decision on EVEL for exactly the reasons that you have put. But before we carry on with this, Lord Falconer has a private stress point.

Q86 **Lord Falconer of Thoroton:** Yes. My friend Lord Beith asked a question about skeleton legislation, and there is what you have just said about English votes for English laws. Both those things you acknowledge are

incredibly significant to the constitution: one in relation to devolution, and one in relation to parliamentary relations with the Executive. What process was gone through by the Government? In other words, what advice did they get, who gave them advice, about whether these two significant constitutional steps should be taken?

**Michael Gove:** Pre-dating my being Chief Whip, work had long been done in this area, some by people who were in government, some by people on the Back Benches. Once the commitment was made by David, quite a lot of work was done with George Young, I think.

**Lord Falconer of Thoroton:** Correct me if I am wrong, but the commitment was made by the Prime Minister maybe the very morning of the result of the referendum being known. Plainly, he had got agreement in government to do that. So the interesting period would be the build-up to Mr Cameron's announcement on the doorstep of No. 10. What work was done, and who gave you advice—"you" being government, for these purposes.

**Michael Gove:** My role at that time as Chief Whip was to reflect sentiment within the parliamentary party and to manage legislation but not to design legislation.

**Lord Falconer of Thoroton:** You would be intimately involved in the process of reaching cross-government agreement.

**Michael Gove:** Not at that stage, no.

**Lord Falconer of Thoroton:** Not as the Chief Whip?

**Michael Gove:** Not at that stage, in that regard. I would have to go back. All I know is that the work was carried on elsewhere, and in the general to and fro I would have said, "I think this is something that we should do" Here is an option, here is a means of proceeding. Should we go down this route?" My contribution was to say, "Yes, I think we should on balance, because of what people are saying". That was a mistake.

**Lord Falconer of Thoroton:** You tell me if I am wrong, but I am getting a suspicion—not because you are saying anything that I am not believing—that it is all a bit ad hoc. Nobody was giving any real advice on either of those issues, because there was no real focus on what the constitutional impact of skeleton legislation and English votes for English laws, so nobody ever really considered within government what the constitutional implications were.

**Michael Gove:** I think lots of people did.

**Lord Falconer of Thoroton:** Tell us who and how.

**Michael Gove:** The civil servants who were working. I cannot remember what Philip Rycroft was doing at the time. A unit was set up in the Cabinet Office and in Treasury to look at some of these questions. Other than managing parliamentary opinion and caring about the issue deeply,

I was not directly involved in some discussions. Teddy Alexander and others, and Philip, would probably be able to help.

Going back to an earlier point, referenda generate percussive consequences and provoke crises. The vow, the commitment to give more power to the Scottish Parliament, which was enacted subsequently, was done as a response—some people would say a panicked one—to the prospect of a yes victory. In the end, the legislation was probably the right thing to do, irrespective of that. That takes me to another point, which I have made on the radio before: that my strong advice to any Prime Minister is to never have a referendum on anything ever.

**The Chair:** That is definitely a quote to use. Thank you. Let us ease back to the Council of the Nations and Regions.

Q87 **Baroness Goldie:** You have made very clear, and used a very interesting illustration about, the importance of personal relationships and trying to nurture a good accord with the devolved Administrations. The Council of the Nations and Regions, we think, has resulted in the abolition of what was the Prime Minister and Heads of Devolved Governments Council, which seemed to me to give the First Ministers of the three devolved nations a certain locus of primacy in a relationship with the Prime Minister. Will that in any way lessen the perception by these First Ministers of where they fit into the structure?

**Michael Gove:** It might do, and I would worry if it did. As I mentioned earlier, without wanting to overburden Ministers with too many councils and meetings, having a meeting in which you have the First Ministers and mayors together is a good thing. There should also be fairly regular meetings in which the Prime Minister, or a very senior Government Minister from the UK Government, meets the First Ministers or Deputy First Ministers to talk through things.

There is an inevitable amount of overlap, but my revealed preference would be that there should certainly be a meeting where it is First Ministers and DFMs only. No disrespect to the metro mayors—I am a huge fan of them—but there is a difference between being First Minister of Scotland and metro Mayor of Greater Manchester. Even though Andy Burnham is responsible for lots of things in a population similar to Scotland's, Scotland is an historic nation, Manchester is a great city.

**Baroness Goldie:** You also usefully explained, and it was helpful to put this context around it, that Nicola Sturgeon was the exception, and I think she was universally regarded politically as a very difficult person to deal with. You also explained helpfully how you have managed to cultivate a good relationship with Kate Forbes, for example. I am interested in driving at what you think is the best way of trying to maintain good relationships with the devolved Administrations. You have indicated where that might lie at prime ministerial or first ministerial level, but is there more that individual Westminster government departments can do to engage with counterparts?



**Michael Gove:** Yes. Work goes on in order to that civil servants are “devolution literate”—a horrible phrase; that people understand not just where the responsibilities lie but how the devolved Administrations work. That is just part of Civil Service training overall, and that is very important. What I would also say is worthwhile is civil servants from the UK Government serving in the devolved Administrations and then coming back. That happens, but not perhaps as much as it might.

The other thing is just good relations between parliamentarians in the devolved Administrations and here in Westminster. There is no substitute, ultimately, for politicians getting to understand what is going on in the other institutions. It may well take a bit of time, but if one thinks that the Scottish Government are doing the wrong thing, then understanding why they are operating the way that they do, talking to people from your own party and other parties in that Parliament enables you to respond with a degree of thoughtfulness, even if what you are doing is actually wholeheartedly opposing what the Scottish Government want.

Q88 **Baroness Goldie:** Finally, it may be unusual, but would you agree there is also the possibility that if Westminster government departments are pursuing that engagement, there is the possibility that we may learn something from the devolved Administrations? As a Defence Minister, I did try to engage regularly with my counterparts, particularly in Scotland and Wales, because Northern Ireland did not have a sitting Executive. I was genuinely interested in what I learned about what Scotland was doing with education and how they were dealing with modern apprenticeships. All that affected our ability as a Ministry of Defence to do our job.

**Michael Gove:** Completely, yes. There are and will be areas where, because of an historic difference that has been preserved, or because of a new approach that thoughtful people have brought forward, we can learn from the devolved Administrations, absolutely.

**The Chair:** Thank you very much for coming this morning. You have answered lots of questions and given us lots of food for thought. Thank you very much indeed.