



Constitution Committee

Corrected oral evidence: The rule of law

Wednesday 10 September 2025

10.30 am

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Members present: Lord Strathclyde (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Lord Burnett of Maldon; Lord Foulkes of Cumnock; Lord Griffiths of Burry Port; Baroness Hamwee; Baroness Laing of Elderslie; Lord Murphy of Torfaen; Lord Waldegrave of North Hill.

Also in attendance: Baroness Ramsey of Wall Heath.

Evidence Session No. 14

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Questions 192 - 210

Witness

I: The Rt Hon. the Lord Hermer KC, Attorney-General for England and Wales, Attorney-General's Office.

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Examination of witness

Lord Hermer.

Q194 **The Chair:** Ladies and gentlemen, welcome to this meeting of the House of Lords Constitution Committee. Today, we hear from the right honourable Lord Hermer KC, Attorney-General. Thank you very much indeed for coming along; you are welcome. I think this is your first attendance at the Constitution Committee. I hope you feel that we allowed you to get your feet firmly under your desk. Do I gather that you would like to make a short opening statement? That is very welcome, so, please, the floor is yours.

Lord Hermer: Thank you very much indeed. I can reassure you that it is a short opening statement. What a pleasure it is to be before this committee, in particular on this subject. The rule of law could not be more important to the Government or to me personally. I start by paying tribute to the work of this committee. That is not just flattery before you start asking questions; the work of this committee has been enormously important to me, as I suspect it has been to many of my predecessors.

Your ninth report, on the roles of the Lord Chancellor and law officers, recommended that the law officers' oath be amended to make an express reference to the rule of law. I read that, thought it appropriate to amend it and, with the Lord Chancellor and the Lady Chief Justice's permission, I did. That came from the work of this committee. That same report provided what I thought was very helpful analysis on the Attorney-General's legal risk guidance. Again, the analysis of this committee was very helpful when I came to amend that.

Your 16th report, on delegated powers, together with the report of the Delegated Powers Committee—Baroness Ramsey is here—has been enormously helpful in shaping my thinking about the appropriate role of delegated powers. That led to not only an early-day message to my colleagues about legislative standards but to the publication of a guide to making good legislation and the appropriate use of delegated powers within that. I am indebted to this committee for the work you have done and very much look forward to answering your questions.

Q195 **The Chair:** Thank you very much indeed. As I am sure you are well aware, given your opening statement, delegated powers is an issue we take seriously. We want to discuss it further with you and consider what thoughts the Government have on it. Legislative standards have been slipping for so long that I cannot even remember when they started to slip. It would be a good idea to try to get them back on track.

Let me start with a question on the internal management between you and the rest of the Government. Particularly, how do you and the Lord Chancellor split responsibility for upholding the rule of law within Cabinet? I know that there is now a new Lord Chancellor. We had the old Lord Chancellor here last week and you may have seen what she said. One issue that is particularly live at the moment is the whole discussion taking place about Article 8 and the ECHR, and how that kind of debate is being

taken on within the Government. When can we see any results emanating from that?

Lord Hermer: I will deal with that question in two parts: first, the internal management and how it works in respect of responsibilities for the rule of law, and then I would very much like to answer the question on where we are with Article 8. Every Minister has a responsibility to uphold the rule of law. It is in the updated Ministerial Code and that responsibility rests upon all our shoulders. The Lord Chancellor has an apex responsibility, because it is written into statute, to uphold the rule of law and protect the independence of the judiciary. That is a key constitutional role in upholding the rule of law. The Attorney-General also plays a distinct role in upholding the rule of law, which has been a long and traditional one, ensuring that Government and Ministers receive legal advice that allows them to uphold the rule of law in the decisions they make and policies they bring into effect. Ensuring that Ministers receive advice to allow them to make decisions that are lawful is a central part of our rule of law fabric.

I think that since the 2005 reforms in particular, where we moved from a stage in which the Lord Chancellor would always be a senior lawyer to one in which sometimes the Attorney-General is the only senior lawyer attending Cabinet, there has been an increase, depending sometimes upon the particular appetite of a given Attorney, in taking additional responsibility for promoting the rule of law. Attorneys-General have always given lectures on the importance of the rule of law, as you would expect, but some of my predecessors—I pay tribute to Baroness Prentis in particular—really leant in to work more generally about the promotion of the rule of law. She did lots of good work with young people. That is an additional, appropriate role for an Attorney-General to play. I hope that answers satisfactorily that part of the question.

I turn to Article 8. I want to do that in the context in which it currently arises; that is the context of immigration and asylum, not least in respect of the small boat crossings. This Government have made it absolutely plain that it is our priority to address that. As the previous Lord Chancellor—now the Home Secretary—made plain before you, we will leave no stone unturned in trying to protect this country's interests, dealing with what we inherited in respect of an immigration and asylum system that in large measures was broken, and addressing the pressing issue of the small boat crossings. As I said, that is something we are absolutely determined to address. Nothing sensible, practical or effective will be off the table.

There has been a lot of discussion about Article 8. The previous Home Secretary announced a review into Article 8 and I do not want to pre-empt anything that that review might come out with. I will just make a few comments about the kinds of area that I think it essential that the Government robustly lean into on this issue. There are many causes for the problems we face. One, for example, is an enormous backlog in the asylum and immigration system, which we are seeking to address. Article

8 and how it is applied by our domestic courts is, I think, an issue that we must look into. The starting point for that is that Strasbourg case law is very permissive. It accords states an enormous margin of appreciation as to what they can do in the asylum and immigration space. That is something that has developed as the principle of subsidiarity; it has developed particularly over the last five or six years. I am concerned to ensure that, domestically, we have kept pace with that. Some of our colleagues in the Council of Europe have, I think, more effective and robust mechanisms that are compliant with Article 8 that we need to look at.

We are kicking the tyres hard at every level. We are looking at caseworker guidance. Are they getting it right on Article 8? We are looking at the Immigration Rules and the body of secondary legislation that govern this. Have they got it right? If we need to, we will look at primary legislation to ensure we get it right. We are also adopting a very proactive litigation strategy. When I came in, I was disturbed to learn that Home Office officials would often not attend First-tier Tribunal decisions, let alone was there in place what I would consider a fit-for-purpose litigation strategy identifying the points that were important to the Government in appealing cases that really should be appealed. We are changing all of that. As I said: no stone unturned.

The Prime Minister has, though, been absolutely crystal clear that we will not leave the European Convention on Human Rights. There are a number of reasons for that, but at the heart of it is that, were we to do so, that would be completely contrary to the national interest of this country. I will give you an example in this very context of asylum, immigration and small boat crossings. The phenomenon we face of irregular migration is not unique to this country but shared by many countries across the continent and the world. The solutions to the problem will not be met simply domestically, in splendid isolation to our allies. In order to address it, we need to co-operate with our friends and partners in Europe. We will only be able to do that within the asylum and immigration context if we are compliant with the European Convention on Human Rights. That is not just rhetoric; here is the evidence.

Since we came into power and the Prime Minister made very plain our commitment to the European convention, we have reached agreements that have real, practical impact, and will increasingly do so, in addressing small boat crossings in particular. I give this as an example. We have entered two agreements with France, one to deal with boats in shallow French territorial waters and the other being the recent announcement of one-in, one-out, which we think will have a real deterrent effect when it is up and running. Germany has agreed to amend its own domestic law to deal with the problem of the transport of boat materials through Germany to the beaches of France. It is inconceivable that our partners would have entered into those agreements if we were not members of the Council of Europe or signed up to the European Convention on Human Rights.

We are back and it is having practical impact. To leave, as some people now advocate, would be entirely counterproductive, if what we seek is not rhetorical answers but real, practical ones. If we leave, those deals go. No one will enter agreements with us if we are not complying with the same standards across the immigration and asylum system. It would be contrary to the national interest, it would be impractical and, of course, it would do great damage to this country's long fought-for reputation as a leader in international law. I hope I get an opportunity a little later to talk some more about that.

The Chair: Thank you very much indeed. I am going to ask a few of our colleagues to come in, beginning with Lord Murphy.

Q196 **Lord Murphy of Torfaen:** Thank you very much indeed and good morning. I see that one of your responsibilities is Advocate-General for Northern Ireland. About 28 years ago, I chaired the Good Friday agreement with regard to human rights, which was then embedded in the 1998 Act that I took through the Commons. That has been challenged in the last few weeks, with the view that the Good Friday agreement could remain as it is, and we could still leave the ECHR and replace it with something else. What is your view on that?

Lord Hermer: I saw that analysis; it is just wrong. As you know, the European convention is expressly baked into that agreement. We would be in breach of it if we left the convention. That is the plain legal view. I am sure it would be the view held by not only Ireland but also the EU. It would do enormous damage to the interests of this country. It would be deeply worrying for Northern Ireland. It would be a clear breach of the obligations that we have held.

Going back to the asylum and immigration context, it would not just be the question of the Good Friday agreement. That is not the only international agreement that would be in play here. Often, the complaint made against the convention is that it stops us sending people back overseas to face the risk of death or torture. That is prohibited in the European convention, baked into the Good Friday agreement. If we wanted to get round that, we would have to leave not only the European Convention on Human Rights but also the refugee convention, the torture convention, the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. We would become, together with Russia and Belarus, in splendid isolation on this planet. I do not think that is in the interests of this country. This is about not just those international agreements that I am proud to list, but also the long common-law traditions of this country in its repulsion of torture and arbitrary killing.

Lord Murphy of Torfaen: Thank you. I have a more general question on derogation. Presumably, one can remain a member of the ECHR and there could be derogation to individual countries. What is your view on that aspect?

Lord Hermer: I am so sorry, Lord Murphy, what is my view on what?

Lord Murphy of Torfaen: On anything, really. If there was any article on which an individual member state wanted to make an exception for itself, in the sense that it thought it was inappropriate temporarily to leave the ECHR, is there a possibility of derogation on whatever it might be?

Lord Hermer: I see. It is very difficult. There is provision in Article 15 of the convention to derogate, but, as you would expect, the threshold to reach that is very high indeed. I want to stress that, certainly in the immigration and asylum context at the Strasbourg level, they have been very keen to emphasise over the last few years that it is in large measure up to states. They do not want to interfere, save in exceptional cases. There is a lot of room for manoeuvre. I am very interested in ensuring that we have caught up with that in this country.

Lord Murphy of Torfaen: That room for manoeuvring could be derogation.

Lord Hermer: I am not sure it would be derogation; it would certainly be the proper application, domestically, of what is called the subsidiarity principle. Strasbourg will leave us to get on with it. Some of our colleagues in the Council of Europe have much more robust immigration and asylum rules that are compatible with Article 8. I want to make sure that we have the best and most effective possible. There is a real area of work to be done here. I know the Home Secretary is absolutely on it.

Q197 **Lord Anderson of Ipswich:** Thank you for what you said about the permissive environment in Strasbourg—with which, for what it is worth, I am minded to agree. However, last week we heard about a letter written by nine very respectable contracting states in which they seemed to indicate that part of the problem might lie with the case law of the court itself. They were talking about problems connected with immigration and asylum, deportation of foreign criminals and so on. We heard from the then Lord Chancellor that she was engaged in discussion with those nine; I was not clear whether other states were involved as well in discussions. Despite what you said about the permissive environment, do you think that the case law of the European Court erects some obstacles to what we would like to do? Do you see a way through that, whether that is some declaration along the lines of Brighton, or something a bit further reaching?

Lord Hermer: As I said a moment ago, the problems we face in this country are not unique across the Council of Europe and the continent. I am absolutely convinced that the only way we will address them is through co-ordination and co-operation. On the legal level, there is a huge space in the asylum and immigration context for countries to work together to ensure that their systems are fit for purpose. That includes looking at best practice. As I said, we want to look very carefully at what some countries have here; they seem to have things that are more effective than ours. We want only things that work. In so far as we have discussions and consensus about areas in which case law needs to work better at Strasbourg, or whether there need to be additional protocols or

discussions about that, of course we will lean into that and work co-operatively with them. This is something that we very much embrace. I know that the new Lord Chancellor and new Home Secretary will be very proactive in talking to our partners about how we make this work for us in the best way possible.

Lord Anderson of Ipswich: One more question, if I may. One argument often advanced for our continued membership of the ECHR is that it enhances our international influence, in not just signing agreements that are to our own advantage but in projecting the rules-based international order in a way that helps to strengthen that order in Europe and around the world. You might have seen a recent paper by Lord Lilley for the Centre for Policy Studies in which he takes issue with this. He said you could look at countries such as Canada and New Zealand, which have their own systems of domestic human rights protection. I think he also mentioned Australia, which as far as I know has no federal system of human rights protections. But he said that they are perfectly good international citizens that are looked to from around the world as good examples, and that we would be no different were we to withdraw from the European convention. I wondered if you had any comments on that. Since you wanted an opportunity to talk more generally about our international commitments and how people see those, if you would like to broaden out your answer to deal with other aspects of international law, then please do.

Lord Hermer: Thank you very much. I should say that I have not read Lord Lilley's article. I am not unfamiliar with the strain of his argument, for which I obviously have respect, but I profoundly disagree with it. If we were to leave the convention, it would require leaving the Council of Europe. I do not wish to make a cheap point, but Canada, Australia and New Zealand are not members of the European convention. The very act of leaving, putting us in the company of Russia and Belarus, would send an immensely damaging signal about not only where we are in the world currently but also the importance of international co-operation around what are core, shared values. Just to be clear, when we talk about the European Convention on Human Rights, those are our shared values: the right to be free from torture; the right to a fair trial; the right to private and family life. These are great British values.

Lord Anderson of Ipswich: They are all in the Canadian charter as well, are they not?

Lord Hermer: They are all in the Canadian charter but they were all enshrined in the European convention, drafted in large measure by British lawyers and politicians such as David Maxwell Fyfe, a great Conservative Minister. They were drafted by people who knew the bloody realities of what a breakdown in international law looked like, with a determination to ensure that that does not happen again and in a belief that bringing countries together around shared values was one contribution towards that. I think that leaving, and putting us in the company of Russia and Belarus, would be a deeply retrograde step. I believe it would damage

our reputation on the international stage as a leader in international law. I think it is not a step that we should take.

Lord Anderson of Ipswich: I wonder if you are saying that there is a particular need for a common system of human rights protection in Europe to which we all subscribe because we are small countries jammed together. As you pointed out in your answer relating to asylum and migration, there are all sorts of issues that we can resolve only by trusting each other in the exercise of some very sensitive powers, whether they are national security, police or immigration powers. It may be that the situation of these large, relatively isolated countries such as Canada, Australia and New Zealand is a little different.

Lord Hermer: It is quite different and, of course, it does not require them to leave anything or the statement that that would send, if you were to leave something that is set up in those terms. You raise an important point. Of course, from your previous role dealing with counterterrorism, you will be well aware that our ties on law enforcement and security within Europe depend on a common framework to keep us safe. That is very important.

With your permission, Lord Strathclyde, I will deal with the invitation from Lord Anderson to talk more generally about international law. Forgive me if I do a little run-up to that. The constitutional bedrock of this country is parliamentary sovereignty. That lies at the absolute beating heart of our constitution. International law does not infringe parliamentary sovereignty. If an international law instrument seeks to impact upon the domestic rights of the citizens of this country, Parliament has to say so. The Human Rights Act brought in the European convention; it is directly enforceable in our courts only because Parliament said it should be. International law, as it applies to deal with our everyday lives, applies only when Parliament has sanctioned it.

There is another level at which international law operates: that between states, where countries enter international agreements and agree to be bound by them. That is absolutely essential for modern-day life. When we talk about international law, of course human rights law is very important in it but it is a fraction of the body of international law. International law governs telecommunications, air travel, military alliances and every aspect of life that makes our lives so much easier. There is a whole network of international law that draws countries closer together and makes for peace and, importantly, prosperity.

We have come into Government after what I would say—I do not want to make any naked political points here—was deemed, having looked at the reports from this committee, to be a fairly shaky period for our leadership role in international law. We have made it plain that we want to be back in the UK leadership position. Not only do we think it is important in principle; it is the way that we will deliver our promises to the British people. Because we are once again trusted, and countries know that when we sign a treaty we will keep our word and not try to wriggle out of it, we are able to enter into agreements that are overwhelmingly in the

interests of the people of this country. There is no better example than trade: with the US, EU and India, we are reaching trade agreements now as a trusted partner. International law is operating to the benefit of people in this country, because those trade deals will result in not only jobs but really good jobs. They will result in people feeling better off, because we are back as international law leaders for the benefit of the people of this country.

Q198 **The Chair:** Thank you. I understand fully why you see the need to defend the ECHR and why you pray in aid a comparison with Russia and Belarus. I am not quite sure why you oppose the example set by Lord Anderson about Australia, New Zealand and Canada, which are perfectly civilised members of the international community and stick to their agreements.

Lord Hermer: Of course. I am not for one moment criticising Australia, Canada or New Zealand.

The Chair: It is just a preference for the ECHR.

Lord Hermer: They are currently not in the Council of Europe so there is no need for them to make what would be an enormous geopolitical statement by leaving it.

The Chair: But is their record on human rights any better or worse? Is it not very similar to ours and other European countries with whom we are friendly?

Lord Hermer: If you look at the contents of rights in many nations, not least great democracies such as Canada, Australia and New Zealand, you will see that their fundamental rights are our fundamental rights. I make no criticism of them at all. The point I made was that, since its conception, we have been a key player in the Council of Europe and a key promoter of these rights within Europe. The idea that we would leave that would be hugely damaging, in my view. It is because we are back as a leader within the Council of Europe, and once again we are a respected partner, that in the British interest we are able to go to discussions such as the ones with countries that Lord Anderson mentioned, and ensure that the British interest is represented as we discuss case law or perhaps the need for protocols. As I said, nothing is off the table. No stone will be left unturned as far as this Government are concerned. It is because we are back as a leader that we can properly protect British interests.

Q199 **The Chair:** Before I call Lord Foulkes, what is your practical role in feeding into these discussions within Government? The Home Secretary is leading on a review and the Lord Chancellor works with the courts; where do you sit in all these internal discussions within Government?

Lord Hermer: Yes, fortunately the Attorney-General is not a policymaker. Policy is for my colleagues. Advice—it is only advice—is for the Attorney-General. As you all know, I cannot talk about the particular issues that I have been asked to advise on because of a long-standing law officer convention now enshrined in the Ministerial Code. As you

might anticipate, my role is advisory, not a policy or decision-making one.

- Q200 **Lord Foulkes of Cumnock:** Welcome, Attorney-General. As you say, Australia, New Zealand and Canada are not members of the Council of Europe and so it is an entirely different situation. Withdrawal from the Council of Europe would be a very significant retrograde step. I am glad you repeated, maybe for the nth time now among Ministers, that we are not going to withdraw. It also enables us to have agreements with other members, such as the two you mentioned with France, particularly dealing with the small boats. Is the political turmoil in France creating any problems, or will it do so, in relation to these or any future agreements?

Lord Hermer: I will leave that question because the day-to-day on it is obviously in the bailiwick of the Home Secretary. We know who the new French Prime Minister is now, but I have no doubt that whoever is in the French Government will want to carry on in the spirit with which we have engaged so far, with really constructive dialogue leading to really practical results, building upon that friendship that the Prime Minister and the President have forged in the time since we came into Government.

Lord Foulkes of Cumnock: The influence of the President—there is no change there—will ensure that that continues.

Lord Hermer: Yes, as I say, the link that the Prime Minister forged with the President has been extraordinarily helpful in setting the tone and framework that has allowed Home Secretaries to go in and reach the deals we need to reach in the British interest.

- Q201 **Lord Waldegrave of North Hill:** I have two slightly separate points I want you to try to elucidate. When the Lord Chancellor, now Home Secretary, came along last week, she said something that sounded a little bit more than just trying to get interpretations. She said that we need a “conversation about whether an instrument that was written 75 years ago can still fit the needs of the modern era”. I thought that that was a bit of a signal to the outside world. Does she think that there will be, ultimately, changes to the European Convention on Human Rights? Secondly, I am surrounded by great lawyers here and I apologise for not being one, but until the Human Rights Act was passed, we were members of the European Convention on Human Rights. Indeed, we were members in the terms that Maxwell Fyfe, Attlee and others would probably have taken for granted. That was all right, was it not? Did not incorporation, if that is the right word, rather change the relationship?

Lord Hermer: Thank you for both those questions. I read very carefully what the then Lord Chancellor and now Home Secretary said and let me make it plain that I absolutely agree with her every word. Nothing is off the table and no stone will be unturned. We will absolutely work with partners across the Council of Europe to check that the operation of the convention is fit for the modern age. In so far as we think it is not, we will work for the benefit of the British people to effect those changes. In

the short term, even if we are able to identify things that need to change, that will not lead to us leaving the European convention, for all the reasons I have given. We also need to be plain that it would be a political trick to pretend that, in the short term, any of those changes would make a difference to what we currently face and are determined to address in practical ways.

To amend the convention itself requires unanimous agreement across 46 states. To seek a declaration, for example to enshrine some new principles, is of course something we will look at—you would expect us to do that. To get a sense of this, the last time we had a protocol impact upon the interpretation was the Brighton declaration, which was all about subsidiarity. It took about nine years between declaration and implementation. Now, we are absolutely sure that there is a raft of measures that we will implement, at speed, to deal with the problems we currently face. We will be robust, at speed, to be effective. I talked about some of those measures, not least Article 8 domestically. We will do whatever is needed in terms of working on the Council of Europe to make sure that the convention is working in the way we would want, but it would be wrong of me to infer that that is something we will see results on in weeks or months. But I make it plain that no stone will be unturned and we will take nothing off the table if we consider it to be in the interests of the British people.

On the point you make about things prior to the Human Rights Act, of course we still complied with the European Convention on Human Rights. I think Parliament was absolutely right in 1998 to pass that Act. The slogan was then about bringing rights back home. It means that decisions affecting the vast majority of matters that impact upon the rights of people in this country are decided upon by the courts of this country. We brought the rights back home through the Human Rights Act. One of the many problems in going back to that old system is that, whereas now we have maybe one or two findings against us from the Strasbourg court in a year—there are hardly any cases against the UK—we would go back to many more cases before Strasbourg, with it issuing many more rulings against us. I do not think that that is where people want to go. I think the Human Rights Act has been a success story and it would be a retrograde step to move away from it.

Lord Waldegrave of North Hill: Finally, Lord Falconer in the *Times* today says that all of this is irrelevant anyway because 70% of the small boat people get given asylum when they arrive. So why is any of this relevant to changing the number of people who arrive here by small boats and stay?

Lord Hermer: I think we need to understand why those people are coming here on small boats and what the answer is to address that. People are not coming here because we comply with the European Convention on Human Rights. They are coming from France and Germany, and through Italy and Greece—all of which comply with the European Convention on Human Rights. There is a range of reasons but it

may be thought—this is one thing we are determined to get to the bottom of and address—that we have a huge backlog we inherited in the asylum and immigration system, not least through a very slow appeal process. We are determined to understand whether the application of Article 8 in those circumstances is one cause of those delays and build-ups. If it is, how do we address that in a way that is, obviously, compliant with our legal obligations but much more effective at getting to the heart of the problem? That is just one of myriad different ways in which the Home Secretary will look at measures to deal with the really pressing issues that we face.

Q202 Lord Griffiths of Burry Port: I am very glad that we met in Strasbourg. Your presence was reassuring for those of us who go there for meeting after meeting. In a sense, the question I would have put top of my list would enter into the exchanges we just had, so I will shift my ground. You talked a lot about organising ourselves in the legal sense so that we are trusted partners and leaders within our own country and, of course, between us and other countries. Trust is possibly the rarest commodity to find across all sectors of public life at the moment. How do we improve public perception of the rule of law—improve their understanding and feel for a situation in which the best solutions are being sought through our institutional arrangements and so on?

At the moment, I am working for Strasbourg. I have just finished writing a report on the role of diasporas. I am anxious to find a counternarrative to the toxic discussion of migration, because diasporas were, yesterday or yesteryear, migrants themselves. I am involving senior pupils in schools in discussing these issues. Now, I am just a nobody in terms of the complexity of the issues we have shared around this table, but I am anxious, in two inner-city schools that I have had a lot of responsibility for, to help 17 or 18 year-old young people from very mixed and diverse backgrounds to have a better understanding. How do we take my humble efforts and situate a discussion in the educational system?

I am also a minister in the Methodist Church. We love protesting in the Church but we have no real forums where we can engage intellectually with the issues that we want to test. I am now in the political field and hear so many political leaders give voice to irresponsible or half-baked, headline-grabbing thoughts. When I talk about headlines, of course there is the press. There are all kinds of ways in which things work against the interest of establishing trust in, or understanding of, the rule of law. Perhaps the second ought to precede the first. How can we answer that?

Lord Hermer: I think that that is one of the most profoundly important questions of our age. We are living in an age of great distrust of institutions, in which truth has become some form of commodity. That is aligned with the rise of populism on both political wings, which is, I think, in some of its manifestations inimical to the kind of values we all share on rule of law. There is an incredibly important role for all of us—Government, politicians, civil society—to be out there talking about our shared rule of law heritage. Like Lord Bingham, I believe that our rule of law heritage is something that unites us as a country: the belief that no

one is above the law; the belief in the importance of an independent judiciary. These are our shared values that have been fought for in this country for generations upon generations.

I am really concerned when I look at attitudes, particularly of young people towards democracy, for example, both in this country and overseas. There is a real shift—a real change—which I think is a real warning sign. I have given quite a lot of thought, together with colleagues across government, as to how we get out into the national conversation the importance of these shared values. I want to emphasise the importance for me of doing so in a way that is apolitical, or at least not the property of a political party, because this project succeeds only if it is our shared values uniting and not dividing us. Part of that way is how we talk about it. I suspect that if you went into the Chamber of the House of Lords now and asked people what the rule of law was, you would get many different definitions.

Lord Griffiths of Burry Port: And just sitting here.

Lord Hermer: And just sitting here, but we can probably all agree on some of the core elements of it—the ones I mentioned before. Not only do we need to coalesce around those; we also need to think about how we talk about them. Long before doing this job, I spent lots of time in schools talking to kids about the rule of law and I think that is our most important constituency. It is about not only how but where we talk about it. Ten years ago, it was exclusively in schools and now it is in social media, but we cannot talk in highfalutin language. It will fail if every time I talk about the rule of law it is in a beautiful room like this or at the Inns of Court. We have to be out there talking in real terms about what the real advantages are to this country of our shared values.

For example, when I go into schools I always try to explain why the rule of law is important by giving the example of the football pitch, where you have two sides. Would you give one side one set of rules while the other side does not have to comply with them at all? Is that fair? Is that a way to have a good match? Do you want a referee who is biased against one side but not another, and is that fair, et cetera? That is to try to distil this into real terms and we just need to multiply that, with Governments of course having a role but working in partnership with Parliament and civil society. In my department, we are trying to act as a bit of a catalyst for that. For example, we held an event recently at the charity Cumberland Lodge, bringing in children to talk about Magna Carta. What does Magna Carta mean for them today? I do not know about the committee, but every time I have engagement with young people I find it an incredibly uplifting experience. This is something that lands when we explain it and it is incredibly important.

That is the positive. If I may just deal with the negative and how we talk about these things in the context of, not least and most recently, the immigration and asylum system, there should be no tension between taking tough and necessary measures to deal with the problems that we have in that system, including dealing with small boats—where we are

going to take tough, robust measures to deal with the problem—and emphasising what an extraordinary country this is. It is an extraordinarily diverse, multicultural society and it behoves us all in our language to be very clear about that, because we have seen in recent weeks some of the dangers when we are not. There have been scenes that would have put shudders through all our spines: of a grandfather being harangued for playing with his grandchildren in a playground; of our minority communities feeling fear and under threat. That is not this country. This country is one that embraces our extraordinary success story of diversity and multiculturalism, and it behoves us all to make it plain that we are going to be robust to deal with the problem, but we are doing it in a British way.

Lord Griffiths of Burry Port: You can stand in my pulpit next week and say all of that.

The Chair: We do need to move on. We have been generous in our time allocation but let us turn to Baroness Andrews.

Q203 **Baroness Andrews:** Good morning and thank you so much for what you have said so far. I am changing the lens a little to look at the internal domestic workings of government. You are clearly a very evangelical Attorney-General and you have talked about communication. You have also said that policy-making is not your problem, but the rule of law, as it is understood and implemented across policy by other Ministers, is a challenge for you.

My first question is: how does that actually work? It is not a very transparent process when looking from the outside. How does it relate to this really interesting Rule of Law Unit, which we would like to know more about? What was the motivation for that? Was it a very proactive decision and did it have a backstory that you inherited, or was it something that you particularly wanted to introduce? Who set the agenda and how is it going? Who do you talk to and can we know more publicly about it? Those are my related questions.

Lord Hermer: Yes, of course. It is not that policy-making is not my problem; I just do not make policy. The role of the Attorney-General, in common with lawyers across government, is not to make decisions but to advise decision-makers and provide them with the best detailed legal advice that we can, so that they can make fully informed decisions. That is the job on the tin. Of course, I am involved in the process that leads to policies being made, as are lawyers throughout government. We are just not making the policies ourselves: as I like to put it, we are here to help.

In respect of the unit, I hope that it has not been potentially overblown. To go straight back to Lord Griffiths's question, I came in really anxious to make sure that we are working across government—there are lots of different rule of law units in various departments across government—and that people are talking with each other. My own particular emphasis is to make sure that we are out talking about the rule of law in ways that everybody understands. Are we hitting the right spots so that, as I said,

it is not just in rooms like this but in other areas? We have set up a committee to engage with all the people in the legal sector who are doing pro bono work and to co-ordinate that as best we can. We are talking about how we communicate and bringing people together in government. I would love to come and tell you that it is some enormous department or an enormous section in one. I have a small team of very eager people working with colleagues across government, and very much to the aims that I touched upon with Lord Griffiths.

Baroness Andrews: Well, it has got quite a big remit. If you look at the four bullet points, they are pretty grand. They include research and stakeholder engagement with the full panoply of civil society and legal bodies; a strategic review of the rule of law activity across government; and innovation with Policy Lab to inform this—

Lord Hermer: Yes, yes.

Baroness Andrews: And so on. These are not small ambitions.

Lord Hermer: Neither are they small ambitions nor is it anything other than a very important subject matter, for the reasons that this committee is grappling with. We are determined to drive it through but it is under a year since we set up the unit. We have had lots of early-day activities, but what I think I would like is an opportunity to come back before you, maybe some time in the future, and give you something a bit more concrete as to what we are doing.

Baroness Andrews: I think that would be splendid. The notion of a strategic review of the rule of law activity across government seems to me rather urgent, given the dynamics of both present domestic law and international law. We have touched on the ECHR. Is that one of the priorities that you really want to push?

Lord Hermer: Well, yes. The Prime Minister has made it plain throughout that the rule of law is going to be the north star, not least because it is the right thing to do and obviously in the national interest to be back as a rule of law leader, both domestically—as the Government cannot have one set of rules for them and another set for others; we want to comply with the law—and internationally, for all the reasons that I have given. We are seeking to do what we can to fulfil that mandate from the Prime Minister.

Baroness Andrews: One more question: you talked at the beginning about making sure that everyone understands the rule of law so that inside Government the same values are presumably embedded in the language used and there is the same terminology. When you became Attorney-General, did you find that there were gaps? Was there a sort of lack of cohesion or consistency about the way that people were managing the discourse around the rule of law in terms of policy?

Lord Hermer: I am anxious to avoid getting into a kind of retail politics, but I did come in thinking that there was some work to be done after the

previous years on rule of law. I put in some immediate steps to try to address that, not least in respect of delegated powers. I took some early steps to try to advise the Leaders of the Houses as to how we properly entrench good decision-making when it comes to legislation. I made some changes to the Attorney-General's legal guidance to ensure that Ministers, as decision-makers, are getting the best legal advice that they can, which is a rule of law issue. There were gaps that I thought needed to be filled, from a lawyer's—or Attorney-General's—perspective. The Prime Minister and other Secretaries of State have been setting out what they are doing, not least on the international stage.

Baroness Andrews: Thank you very much.

The Chair: Thank you. Since you raised delegated powers, I am going to move on now with Lord Beith.

Q204 **Lord Beith:** To continue this, you have said that you do not make policy, and that is obviously correct. But you made clear in the answer you just gave that seeing that policy is enacted in a legally sound way is part of your responsibility, and one that you have taken seriously. In our notes for this meeting, which I hope might be shared with you, I think we identified nine recent reports of this committee which referred to defects in the legislative process or unclarity in the law which emerges. There was a use of fast-track powers when that was not appropriate and guidance and codes of practice which could amount to disguised legislation. There were a whole number of areas where, particularly from a rule of law perspective and the law being clear and understandable, there is, as you say, work to be done. Are you alone in this task or is it one where other bits of Government are on side?

Lord Hermer: My universal and consistent experience with my colleagues who sit on the PBL committee, which is run by the Leader of the House of Commons and scrutinises all legislation—that committee has the Leader of the House of Lords, the Secretaries of State for the devolved nations and the Chief Whips of both Houses as permanent members—is that we have all been absolutely on the same page since day one about the need to ensure the highest standards possible when it comes to legislation, not least when carefully scrutinising whether powers that those who propose a Bill seek to put in it are justified. When I put out the delegated powers toolkit, to try to give guidance to help people ensure that those standards were met, that was done with the full support of all permanent members of the PBL. I have found that we have all been absolutely of one mind on that.

Lord Beith: Yet still these things slip through.

Lord Hermer: Of course.

Lord Beith: But we don't let them slip through because we identify and draw attention to them, not least because even though they may seem relatively small issues in the particular context of a Bill, those inappropriate uses of powers, bad drafting and things such as that will be

used as a precedent in more serious future cases. We have regularly come across the argument saying, "This is well-established practice; it was done in this or that Bill", so we see a growing pile of precedents which are unhelpful to the rule of law.

Lord Hermer: I completely share that fear and completely acknowledge that, if you let standards slip, it is not just about that individual case but can have consequences. I totally share that view, which I think is shared by all of us on PBL. My experience now, because of the way that PBL has operated during the last year, is that when the relevant Minister comes before the committee to talk through a Bill, they know full well that they are going to be asked about the use of delegated powers. They know full well that it would have been scrutinised beforehand for justifications and that is almost always a conversation about a Bill that includes delegated powers. It will always be a conversation when there are, for example, Henry VIII powers that are sought to be included within a Bill.

Although you do not see how the sausage has been made before it is presented, of course, I would hope that that has led to an improvement in the quality. I always look carefully at the Delegated Powers Committee's analysis and that of this committee, which is very helpful. I feed that into what we are saying at PBL. It is incredibly valuable to the work of law officers and PBL more generally. We are determined to ensure that delegated powers, which are obviously necessary in a modern democracy, are used where appropriate.

Q205 **Lord Burnett of Maldon:** Can I follow up on that answer, Attorney-General? Neither this committee nor the Delegated Powers Committee is antipathetic to appropriate delegated powers; it is their exorbitant use that has caused concern in both committees.

Lord Hermer: Yes.

Lord Burnett of Maldon: Many of us were heartened last year—I think it was in the Bingham lecture—when you covered in many respects the quality of legislation, not only delegated legislation but some of the deficiencies in primary legislation, particularly skeleton Bills and matters of that sort. I just wonder how you think things are going, because, as Lord Beith indicated, this committee has written many reports and letters drawing attention to delegated powers which we consider to be inappropriate. We march with Baroness Ramsey's committee, which draws attention to many of the same things.

Could I ask you about one in particular, which has always struck me as odd? It is the Henry VIII power, as it is called, which enables Ministers to amend not only legislation passed before Royal Assent to the Bill in question but legislation passed after it in the same Session. It has always seemed to me that that is no more than a recognition that the Government have become, and recognise that they are likely to be, totally incompetent in their drafting and passing through Parliament of legislation. More worryingly, we had on two occasions in letters from Ministers to this committee, I think, an observation that these were

“standard clauses”, which troubled me enormously. In a sentence or two, I would be interested to know why you think these clauses are ever needed. I wonder whether they have ever been used to amend legislation that has passed after the Bill in question. Would you be able to indicate that you will continue to look carefully at these clauses and see whether they may be strangled out of the legislative process?

Lord Hermer: I share the concern about the exorbitant use of delegated legislation. It is a question not simply of quantity but of the principles that are applying to ascertain where it is appropriate to have delegated legislation. This is all about democracy and parliamentary sovereignty, where Parliament absolutely has to have the say and not the Secretary of State. The delegated powers toolkit—if the committee does not have a copy, I will ensure that you are furnished with it—seeks to assist those who draft legislation with the identification of those principles, to try to help them steer a constitutionally appropriate path. You mentioned one principle: you should not take powers because you have not worked out the policy yet. That is put absolutely front and centre of the toolkit. There is also using delegated powers in a way that would affect people’s fundamental rights, rather than letting Parliament decide that in a much more upfront way than through a negative or a positive resolution, so it is about the underlying principles.

Of course, we need delegated powers. We cannot function as a modern democracy with the legislation and regulation that we need in this country without delegating powers to Secretaries of State in the inappropriate circumstances. Lord Burnett, I have to say that off the top of my head I cannot recall the Act that you have raised. Forgive me if I sound lawyerly—probably not something I have to ask an apology for from a former Lord Chief Justice—but I would want to look at that Act, the clause and the policies behind it. Can I undertake to look at it and write to the committee on that point?

Lord Burnett of Maldon: Thank you.

Q206 **Baroness Hamwee:** I have had the same concerns as Lord Burnett and about the same clauses. My apologies for not being able to be in the same grand room as you, Lord Hermer. My question is about process as well. As I understand it, statutory instruments are written within each relevant department, rather than it being a centralised process. Is there anything that you might want to say about that? If I say, “control of quality”, I do not want to sound overly critical, but, with regard to the issues that we are talking about, inevitably they come after primary legislation. We are faced with a process which for years and years we have found unsatisfactory, because of course we cannot amend secondary legislation. Again, you might like to say something about that. Our Secondary Legislation Scrutiny Committee gets through a huge pile of work and its comments are very useful, but, politically, we cannot follow them up in a way that most of us would think was adequate.

The Hansard Society—we heard from Dr Ruth Fox recently—has various ideas about the secondary legislation process. Some of them are on

having relevant departmental Select Committees, introducing a “parliamentary office of statutory instruments that would bring together the resources for both Houses” and improving “the legal and policy support available ... for Members” of both Houses. As well as those specific points, I would be really interested to know your take in the context of the rule of law about how we are doing things and might do them better.

Lord Hermer: Thanks very much for that. I will give you my understanding as to how the statutory instrument process evolves from department through to Parliament, but I am conscious that I might not have every detail at the forefront of my mind. If anything that I say turns out to be even remotely inaccurate or incomplete, then I will immediately let the committee know.

It is not the case that there is no central co-ordination when it comes to drafting. There is a statutory instrument hub that sits in the same building as, and is connected to, the Office of the Parliamentary Counsel, which is the body responsible for drafting legislation. It may well be that within departments, because it is a power that is reserved to the given Secretary of State, an awful lot of work goes on as well. All of that, though, will be drafted in accordance with the relevant guidelines. Those will very much now include the delegated powers toolkit, so I hope that that is of real assistance to people when they draft. Certainly, when people come before the PBL for legislative scrutiny, my experience is that they absolutely address why it is that delegated powers are being sought. They are seeking to justify that before the committee.

I have read the Hansard Society’s report carefully. I had the enormous pressure of speaking to it at its AGM last week and it makes a great contribution to the body politic. I read its recommendations carefully. The committee will forgive me, because I am obviously here representing the Government, if I do not make policy indications. Those would all be matters for people other than me, but what I can say is that we are a Government with a commitment to the key principle of parliamentary sovereignty—and that is not just a slogan. It means all the bits that go with it, including that Parliament has an opportunity to properly scrutinise legislation. I do not think it would be appropriate for me to go beyond that but I have read that report very carefully.

Q207 **Lord Anderson of Ipswich:** Thank you first, Attorney-General, for your offer of the delegated powers toolkit. Speaking for myself, I should find that an extremely useful document. I hope you might also have noticed that, in May, we published our own code of legislative standards, as they emerged from our own reports over the last seven, constitutionally rather tumultuous years. Having shared, in a sense, those two documents, I hope that we might even be in a position to approach some of these issues in a slightly more systemic way than we do at the moment, where it is very much Bill by Bill.

My question really relates to Private Members’ Bills. I have been reading the report of Baroness Ramsey’s committee, the Delegated Powers

Committee, on the Terminally Ill Adults (End of Life) Bill. She will correct me with a frown if I am wrong, but I think I identified 11 clauses that, in the opinion of that committee, inappropriately delegate power. In relation to at least three of those clauses, the delegation is said to be highly inappropriate. Do you think that there are particular constitutional difficulties about the Private Member's Bill process and do you have any suggestions for how they might be addressed?

Lord Hermer: Obviously, there are good reasons why the Government do not themselves draft legislation that is adopted by way of Private Members' Bills. There are good constitutional reasons for that. As a Government and a Parliament, we of course want to make sure that all legislation reaches the highest standards. All I can really say at this stage is that this is a Government—I am very much part of the same ethos—who want to learn from experience. Where we can identify that things are not as good as they should be, we want to make sure that we have systems in place to learn those lessons and make changes, as and when appropriate. I am afraid that that is an answer at a high degree of generality, but it is very much how we approach all of this. I will always look carefully at the reports of this committee and the Delegated Powers Committee.

Lord Burnett of Maldon: Following on from that, if I may, Attorney-General, clearly Private Members' Bills are different from government Bills. But the powers that are on the face of that Bill at the moment, which Baroness Ramsey's committee has looked at carefully, delegate power for the most part to Ministers. In those circumstances, if the Government were to take the view that those powers were inappropriate for any reason, surely the way to deal with it would be for the Government to introduce amendments in the House of Lords to make them more acceptable. Would there be anything wrong with that and, indeed, would it not be the responsible thing to do?

Lord Hermer: Again, I am afraid that I am going to answer at a level of generality. I do not really want to get into the particular Bill that is coming before your Lordships' House on Friday. But, as a matter of generality, we want to ensure that we are reaching the highest standards, and where we have good examples of Private Members' Bills falling short, we are going to want to see what lessons we as a Government can learn in a way that is still an appropriate balance, which allows Private Members to drive through the legislation that Parliament has said they can. If there are lessons to learn that will allow the best possible quality of laws, we will seek to do so. I am sorry again to answer at such an abstract level.

The Chair: We have a few minutes left until the end of this session. I turn to Lord Waldegrave on public perception, and then Lord Foulkes.

Q208 **Lord Waldegrave of North Hill:** You have spoken a bit about the public perception of the rule of law and its maintenance for living in a civilised country, with which I can only agree. Nations go through sorts of moods of thinking things and atmospheres change. Is there any objective

opinion polling, or anything else undertaken or tracked by the Government, which shows whether things are getting better or worse? Do people believe that the rule of law is under threat more or less? Things are thrown around a lot but there is not much evidence.

Lord Hermer: I cannot speak for the Government as a whole but I can certainly speak for my own department, in which we are doing some early-day testing as to where people are currently at. The early-day sense is that, as you would hope, people see our core values as core values. They believe in their importance and protecting them. We are certainly going to carry on doing work about the language that best explains those values.

As I think I said in answer to Lord Griffiths's question, we are at a really important moment in society. There is in some sectors of society this prevailing mood of pessimism that rule of law and trust in institutions is crumbling. I am afraid that I am a sunny optimist and a sunny patriot. I believe that the kind of core values that we have are values that truly bind the people in this country together, that this extraordinary country deserves its place as an international law leader, and that we have wonderful values which we cherish and promote. I know that there are people who are, to coin a phrase, gloomsters, but I am not and this Government are not. We fundamentally believe in our core British values.

Lord Waldegrave of North Hill: I am trying to get at a slightly less emotive point on whether there is any benefit from trying to track, in a systematic way, whether people's perceptions are getting better or worse.

Lord Hermer: I am so sorry. Empirically, yes, and we have started some basic early work on that. There are others, not least in civil society groups, who are tracking that and there is some interesting data. I referred earlier to young people, not so much on the fundamental rule of law issues but on whether they would prefer one strong leader to democracy. Fortunately, an overwhelming majority still want a democracy, as you would expect. But the figures are changing not just here but across Europe, and in other parts of the world. That just makes me want to double down in our efforts to explain why the rule of law is so central to the history of this country and so necessary for our continued security and prosperity.

I am sorry if I gave a slightly general or rhetorical answer, but data is obviously incredibly important. We want an evidence-based approach; there is no point in trying to address these issues of our age through instinct rather than evidence and analysis.

- Q209 **Lord Foulkes of Cumnock:** Not just on this, but on all the things you have been dealing with, we are thankfully still a United Kingdom. We have a separate system in Scotland—the chairman and I come down every week from Scotland. In order to try to minimise any problems between the system in Scotland and the system in the rest of the United Kingdom, who does the main liaison? Do you leave that to Baroness

Smith of Cluny or do you get involved in it? How do you work on that?

Lord Hermer: As the Advocate-General for Scotland, Baroness Smith has primary responsibilities for issues which arise that concern Scotland, so she works out of the Scottish office in both Edinburgh and London. We are very close colleagues, as you would expect with all three law officers. There is a constant collegiate conversation going on, but issues relating to Scotland are issues for the AGS.

Lord Foulkes of Cumnock: But you would remember that we had the problems with gender recognition that I think Lord Jack, as he is now, stepped in on. There are other differences that created problems. Who would try to stop those happening again? Would you be involved with that at all?

Lord Hermer: Again, forgive me if I just answer on the level of generality. Issues that really relate just to Scotland would be the primary responsibility of the Advocate-General for Scotland. There are obviously lots of issues that interrelate and which would have consequences for the United Kingdom as a whole if Scotland's courts decided X or Y. That is why the three law officers are so closely intertwined: so that there is that kind of intelligent, joined-up conversation and comprehensive legal advice is provided.

Q210 **Baroness Andrews:** I think we have not touched on this issue, Chair. If I may go back to the question of perceptions of justice, the point of much of the evidence we took around the notion of what the rule of law is and how it affects ordinary people is that they come into contact with it through the civil courts. There is a real issue, which came out in evidence from voluntary organisations and legal groups, about access to justice. There are delays at all levels in the criminal courts, civil courts and employment tribunals, in the context of even greater and more dramatic delays in the criminal justice system. When we talked to the Lord Chancellor last week, she was clear that she saw the system as a whole, interrelated and impacting on both sectors. What do you see as your responsibility, as it were, for addressing this? Are you aware, for example, that when we create legislation which creates additional criminal offences, it is likely to have an impact on those processes and possibly on those delays? Do you have a voice in the discussions about how we shall reduce delays in the courts and those sorts of issues?

Lord Hermer: Direct responsibility for the courts is obviously a matter for the Lord Chancellor, but in my role as Attorney-General I superintend the Crown Prosecution Service. I obviously do not get involved in its operational decisions, which are entirely independent, but I kind of oversee so I do have an involvement in it. I entirely agree with the premise of your question. Access to justice is absolutely a rule of law issue; it is not just an abstract principle. Unless people can get into courts to have their cases determined, and unless criminals can be tried and punished, the rule of law fabric comes under enormous strain. We inherited a position with this vast backlog of cases before the Crown Court that we are trying to address now. In the civil courts, there is not

only a backlog and an estate that is in poor condition; there are also very real practical difficulties in people getting to lawyers, getting legal advice and getting into court. From day one, we have been absolutely focused on addressing that. The now Home Secretary, then the Lord Chancellor, put in place the Gauke sentencing review and the Leveson court review, determined to look at this by not just short-term fixes but long-term solutions to deal with the problems.

From my perspective I have had a particular focus, with the Crown Prosecution Service, on two types of crime to make sure that we are really addressing them. The first is in rape and serious sexual offences. We inherited a position in which people—and it is still the case—can sometimes wait, as the victim of a rape, up to four years before trial, with all that stress and trauma hanging over them. We are seeing a victim attrition rate, because people cannot bear it, and defendants gaming the system with not guilty pleas because they think that the victim might give up after several years. That is completely unacceptable, and I, as the superintendent of the CPS, and the Government as a whole are absolutely determined to address it—I know that the Lord Chancellor was.

The other area is street crime and knife crime, but it is not just the most serious—it is also street crime at the whole level. If we have situations in which you can walk down your high street and see people going in and shoplifting, and nothing happening as they walk out, that is a rule of law issue, because the rule of law also goes with law and order. We are absolutely determined to address that.

The Chair: So we are going to see a reduction in shoplifting and the street theft of mobile phones and bicycles.

Lord Hermer: You are going to see a Government absolutely determined to address that.

Lord Anderson of Ipswich: You mentioned your role in supervising the CPS and there are some decisions to prosecute which, I understand, are taken or approved by you as Attorney-General. Could you give us an outline of what those decisions are and what you think the nature of your input is? In a sense, what do the law officers add to that process that the CPS has to conduct?

Lord Hermer: Yes, there are certain crimes in very limited categories, some in the public order sphere and some in the terrorism sphere, which require the consent of a law officer before they can proceed. They come up from the CPS, which would have carried out its uniform evidential analysis. There is a published code for Crown prosecutors that has two limbs to it. First, there is an evidential limb: is there enough evidence to realistically secure a conviction? Secondly, is it in the public interest to prosecute? That analysis will be carried out before it comes to a law officer.

Constitutionally, a law officer has been given that role by Parliament to effectively put another set of eyes on it. Parliament has deemed that as an appropriate safeguard because of the nature of the offences. There are going to be very few instances—it is hard to think of examples—where the analysis of seasoned prosecutors is that there is enough evidence to prosecute an individual but it would not be in the public interest to prosecute. If there is evidence that people have committed crimes, then, save in exceptional circumstances, people should be prosecuted. There is a residual discretion that has been allowed by Parliament but it is important to see that that is the process. There is nothing special going on under the covers. The questions are: is the evidential test met and is there a public interest in prosecuting? There is a strong presumption that, if the evidential test is met, it will be in the public interest to prosecute. It is effectively the same analytical framework that the CPS would apply, but Parliament has seen fit for law officers to exercise a second look.

Lord Anderson of Ipswich: I think you are saying that it is rare, perhaps vanishingly rare, to have a case in which the consent of the law officer is withheld.

Lord Hermer: Yes, there have been cases in the past, some of which became quite high profile. But my fundamental starting point is that if the view of trained prosecutors is that on the evidence, which I would of course examine, there is a realistic prospect of a conviction—and if on examination I agree with that view—it is difficult to see, save in exceptional cases, why the public interest would not be met by prosecuting. Indeed, you could say the contrary: that it would be contrary to public policy not to prosecute people if the threshold has been met.

The Chair: Lord Burnett, did you have anything to add to that?

Lord Burnett of Maldon: No, I do not think so on that point.

The Chair: Thank you very much. Lord Griffiths?

Lord Griffiths of Burry Port: No.

The Chair: Very good. In that case, we have reached the end of our questions. Thank you very much indeed for your time and your patience in answering them all and in allowing us to range far and wide on some of these important issues. We are now going to stop the public session.