

An indictment of Tony Blair, and the failure of the political process

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Terrorism has undoubtedly put a strain upon democratic institutions, the democratic process and basic democratic precepts. Many people are concerned that the effectiveness of the political process has been eroded and that the rule of law and fundamental human rights and civil liberties have been placed in jeopardy. They are troubled by the feeling that democracy is more fragile and their freedoms more precarious than previously thought.

Some look to the judiciary to maintain the rule of law and protect human rights and civil liberties. But it is axiomatic that the rule of law and human rights and, indeed, democracy itself, will not survive, much less flourish, if the only safeguard is to be found in the legal system. The judiciary's power and influence is limited, especially in a legal system where the judges are regularly reminded by lawyers, legal academics, political scientists, politicians, writers of letters to the editor and others to accept obeisance to the Diceyan concept of parliamentary sovereignty. Primary responsibility for the preservation of the rule of law and human rights, and accountability for any departure from the rule of law or breach of those rights, must exist within the political system. Unless that political responsibility is discharged democracy, or the kind of democracy the people esteem, is in danger of being undermined.

I am not satisfied that, in this age of terrorism, the probity of government and the ability of democratic institutions is adequate to prevent serious inroads into the rule of law, or to monitor the boundary between human rights and their breach or, indeed, to safeguard and secure the democratic process. Nor am I satisfied that those politicians who seek to redefine the rule of law, or who cross the boundary between the observance of human rights and their breach, or who show less than constitutional respect for the democratic process will be effectively held to account for their default.

For the purpose of testing this hypothesis I

propose to examine Tony Blair's role leading up to the war in Iraq. Focusing on Tony Blair does not mean that I am unaware of, or indifferent to, the greater involvement of the President of the United States and his administration. George W Bush's conduct has been canvassed in any number of articles and books.¹ He does not emerge unscathed. But the fact that the policies and behaviour of the Bush administration are in many respects more extreme than the policies and behaviour of Mr Blair cannot excuse the latter from scrutiny. He may properly be judged in his own right.

Rather than essay a broad sweep of events leading up to the war I have selected a number of key matters to explore, and to finally demonstrate, Mr Blair's level of culpability. These matters comprise the sudden shift in the claim that Iraq had the potential to develop weapons of mass destruction to the claim that Iraq actually possessed weapons of mass destruction; the manipulation of the intelligence provided by the intelligence services in preparing the first dossier; the misrepresentation that Iraq had the capacity to deliver missiles carrying weapons of mass destruction within 45 minutes; the misuse of the Attorney-General's advice relating to the legality of the war; the forgiving tolerance of the use of torture on terrorist suspects; and the condoning of a doomed post-war economic strategy. I seek to bring a judicial approach to this examination. An analysis of the extent to which human rights have been imperilled by the Prime Minister's behaviour is then briefly undertaken. I conclude by emphasizing the failure of the political process to effectively monitor the Prime Minister's foreign policy and to properly hold him to account.

In approaching this examination, my pre-disposition was to believe that Mr Blair was deluded, but sincere in his belief. After considerable reading and much reflection, however, my final conclusion is that Mr Blair deliberately and repeatedly misled Cabinet, Parliament, the British Labour Party and the people in a number of respects. It is not possible to hold that he was simply deluded but sincere; a victim of his own self-deception. His deception was deliberate.

I admit to having personally found the extent of the manipulation and distortion of the democratic system and lack of accountability profoundly disturbing. Exercising a presidential style of rule, obtaining no effective policy input from Cabinet or Parliament and shrouding the development of Iraq policy in secrecy, Mr Blair was effectively free to determine Britain's foreign policy as if it were his personal fiefdom.

¹ See, e.g. Graydon Carter, *What We've Lost: How the Bush Administration has Curtailed Freedoms, Ravaged the Environment and Damaged America and the World* (Little, Brown, 2004); Seymour M. Hersh, *Chain of Command: The Road from 9/11 to Abu Ghraib* (Allen Lane an imprint of Penguin Books, 2004); Jack Huberman, *The Bush-Hater's Handbook: An A-Z Guide to the Most Appalling Presidency of the Past 100 Years* (Granta books, London, 2004); Molly Ivins, *Who Let the Dogs In? A Personal History of America's Most Incredible Political Animals* (Allison & Busby Limited, 2004); Richard A. Clarke, *Against all Enemies: Inside America's War on Terror* (Free Press, 2004); Bob Woodward, *State of Denial: Bush at War, Part III* (Simon & Schuster, 2006); Sidney Blumenthal, *How Bush Rules: Chronicles of a Radical Regime* (Princeton University Press, 2006); Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (Allen Lane, an imprint of Penguin Books, 2006).

Support for neo-conservative policies

For reasons which remain obscure or contentious, Mr Blair chose to endorse the neo-conservative, ideologically based policies of the Bush administration. His truckling support for the policies of that administration cannot be entirely explained by his predisposition to bring about a new ‘global order’.²

Take, for example, the Prime Minister’s assertion when seeking to brand anti-war sentiment prior to the invasion as ‘anti-Americanism’ that he firmly believed ‘America is a force for good’.³ Examined even cursorily, the assertion is specious. The issue is not whether America is a force for good but whether America, led by a neo-conservative and ideological administration bent on a war against Iraq, is a force for good. Far right thinking which would be unacceptable in the domestic sphere does not mystically gain in rationality when transferred to the international arena. Thinking which is divorced from reality and crude in its simplicity does not become more realistic, less ideological and better informed simply because it emanates from the President of the United States and the administration he has chosen.

David Cameron, the leader of the Opposition, no doubt sensitive to the direction of public opinion, has recently observed that much of the Bush administration’s thinking was ‘unrealistic and simplistic’.⁴ Why, then, was Tony Blair not able to perceive this unrealistic and simplistic thinking before committing the United Kingdom to a tragic and disastrous war? Literally millions of people around the globe shared this perception long before the invasion. The might of the United States, it was commonly said, would win the immediate war but it would not win the peace. In the result, Mr Blair’s close alliance with the Bush administration vested its policies with a veneer of ‘respectability’. The neo-conservative and ideological underpinnings of the decision to invade Iraq were obscured. Indeed, the phrase ‘coalition of the willing’ would have sounded silly without the involvement of Great Britain.

Christopher Meyer, the British Ambassador in the United States leading up to the war, in his book, *DC Confidential: The Controversial Memoirs of a British Ambassador at the Time of 9/11 and the Iraq War*,⁵ paints a picture of Mr Blair as being over-awed by the President and his administration.⁶ He observes that Tony Blair always appeared seduced by the proximity and glamour of American power. He perceptively points out that, in adopting the moral high ground and the pure white flame of unconditional support of an ally, the Prime Minister placed himself in the hands of that ally. Mr Blair was fêted by the Bush administration from the

² Steven Kettell, *Dirty Politics? New Labour, British Democracy and the Invasion of Iraq* (Zed Books, London & New York, 2006), at pp 5, 43-35 and 182.

³ Repeated as a mantra; see, e.g. *BBC News*, Mark Mardell, BBC Chief Correspondent, 2 April, 2003.

⁴ When distinguishing his perception of conservatism from neo-conservatism, i.e. the Bush administration’s world view, Mr Cameron said that they [the ‘sound-bites’ that led up to the war in Iraq] were ‘unrealistic and simplistic’. See David Cameron’s 9/11 speech; *BBC News*, 11/9/06 (news.bbc.co.uk/1/hi/uk_politics/5333406.stm).

⁵ Weidenfield & Nicolson, London, 2005.

⁶ Bruce Anderson, ‘Why US has lost the plot in Iraq’, *New Zealand Herald*, 30 October, 2006. See also Blumenthal, *How Bush Rules*, supra n 1, p 284.

outset. He was accorded personal attention, praise, privileges and honours few, if any, British Prime Ministers have received in the United States. His speeches dedicating Great Britain to unconditional solidarity with the United States made him an ‘American hero’.⁷ Certainly, Mr Blair’s deference was exceptional.⁸ After a time one nurtures the feeling that this over-awed deference may have had a psychological element blinding him to the reality. Whether a causative link can be established between the coddling and adulation which he received and his exceptional deference is problematic, but there can be no doubt that Mr Blair consistently failed to display the independence one would expect of the leader of a sovereign nation.⁹

Mr Blair’s appreciation of neo-conservatism is also seemingly vagarious. In response to criticism directed at his indiscriminate support for the Bush administration he is reported to have said: ‘It is apparently a “neo-conservative”, i.e. right wing view, to be ardently in favour of spreading democracy round the world’.¹⁰ Again, this statement is superficial. Even as a debating point it is self-evidently weak. Most people, many ardently so, are in favour of spreading democracy around the world, more particularly if it is indigenous to the culture of the country concerned. That goal is not in dispute, although the view that democracy can be exported on American and British mortars may have died a thousand deaths in Iraq. What critics’ dispute is that the war should have been embarked upon by what was, effectively, a Prime Ministerial fiat based on unverified, false or fabricated evidence. What they urge is that it was impulsively foolhardy to support a war inspired by the Bush administration’s suspect motives; criminal folly to make war without being assured that the peace could be won; devious to lend support to the pretence that the war was a war on terrorism or terror and not a straight out war against Iraq; naïve to minimize the problem of imposing a western style sectarian democracy from without; and disingenuous to undertake the invasion underestimating the difficulties the coalition would face, the level of resistance that would be encountered, the casualties and cost in human terms, the potential for war to brutalise its participants, and the damage to the relationship of Islam and the western world.

7 Blumenthal, *How Bush Rules*, supra n 1, p 205.

8 Ibid, at pp 34-36 and 189-191.

9 E.g. Mr Blair generally went along with Mr Bush’s shifting justifications for the war: from its possession of actual WMD to its possession of WMD programmes to its WMD-related programmes and, finally, to its WMD-related programme activities. Further, see Riddell, *Hug Them Close: Blair, Clinton, Bush, and the ‘Special Relationship’* (Politicos; London, 2004) pp 280-281; and Bob Woodward, *Plan of Attack* (Simon & Schuster, 2004) pp 434-435. Similarly, when two trucks containing sophisticated equipment were located on Iraq in June 2003, Bush was quick to claim that weapons of mass destruction had been discovered. The rest of the world was yawningly sceptical and waited for the full facts to emerge. But Tony Blair immediately claimed the ‘our experts’ had found ‘two K 119 Facilities’. Of course, as widely anticipated, the claim was false. When examined three days later it was ascertained that the trucks contained equipment for the production of helium for weather balloons. Yet again, the Prime Minister had seemingly accepted the Washington line as if it were gospel. The examples of blind support are endless.

10 Tony Blair, speech to the Foreign Policy Centre quoted in full in *The Guardian*, 21 March, 2006.

See also http://politics.guardian.co.uk/iraq/story/0,,1736105,00.htm1#article_continue

Nowhere is the folly of following the neo-conservative, ideologically driven Bush administration's policies more apparent than in the Prime Minister's endorsement of that administration's war model. The war model was not only unwise, it was misconceived.¹¹ It is a false and dangerous metaphor; false because it assumes that there can be a war against an abstraction, such as terror, and dangerous because it is prone to be taken literally. Thus, the catchphrase fostered the notion that the so-called war on terror required a military response relying on military might.¹² The problem of terrorism was conflated with that of 'rogue states' and weapons of mass destruction, and this conflation was blatantly used to sanction the invasion of Iraq.¹³ Seemingly absent was any appreciation that a military response would fuel future violence, create conditions of social and political injustice, out of which extreme movements would emerge, and quickly antagonize the more moderate voices that might otherwise prevail.¹⁴ Similarly absent, almost criminally so, was any realistic understanding of the religious, ethnic, nationalistic and tribal forces at work in Iraq which would render the war a disastrous military operation.¹⁵

Long before September 11 Tony Blair had an ambition to reassert Britain's position as a 'global player' on the international stage and it seems that, as part of this global vision, he was in favour of regime change in Iraq prior to the advent of the Bush administration.¹⁶ Mr Blair was therefore receptive to the ill-conceived war model, and there can be little doubt that in late 2001 or early 2002 he gave George W Bush a firm assurance that the invasion would have Britain's solid backing.¹⁷ Following a meeting in February 2002, the United States and British attacks on the Iraqi no-fly zone were intensified. At a press conference Mr Bush and Mr Blair presented a united front and reasserted their joint commitment to resolve the threat Iraq was perceived to pose.¹⁸ Then, in April, the Prime Minister

11 For a compelling condemnation of the notion of the so-called war on terror, see George Soros, *The Age of Fallibility: The Consequences of the War on Terror* (Weidenfeld & Nicolson, London, 2006), pp 101-111.

12 The phrase 'war on terror' was first used by Mr Bush on 20 September 2001. <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>.

13 As, of course, it was also used to sanction Guantanamo Bay. For a compelling condemnation of Guantanamo Bay, see Philippe Sands QC, *Lawless World: The whistle-blowing account of how Bush and Blair are taking the law into their own hands* (Penguin Books, 2006), Chapter 7, 'Guantanamo: the Legal Black Hole', p 143 et seq.

14 It is time to move away from the war model and, indeed, the 'war on terror', the flaws in which are now painfully patent, towards a new model based on respect for the rule of law and human rights, an internationally coordinated anti-terror strategy, independent of American domination or imperialism, and a long term political vision that will reduce the global tensions that generate a political constituency for terrorists. See Richard Ashby Wilson, 'Human Rights in the "War on Terror"' in *Human Rights in the War on Terror*, Ed. Wilson (Cambridge University Press, 2005) 1, at p 33.

15 Thomas Ricks in *Fiasco*, supra n 2, demonstrates that there were many senior officials, high ranking military personnel and public interest organisations that warned the Bush administration of the dangers of a war in Iraq well in advance of the invasion. They were ignored.

16 Kettell, *Dirty Politics*, supra n 2, pp 4-5.

17 It is not possible to fix a firm date. Possibly, the firm backing was given at the White House meeting on 20 September 2001 or at the Camp David Summit in April 2002.

18 Kettell, *Dirty Politics*, supra n 2, p 49.

met Mr Bush at the President's ranch in Texas. The official line, confirmed in a leaked briefing paper, was that the United Kingdom would support military action to bring about regime change subject to the President reinvigorating the Middle East peace process and seeking the endorsement of the United Nations. No doubt recognising the political difficulties faced by the Prime Minister, the President accepted these terms. The die was therefore cast.

There is evidence, however, that Mr Blair's private commitment was even firmer than these developments would indicate. In March 2002, Sir David Manning, the Prime Minister's foreign policy adviser, penned the Prime Minister a memorandum reporting on discussions he had with Condoleezza Rice. Sir David stated he had told Condoleezza Rice that he, Mr Blair, 'would not budge in his support for regime change'. But, it was reaffirmed, the Prime Minister had to 'manage a press, a Parliament and a public opinion that was very different from anything in the States'.¹⁹ John Kampfner, a political commentator, reported at the time that Mr Blair, together with Sir David Manning, had told the President that 'Britain would support him come what may'. To maximize support, however, they should try to build a large coalition, preferably through the United Nations.²⁰

Certainly, in subserviently following the Bush administration into the war, the Prime minister faced two obstacles not as evident or as marked as in the United States. The first was the need to positively sway public opinion in favour of the war. Public opinion in the United Kingdom has been consistently opposed to the war. The second was the related need to establish a legal basis for the war. That legal basis was to prove elusive. These two needs undoubtedly underpinned the Prime Minister's actions, certainly in respect of the particular matters which I propose to examine below.

A judicial approach

In examining the following matters, I have sought to adhere to a judicial approach and judicial discipline. Having been a barrister for nigh on 32 years and a senior judge for 11 years, I am familiar with that approach. My appreciation that this approach is necessary reflects the seriousness of the charges that can be made against Mr Blair. The discipline inherent in the approach provides a safeguard against unjust or intemperate condemnation.

Judicial caution before attributing mendaciousness is well-established. Fraud is not to be lightly alleged nor lightly found. I have, therefore, consciously drawn back from reaching conclusions which might be said to contain an element of speculation. The famous – or infamous – 'judicial hunch' has no place in an inquiry of this kind. Hence, I believe that the conclusions I have reached are findings which would be considered respectable in a court of law.

¹⁹ Gaby Hinsliff, 'Blair in firing line on Iraq leak', *The Observer*, 19 September, 2004, at 4; Sands, *Lawless World*, supra n 13, pp 182-183.

²⁰ John Kampfner, *Blair's Wars* (Free Press, 2003) p 168. In evidence to the Foreign Affairs Committee Clare Short has subsequently testified that 'senior people' had told her that Tony Blair had committed the country to war in the spring of 2002; Foreign Affairs Committee, evidence, 17 June 2003.

Furthermore, I am not unaware that the more severe the condemnation of Mr Blair, the more likely it is that one's analysis will be viewed as a polemic. But that concern cannot absolve one from following the facts to their proper conclusion. The temptation, often evident in judicial adjudication, to avoid the harsher finding and hold that Mr Blair was only reckless about the truth must bow to the evidence.

Then, I was conscious that my material was not hard evidence tested in cross examination. The information in books and articles is as yet incomplete and includes the authors' opinions. I considered that I could guard against this disadvantage by relying upon the factual data only, and I have at times spent as much time among the authors' footnotes as I have in his or her text.

Finally, I have been appreciative of the need to allow politicians a reasonable latitude. After all, politics is politics, and some are cynical enough to say that all or most politicians will at times, and possibly more than once, lie to their constituents. In judging them, they must be allowed the latitude to be scallywags but not rogues. But I proffer my judgment of Mr Blair confident that the level of his mendaciousness falls well outside any reasonable, or even generous, latitude.

Nonetheless, adopting a judicial approach and judicial discipline in examining the following matters does not mean that this work is in the nature of a legal judgment. It does not assume that style. Moreover, I must acknowledge that no effort is made to establish an assumption that permeates the paper. That assumption is the notion that neo-conservative policies are likely to reflect ideological thinking and consequently tend to be over-zealous, unrealistic, simplistic and single-minded. In the United Kingdom, such thinking has had minimal, or even negative, domestic appeal to the electorate. But my readiness to, in effect, take judicial notice of that perception will not satisfy some. Even if this perception of neo-conservative thinking is discounted, however, the evidence of Mr Blair's manipulation and deception remains compelling.

The matters which I propose to examine raise two broad questions which I cannot fully explore in this paper. The first question is: how can the political process be improved to better contain the excesses of executive power, particularly the far-reaching power of the Prime Minister in relation to foreign policy, and hold those responsible for the excesses accountable? The second question is: how assertive should the judiciary be in protecting human rights and civil liberties having regard to the reality of the political process? Both these questions are of paramount importance in determining the effectiveness and integrity of the political process and implementing the fundamental values of democracy.

In undertaking the following examination, I have not sought to conceal my personal belief that the decision to invade Iraq was a predictable mistake. But it is not necessary to be of that view to be disturbed at the manipulation and deception which took place leading up to the war. Indeed, the question of Mr Blair's culpability can be sensibly separated from the question whether the war was justified, including any claim that it was the execution of the war or post-war strategy that has been responsible for the subsequent calamity in that country.

Irrespective whether the war was justified or not, Mr Blair's behaviour in pursuing and prosecuting the war remains exactly the same. It deserved, and deserves, the same response from supporters and opponents of the war alike.

I turn now to the first matter that I consider demonstrates the lack of probity in Tony Blair's preparation for, and prosecution of, the war against Iraq.²¹

(1) From potentiality to actuality

I first want to examine the shift from the claim that Iraq had the *potential* to process weapons of mass destruction to the claim that Iraq *actually* possessed weapons of mass destruction. The shift was sudden, and has never been fully explained.

The narrative can begin in the early months of 2001. At this time Iraq was believed to pose a potential, rather than an actual, threat to peace and security. Tony Blair's belief then was that the menace presented by Saddam Hussein could be contained. He proclaimed that Iraq would seek to develop weapons of mass destruction 'given the chance'.²² He told one newspaper, for example, that Iraq 'was still trying to acquire' a weapons of mass destruction capability.²³

This assessment of the potentiality rather than the actuality of the threat posed by Iraq's weapons of mass destruction accorded with the analysis of the British intelligence agencies. The view of the Joint Intelligence Committee (JIC), the chief conduit of intelligence material for the Government, was that, while Iraq had 'increased the pace and scope' of its missile research and development programmes, it was probably in possession of only a handful of ageing Scud-derived missiles with 'little accuracy'.²⁴ While accepting that there were 'grounds for concern', officials pointed out that the intelligence was 'limited', 'patchy', and 'unclear'.²⁵

A similar picture was also being presented by the United States intelligence agencies. Their conclusion was that Iraq did not as yet have any 'weaponised material'.²⁶ It was not as though Mr Blair had not been warned of the chicanery in Washington. A leaked memorandum records that Sir Richard Dearlove, the Chief of MI6, told a meeting of Mr Blair and top officials on 23 July 2002, that 'Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy'.²⁷ Richard Dearlove's perception is confirmed by Tyler Drumheller, the former Chief of the CIA in Europe. Referring to the fact that the White House had dismissed the intelligence validated by the CIA in the run up to the war that Iraq

21 In carrying out this examination, I have obtained considerable assistance from two outstanding books; Steven Kettell, *Dirty Politics: New Labour, British Democracy and the Invasion of Iraq*, supra n 2, and Philippe Sands QC, *Lawless World: The whistle-blowing account of how Bush and Blair are taking the law into their own hands*, supra n 13.

22 Joint Press Conference at Camp David, 23 February, 2001.

23 Tony Blair, *The Observer*, 14 October, 2001.

24 Lord Butler, *Review of Intelligence on Weapons of Mass Destruction*, July 2004, paras. 218-288.

25 Ibid.

26 United States Senate Select Committee on Intelligence, *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, July 2004, 144-145; and see Bob Woodward, *Plan of Attack* (Simon & Schuster, London, 2004) p 194.

27 *Sunday Times*, 1 May, 2005. See also Ricks in *Fiasco*, supra n 2, at p 39.

had no weapons of mass destruction, he said: ‘The policy was set. The war in Iraq was coming. And they [the Bush administration] were looking for intelligence to fit into the policy, to justify the policy’.²⁸ Similarly, a former director of the strategic proliferation and military affairs office in the United States Department of State, Greg Thielmann, was to say in July 2003, that, ‘this administration has had a faith-based intelligence attitude [in] its top-down use of intelligence: we know the answers, give us the intelligence to support those answers’.²⁹

Yet, in a matter of months only the potentiality became the actuality. Tony Blair now asserted that Iraq actually possessed weapons of mass destruction. This assertion was repeated incessantly and was part of a concerted public relations campaign to convince the public that Saddam Hussein posed a current threat to the peace and security of the world. Mr Blair was unequivocal; he now described Iraq’s claims to have no weapons of mass destruction as a blatant lie professing to ‘know’ that Iraq was developing weapons of mass destruction;³⁰ he told the House of Commons that Iraq was developing weapons of mass destruction which posed a threat ‘not just to the region, but to the wider world’;³¹ he told journalists that Iraq had ‘actually acquired weapons of mass destruction’ and that the threat was ‘not in any doubt at all’;³² he told the American television channel, NBC, that Iraq was in possession of ‘major amounts of chemical and biological weapons’;³³ and Iraq, he said, was spending around £3 billion of illicit funds a year on weapons of mass destruction programmes.³⁴

In his book, *Disarming Iraq: The Search for Weapons on Mass Destruction*,³⁵ Hans Blix notes how Tony Blair’s mindset had changed. He was now asserting that weapons of mass destruction did exist and could be used almost immediately. Blix quotes Mr Blair’s statement to the NBC³⁶ adding his own emphasis. The Prime Minister stated: ‘We know he [Saddam Hussein] has *major amounts of chemical and biological weapons*. We know that he’s tried to acquire nuclear capability’.³⁷ Hans Blix repeatedly refused to condone these flat assertions.³⁸

One would expect this sudden and positive shift from potentiality to actuality, from possibility to certainty, to reflect further and more positive intelligence. It did not. At the time intelligence in both the United Kingdom and the United States remained heavily qualified and non-committal. The JIC’s assessment of Iraq’s weapons of mass destruction capacity remained markedly negative.³⁹ The

28 Blumenthal, *How Bush Rules*, supra n 1, p 402.

29 Quoted in Hans Blix, *Disarming Iraq: The Search for Weapons of Mass Destruction* (Bloomsbury, 2004), p 263.

30 Tony Blair, press conference, 6 April 2002.

31 Tony Blair, statement to the House of Commons, 10 April, 2002

32 Joint press conference with Dick Cheney, 11 March, 2002.

33 NBC, 4 April, 2002.

34 Tony Blair, speech to the TUC Conference, 10 September, 2002.

35 Supra n 29, at pp 60-61.

36 See n 33 above.

37 Supra n 29, at p 61.

38 Ibid, at p 111.

39 Butler Report, supra n 24, paras. 327, 331, 466. 573-578.

Committee noted that intelligence on the subject was ‘poor’ and that it was founded on ‘sporadic and patchy’ information. There was, it said, very little evidence to suggest that any chemical, biological, or nuclear weapons’ programmes were currently being pursued.⁴⁰

The conclusion is inescapable that the campaign led by Mr Blair was founded on a pretence. Nevertheless, Mr Blair was to assert, then and later, that the claim Iraq possessed weapons of mass destruction was based on intelligence. But the intelligence, as I have indicated, conferred no such basis. Peter Ricketts, the Political Director of the Foreign Office correctly analysed the position when outlining his concerns to Jack Straw, the Foreign Secretary. He observed that what had changed was not the pace of Saddam Hussein’s weapons of mass destruction programmes, but the Government’s tolerance of them post September 11.⁴¹ But a different level of tolerance cannot, of itself, convert the potential for Iraq to possess weapons of mass destruction into the actuality that it possessed those weapons.

Many persons who witnessed Mr Blair’s repeated claims on television that Iraq possessed weapons of mass destruction, persisted with long after the invasion had begun, will find it difficult to conclude that he did not genuinely believe that such weapons would be found. I share that difficulty. Why would the Prime Minister persist with a claim if he knew that the claim would eventually be shown to be false? Furthermore, as Hans Blix has noted, the United States leadership appears to have been convinced that Iraq had an ample supply of unconventional weapons in that protective suits were distributed to their troops and donned repeatedly in the first part of the military campaign. This prudence, he observes, was understandable. What Blix finds amazing, however, is that several hundred million dollars had been budgeted for the destruction of any weapons of mass destruction that might be found.⁴² Clearly, the Bush administration spoke with the voice of infallibility. At some point, Tony Blair appears to have bought into this ‘faith-based intelligence’.

For that reason I do not consider that, however inept his endorsement of this faith-based intelligence might have been, it is possible to charge the Prime Minister with deliberately lying in continuing to assert that weapons of mass destruction existed in Iraq. When Hans Blix put it to him that it would be absurd if 250,000 troops were to invade Iraq and find very little, the Prime Minister responded that the ‘intelligence’ was clear that Saddam had reconstituted his weapons of mass destruction programmes. He was apparently unperturbed that Hans Blix’s faith in the intelligence has been shaken by the fact that not one of the sites given to him by the intelligence agencies in the United States as sites housing, or suspected of housing, weapons of mass destruction were found to harbour those weapons.⁴³

40 Ibid.

41 Memorandum, Ricketts to Straw, 22 March 2002.

42 *Supra* n 29, at pp 255-256.

43 *Supra* n 29, at pp 194 and 93.

Rather, the focus must be more narrowly drawn, I believe that the Prime Minister's culpability lies in the fact that he moved from saying one day that Iraq had the potential to develop weapons of mass destruction to saying, in effect, the next day, that Iraq actually possessed those weapons when there was no basis for that change in the intelligence emanating from the intelligence services. At this time, of course, there is no suggestion that the intelligence had been influenced or manipulated by political pressure. Even if the shift from potentiality to actuality was in response to the direction or line being taken in Washington, Mr Blair had to know that the intelligence as it then stood simply did not support the claim.⁴⁴ While, therefore, Mr Blair may in time have come to believe that Saddam Hussein possessed weapons of mass destruction, he could not initially have believed that to be the case in the absence of hard intelligence to that effect. At the very least, it was duplicitous to assert as an established fact that Iraq actually possessed weapons of mass destruction without at the same time disclosing that the intelligence was far from unequivocal.

One possible explanation is that, spurred by the need to convert public opinion in favour of the war and to establish a basis for justifying the legality of the invasion of Iraq, the Prime Minister was quick to resort to a lie as part of the intensive public relations campaign which he headed. Necessity was the mother to the lie. Perhaps with the passage of time and the repetition of the claim on an almost daily basis he came to believe the lie. This phenomenon is not unknown in the world of debating, and Mr Blair is undeniably a master debater. Another possibility is that the Prime Minister was convinced that Saddam Hussein would not have destroyed all the weapons of mass destruction in existence at the end of the first Gulf war as required by resolution 687 of the United Nations.⁴⁵ Thus, although Iraq lacked the missiles to effectively deploy the lethal weapons, some weapons of mass destruction would be found. On this basis the claim that Iraq possessed weapons of mass destruction, and the threat posed by Iraq under Saddam Hussein, could be exaggerated without significant adverse political fallout.

Whether either of these possibilities, or any other possibility, emerges to explain Mr Blair's motivation can, however, be left to the future. For the present, one can accept Hans Blix's conclusion that Tony Blair's (and the Bush administration's) approach demonstrated a 'deficit of critical thinking'.⁴⁶ The contention that Iraq possessed weapons of mass destruction was 'simply wrong' and could have been avoided with a 'moderate dose of prudence'. Hans Blix concludes that it would not have taken much critical thinking on the part of Mr Bush and Mr Blair, or on the part of their close advisers, to preclude statements

⁴⁴ Blumenthal, *How Bush Rules*, supra n 1, p 31, suggests the opposite. He claims that Bush originally came to Blair determined to go to war in Iraq, but without a strategy, and that it was Blair who instructed him that the *casus belli* was Saddam Hussein's weapons of mass destruction.

⁴⁵ Security Council resolution, 3 April, 1991. Adopting a ceasefire, the resolution imposed obligations on Iraq to disarm and to destroy all chemical and biological weapons of mass destruction. It also established the system of United Nations inspections, which continued until 1998, to ensure Iraq's compliance.

⁴⁶ Supra n 29, at p 263.

being made which misled the public.⁴⁷

While agreeing that Tony Blair approached the intelligence with a surprising lack of prudence and critical thinking, however, I am not prepared to absolve Mr Blair of more severe censure. His subsequent sincere adoption and assertion of the claim that Saddam Hussein possessed weapons of mass destruction does not eradicate his original guile. I remain satisfied that the original decision to convert the claim that Iraq had the potential to develop weapons of mass destruction to an unqualified assertion that Iraq actually possessed weapons of mass destruction can only have been a deliberate deception.

(2) The first dossier

There were three dossiers. I propose to focus on the first.⁴⁸ Focusing on the first dossier, however, does not mean that the veracity of the second and third dossiers is to be accepted. More than half the second dossier, it will be recalled, had been directly copied, without attribution to the author and replete with grammatical and typographical errors, from an article posted on the internet. The article derived from a 12 year old PhD thesis⁴⁹ and, even then, sections were doctored to make it appear as if it were the work of the intelligence agencies. Not unexpectedly, the author claimed that his work had been distorted. Mr Blair's defence; the article had been amended 'to reflect the actual situation in Iraq'⁵⁰ The third dossier issued shortly afterwards sought to focus on Iraq's human rights abuses instead of its military capabilities. Until uncovered through the media, it was not widely known that the document was the work of Alastair Campbell, the Government's Director of Communications, and not the intelligence services. Amnesty International condemned the dossier for being 'opportunistic and selective.'⁵¹

The first dossier was critical in that it was intended to convince the British public that Iraq possessed weapons of mass destruction and was therefore an immediate threat. Peter Ricketts presented Mr Blair's dilemma in stark terms:

To get public and Parliamentary support for military options we have to be convincing that the threat is so serious/imminent that it is worth sending our troops to die for.⁵²

To this end, a dossier was eventually constructed which conveyed a significantly different picture from that presented by the intelligence agencies. The intelligence and security services had been for some time expressing deep concern about the pressure placed on them by their political masters and the use to which the secret information would be put. According to a columnist who consistently saw the folly of a war which would ignite Islamist extremism and convert Iraq into an almost inexhaustible

47 Ibid, at p 260.

48 *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*, 24 September, 2002 (the first dossier).

49 Ibrahim al-Marashi, 'Iraq's Security & Intelligence Network: A Guide & Analysis', published in *Middle East Review of International Affairs*, September, 2002.

50 Kettell, *Dirty Politics*, supra n 2, p 89.

51 Ibid, p 85.

52 Memorandum, Ricketts to Straw, supra n 41.

recruiting ground for further terrorists, the intelligence services never wanted an intelligence dossier published. Initially, they managed to thwart the idea by telling Downing Street that there was nothing new to say. But political pressure prevailed.⁵³

The dossier, however, was not accepted without some protest. Dr Bryan Jones, the head of the Nuclear, Chemical and Biological Warfare Division of the Defence Intelligence Staff condemned the claims being made about Iraq's possession of weapons of mass destruction as 'far too strong'. He maintained that Mr Blair's claim to 'know' that Iraq was in possession of such weapons 'was simply not true'.⁵⁴ And as John Morrison, former Deputy Chief of Britain's Defence Intelligence Staff, later somewhat colloquially reported, the Prime Minister's promulgations were greeted throughout Whitehall with a 'collective raspberry'.⁵⁵

Mr Blair appointed Alastair Campbell in charge of a team to supervise the dossier 'from a presentational point of view' and to 'make recommendations and suggestions to the [head of intelligence] as to how it could be improved'.⁵⁶ Mr Campbell was answerable to Tony Blair alone. Moreover, in a dubious utilization of the Crown's prerogative powers, Mr Blair had conferred on Mr Campbell the far-reaching power to issue direct orders to civil servants.⁵⁷ I will not traverse in full the political manipulation that then transpired. Suffice it to say, early drafts were rejected as being insufficiently strong. Mr Campbell, himself, noted that the earlier dossier was 'not terribly good'.⁵⁸

A brief indication of the climate in which the dossier was produced is evident from the comments of Jonathan Powell, the Prime Minister's Chief of Staff. Mr Powell sent an email to Alastair Campbell and John Scarlett, who chaired the JIC, reminding them of the need for the kind of headline they wished to see in the *Evening Standard* following publication of the dossier.⁵⁹ He claimed that the description of Saddam's willingness to use weapons of mass destruction 'if he believes his regime is under threat' was 'a bit of a problem'. The problem he foresaw with this statement was that it would support the argument Iraq did not in fact pose a current threat and that 'we [Great Britain] will only create one if we attack him'. He suggested that the paragraph should be deleted.⁶⁰ By the time the dossier had been published, and unknown to the members of the JIC, the paragraph had been deleted. Other key statements which were struck out were the section admitting that the Government's knowledge of the Iraq situation was 'partial' and that Saddam would only use weapons of mass destruction 'to protect his power and eventually to project it when he feels strong enough to do so'.⁶¹ So

53 Richard Norton-Taylor, *The Guardian*, 28 June 2003.

54 Kettell, *Dirty Politics*, supra n 2, p 73.

55 Ibid.

56 Ibid, p 72.

57 Ibid, pp 21-22.

58 Ibid, p 69.

59 Email, Powell to Campbell and Scarlett, 19 September, 2002.

60 Ibid

61 Kettell, *Dirty Politics*, supra n 2, pp 74-75. Kettell also records that the title was changed from 'Iraq's Programme for Weapons of Mass Destruction' to the more assertive 'Iraq's Weapons of Mass Destruction'.

too, a statement by Hans Blix to the Associated Press a month before the dossier was published saying that he could not confirm that Bagdad had weapons of mass destruction was excised from the document.⁶²

There were many other respects in which the dossier as finally published bore little resemblance to the heavily qualified intelligence that pre-dated this manipulation. What Robert Fisk calls ‘weasel’ words litter the document; such words as ‘almost certainly’, ‘appears’, ‘probably’ and ‘if’.⁶³ To claim, as Mr Blair had to claim, that the dossier established a threat so serious and imminent that it was ‘worth sending ... troops to die for’ was nothing short of an obscenity. The public were misled. As Hans Blix so pungently observed, the Government ‘put exclamation marks where there had been question marks’.⁶⁴

A similar point was made by the late Robin Cook who pointed to the clear evidence from both the Hutton Inquiry and the Butler Report that Parliament had been ‘misled into voting for war on the basis of unreliable sources and overheated analysis.’⁶⁵

Mr Blair’s responsibility for this duplicity is not just the responsibility of the Minister in charge. He was closely involved in the preparation of the dossier. As indicated, Alastair Campbell was answerable to him and no one else. At the very least, one is forced to accept the verdict of Hans Blix; Mr Blair did not act in ‘good faith’.⁶⁶

Needless to say, Mr Blair has hotly denied fabricating the intelligence. The idea, he repeated, that he ‘made our intelligence agencies invent some piece of evidence’ was ‘completely absurd’. No one, he claimed, had sought to ‘insert’ concocted information into the dossier in order to strengthen the case for war.⁶⁷ But this denial misses the point. The point is not that Mr Blair and his close advisers actually ‘invented’ intelligence information, but rather that intelligence information was misused in the course of constructing the dossier. The real strengthening of the dossier came, not through the insertion of information, as in the clever use of ‘weasel’ words and the wholesale removal of caveats and uncertainties from the assessments of the JIC.

Tony Blair’s culpability rests in the fact that he sanctioned the strengthening process by which the distortion occurred, and then endorsed and represented that distorted material to Cabinet, Parliament and the people as genuine intelligence. It has to be said that people have been found liable for fraudulent misrepresentation on less evidence than this.

(3) The 45 minute claim

A specific item in the September dossier deserves particular mention. It was one of the few pieces of new information to be included in the dossier, and one which

62 Robert Fisk, *The Great War for Civilisation: the Conquest of the Middle East* (Fourth Estate, London, 2005) pp 114-115.

63 Ibid, p 115.

64 Hans Blix, *HardTalk*, BBC, 15 July, 2004.

65 Robin Cook, ‘Britain’s worst intelligence failure, and Lord Butler says no one is to blame’, *The Independent*, 15 July, 2004; and *BBC Radio*, 4 August, 2004.

66 See above, n 64.

67 E.g. Tony Blair, press comments on *Sky News*, 1 June, 2003, and press conference in Warsaw, 30 May, 2003.

undoubtedly had a dramatic impact on public opinion. This item was the claim that Iraq's possession of weapons of mass destruction had been 'established beyond doubt', that these 'could be activated within 45 minutes' (repeated no less than four times) and that Iraq had 'existing and active military plans' for their use.⁶⁸ Undoubtedly aware of its impact on public opinion, Tony Blair repeatedly stressed this 'intelligence'. He repeated it in the House of Commons.⁶⁹ It was given dramatic headlines in the daily press. But the claim was false.

The secret and limited information on which the claim was based was so unreliable that it was withdrawn by the intelligence services the following July.⁷⁰ But even at the time, the inclusion of the claim in the dossier was criticized by the Foreign Affairs Committee and the Intelligence and Security Committee.⁷¹ Its inclusion was later criticized in the Butler Report.⁷² Worse still, the 'intelligence' referred to battlefield chemical weapons, and not long-range missiles. Mr Blair purported to have been unaware of the unreliability of the so-called intelligence and the fact that the claim referred to battlefield munitions and not weapons of mass destruction prior to launching the war.⁷³

Steven Kettell argues that one is led inexorably to one of only two possible conclusions. The first is that the Prime Minister wilfully and knowingly misled Parliament and the British public by fostering the impression that Iraq was capable of launching a full scale attack using weapons of mass destruction within three quarters of an hour. The second is that the Prime Minister did not think to inquire into, and likewise nobody thought to inform him about, the specific nature of the intelligence.⁷⁴

As tempting as it is to adopt the less iniquitous of these two possibilities, I am unable to do so. The evidence, I believe, points to a deliberate deception on the part of Mr Blair.

Consider, first, the persons who were fully aware that the intelligence related to battlefield munitions and not weapons of mass destruction. All the intelligence analysts knew. In particular, the members of the JIC were fully aware of the limited scope of the claim. John Scarlett, the head of the JIC, and Richard Dearlove, Chief of MI6, both had access to the Prime Minister. Others who have been recorded as being aware of the distinction included Jack Straw, the Foreign Secretary, Geoff Hoon, the Minister of Defence, Alastair Campbell and Robin Cook.⁷⁵

It beggars belief that Tony Blair alone could have been under a genuine misapprehension as to the nature of the 'intelligence'. Coincidences do occur, but it would be an amazing coincidence if, of all those who were privy to this

68 The first dossier, supra n 48, p 17.

69 Tony Blair, statement to the House of Commons, 24 September, 2002.

70 Marie Woolf, 'The 45-minute claim was false' *The Independent*, 13 October, 2004.

71 Kettell, *Dirty Politics*, supra n 2, p 77.

72 Butler Report, supra n 24, para. 511.

73 Tony Blair, statement in the House of Commons, 20 July, 2004.

74 Kettell, *Dirty Politics*, supra n 2, pp 77-78.

75 *Ibid*, p 77.

information, the one person who misunderstood it was the Prime Minister.

Further, it also strains credibility to believe that, with the JIC and a number of others, including ministerial colleagues, being aware of the true scope of the 'intelligence', Mr Blair was not informed that he was misrepresenting the 45 minute claim. Yet, Mr Blair repeated the wrong 'intelligence' over a period of months. He continued to repeat the claim even after it had been withdrawn from the dossier on the ground of its unreliability.⁷⁶ It is difficult, if not impossible, to believe that in all that time no one on the JIC or in the intelligence services thought to tell the Prime Minister of his error. It is also difficult, if not impossible, to believe that not one of them would have penned a memorandum to the Prime Minister, or the Prime Minister's Office, correcting the misrepresentation, a misrepresentation which they were fully aware the Prime Minister was repeating to Parliament and propagating to the people. Equally, it is difficult, if not impossible, to believe that those of his colleagues who were aware of the true scope of the claim, such as Jack Straw and Geoff Hoon, did not draw their leader's attention to his continuing critical misstatement.

I am drawn to the conclusion that, if Mr Blair were to be cross-examined on this issue by a reasonably competent counsel, he could not emerge with his credibility intact.

I believe that the 45 minute claim had to be a knowing lie.

(4) The Attorney-General's advice on the legality of the war

The story of the Attorney-General's advice to the Prime Minister on the legality of the war is an astonishing saga. In fact, there were two opinions given by the Attorney-General, one on the 7 March and the other, ten days later, on the 17 March. Although proximate in time, they are clearly inconsistent.

From the outset, the Attorney-General had expressed considerable unease as to the legality of the pending war.⁷⁷ The Foreign Office was even more forthright in its repeated view that there was no valid legal basis for the war.⁷⁸ A number of possible grounds were excluded. It was generally agreed that the Bush doctrine of pre-emption was not 'recognized in international law'; that a war to achieve a regime change could 'not be the objective of any military action'; that attacking Iraq on humanitarian grounds was not 'an appropriate basis for action ...'; and that the use of force could only be authorized by an entirely new resolution of the United Nations.⁷⁹

Mr Blair deferred obtaining formal advice as to the legality of the war until the latest possible moment. He told the Cabinet, '[t]he time to debate the legal base for our action should be when we take that action.'⁸⁰ Not only does such a notion defy both custom and good sense, but the Ministerial Code of Conduct requires

⁷⁶ Mr Blair purported not to know that the claim had been withdrawn; Kettell, *Dirty Politics*, supra n 2, p 152.

⁷⁷ Sands, *Lawless World*, supra n 13, pp 183-184.

⁷⁸ 'Iraq: Legal Background', Foreign and Commonwealth Office briefing paper, 8 March, 2002.

⁷⁹ See Memorandum from the Attorney-General to the Prime Minister, 7 March, 2003.

⁸⁰ Robin Cook, *The Point of Departure: Diaries from the Front Bench* (Pocket Books, 2004) p 135.

the Attorney-General to be ‘consulted in good time before the Government is committed to critical decisions involving legal considerations’.⁸¹

The Attorney-General’s formal advice was given on 7 March in a 13 page memorandum.⁸² This memorandum remained a tightly guarded secret until part of it was leaked 18 months later just before the General Election in 2005. The Prime Minister, in an exercise of damage control, published the full contents of the memorandum one week before polling day.

As the advice given on 17 March, however, was the first advice made public it is convenient to deal with it first. In a short memorandum prepared in answer to a question in the House of Lords and taking up little more than one side of A4 paper, the Attorney-General relied upon what is called the revival argument, that is, the authority to use force contained in resolutions relating to the first Gulf war were revived if Iraq was in material breach of those resolutions.⁸³ As Philippe Sands QC has written: ‘The argument is well spun and could, at a pinch, win the prize for the most plausible response to the question: what is the best possible argument to justify the use of force in Iraq in March 2003?’⁸⁴

I will not pursue the detail of this argument but there can be little doubt that it is specious. Few states and virtually no established international lawyers accept it as valid. Nor did the Foreign Office’s legal advisers. Indeed, the Office’s Deputy Legal Adviser, Elizabeth Wilmshurst, sought early retirement or resignation in protest. She wrote that she could not ‘agree that it is lawful to use force without a second Security Council resolution’. With courage to match her conscience, she added, ‘I cannot in conscience go along with advice within the Office or to the public or Parliament, which asserts the legitimacy of military action without such a resolution, particularly since an unlawful use of force on such a scale amounts to the crime of aggression; nor can I agree with such action in circumstances which are so detrimental to the international order and the rule of law’.⁸⁵

Having studied the Attorney-General’s argument, I can confirm that it is fanciful on a number of grounds. Apart from resolution 1441, the resolutions related to the first Gulf war. They had effectively become otiose by the ceasefire in 1991. Then, in resolution 1441 the Security Council determined that Iraq had been and remained in material breach of resolution 687 requiring Iraq to eliminate its weapons of mass destruction. It gave Iraq a ‘final opportunity to comply with its disarmament obligations’ and warned the country that it would face ‘serious consequences’ if it did not. The Security Council required a dossier listing Iraq’s weapons of mass destruction within 30 days and stated that failure to cooperate

81 *Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers*, Cabinet Office, July 2001, para. 22.

82 The Attorney-General’s advice is conveniently appended to Sands, *Lawless World*, supra n 13, Appendix X, p 328. The advice of 17 March is appended as Appendix XI, 343.

83 *Ibid*, Appendix XI, 343-344.

84 Sands, *Lawless World*, supra n 13, p 189.

85 Elizabeth Wilmshurst resigned the day following the Attorney-General’s advice. See V. Dodd, ‘Iraq war illegal, says FO adviser who quit’, *The Guardian*, 14 June 2004. See also <http://www.guardian.co.uk/Iraq/Story/0,,1238122,00.html>

fully with the weapons' inspectors would constitute a material breach of its obligations. Should that happen, the Council would then convene immediately 'in order to consider the situation'.⁸⁶

On the face of it, the resolution anticipated that the Security Council would make an assessment of the situation in the event of an adverse report from Hans Blix, as the head of the United Nations Monitoring, Verification and Inspection Commission, or Mohammed ElBaradei, as the Director General of the International Atomic Energy Agency. There can be little doubt that, as the resolution is worded and having regard to its context, any determination that there had been a material breach was one for the Security Council to make.

How, then, in the absence of this determination, was this pre-condition to the Attorney-General's advice given on the 17 March satisfied? The Prime Minister simply informed the Attorney-General that it was his 'unequivocal view' that Iraq was, indeed, 'in further material breach' of its obligations to the United Nations.⁸⁷ And that was it. Although the Attorney-General advised that legal authority would be contingent on the existence of weapons of mass destruction and that 'strong factual grounds' and 'hard evidence' would be required, no process or procedure was suggested for resolving this prerequisite.⁸⁸ Mr Blair has never explained how he came to his conclusion and no supporting evidence has been provided. The best evidence, the reports of Hans Blix and Mohammed ElBaradei, although evidence to the contrary, was apparently ignored. Nor was any step taken to ascertain the current views of the JIC. The Prime Minister's word alone sufficed to 'revive' the authority of the earlier resolutions. In the result, with the Attorney-General's advice in hand, Cabinet and Parliament accepted that the war was legal.⁸⁹

One can test the soundness – or unsoundness – of the Attorney-General's advice by posing the same question in a different context; if he had been asked whether, say, Iran could unilaterally decide that Iraq was in breach of its obligations to the United Nations and lawfully use force to remove Saddam Hussein from power, would he have given the same answer? Of course, he would not, and if he had, it is not overstepping the mark to suggest that his advice would have been viewed with disbelief. If it had been further suggested that the decision whether Iraq was in material breach of its obligations to the United Nations was one that the President of Iran could simply dictate, his advice would have been met with derision.

The normally circumspect Secretary-General of the United Nations, Kofi Annan, was later prompted to take the unexpected step of emphatically stating that the Iraq war was illegal.⁹⁰

Throughout this time, Cabinet, Ministers, Members of Parliament and the

86 Resolution 1441, adopted 8 November, 2002.

87 Kettell, *Dirty Politics*, supra n 2, p 102.

88 Butler Report, supra n 24, paras. 379, 383-386. C Short, *An Honourable Deception? New Labour, Iraq, and the Misuse of Power* (Free Press, London, 2004).

89 But Tony Blair's advisers must have had some misgivings. They took steps to put together a legal team to prepare for the possibility of international litigation. See Sands, *Lawless World*, supra n 13, p 197.

90 Statement, September, 2004. http://news.bbc.co.uk/2/hi/middle_east/3661134.stm

public remained unaware of the contents of the Attorney-General's earlier opinion of 7 March.⁹¹ Questioned about it, the Prime Minister managed to convey that the advice given on the 17 March was a summary or précis of the Attorney-General's formal opinion given ten days earlier. It was, he said, a 'fair summary'.⁹² The suggestion 'that the legal opinion of the Attorney-General was different from the Attorney-General's statement to the House', he proclaimed, 'is patently absurd'.⁹³

When the Prime Minister's hand was eventually forced and the formal advice of 7 March was published, it was at once apparent that the 17 March advice was inconsistent with the earlier opinion. The caution, doubts and caveats in the formal opinion were absent and the inconsistencies were manifest. On 7 March the Attorney-General had advised the Prime Minister that, while a 'reasonable case' could be made that resolution 1441 was 'capable in principle' of reviving the authorization to invade Iraq, he could not be 'confident' that the argument would succeed in a court of law.⁹⁴ In other words, as any lawyer will recognize, the Attorney-General was saying that, while the Prime Minister could choose to run with the revival argument, he should not expect it to survive a legal challenge.

In the formal opinion of 7 March the Attorney-General had also advised that the United Kingdom had consistently taken the view that it was for the Security Council to assess whether any breach of the earlier resolutions had occurred. He maintained: 'On the United Kingdom view of the revival argument only the Council can decide if a violation is sufficiently serious to revive the authorization to use force'.⁹⁵ As we have seen, ten days later this requirement had been varied to permit the Prime Minister alone to decide that key question.

It is legitimate to ask what had happened to the perceived threat from Iraq in this ten day period to cause the Attorney-General to so dramatically revise his advice. Some new argument or development or further intelligence could be expected. But there was none. No new and previously unknown evidence of weapons of mass destruction emerged. To the contrary, Hans Blix provided his third and final report in which he said that, although Iraqi co-operation was not wholehearted, it was accelerating.⁹⁶ Nor had any new argument been advanced. All

91 In The Sixth Sir David Williams Lecture, 'the Rule of Law' (publication pending) Lord Bingham of Cornhill, the senior Law Lord, recently questioned whether the ordinary rules of client professional privilege, appropriate enough in other circumstances, should apply to a law officer's opinion on the lawfulness of war. He expressed the view that it is not unrealistic to regard the public, those who are to fight and perhaps die, rather than the government, as the client. An opinion on the lawfulness of war, being the ultimate exercise of sovereign power involving the whole people was, he thought, quite different from situations where the ordinary rules of client professional privilege would apply. He added that the case for full contemporaneous disclosure would seem to be even stronger when the Attorney-General is a peer and not susceptible to direct questioning in the Chamber.

92 Kettell, *Dirty Politics*, supra n 2, p 163.

93 Tony Blair, 9 March 2005. For a decisive refutation of this claim, see Sands, *Lawless World*, supra n 13, Chapter 12, 'This Wretched Legal Advice', p 258 *et seq.*

94 Sands, *Lawless World*, supra n 13, p 268.

95 Kettell, *Dirty Politics*, supra n 2, p 98.

96 Hans Blix's third and final report was also provided on 7 March. Mr Blix denied that it could be said Iraq was in substantial non-compliance and claimed that there was no evidence to the contrary; see *Financial Times*, 28 April, 2005. The increasing co-operation of Iraq is traced by Hans Blix in *Disarming Iraq*, supra n 29, at pp 148-149, 178 and 215.

the legal issues had been fully aired in the formal opinion given on 7 March.

I cannot accept that the equivocations, reservations and caveats stipulated in the advice of 7 March could, in the absence of an intervening event, dissolve so completely as to make way for such an unequivocal view as that expressed in the 17 March document. Nor can Lord Lester QC. The leading Queen's Counsel has had this to say:

After being in the business for 40 years I cannot recall a single example where I have given firm advice of this kind and then changed my mind in this way except where there was some mistake or a client misled me, but otherwise it would be unheard of.⁹⁷

One significant event, however, had occurred. Admiral Sir Michael Boyce, the Chief of Defence Staff, was not satisfied that a legal basis for the war had been established. He demanded more concrete assurances from the Prime Minister that the war would be legal. His concerns were transmitted to the Attorney-General through the Prime Minister.⁹⁸ The Attorney-General's second effort on 17 March was then provided and accepted by the Chief of Defence Staff.⁹⁹ Sir Michael Boyce was not the only senior military officer to express misgivings at the absence of a legal justification for the war. Chief of Staff, Sir Mike Jackson, is on record as having said: 'I spent a good deal of time recently in the Balkans making sure Milosevic was put behind bars. I have no intention of ending up in the next cell to him in the Hague'.¹⁰⁰

One can only speculate what would have happened, if, just days before the invasion was to commence, the military had not got the unequivocal assurance it sought that the war was legal. The pressure on the Prime Minister must have been enormous.¹⁰¹

Reaction to the Attorney-General's about face is indicated by the fact that a group of fifty barristers, including four Queen's Counsel, complained to the Bar Council. They requested an investigation into the possibility that the Attorney-General's advice of 17 March did not reflect the contents of his formal opinion. The basis of the complaint were the provisions in the Bar's Code of Conduct requiring of a barrister independence, integrity and freedom from external pressure and a refusal to compromise professional standards to please a client. The Bar Council determined that it did not have jurisdiction to investigate the complaint.¹⁰²

But I am here concerned with the Prime Minister's involvement. Obviously, many authors and commentators suspect that he manipulated the presentation of

97 'The Document and What it Means', reported in *The Guardian*, 28 April, 2005.

98 Sands, *Lawless World*, supra n 13, p 197.

99 *The Times*, 18 March, 2003.

100 R Norton-Taylor, 'Revealed – the rush to war', *The Guardian*, 23 February, 2005.

101 Legal validation for the war was also necessary to avoid the possible resignation of Cabinet Ministers if its legality were not verified. Similarly, the legal advice was necessary to maintain the support of back bench Members of Parliament who might vote against the war when the issue was brought before the House of Commons. See Sands, supra n 13, p 175.

102 Sands, *Lawless World*, supra n 13, p 376, n 36.

legal advice as he had manipulated the intelligence on weapons of mass destruction. Indeed, Clare Short, the Minister who ultimately resigned, has since openly charged the Prime Minister with bringing political pressure to bear on the Attorney-General.¹⁰³ But it must be acknowledged that there is no direct evidence of pressure or manipulation by the Prime Minister.

What is certain is that Mr Blair, who had repeatedly stated that Britain would only act within the bounds of international law,¹⁰⁴ knew of the significant differences in the two documents and that the uncertainties and reservations in the March 7 opinion had been removed from the 17 March document. Mr Blair must have known, particularly as a barrister, that this latter advice was not a 'fair summary' of the formal opinion. He must also have known that any suggestion the advice of 7 March had not been changed could not be described as 'patently absurd'. Mr Blair would also have known that the information being put before Cabinet was seriously incomplete and would give Ministers an incorrect understanding of the Attorney-General's advice. He must also have known that putting the Attorney-General's 17 March advice only before Cabinet was a breach of the Ministerial Code of Conduct which stipulates that full legal advice must be disclosed to Ministers whenever they are presented with a summarized version of the advice.¹⁰⁵

In all, I am satisfied that the Prime Minister was duplicitous and that that duplicity was deliberate. This conclusion is serious. The Attorney-General advised in his formal 7 March opinion that the International Criminal Court at present has no jurisdiction over the crime of aggression and could therefore not entertain a case concerning the lawfulness of any military action.¹⁰⁶ He also correctly pointed out, however, that: 'Aggression is a crime under customary international law which automatically forms part of domestic law' and that 'it might therefore be argued that international aggression is a crime recognised by the common law which can be prosecuted in the UK courts'.¹⁰⁷ In this opinion, the Attorney-General was right. The House of Lords have subsequently held that the crime of aggression is established in customary international law and its core elements have been understood, at least since 1945, with sufficient clarity to permit the lawful prosecution (and, on conviction) punishment of those accused of this crime.¹⁰⁸

103 Clare Short has also accused the Attorney-General of having succumbed to political pressure and of having 'misled the Cabinet' by failing to disclose his uncertainty and reservations about the legal situation. See Kettell, *supra* n 2, p 162.

104 Sands, *Lawless World*, *supra* n 13, p 175.

105 *Ministerial Code of Conduct*, *supra* n 81, para. 23. Paragraph 23 states: 'When advice from the law officer is included in correspondence between Ministers, or papers for the Cabinet or Ministerial Committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.'

106 *Supra* n 79, para. 33.

107 *Ibid*, para. 34.

108 *Regina v Jones (Margaret) and Others, Ayliffe and Others v Director of Public Prosecutions; Swain v Director of Public Prosecutions* [2006] UKHL 16. See esp Lord Bingham of Cornhill at paras. 10-19. Their Lordships went on to hold, as a matter of interpretation in the context of that particular case, that the crime of aggression was not a crime or offence within the meaning of s 3 of the Criminal Law Act, 1967.

As extreme as it sounds, it is difficult to resist the conclusion that, should he be prosecuted at a time when the plea of sovereign immunity is not available, Mr Blair would be found guilty of a war crime.

(5) Forgiving tolerance to torture.

I have included this heading because I believe that torture in all its forms is the ultimate denial of human rights. It denies a person's dignity and humanity. It is cruel and inhumane, and it is degrading to both the torturer and the tortured. It is illegal and contrary to international law, and alien to any sensible concept of civilization. Laws prohibiting torture protect us from our worst selves; from descending to the lowest depths of humanity.¹⁰⁹ Further, as is well documented, information gained by torture is notoriously unreliable.

Philippe Sands QC has provided a comprehensive account of the Bush administration's twisted dalliance with torture.¹¹⁰ I do not propose to canvass what, by any objective standard, is a remarkable departure from the values that underlie democracy. My present concern is that Tony Blair has been indifferent, to the point of tolerance, of the use of torture against terrorist suspects. While frequently claiming to abhor torture, the outright condemnation expected has not been forthcoming.

Asked to comment on the outrages at Guantanamo Bay, for example, the Prime Minister acknowledged that it was an 'anomaly' but stressed that it is important to have an understanding of the huge amount of anger there is in America following September 11.¹¹¹ Referred to the fact that the United States was deporting or returning people to other countries where they would be tortured, he complained that people spent too little time in actually looking at the threat the United States and United Kingdom faces and how to deal with it.¹¹² The question will be asked by many, especially those sensitive to abuses of human rights, whether Mr Blair's proclaimed abhorrence of torture is lacking in substantive conviction.

There are, I believe, two main respects in which Mr Blair may be held accountable for adopting a too forgiving accommodation of torture.

The first relates to the United States' policy of extraordinary rendition. No sensible distinction can be drawn between administering torture to a person within a country and removing that person to another country to be tortured. As an unnamed United States official interviewed by the *Washington Post* said in 2002; 'We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them'.¹¹³ The latter option is no less heinous than the former.¹¹⁴

The question is to what extent Mr Blair knew of and was complicit in this

109 Marguerite Feitlowitz, 'The shadow world of a "dirty war"', *Herald International Tribune*, 19-20 August, 2006.

110 Sands, *Lawless World*, supra n 13, pp 205-223.

111 Andreas Whittam Smith, 'Torture Starts at the Top', *The Independent*, 27 February 2006; David Charter, Ruth Gledhill and Greg Hurst, 'Blair condones Amin-Style Tactics Against Terrorism Says Archbishop', *London Times*, 24 February, 2006.

112 Ibid.

113 *Washington Post*, 26 December, 2002.

114 George W Bush acknowledged the existence of a secret CIA prison network (commonly called 'black holes') outside the United States in September 2006; see *The Guardian*, 7 September, 2006.

practice. Having regard to the close co-operation between Mr Bush and Mr Blair, it would be odd if he did not know that the CIA was operating a network of secret 'black sites' and that the suspected terrorists were being sent to those locations. He would know that the sites were located in countries that practised torture. Indeed, it has been pointed out that one of the sites where inmates are subject to violent and coercive interrogation, including beatings, withholding of pain medication, sleep deprivation and loud noise intended to be disorientating, is the British owned island of Diego Garcia in the Indian Ocean.¹¹⁵

Furthermore, air logs have confirmed that private jets registered by CIA front companies have landed in England as well as other European countries. In June of 2006, Mr Blair claimed that Parliament had been kept informed of the requests made by the CIA for the transfer of detainees; namely, four in 1998 of which two were granted and two were declined.¹¹⁶ The reality which he conceded was that he and his Government did not know whether British territory or air space had been used for rendition at any time since 1998. Surprisingly, no systematic record has been kept and the legality of providing assistance to the CIA was not questioned for seven years.¹¹⁷ But the fact that the full scale of Mr Blair's complacency towards the practice of extraordinary rendition is as yet unearthed does not detract from his known indifference to date.

The second related aspect is the Prime Minister's willingness to deport detainees to countries where torture is known to occur, or even routine, and where there is a real risk that those who are deported will be tortured.

In an effort to avert criticism that these detainees would be in jeopardy of being tortured, Mr Blair announced that the Government would sign agreements with Algeria, Egypt, Jordan and Libya to ensure that Muslim extremists could be returned to their home countries without their dignity or safety being imperilled. 'Should legal obstacles arise,' he said, the Government 'would legislate further including, if necessary, amending the Human Rights Act in respect of the interpretation of the European Convention on Human Rights'.¹¹⁸

115 Ronald Dworkin, 'Terror and the Attack on Civil Liberties', *The New York Review of Books*, Vol. 50, No. 17, 6 November, 2003.

116 David Rennie, 'Air traffic logs show secret night flights from Kabul and Baghdad, says report', *Daily Telegraph*, 8 June 2006.

117 Martin Bright, 'Rendition: The Cover-up', *New Statesman*, 23 January, 2006, 12. See the memorandum referred to by Bright signed by a private secretary at the Foreign Office addressed to an assistant private secretary at Downing Street confirming that extraordinary rendition is not and never could be legal; disclosing that the papers unearthed 'so far' suggest that 'there could be more such cases'; and affirming that the Foreign Office cannot say that they have received no requests for the use of United Kingdom territory or air space for 'extraordinary rendition'. The memorandum recommends that the attempt be made to shift the focus of people from the 'specifics of rendition' to Condoleezza Rice's clear assurance that United States' activities did not include the use of torture. See also Richard Norton-Taylor, 'Leaked memo reveals strategy to deny knowledge of detention centres', *The Guardian*, 19 January, 2006.

118 *Daily Telegraph*, 6 August, 2005. This comment illustrates Mr Blair's disregard of the rule of law. Dictating an interpretation, or telling the courts how to interpret a document, is constitutionally unsound. Certainly, Parliament may amend the law, and it may do so to effectively reverse a decision of the courts. But it is quite a different matter to dictate to the courts how a document is to be interpreted. That is to usurp the constitutional function of the courts.

Mr Blair has already reneged on his promise to secure agreements with countries believed to practise torture. A number of countries are unwilling to sign such agreements because of the implicit admission that this is their practice. Mr Blair has now, therefore, condoned the deportation of detainees to countries where the Government is satisfied that they will not be subject to torture. The policy is self-evidently disingenuous in that it requires the Government to accept the word of regimes that practise torture but are unwilling to acknowledge that practice. It is impossible to avoid the conclusion that Mr Blair is indifferent to the real possibility that some of the detainees will be in fact tortured.

It would be possible to list as further evidence of Mr Blair's forgiving attitude to torture his amenability to accepting that evidence obtained through torture should be admissible. But for the intervention of the courts,¹¹⁹ such evidence would have been admissible before the Special Immigration Appeals Commission in assessing the legality of the detention of non-United Kingdom nationals. While, however, Mr Blair may be reasonably comfortable with the distinction between practising torture in Great Britain and admitting evidence obtained through torture practised in another country, at least where the British authorities are unaware of the torture, it is not clear that he was primarily responsible for the legislation in question. The two grounds covered above will suffice; the Prime Minister's complacency, virtually amounting to complicity, towards the United States practice of extraordinary rendition and his willingness to deport detainees suspected of terrorism to countries where there is a real risk that they will be tortured.

Because torture is such a horrendous evil, Mr Blair's indifference, seemingly amounting to a forgiving tolerance of the practice, cannot escape the strongest censure.

(6) Condoning a grotesque post-war economic strategy.

The military and political strategy following the invasion is widely known.¹²⁰ I do not intend to focus on the failings of that strategy. Not so widely known is the Bush administration's plans for the economy of a post-war Iraq.

Almost overnight, the Bush administration set out to establish a *laissez-faire* capitalistic Utopia. Neo-conservative economic creed dictated an eviscerated state, a passive workforce, low taxes, no tariffs, open borders and no ownership restrictions. Multi-national corporations would be free to pursue their quest for profit with little or no constraint. What would follow, the reactionary diehards in the White House forecast, would be an economic boom the like of which the World has never seen.

Naomi Klein, in a valuable contribution in *No War: America's Real Business in*

119 *A and others v. Secretary of State for the Home Department (No 2)* [2005] UKHL 71. For another instance where the House of Lords firmly upheld a basic human right, i.e. the right not to be discriminated against, see *A (FC) and others (X) FC and Another v. Secretary of State for the Home Department ('Belmarsh')* [2004] UKHL 56.

120 Ricks provides a chilling account of the lack of planning and intellectual failure of those behind the invasion of Iraq. See Ricks, *Fiasco*, supra n 1. See also Bob Woodward, *State of Denial*, supra n 1.

*Iraq*¹²¹ provides details of how Paul Bremer carried out the White House's vision; he immediately fired 500,000 state workers; opened the country's borders to unrestricted imports; and decreed no tariffs, no duties, no inspections and minimal taxes. Numerous state-owned corporations would be privatized on a scale second only to that which followed the collapse of the Soviet Union. Order 37 reduced Iraq's corporate tax rate from approximately 40 per cent to a flat 15 per cent. Order 39 permitted foreign corporations to own 100 per cent of Iraq's assets not in the resource sector and to take 100 per cent of the profits out of the country without being taxed or required to re-invest in the country. Order 40 made the same favourable provision for foreign banks. As Klein wryly observes, all that remained of Saddam Hussein's economic policies was a law restricting trade unions and collective bargaining.

David Ricks refers specifically to Order 2, Dissolution of Iraqi Entities, which formally disbanded several groups: the Iraqi armed forces, which accounted for 385,000 people; the staff of the Ministry of the Interior, which amounted to 285,000 people and included police and domestic security forces; and the presidential security units, a force of some 50,000.¹²² Abruptly terminating the livelihood of these people, many of whom were armed, created a vast pool of humiliated, antagonised and politicised men. Bremer's radical privatization programme beginning with the closing of unprofitable state-run industries had the effect of further alienating the middle class, many of whom were managers from those industries.¹²³

At the same time, the Bush administration organized lavishly funded seminars throughout the United States promoting the business opportunities pending in the liberated Iraq. Executives from multi-national corporations, such as Halliburton, gave elaborate presentations as to how American companies could compete for multimillion-dollar subcontracts. The free market, it was proclaimed, would drive democracy in Iraq. High ranking military personnel were co-opted to provide optimistically glowing pictures of security in that country.¹²⁴ But the administrations' expectations were not realized. Whatever their political inclinations in private, hard-nosed businessmen are not prone to indulge in neo-conservative chimeras in the management of their businesses.

The promised economic utopia was never anything other than neo-conservative madness. Out of touch with reality, it was doomed to fail.¹²⁵ Indeed, it takes no more than a moment's reflection to predict what would have happened if this economic Utopia had eventuated. Simultaneously the fabric and culture of Iraqi society would have been destroyed. The disharmony between a century's old

121 (Gibson Square, 2005), 'Baghdad Year Zero', p 5.

122 Ricks, *Fiasco*, supra n 1, at p 162.

123 *Ibid*, at pp 165 and 180.

124 Bryan Mealer, 'Dying for Dollars' in *No War: America's Real Business in Iraq*, supra n 121, p 41.

125 This economic strategy was, of course, part of the plan to simply remove Saddam Hussein, establish democracy, and depart the country, a plan which a *New York Times* writer, initially a strong supporter of the war, has written seemed in retrospect to be like a 'childish fantasy', referred to in Hicks, *Fiasco*, supra n 1, at p 380.

civilization and a rabid Chicago-style western economic model would have become rapidly apparent. Eventually, the Iraqi people would have resented the exploitation of their people and resources by corporate America. It may have taken more time to emerge, but this foreign economic occupation would have become as intolerable to them as the present military regime. Insurgency, strife and instability would have been inevitable.

What, then, was Tony Blair's role in this strategy? I am satisfied that he must have known of this economic absurdity and either condoned it or, at the very least, failed to expose and positively reject it. First, it is clear that Mr Bush and Mr Blair were in close contact on all aspects of the proposed war in Iraq. Mr Blair, himself, insisted that the invasion had been subject to 'the most careful planning and consideration'. He claimed that the essential strategic picture was 'unfolding exactly according to plan'.¹²⁶ There were also numerous trans-Atlantic discussions between senior officials. It is impossible to accept that the Bush administration's economic strategy was not discussed. Secondly, Mr Blair had to know of the various orders promulgated by Paul Bremer. At no stage is there any record that he evinced any surprise or opposition to these developments.

I have included Mr Blair's knowledge and apparent condoning of the Bush administration's economic strategy for post-war Iraq because it can only be seen as an outright betrayal of the basic tenets of the British Labour Party. It cannot be tenably thought that the Labour Party would have been prepared to condone an economic regime for Iraq which it would reject as utterly inequitable and unacceptable in Great Britain. The inevitable exploitation of the Iraqi people and the country's resources, and the resulting enlargement of the profits of corporate America, would undoubtedly have been anathema to most of its members.

Tony Blair's culpability, therefore, was not just that he condoned an inept economic policy, but that, in supporting the invasion of Iraq, he endorsed a far right economic strategy which effectively betrayed the traditional principles and conscience of the Party he was leading in Government. Moreover, it was an economic strategy which, it is safe to say, would not have had much, if any, greater appeal to the British people as a whole.

The erosion of human rights

de Tocqueville said:

The idea of rights is nothing but the concept of virtue applied to the world of politics. By means of the idea of rights men have defined the nature of licence and of tyranny ... no man can be great without virtue, nor any nation great without respect for rights.¹²⁷

¹²⁶ Tony Blair, press conference, 26 March, 2003. The two leaders discussed, *inter alia*, the possibility of post-war sectarian violence. Mr Blair accepted Mr Bush's assurance that it was 'unlikely that there would be internecine warfare between the different religious and ethnic groups'. See memorandum written by David Manning summarising the meeting between George W Bush and Tony Blair on 31 January, 2003, reported in the *New York Times*, 17 March, 2006. See also Sands, *Lawless World*, supra n 13, p 281.

¹²⁷ Alexis de Tocqueville, *Democracy in America* (1835). For a recent translation see Arthur Goldhammer, New York: *Library of America* (Penguin Putman, 2004).

This quotation from de Tocqueville reflects my belief that human rights are paramount and timeless, being grounded in the dignity and worth of the human person. They are an indispensable component of liberal democratic politics, and those politics, even in times of crisis, must recognise individual rights.

The erosion of human rights and civil liberties that has occurred, or which is still threatened by the Blair Government, reflects the same unrealistic and simplistic thinking that motivated Mr Blair to support the war against Iraq.

Focusing on the malevolent role of radical Islamic ideology, the Government strategy was to stress the need for harsh anti-terrorist measures. Civil rights, it was said, must be redrawn as a defence against further terrorist attacks. Mr Blair has been adamant; the balance between national security and individual freedoms must be recast in favour of the former. Terrorism poses a crisis and in a crisis the traditional safeguards to individual freedoms must give way to more flexible arrangements. 'The rules of the game', he continues to assert, 'are changing'.¹²⁸ As he explained:

'... when you are in a situation like that [facing the threat of terrorism] you have got to put aside the normal bureaucracy and thinking. If you are constrained by that, forget it, you will never get on top of it at all and you have got to be prepared to knock the rules out of the way in order to get things done'.¹²⁹

It is difficult to imagine a more forthright espousal of expediency over principle, particularly if, for the phrase 'bureaucracy and thinking', one reads the traditional liberties that Great Britain has enjoyed for over eight hundred years.

But Mr Blair's response has proved popular with the public. Whether it is in the domestic context of maintaining law and order or in the context of seeking to combat the threat of terrorism, people in a democracy tend to opt for the generality of harsher laws. The simplistic slogan, 'get tough on crime', is writ large in the cry, 'get tough on terrorism'. The enduring values which the law, and the judiciary, seek to protect are necessarily placed in jeopardy. The greater the threat, or the fear generated by the threat, the greater that jeopardy.

There can be no doubt that human rights would not be imperilled to the extent that they are today if the war in Iraq had never been undertaken. The intensity of the challenge to the rule of law as traditionally understood, to the preservation of fundamental human rights, and to the role and integrity of the judiciary is directly related to that war. Consequently, Mr Blair's culpability in respect of the war has a direct bearing on the erosion of basic liberties which has taken place and which is yet threatened. It is a nasty irony that the threat of terrorist activity, to which the Blair Government's anti-terrorist laws are a reaction, has been seriously exacerbated by the very war Mr Blair claims was necessary to combat terrorism.

While the introduction of firmer measures may be necessary, that necessity

¹²⁸ Tony Blair, press conference, 5 August, 2005. See also Human Rights Watch, 'A new ambivalence toward torture'; 'The rules of the game have changed', *The Guardian*, Editorial, 15 August 2006; and Simon Jenkins, 'The weekend's horror-fest will do Osama bin Ladin's work for him', *The Guardian*, 8 September, 2006.

¹²⁹ Evidence by Tony Blair to the House of Commons Liaison Committee, 16 July, 2002.

should be clearly demonstrated. The notion that it is the Government's job to give the police the powers they seek to do their job is dangerous unless it is qualified by a close examination of the necessity for the police to have those powers. Civil liberties already eroded, such as the right not to be detained without charge, the exclusion of *habeas corpus*, the deportation of suspects, even when they have been acquitted by an English jury, are serious inroads into fundamental human rights. Executive powers to impose house arrest and other forms of 'control' without charge or trial contravene those rights. Any concession to involve the courts in the implementation of these far-reaching powers simply impairs the independence and integrity of the judiciary.

The key developments which emerge from the Blair Government's anti-terrorist measures can be readily identified. The strategy has had a dramatic impact on the democratic polity.

First, the demand for security is asserted ahead of and at the expense of human rights. The threat of terrorism engenders an apocalyptic vision that is singularly unyielding. As Ronald Dworkin has pointed out, the United States has pursued a strategy of putting safety *absolutely* first.¹³⁰ But this is also true of the United Kingdom. Any measure which is seen to improve security against terrorism, even marginally or speculatively, is adopted without apparent or sufficient concern for the harm or unfairness to the victim or its impact on the universal regime of human rights. In a practical sense, the demand for absolute security tends to distort a proper balance being drawn between security and human rights.

Moreover, it is to be noted that the security is, in essence, the security of the majority. No one who is not a Muslim, or not associated with Muslims, is at great risk of being arrested and held as a suspect or deported to their county of origin – or that is the way it is seen. All too easily, the balance can be drawn between the security of the majority and the rights of a minority.¹³¹ Yet, it is a constitutional truism that if you take the protection of the law away from any minority, however different or unpopular, you endanger all minorities and all individuals.

What is needed, and what has been noticeably lacking in Tony Blair's thinking, is an appreciation that, in a democracy, security and human rights are not antithetical values. Security measures can only be justified by the very moral principles that legitimise the state in the first place; the imperative to preserve and protect the liberal democratic constitution. What was required from the Prime Minister was not a cringing supplication to the President of the United States and his administration but the application of the classical theory of human rights that, having due regard to the seriousness of the threat, seeks to find a just balance between order and human rights.

A conception of global justice, which recognises that the powerful possess the ability to determine the fate of the weak, was also required. That justice will not be achieved without allegiance to international law. Yet, faced with the outspoken determination of the Bush administration to challenge global rules, Mr Blair was often silent, and in certain respects, a 'willing handmaiden to some undeniable

130 Dworkin, *supra* n 115, p 3.

131 *Ibid*, p 2.

violations of international law'.¹³²

The second development has been the assertion of executive power to the detriment of Parliament. Neither Cabinet nor Parliament was effectively involved in the process of formulating the Iraq policy. Nor were they aware of underlying developments, at least, not until after the event. The decisions were the decisions of a small cabal surrounding Mr Blair at No. 10 Downing Street.¹³³ Put succinctly, they stretched the boundaries of executive power beyond its democratic limits and the bounds of constitutional tolerance.

This assertion of executive power also has the potential to damage the courts. Direct attacks on the judiciary to the effect that 'they just don't get it' necessarily harm the judiciary.¹³⁴ Similarly, assertions along the lines that 'the rules of the game are changing',¹³⁵ that the 'normal bureaucracy and thinking' and the rules that go with it must be knocked out of the way,¹³⁶ and characterizing the judiciary's reaction as 'legal obstacles'¹³⁷ necessarily infer that the judiciary is out of touch and failing the community. The essential constitutional balance between the different arms of government is impaired.

Most importantly, this assertion of executive power and the consequential erosion of human rights weakens the democratic process and undermines the very values on which a democracy is founded. It not only diminishes those values but also can bring them into disrepute. There is a real risk that, once individual freedoms are set aside, they will never be regained, and this risk is exacerbated by the apparently endless nature of the war on terror.¹³⁸ Nor is respect for fundamental human rights promoted elsewhere in the world when those rights are flouted by a leading democracy. The British Prime Minister's approach provides pabulum to others who wish to break free from the rules.¹³⁹

The third development is related to the effect of this expansion of executive power on the rule of law. It has been observed that at the heart of the Bush administration's policies in Iraq lies the drive for concentrated executive power above the rule of law.¹⁴⁰ Although probably less in intensity, the same drive can be detected in the Blair Government's response to terrorism. The rule of law is being redefined, not by the judiciary, but by the executive. Loss of respect for *habeas corpus* and the rights of suspects and detainees runs counter to the basic ideal of the dignity and worth of the individual person which is the bedrock of the rule of law. Notions of justice are now expected to be sufficiently resilient to

132 Sands, *Lawless World*, supra n 13, pp xii and xviii. Richard A. Clarke, in his book, *Against All Enemies: Inside America's War on Terror* (Free Press, 2004), quotes Bush yelling his head off in a conference; 'I don't care what the international lawyers say, we are going to kick some ass'. (at p 24).

133 Meyer confirms that Tony Blair and his staff dominated the political and military strategy for Iraq; *DC Confidential*, supra n 5, p 239.

134 John Reid reported in *The Guardian*, 10 August, 2006.

135 See above, n 128.

136 See above, n 129.

137 See above, n 118.

138 Kettell, *Dirty Politics*, supra n 2, p 173-174.

139 Sands, *Lawless World*, supra n 13, p 278.

140 Blumenthal, *How Bush Rules*, supra n 1, p 240.

accommodate the executive's demands for secrecy and immunity from judicial supervision. Mr Blair's oft repeated mantra that the 'rules of the game must change'¹⁴¹ must be understood to mean that it is the rule of law that must change.

All persons sensitive to the need to maintain the rule of law in a working democracy, promote international law, and protect fundamental human rights cannot be other than dismayed at the role and responsibility of Mr Blair in eroding and degrading those concepts.

The 'Indictment'

What, then, are the principle matters to emerge from this survey for which it could be reasonably expected Tony Blair should be accountable. The following list is not a legal indictment, as such; it makes no rigid distinction between political morality, legality or, even, political misjudgement.

1. In supporting the war in Iraq, the Prime Minister allied the United Kingdom, and the Labour Government and Labour Party, with the neo-conservative and ideologically driven administration in the United States. It was beholden on him to assert greater independence and recognize that the policies of the Bush administration were both unrealistic and simplistic.

2. In particular, he effectively endorsed the Bush administration's ill-conceived war model as an appropriate response to the threat of terrorism.

3. The Prime Minister unilaterally committed the United Kingdom to support the United States invasion of Iraq without obtaining the timely sanction of his Cabinet or Parliament. Such sanction as was later obtained was obtained through manipulation and political deceit.

4. In particular, he manipulated the intelligence of the security agencies and was deliberately deceptive when he initially shifted from the claim that Iraq had the potential to develop weapons of mass destruction to the claim that Iraq actually possessed those weapons. Further, his uncritical acceptance of the faith-based intelligence of the Bush administration was inexcusable.

5. In respect of the dossier of September 2002, the Prime Minister deliberately misrepresented the intelligence by omitting the reservations, qualifications and caveats in that intelligence.

6. In particular, his claim that Iraq could launch missiles carrying weapons of mass destruction within 45 minutes was a serious misrepresentation which the Prime Minister must have known was false, or which he came to know was false before he ceased making that claim.

7. The Prime Minister misrepresented, and must have known that he was misrepresenting, the advice which he received from the Attorney-General as to the legality of the war against Iraq. It is impossible to accept that the Prime Minister did not know that there was no sound legal basis for the war. Hence it is difficult to escape the conclusion that he was guilty of the crime of aggression.

8. The Prime Minister has been less than emphatic and, indeed, benignly

141 See above, n 128.

forgiving, in his rejection of the use of torture, principally because of his knowledge of, and effective complicity in, the United States' practice of extraordinary renditions and his insistence on deporting non-nationals to countries where there is a real risk they will be tortured.

9. The Prime Minister, at the very least, condoned the ideological aim of the Bush administration to establish a *laissez-faire* economy which was self-evidently unreal, would have resulted in the exploitation of Iraq's people and resources by corporate America, and would eventually have led to civil instability.

10. The Prime Minister must accept responsibility for the passage of legislation which constitutes an erosion of fundamental human rights unprecedented in recent British history.

11. The Prime Minister has impaired the democratic process in manipulating Cabinet and Parliament, and he must accept responsibility for the unprecedented level of 'spin' used in promoting the war against Iraq. The spin was nothing short of propaganda.

12. In the course of preparing for and supporting the war in Iraq, the Prime Minister displayed an unacceptable disdain for the democratic process, the rule of law and fundamental human rights and civil liberties. The rules of international law have fared no better.

The failure of the political process

The shortcomings in the political process are self-evident in that the Prime Minister was not constrained from committing the above political, immoral and illegal misdemeanours. Nor has he been held accountable for them.

It could be said that Mr Blair has eventually been held accountable in that he is being forced by his own Party, obviously against his will, to relinquish the leadership of the Government earlier than he would himself want. The reason for the pressure on him to resign is because he is now seen as an electoral liability. But, of course, he is seen as a liability largely, although not solely, because of his involvement in the war against Iraq. In this sense, therefore, it could be said his misdeeds have caught up with him. Mr Blair's present troubles in the Labour Party, however, do not absolve the political system from the charge that it failed.

Primary political responsibility in a democracy rests with the electorate, and it is true that, although his credibility was seriously in issue, Tony Blair was returned for a third term in the General Election in 2005. While the war in Iraq was a critical issue for a large and growing number of voters, the Prime Minister's conduct leading up to the war did not dominate the campaigning. Both the Labour and Conservative parties were reluctant to raise the subject because of their earlier pro-war stance, and the Liberal Democrats, who did take up the issue, were anxious not to be characterized as a one issue party. The election was far from a plebiscite on the war. A number of domestic issues of likely greater concern to many people were hotly debated.¹⁴² In the result, Tony Blair was re-elected on a

¹⁴² See Kettell, *Dirty Politics*, supra n 2, pp 164-165.

significantly low voter turn out and with a substantially reduced majority. As W. G. Runciman has observed, it no longer made much difference to the majority of the electorate whether the Labour Party or the Conservative Party was in power.¹⁴³

The essential point, however, is that the verdict of the electorate is circumscribed by the extent to which it is informed. People are not immune to manipulation and being deceived by a prime minister or a government bent on manipulation and deception. The question therefore remains open; would the electorate have returned Tony Blair at all if more people had been aware of the culpability on his part as demonstrated above.

A further factor reducing the impact of the ultimate electoral sanction which the electorate can impose is the seemingly inevitable time lag that occurs before some matters seep into the public's consciousness. The old political adage: 'You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time',¹⁴⁴ reflects this time lag. This perception, of course, is evident in the tardy desire within the Labour Party for Tony Blair to vacate the leadership and in the belated decline in support for Republican Congressman and Senators in the recent mid-term elections in the United States. It is axiomatic that this delay in public reaction will be reduced if the public is better informed earlier in time. That objective can only be achieved if the political system is transparent and has the capacity to scrutinise and publicise any real or apparent prime ministerial, ministerial or executive maladministration or mendaciousness, if not contemporaneously, as soon thereafter as is possible.

Having regard to the Prime minister's culpability, Mr Blair, in a properly functioning democracy, would have been called upon to resign the premiership in Parliament. When one considers the peccadilloes and administrative mishaps which have caused Ministers to step down in the past, it is incongruous that Mr Blair has not resigned, or been forced to resign, for a war which was based on a delusion, and which has had such calamitous and humanly tragic consequences. In short, he has not been held accountable in Parliament for the manipulation of the intelligence or for the deception which he practised in pursuit of the war.

At once it must be acknowledged that, if the occupation and post-war rehabilitation of Iraq had been successful, it would be unrealistic to expect the Prime Minister to have been held to account. In the wake of a united and stable Iraq holding the beacon for democracy and freedom in the Middle East, Mr Blair's mendaciousness would have been overlooked, minimized or forgiven. As disturbing as it is to admit, the end would be seen to have justified the means.

But far from being a success, the war has been an unmitigated and tragic disaster. His policies having failed, the Prime Minister cannot now escape responsibility for his pre-war misconduct. The end proved an illusion and Mr Blair should have been held accountable for the undemocratic and unacceptable means that he adopted in pursuit of that illusion. The fact that he was neither monitored

¹⁴³ W. G. Runciman, 'What happened to the Labour Party?' *London Review of Books*, 22 June 2006, pp 17 and 19.

¹⁴⁴ Attributed to Abraham Lincoln, 16th President of the United States (1809-1865).

nor curbed at the time, nor subsequently held accountable, is the measure of the failure of the parliamentary process.

The deaths, human suffering and dislocation have proved a calamity. One shies away from citing figures of the servicemen and women killed or injured or the civilians killed or injured in Iraq simply because, by the time this essay is read, those figures will be out of date. Furthermore, uncertainty exists as to the number of civilian deaths because of the allies' shameful neglect to put in place a policy or system to collect the appropriate data.¹⁴⁵ Suffice it to say, that hundreds of troops have died or been wounded¹⁴⁶ and thousands of civilians, including children, have been killed or wounded.¹⁴⁷ Over a million Iraqi people have fled Iraq, that is, more than 1,000 a day, and over another million been displaced internally.¹⁴⁸ Millions live in daily fear and trepidation for themselves and their families. Millions, including the young and impressionable, are scarred by hate, hostility and an immunity to, and even an insatiable appetite for, violence. And still the carnage and social disruption continues. The exact figures do not matter; the cost has been too great to justify the regime change that has taken place.

Apart from the human cost, the war has galvanized Islamic extremism; destroyed the infrastructure and basic services of the country; provided a fertile breeding and recruiting ground for terrorists; exacerbated the religious divisions in the country; created extreme instability fomenting a civil war; inflamed hatred of the West; rendered Iraq receptive to Iranian fundamentalist influence; resulted in a higher level of torture than in the days of Saddam Hussein; placed the armed forces in a no-win situation without any real prospect of emerging from Iraq with a semblance of military honour; provided a diversion from what should have been the primary task of dealing with the real threat, Al Qaeda; diverted a massive amount of money which could have been more profitably expended in more directly confronting that organisation and threatened terrorist activity;¹⁴⁹ weakened

145 For reported civilian deaths on ongoing basis, see the Iraq Body Count Database, www.iraqbodycount.org/database/

146 As at the beginning of 2007, 3000 members of the United State's military have died since the beginning of the Iraq war in March 2003. Over the same period the British military has reported 126 deaths. See also, 'U S military deaths in Iraq hit 2,875', *The Associated Press*, 27 November, 2006.

147 Estimates of civilian deaths vary from 100,000 to 655,000. See, e.g. David Brown, 'Study claims Iraq's "excess" death toll has reached 655,000', *Washington Post*, 11 October, 2006. See also, 'The Lancet surveys of mortality before and after the 2003 invasion of Iraq', http://en.wikipedia.org/wiki/lancet_surveys_of_mortality_before_and_after_the_2003_invasion_of_Iraq. A recent report claims that over 100 Iraqis are being killed everyday. See Patrick Cockburn, '100 Iraqis being killed each day, says UN', *The Independent*, 26 July, 2006.

148 The United Nations Commissioner for Refugees has reported that 1.8 million people have fled Iraq to neighbouring countries and 1.6 million people have been displaced internally. See *ABC News On Line*, 4 November, 2006, See also Walter Pincus, '1,000 Iraqis a Day Flee Violence. U. N. Group Finds', *Washington Post*, 24 November, 2006

149 Ricks relates that during 2004 and 2005 the cost of the Iraq war to the American taxpayer was running at about \$5 billion a month meaning that, by mid-2006, the total cost of the venture had surpassed \$200 billion. He states that it is staggering to think how that amount of money could have been spent differently to achieve the stated goals of countering terrorism and curtailing the proliferation of weapons of mass destruction. He suggests, by way of an example, that just \$1 billion in aid might have changed the face of education in Pakistan and helped draw out the poison of anti-Western teachings in that country. Ricks, *Fiasco*, supra n 1, at p 431.

the capacity of the United States and the West to respond to the state-based threats to the peace and security of the world as, for example, in Iran and North Korea; diverted and sapped resources required to meet the resurgence of the Taliban in Afghanistan; damaged the relationship of America's allies with the United States and potentially damaged the relationship of the United Kingdom with the United States; provided sustenance elsewhere in the world for those who would deny human rights; and, in all, made the world a less safe place for decades to come if not the remainder of this century.

The verdict of history will undoubtedly be harsh, but what was required was a verdict within the political process that would maintain the effectiveness and integrity of the democratic system. It is that verdict which has not been forthcoming.

The reasons why Mr Blair was not subject to a compelling demand for his resignation are disturbing. One possibility is that Parliament did not fully appreciate the extent of the Prime Minister's manipulation and deception. But, if that was so, it was because the manipulation and deception was successful. Parliament, it must be accepted, can be deceived, and the machinery is not in place to expose the deception, particularly if the Prime Minister's own Party, or the majority of them, remain resolutely loyal. Another possibility is that the question of the Prime Minister's culpability was unnecessarily confused with the pros and cons of invading Iraq. Initial support for the war may have inhibited the Opposition and many Members of Parliament from questioning the means by which Mr Blair pursued and prosecuted the war. Demanding Mr Blair's resignation could all too easily be seen as an admission that they were wrong. Either way, the prognosis for the health of democracy is bleak.

The failure to hold Mr Blair to account has also pointed up a wider systemic failure. Not only has no other Minister resigned, but no official has been held responsible for any of the controversies surrounding the conflict in Iraq. Indeed, some officials who shared in the decisions have been promoted.¹⁵⁰ If one can imagine a domestic event involving a similar catastrophe brought about by a similar level of manipulation and deception, it is certain that heads would roll. Of course, if Mr Blair, as the main perpetrator, remains untouched it is impossible, or at least extremely difficult, to bring those who played a lesser role to account.

In the face of a Prime Minister exerting a monolithic control over foreign policy, including a resolute measure of secrecy, Parliament lacked the machinery to effectively monitor his actions or hold him to account. While parliamentary questions can be a useful tool to control or curb the excesses of executive power, the effectiveness of this mechanism is restricted by the constraints of time and the executive's control over official information, not to mention Ministers' ability to evade direct answers. Similarly, the effectiveness of parliamentary committees is limited by their composition in accordance with the parties' strength in the House of Commons, by their inability to scrutinize Ministers or senior public servants without government

¹⁵⁰ E.g. John Scarlett, who was head of the JIC at the time the first dossier was prepared, was appointed head of the British Secret Intelligence Service (MI6) on 6 May, 2004.

permission and by their lack of power to compel the disclosure of information the government may choose to call 'sensitive'.¹⁵¹ Nor, while select committees may issue reports, can they ensure that the report will be debated in Parliament.

The shortcomings of the select committee process to properly determine a question such as the one the Foreign Affairs Committee set for itself immediately following the publication of the claims of the then BBC journalist, Andrew Gilligan,¹⁵² are readily apparent. The question was valid; that is, whether the Government had 'presented accurate and complete information to Parliament in the period leading up to military action in Iraq, particularly in respect of weapons of mass destruction'.¹⁵³ But the Committee was frustrated at every turn. Its requests to interview John Scarlett and Richard Dearlove were refused. Tony Blair declined to be interviewed. He also initially refused to allow Alastair Campbell to be interviewed.¹⁵⁴ Requests to see draft copies of the first dossier and intelligence material were rejected. National security considerations were put forward to justify these refusals, although it is difficult to see how the earlier drafts of the dossier, at least in large part, could attract this excuse. In the result, the Foreign Secretary appeared before the Committee and outlined 'some extracts' of what was considered to be the 'relevant' sections of the intelligence assessments of the JIC.¹⁵⁵

Nor, as at the time of writing, has a commission of inquiry been appointed and empowered to inquire into the Prime Minister's decision to support the invasion of Iraq and the legality of the war. Independent commissions of inquiry can serve a valuable democratic function in investigating and determining facts, uncovering maladministration and the abuse of power, exposing dishonest or fraudulent malpractice and, generally, educating the public.¹⁵⁶ Neither the Hutton nor Butler Inquiries served this function in respect of the political issues behind the decisions to invade Iraq.¹⁵⁷ Nor have the legality of the war and the saga of the Attorney-General's twofold advice been independently examined. The terms of reference in both inquiries were deliberately drawn narrowly so as to preclude any examination of these wider, but critical, issues. Lord Hutton and Lord Butler adhered to the letter of their respective remits.¹⁵⁸ In the result, the more far-

151 Kettell, *Dirty Politics*, supra n 2, p 17.

152 Andrew Gilligan, 6:07 broadcast for *Today*, BBC Radio 4, 29 May, 2003.

153 *The Decision to go to War in Iraq*, Foreign Affairs Committee, Ninth Report of Session 2002-2003, 7 July 2003, paras. 1-7.

154 Subsequently, Mr Campbell was permitted to appear. See Kettell, *Dirty Politics*, supra n 2, p 122.

155 Foreign Affairs Committee Report, supra n 153, para. 6.

156 The value of commissions of inquiry inquiring into governmental activity is seriously reduced by the absence of any mechanism for the independent appointment of the chairperson and members. There can be little doubt that the power to appoint the membership of a commission of inquiry, especially the chairperson, can be a significant, if not decisive, factor in determining the outcome of an inquiry. The ability to frame the terms of reference can have an equally disabling or disarming impact.

157 Kettell, *Dirty Politics*, supra n 2, p 7.

158 Lord Hutton expressly approbated the narrowly drawn focus of his inquiry on the basis that, for the purposes of practicality 'you have to draw the line somewhere'. He did not permit Mr Blair to be cross-examined. Lord Butler announced that the inquiry would focus on processes and systems rather than on the actions of specific individuals. Kettell, supra, n 2, pp 143-145.

reaching inquiry into what must be acknowledged has been the greatest foreign policy débâcle in recent times has never taken place. In a properly functioning democracy the absence of such an inquiry would be, or certainly should be, unthinkable.

Not unexpectedly, Mr Blair has triumphantly claimed to have been vindicated by the Hutton and Butler Reports. Strangely, his claims suggest that the inquiries had much wider terms of reference than was the case. Even so, a cursory reading of the Reports indicates serious areas of concern. Lord Butler, for example, commented on the ‘relative thinness of the intelligence base’ and concluded that the first dossier had taken the intelligence to ‘the outer limits’. ‘More weight,’ he added, ‘was placed on the intelligence than it could bear’.¹⁵⁹ This is a curiously reticent way of explaining the suppression of the many reservations, qualifications and caveats in the intelligence at the time. He also noted that the JIC chairman should be someone with experience of dealing with Ministers in a very senior role, and ‘who is demonstrably beyond influence’.¹⁶⁰ This, again, seems an oddly restrained way of indicating that John Scarlett, the then Chairperson of the JIC, had failed to counter the strengthening of the intelligence ‘from a presentational point of view’.¹⁶¹

Again, Lord Butler observed that the centralized structure of the Government had the effect of concentrating ‘detailed knowledge and effective decision-making in fewer minds at the top’.¹⁶² The ‘informality and circumscribed character of the Government’s procedures’ had risked ‘reducing the scope for informed political judgement’.¹⁶³ In other, and in more direct words, this misgiving describes the Prime Minister’s presidential and élite style of governance in which a small group of select advisers surrounding him at number 10 Downing Street made the critical decisions divorced from any effective input from Cabinet or Parliament. Then, Lord Butler’s exculpatory finding that there was ‘no evidence of deliberate distortion or of culpable negligence’ seems to be oddly against the weight of evidence¹⁶⁴ unless the phrases ‘deliberate distortion’ and ‘culpable negligence’ are fixed with illiberal meanings. Certainly, numerous questions went unanswered. Perhaps Lord Butler’s scrutiny of the facts was undermined by his adamant refusal from the outset to apportion any blame or responsibility to any specific individual.

It nevertheless remains undeniable that the conduct of the Prime Minister and his immediate advisers had the effect of blurring the boundaries between the political function of governance and the function of the intelligence gathering services. To properly serve its function, the latter must be separate and

¹⁵⁹ *Butler Report*, supra n 24, paras. 327, 331 and 464-466.

¹⁶⁰ *Ibid*, paras. 469 and 597.

¹⁶¹ I consider that it was inappropriate for Alastair Campbell to have presided at meetings concerned with intelligence and the preparation of a document purportedly containing intelligence, which would have the imprimatur of the intelligence services. The arrangement underestimates the influence a forceful and competent person can exert when chairing a meeting.

¹⁶² *Butler Report*, supra n 24, Section 7.4.

¹⁶³ *Ibid*.

¹⁶⁴ *Ibid*, para. 450.

independent of political machinations. Intelligence, to be intelligence, cannot be influenced by politicians who may have, and are likely to have, an extraneous objective. Intelligence which is subject to such influence is contaminated intelligence. Those responsible for that contamination, such as Tony Blair and his close team of advisers in this instance, not only pervert the democratic process, but also undermine the security of the state.

But if the system was inadequate to curb Mr Blair's behaviour and Parliament did not intervene to call him to account, there still remains the Labour Party.

Political parties are an integral part of the political process, and the Labour Party cannot escape censure. Certainly, a group of 121 Labour back-benchers staged something of a rebellion in defying the parties whip and supporting a motion that the case for war was 'as yet unproven',¹⁶⁵ but the move was more a symbol of defiance and frustration than a serious threat to Mr Blair's position. Most within the Party remained supine and must stand condemned as craven for allowing Mr Blair to remain for as long as he has and to then depart on agreed terms, albeit under pressure. Gratitude to Tony Blair for past triumphs, members' self interest, misplaced loyalty, and the desire not to haemorrhage the Party, cannot excuse the Party's inaction. The Party has only itself to blame if many conclude that it has forfeited the moral high ground by not ousting a leader who led it, and the country, into a war which is illegal, immoral and unjust by means which were dishonest. Its inaction has put in jeopardy the credibility and self respect of the Labour Party as a party of principle, justice and humanity.

Nor is it any excuse for the Party to retreat to its Constitution designed to ensure an orderly succession in the leadership. As Mr Blair's lack of probity became more widely known or suspected, members should have recognised that an exceptional response was called for. It will be a shameful footnote to history that there was no-one in the Parliamentary Labour Party who, with sufficient support to command a chorus, did not rise in the House and resoundingly voice the words of Leo Amery to Neville Chamberlain all those years ago: 'You have sat too long here for any good you have been doing. Depart, I say, and let us have done with you. In the name of God, go!'¹⁶⁶

The finding is inevitable that both Parliament and the Labour Party have failed the democratic imperative. Tony Blair, in foreign policy, exerted unbridled and unchecked power to pursue his personal vision. When that vision was threatened he was able to manipulate the political process to his own ends.

But the end was flawed and the means dishonest, and we have yet to learn the full cost.

¹⁶⁵ Kettell, *Dirty Politics*, supra n 2, p 96.

¹⁶⁶ Leo Amery, Conservative backbencher during the 'Norway Debate' in the House of Commons on 7-8th May, 1940, *Official Report* (Hansard) 5th Series, Vol. 360, columns 1073-1196 and 1251-1366.