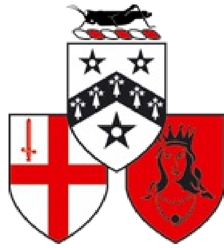

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The Civil Service and the Constitution Transcript

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The Civil Service and the Constitution

Professor Vernon Bogdanor, Gresham Professor of Law

Robin, Lord Butler, former Head of the Civil Service

Today we are going to have a dialogue with Lord Butler on the theme of the civil service and the constitution. Lord Butler is presently the head of a college at my university at Oxford; he is the Master of University College. He is probably best known to the public in recent years because he chaired an inquiry into the role of the intelligence services in the period before the Iraq War. That report was issued a couple of years ago, the Butler Report. But the sense in which he is much better known in history, under his former title Sir Robin Butler, is because he was Cabinet Secretary and Head of the Home Civil Service from 1988 to 1998, so he is obviously in an excellent position to talk to us about the role of the Civil Service in the constitution.

Robin Butler entered the Civil Service immediately after leaving university in 1961, so he was a career civil servant for 37 years. I would like to begin by asking you what made you decide to join the Civil Service?

Well, several reasons, some good, some bad, perhaps more bad than good, and when you ask me that question, it makes me realise what a different age it was. I was finishing at university. In those days, business, trade, the City, you know, we rather sniffed at. I was a keen academic, I liked intellectual argument, but I fancied the idea of intellectual argument about today's affairs rather than Ancient Greece and Ancient Rome, which is what I had studied at university. So that attracted me to the Civil Service.

I think the other thing was the foresight syndrome. I was the third generation of a family which had started a business. The second generation had gone into it and kept it going, and by the third generation, the family had higher aspirations. They aspired to the professions. So my parents hoped that I would go into the professions – my father wanted me to be a lawyer. He made the mistake of taking me to the law courts, where I saw a case where a barrister was cross-examining a defendant. He was clearly hugely the defendant's intellectual superior, and it repulsed me. I couldn't, I couldn't… I hated the idea of using my brain in that way. I apologise if there are lawyers in the audience.

There probably are!

And I think there was also an element of idealism about public service too.

You ended up, as I said a moment ago, as Cabinet Secretary and Head of the Home Civil Service. What does the Head of Home Civil Service actually do? It's a grand title; what are the actual responsibilities of the Head of the Home Civil Service?

Well, responsible for the management of the Civil Service. Now, what does that mean? It means less than you might think, because the Civil Service is a federation. You have all the departments. Each Permanent Secretary is responsible to his Secretary of State, her Secretary of State, for that department, so in general, they run the department. The Prime Minister is the Head of the Civil Service as well as Prime Minister, and so it is natural the Cabinet Secretary, as the civil servant closest to the Prime Minister, should be Head of the Civil Service.

What did I have to do in my time? Well, advise the Prime Minister on the most senior appointments, and that gave me a certain leverage over my most senior colleagues, and that enabled me to get quite a lot done in departments, quite a lot done about changes in management in the Civil Service, to some extent, changes in structure, that would have been less easy in other circumstances. I think that the people have separated the Head of the Civil Service from the Cabinet Secretary; that was done when the Civil Service Department was a separate department. It didn't work very well really. I think the two jobs go better together. The Cabinet Secretary is more use to the Prime Minister if the Cabinet Secretary has some leverage over the Civil Service, and the Cabinet Secretary only has leverage over the Civil Service if he is also Head of the Civil Service and has that responsibility for appointments.

You described a very close relationship with the Prime Minister. You were called the Cabinet Secretary. Would it be unfair to have renamed you the Prime Minister's Permanent Secretary? Are you actually working for the Prime Minister rather than the Cabinet?

Well, it would have been unfair, because there are some differences between the relationship between a Permanent Secretary

in a department and their Secretary of State, on the one hand, and between the Cabinet Secretary and the Prime Minister on the other. The Cabinet Secretary is responsible to the Cabinet as a whole. There is, between the Cabinet Office and 10 Downing Street – all these buildings interlock in Whitehall – there is a locked door. All watchers of "Yes, Prime Minister" will be familiar with this, because there was a famous episode in which the lock on the door was changed so Sir Humphrey could no longer get through. But I did feel a responsibility not just to the Prime Minister, though the Prime Minister was the minister that I saw most of the time. Also, I think the Principal Private Secretary to the Prime Minister, who is the sort of king bee and queen bee and –

That's 'Bernard' in the television series 'Yes, Prime Minister'?

Bernard, yes, in 10 Downing Street, is in a more powerful position in relation to the Prime Minister than a normal Private Secretary to a Secretary of State. I found I could not boss the Prime Minister's Principal Private Secretary around quite as much as I would have expected to do if I had been a Permanent Secretary in a department bossing the Private Secretary of the Secretary of State.

Could you imagine the situation where there was a clash in your duty to the Prime Minister and your duty to the Cabinet as a whole? Could these responsibilities clash, do you think?

Yes, I think that they could clash. I can't imagine and I can't remember a situation where they came into direct conflict. I certainly remember advising the Prime Minister that it would be good to take an issue to the Cabinet, it would be good to take it in such-and-such a way, if the Cabinet was going to understand it, they ought to have this material or that material, but of course nobody lays these things down – there's no sort of company law that says, for example, it's illegal if you don't do it this way, and so the Prime Minister might ignore that advice or overrule it. So I could give my advice, but it wouldn't come into, in that respect, it wouldn't come into a clash like certain other issues might come into a clash. Now, there could be clashes with the Prime Minister over legality or morality or the treatment of individual civil servants, where there could be a real issue of difference, but not I think over the treatment of the Cabinet.

Well, is there a sense in which you are a guardian of public morality? I think the present Cabinet Secretary was asked to look into an issue involving the morality of a minister a little while ago, and I think you were also on one or two occasions. Is the role of the Head of the Home Civil Service and the Cabinet Secretary in a sense to be the guardian of public ethics against the wiles of wicked ministers?

Absolutely not! I think one of the things that has been deplorable in recent years, although it is a tribute I think to the reputation of the civil service, that ministers have tended to say to the public, "Look, you can be sure this is all right because the Cabinet Secretary says it is all right," or "The Permanent Secretary of the Department says it is all right," and to try to hide it is completely fruitless. It has always been completely in vain because people are not impressed by that in the slightest, and the media have continued to pursue these issues. So no, I don't think that the Cabinet Secretary, or any civil servant, is in any sense a guardian of morality, but, having said that, the Civil Service, like other professions, has its standards, and one hopes that we obey those standards. I think we have got a reputation of obeying them, and I think politicians have tended slightly in some cases to try to hide behind that.

I think a little while ago the present Cabinet Secretary was asked to look into the question of whether Tessa Jowell, the Minister for Sports and the Arts, had acted improperly in relation to a mortgage on her house, and he came to the conclusion she had not and that gave her a clean bill of health. Presumably, if he had said that she had acted improperly, there would have been great pressure upon her to resign. So in that sense, isn't the Cabinet Secretary a kind of guardian of public morality?

No, I don't think so. I think in that role you are simply giving advice to the Prime Minister and, as you say, I had to do that on one or two occasions. The time when the Cabinet Secretary is in a good position to do that is particularly when the evidence is in the Civil Service papers, or likely to be found in the departmental files, because the Permanent Secretary or the Cabinet Secretary can get access to that. I wouldn't have thought actually that Tessa Jowell's mortgage was a particularly good example of that, and I don't why my successor was asked to look into that. The case I had was cash for questions, and in that case, the evidence of whether MPs had put down questions in a strange pattern was in the departmental files, so it was quite sensible I think to ask me to look into that. But in general, I have always been against it.

There has been the idea that there should be one great panjandrum that carries out all inquiries for the Prime Minister. I have never thought that was a particularly good idea, because all these issues, all these so-called scandals, are different. Some involve questions of legality, of crime, and in that case, the police ought to look into them. Some are personal scandals – I don't

think the Cabinet Secretary is a particularly good person to look into that. Some are about misbehaviour as a minister within a department, you know, departmental issues. Well there, the evidence is likely to be on files that the Cabinet Secretary can get access to. But in all these things, no civil servant is ever a judge. The advisor to the Prime Minister can say to the Prime Minister, "Yes, I think this has been perfectly above board," or "I think it is criticisable," and the Prime Minister must then report that, but, as I say, I think it is completely useless for the Prime Minister to say, "This is okay because Sir Robin Butler says it is okay," or "because Sir Gus O'Donnell says it is okay." You know, they have looked into something, they have given the evidence, and then it is up to the politicians to defend themselves publicly.

You joined the Civil Service in 1961 when Harold Macmillan was still Prime Minister and you left it in 1998 when Tony Blair was Prime Minister. Did the Civil Service change in any striking degree in those years, or would someone who was there in 1961 and then fell asleep for 37 years, would he or she still recognise it in 1998, or was it a totally different animal?

Oh it changed, it changed enormously! You know, when I think of when I first joined the Treasury, people still wore bowler hats, or some people still wore bowler hats, and black jackets and pinstripe trousers. You were regarded as slightly dodgy, from a security point of view, if you arrived before 9.30 in the morning or you left after 6.30 in the evening, because it was suspected that if you came in at those odd hours it was because you wanted to photograph the papers. There was much less challenge. There was much less challenge to authority. Ministers were much less questioned. We were not pushed around by the press in the same way. There was I think a greater feeling of solidarity and companionship between ministers and civil servants. It would not occur I think to a minister to question whether a civil servant was loyal to them. I think that Conservative Government when I came in, they would have regarded the Civil Service rather like their gamekeepers, you know… they were there, they were servants, you assumed that they worked for you! So none of those issues arose.

But of course the other huge change that took place was the change that took place I think particularly stemming from the 1970s, when the pressure came on politicians to hold down the level of taxes. We had Proposition 13 in California. Ever since then, it has been an electoral liability to say you are going to raise taxation, in the States as well as here – no new taxes and all that – but at the same time, the electors wanted first class public services, and so there came a tremendous squeeze on ministers. They wanted to get more out of no more taxes, and so that I think switched the emphasis towards management and what are now called outcomes. So the whole structure, from Fulton onwards, was turning the Civil Service's attention more on management and less on political advice.

And of course, you know, it changed enormously in the sense of challenge, and when things were going wrong, wanting scapegoats.

And another change: the Government has been I think expected to do more and more, solve more and more problems, provide services for particular sorts of disability, particular sorts of social misfortune.

So all those things are huge changes, and I think also the people who went into the Civil Service changed a lot. I had to look up the figures. In the year I joined, of 124 people joined, I think that 117 were men and 7 were women; the vast majority were Oxbridge graduates, and of those, the vast majority were arts graduates. Now that has all changed hugely.

I remember speaking a while ago to a Permanent Secretary – this backs up what you say I think – who in turn had been talking to a civil servant who was in office in the 1930s, and he had said that when members of the public wrote in, they were liable to get a printed postcard in reply saying that theirs was one of the two-thirds of the letters that had not been selected for a proper reply, and that you knew when the War had broken out, because the lights in the Foreign Office remained on till 6pm in the evening! So obviously there have been massive changes, but it is said by many people, and perhaps you would agree, that despite all the changes, the constitutional structure of the civil service is still what it was in the 19th Century – either for better or for worse. But when we had the famous Northcote-Trevelyan Report on the Civil Service in 1854, it said that what we wanted was a permanent Civil Service, chosen by open competition, with promotion by ability, and politically neutral. Now through all the changes we have had - and as you have said, they have been very considerable - do we still have that, that type of Civil Service that Northcote and Trevelyan in the middle of the 19th Century said we want and which was the basis of the system they established?

The Civil Service I think has struggled to preserve that, and I think they have, on the whole, succeeded. I think it has come under greater and greater pressure in recent years, and there are some people who say, well, they are not sure that it is still appropriate, but I think it has served the country very well. I will elaborate on why I think it has served the country well if you would like me to do that. I believe in it strongly, and certainly while I was in the service, I did my best to maintain that against the

pressures that were attacking it.

Well, I think most of us here regard the British Civil Service as a kind of paradigm and a typical Civil Service, but in fact I think if you look around the world, in most civil services, the top officials tend to change with the government – obviously in America, but in other countries as well, even in some Commonwealth countries. For example, in Australia, I think your post, or the equivalent of it, is held by two people, one of whom is a career person, but the other who works for the Prime Minister, who changes with the government when the government changes. I think we and Canada are two of the few countries that retain this principle of neutrality, and I think even Canada is moving a bit away from it. We are unusual therefore. Why should we remain unusual? You were, after all, one of the chief advisers, chief adviser perhaps, to John Major, and then when he lost the election in 1997, the next day, you were the chief advisor to Tony Blair. Now someone might say, "How could you be equally committed to two people with such different policies, such conflicting policies? Don't you, as it were, lose the last ounce of commitment in trying to be neutral between two such different governments?"

I'm a little surprised by it myself. When you say John Major and Tony Blair had two such different policies, you mean that Tony Blair was so much more to the right wing than John Major! No, there is a sense in which we are mercenaries, but I don't think there is anything terribly difficult about that. A barrister has to do his best for one client one day and another client the next day. It puts limitations on your relationship, but I never had any difficulty in being a mercenary. I knew that was my role.

There were moments when it came under strain. Perhaps the moment it came under greatest strain was when I was Private Secretary in Number 10 in 1974, when the Heath Government fell, and we had been working extremely hard, 18 hours a day, during the miners' strike you remember, and the issue was who governs Britain, and we tried to support the Government in keeping the country going. You remember the election, and Heath tried to form a coalition with the Liberals and that failed, and he went out and there were people chanting in Downing Street, and there were demonstrations and so on all over the country. Harold Wilson came in and said, "This has all been nonsense, and we must settle the strike straight away," and did. I remember that being perhaps the moment where I learned that I was a mercenary, and that was a valuable lesson, but there was nothing that offended my conscience or my principles. An elected politician was perfectly entitled to take a different view from his predecessor, and did, and it was the duty of the Civil Service to try to implement that. I learned that on that occasion, and I became completely used to it.

But where I think that the Civil Service, this non-political Civil Service, has served Britain so well, well, there are lots of ways. Perhaps I can illustrate it best by comparing it with the American system. A President in the United States changes: the top 5 levels in the departments give up their jobs; new ones are appointed. It takes 4 or 5 months of transition to get even the first ones in position. There are then hearings before the Congress. It probably takes 18 months before that whole Civil Service panoply has been approved by the Congress. The President's term is 4 years, so for the first 18 months of the administration, it is in some sense in formation. A year before the next election, some of the people who have been appointed begin to say, "Well, what happens if the President isn't re-elected? There's going to be a rush into Wall Street. Perhaps we ought to be looking around for our next jobs," and people start flaking off and going into Wall Street. So in the most powerful government in the world, in a 4 year term, you probably have 18 months when the Administration is pretty stable and everybody is settled. I think that is alarming actually, and so I think there is a great deal to be said for this continuity, and of course there is a lot to be said for it in two other respects.

One is that senior Civil Servants in our system are not dependent on the politician for their jobs. We do not have to be yes-men, like everybody else. You want to be liked, no doubt, and you do not want deliberately to give offence. You want to show that you understand what the politician is after and you are trying to help him or her achieve it, but you can give objective advice without being in terror of losing your job. So that is a very good thing.

The other thing is I think this, and you may think this is a crude point to make, but I do actually think it is important. Government in Britain, on the whole, has been regarded as remarkably incorrupt. What keeps politicians straight? Well, I think one of the things that keeps politicians straight is the fact that some of the closest people around them are not their people. You know, when I was Principal Private Secretary in Number 10, there really wasn't much about the Prime Minister's life that I didn't know. In general, civil servants listen in to conversations that ministers have with the outside world. It would have been very difficult for a Prime Minister to be up to anything corrupt, and the same would go for politicians and departments, and their relationship with their Civil Service private offices, without those civil servants knowing about it. I think that separation of the professional Civil Service, that has not got quite the same interest as the politician, is something which has contributed to the integrity of British government.

When you joined the Civil Service in 1961, there were very few outside political people there. I think the concept of the Special Advisor had not yet been invented, but now we have lots of them. I think there are at least 2 in every department, and at least 2 of those working in Number 10 had executive authority over civil servants – Alistair Campbell, who was the Chief Press Officer, I think was his title, and Jonathan Powell, who is still there, who is Chief of Staff to the Prime Minister. So the Civil Service has in a sense become diluted by political appointments. Now, ministers obviously feel perhaps they ought to have more of their own people there. They are not perhaps 100% happy with the, as it were, neutral mercenaries as you call them, or eunuchs, whatever you like to call them, that they have got; they want their political people. Have they gone too far in that, or should we go further in letting politicians simply bring in their own people to advise them?

Well, actually I think when I joined in the early 1960s, it was a low point for the appointment of outsiders, but there have been outsiders before. Churchill had had Brendan Bracken and others, and so did Lloyd George, so it was not at all unknown. Actually, in the 1960s, you are right, there were rather fewer, and when Labour came in 1964, then they did deliberately bring in some outsiders. They brought in Nicky Kaldor and Robert Neil in the Treasury, Tommy Balogh in Number 10, and these people got a good deal of attention, and Special Advisors have continued since then. On the whole, the rule was one per department, and that applied up to 1997, and there were then I think about 40 Special Advisors throughout Whitehall. It has doubled now to 80, of whom very many are in Number 10, but also ministers, as you say, have probably got 2 or 3 each. Now, I have no objection to that; indeed, I think it is a great advantage. I mean, when I was junior in the Treasury and Kaldor and Robert Neil came in, it galvanised debate in the Treasury. We were much more challenged. I remember the excitement it created. You know, I was quite a young man sitting around – I think I was Secretary to the Budget Committee – and I was very excited by these much more lively debates that there were between the officials and the political advisors, who were very expert men of great calibre. So that challenge is there, and I think it is for the reason you gave, that it is good that a minister has got some people who are politically committed to him or her around them.

Now, a sensible minister will listen to both sides. They will allow the debate to happen. They will listen to the Special Advisor, who has got a wonderful idea, you know, which is going to solve this problem and win the next election, and then you have got the dreary old civil servants who say, “Well, it won’t work, and anyway it was tried 5 years ago, and there is this snag about it and that snag about it.” A wise minister listens to that debate and then decides, well, can I solve some of these objections that the Civil Service raises, am I going to take the risk and see if I can do it? That’s terrific. I think that is the way that government works.

The problem arises I think when a minister listens only to the Special Advisors – maybe also if he listens only to the civil servants – but particularly if you listen to the Special Advisors, because they may have ideas that are very politically attractive, very attractive on the surface, but if they are not worked through, then they don’t bring home the bacon.

Well, political advisors may be a good thing, or they may be a bad thing, but they are a departure, aren’t they, from the constitutional principle of selection by merit and promotion by ability, because they are political appointments and their promotion or position depends upon the minister? And I wonder if there isn’t also a departure in the sense that there are, as it were, fewer Robin Butlers in the Civil Service than there were. I mean, you were in the Civil Service for 37 years, you were a career civil servant, but now I think 35% of the top positions are advertised and many of them go to outside appointees, who are there for a few years and then they leave, and it is said now that people should expect to have an outside post if they want the highest posts in the Civil Service. So there may not be any more Robin Butlers in the future. Again, that might be a good thing, that might be a bad thing, but it is a departure from the principle of a career Civil Service, isn’t it? As I say, it may be a good thing, it may be a bad thing – but aren’t we departing from our traditional model of a neutral career Civil Service?

Well, I think we have got to distinguish two cases. First of all, the Special Advisors, the political advisors, as I say, they have happened before, there is nothing terribly new about those, and they are not, if I may use this phrase, “proper civil servants” in the sense that they do not continue when the minister leaves, and particularly not when the government leaves, so they are not permanent, and they come and they are there with a particular minister and a particular party and they perform a useful role. So I do not think they are a departure from the Northcote-Trevelyan model.

It is much more of a departure, as you say, that now a lot of the top civil servants who do become civil servants, who are there to be recruited to be part of the permanent Civil Service, are brought in later in life, in their forties or fifties, because they bring particular skills. That happened on my watch to a large extent, and that is a departure from Northcote-Trevelyan, because Northcote-Trevelyan recommended a life Civil Service, where a young person came in at aged 25 and, as you say, they were a Robin Butler, they stayed there all the time! But I felt that – well, not just me, it was not my personal decision, but I supported it – that as you need particular management skills and experience in running particular parts of the Civil Service, then you ought to be prepared to bring in people who have got those skills, because you cannot always create them within the Service. I also

thought it was a good spur and a good competition to people within the Civil Service to develop these skills so that they themselves knew that they would be up against tougher competition in going for the top jobs. I used to say to people within the Civil Service, “Our aim is to equip you for these jobs. These jobs will be advertised openly and you will have to compete against outside applicants, but I hope you win,” the insider, and you know, “we will regard it as a success if we have trained you up so that in competition you get this job, but we have got to get the best person doing it, and therefore we ought to open it up.” When civil servants complained about that, I pointed out that there were at least 35% of the top civil servants who went out and got top jobs outside – it could not just be one-way traffic.

I can understand this principle being applied when you want people with specific skills – an economist, shall we say, or an accountant – but what about someone who is, as you were, a professional administrator? When you joined the Civil Service, the idea that the Civil Service was a profession was heard much more perhaps than it is today, and with a profession, you do not, on the whole, have in and out. I mean, it would be very odd to advertise the position of a doctor for people who were not qualified in medicine. Professions, almost by definition, are closed to people who are qualified. Now, is the Civil Service not a profession in that sense, but as it were a branch of management which someone in business or someone else could do just as well as anyone who has been in the Civil Service for some years? Is it a managerial position, rather than a professional one?

Well, there are different types of civil servants, and there are different jobs in the Civil Service. Let me take a particular case: one of the first people who came in and became a Permanent Secretary of a policy department in that way, was Michael Bichard. Michael Bichard came in, he won the competition to be head of the Benefits Agency, running this great social security machine. He had a background in local government, dealing directly with the public, so he had really very much the skills, so that part of the professional apparatus he had. Then think of the Cabinet Secretary, let’s say. I don’t want to say the Cabinet Secretaryship ought to be a closed shop, but the skills there are very much the skills that one will have got by dealing with politicians at close range over a long period and in many situations, and having seen their ups and downs and so on. So it is less likely that you will find an outsider who has developed those skills over the years. So I think you have got to look at the job, and there will be a lot of jobs where it isn’t like a doctor, because the skills are more, as it were, open than that, where people who have done outside jobs will have the skills, may be in more abundance than people within the Civil Service.

Another difference between the time you entered the Civil Service and today is that the civil servant was much more anonymous in the 1960s. I think you yourself received a great deal of publicity when you were Cabinet Secretary. I suspect in the 1950s, early ’60s, most people didn’t know who the Cabinet Secretary was – they were anonymous figures. It is a tendency much more these days to blame civil servants when things go wrong – for example, with the Child Support Agency or IT arrangements in government or recently I think John Reid, the new Home Secretary, said that the Home Office was not fit for purpose, which is a way of criticising his civil servants I suppose, though he didn’t, it’s fair to say, mention them by name. But we do know who a lot of the leading civil servants are, and if things go wrong, we tend to blame them. Is that moving away again from the Northcote-Trevelyan idea, according to which it is ministers who take the blame when things go wrong, and civil servants are servants – they don’t get blamed when things go wrong, and they don’t get praised when things go right. The ministers get the praise when things go right – they tell the electorate we have spent more on the National Health Service, the National Health Service has worked better, whatever it is – and when things go wrong, they take the blame. Now, are we moving away from that doctrine so that civil servants tend to take the blame when things go wrong?

Well certainly I think it is more open; the whole system is more open in that way. Of course one of the other great changes that took place over my career, the changes in recent years, was the growth of scapegoatery. Certainly, you know, in the early years, if something went wrong, people didn’t immediately say, “Well, who are the guilty people and whose head should roll over this?” There were inquiries, but you almost seem to have an inquiry every week now. And understandably, politicians take the view, “If I didn’t know about it and I wasn’t responsible for it, my head shouldn’t roll.” And Parliament also wants to get at these things and wants to discover what really went on. So, civil servants have become more accountable. We appear before Select Committees much more. Our names therefore get known to some extent. And sometimes, you know, it is the case that it is the civil servant who is the one who is blameworthy, very often it may be the case where a government operation goes wrong. So what I believed and believe is that ministers are the elected people, they are the ones who are accountable to the electorate. The electorate, through Parliament, has the right to ask them to account for everything that goes on on their watch and in their department. So they are always accountable. I think, as Herbert Morrison said, “To the smallest stamp being put on an envelope upside down,” the minister must be asked to explain that.

When you get into the business of blame, then you have obviously got to look below that and decide to what extent the minister is to blame, or the civil servant is to blame, or which civil servant is to blame, and increasingly there has been an appetite in the public for doing that in recent years, and so you get more and more of these inquiries. Unfortunately, of course,

it so often turns out that life is complicated, and it is not very easy to apportion the blame, but nonetheless, it is right that it should be done, and there are useful lessons to be learned from it.

There are some bad sides of it though, and one of the bad sides is of course it does make people very much more defensive, makes them less inclined to take risks, and I think that one of the things that went with the complacency of government when I joined it, complacency on the part of ministers and complacency on the part of civil servants, was that they had more self-confidence. They would do things because they thought they were right and because they were less in fear of being held up to obloquy about it. Now, there is a good side and a bad side to that. I mean, it is good that if they do things wrong, they should be blamed for it; it is bad, or it is a disadvantage if it produces an entirely defensive, non-risk-taking attitude to it.

Well, perhaps ministers and other people have a contradictory attitude towards the Civil Service. They are always saying they want them to be more innovatory, more risk taking, but as you say, the climate is such that risk taking is easily punished. I suppose some people might put the point I made in a different way. They might say the problem is not that we know who the civil servants are. The problem is we cannot really deal effectively with the incompetent civil servants, that civil servants can get away with incompetence in a way that people in private business, private life, other areas, cannot, and that they can waste millions of pounds of public money and nothing can be done about it. I am caricaturing the point, but is there anything to it? What can we do if we find particular officials are incompetent or behave badly?

Well, the department can act on that and does act on it. The myth that a Civil Service job is a job for life, however incapable you are, is indeed a myth. I had reason to look up the figures when I was Head of the Civil Service - I'm sure it is much the same now, I should think it's perhaps even gone further – but I found that at the top three levels of the Civil Service, only 50% got through to retiring age. Now, of that 50% who had left, half of them left voluntarily, no doubt to go on to better jobs, but half left because they were levered out – now, not necessarily sacked, but businesses have got lots of ways of getting rid of people, and the Civil Service had ways of getting rid of people.

The only bit that hasn't is the academic world I think!

But there is I think, a sense in which the Civil Service is more secure, and that is this: you do not have the discipline of the bottom line. Since I have left the Civil Service, I have been on the boards of a couple of companies, and one of these companies, they ran into bad trading times, and they had a profit warning and so on. It was a perfectly good Chief Executive, working hard, and doing a good job, but he had to go. The board said sorry, the company is not succeeding; however hard you are trying, however meritorious, you go. That sort of thing I think does not happen in the Civil Service. I felt, with my Civil Service background, this chap had actually been treated unjustly, but that was the market. Should the Civil Service be a bit more like that? Well, again, there are two sides to that coin. It is not necessarily fair to the individual, but that sort of rough justice can be a great incentive to people to bring home the results.

Until the 1990s I think, the Civil Service was, broadly speaking, unregulated by any constitutional rules. It operated in terms of conventions with ministers and things on the whole seemed not to be working too badly, but perhaps it is a sign of a deterioration of this relationship on which the Civil Service depends that in the 1990s we had a Civil Service Code, and now some people are suggesting that we should have the role of the Civil Service embodied in Statute, a Civil Service Statute, Civil Service law. This, to my mind, raises two questions: firstly, do you think relations between ministers and civil servants have deteriorated since the 'Sixties, since you joined the Civil Service; and, if they have, would a Civil Service Statute do anything to help improve that relationship?

Well, it is not quite true that there were no rules. There was the Civil Service Order in Council, which dictated, for example, that permanent posts in the Civil Service had to be advertised, had to be filled on the basis of open competition, and promotion had to be on merit. Indeed, the reason why two Special Advisors have been given executive power over civil servants in 10 Downing Street was that Special Advisors were limited by the Civil Service Order in Council of being advisors, and since it was obvious that Alastair Campbell, as Head of the Press Office, was going to give instructions to Civil Service press officers, and since it was obvious that Jonathan Powell, as Chief of Staff, was going to give instructions to civil servants, we decided we had to make an exception for them from the Order in Council. That was the reason that came about. Actually, in their positions, there was nothing very new about it. Joe Haines had been a political adviser, but we had not been so punctilious in those days in making sure that we were within the rules as they became, as they applied. So there were rules.

Now, you are absolutely right that today there is talk of putting more rules in the way. I have come to think that it would be a good idea to have a Civil Service Act if we believe in the type of Civil Service we have, in a permanent Civil Service, to stop us

going the way that, as you pointed out, the Australians, the New Zealanders, many other Commonwealth countries who used to have our model, have gone.

It would have been perfectly possible for ministers when they came in in 1997 to have said we want to replace our Permanent Secretary, the permanent civil servant, with a Special Advisor, with someone who is appointed politically. That is what happened in the past in Australia. Once you have done that, then you have crossed a rubicon. The permanent Civil Service is gone, because when a government of a different colour comes in, they say we don't want someone – well anyway, probably he has gone because he was a political appointment – we don't want this person who is politically loyal to our predecessors to hold this post, we want to appoint somebody of our own. So they appoint somebody loyal to them, and then you are in the Australian situation. I am not saying that is a bad situation, but the permanent Civil Service has gone. Now that could have happened extremely easily. It could have happened as easily as the exception that was made to the Order in Council for those two Special Advisors in 10 Downing Street. It happened over the first weekend the Government came in. I advised them on it. I did it. I thought it was right to do it for the reason that I have given, but it was terrifying how easy it was. Parliament had no role in it. It was an Order in Council.

So I think now that things are in flux that if we want the Civil Service system that we have got, we ought to have an act that entrenches it, which can always be changed by Parliament, but could not be changed without a proper parliamentary process, debate, all parties taking part in it. That I think would be the purpose of having a Civil Service Act, to entrench the permanent Civil Service. It would not necessarily improve the relationships between ministers and civil servants, because those are not governed by Act of Parliament, and indeed, you cannot generalise about them. Some are extremely good, and close, and you know, ministers get on with their civil servants. Sometimes, for personality reasons, or because a minister would rather listen to his or her Special Advisors than the civil servants, they are not so good, and that is not going to be governed by legislation.

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