

Another Agenda

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None of the members of the Chilcot Inquiry have training in either legal principles or forensic skills. They have no permanent appointed legal experts or advisers and no appointed counsel to represent the tribunal and to cross-examine witnesses. This was quite deliberate. The government that set up this Inquiry was quite open on the subject. It was widely suggested by the prime minister and others that the presence of skilled cross-examiners would conceal rather than reveal the truth. To this patent nonsense was added the issue of expense. The Iraq war has to date cost £26,000,000,000. Appointing a legal team to assist the Inquiry, would be, it was maintained, prohibitively expensive.

There was, of course, another agenda. In assessing responsibility for the Iraq disaster, past and present members of this government are the prime suspects. Although the Inquiry is famously not 'a court', its public purpose is to reveal the manifest deceptions and concealments that led us to participate in a conflict that caused massive suffering, the loss of 600,000 lives and a huge increase in fundamentalism and terror. Most prime suspects for most crimes or misdemeanours would opt for a trial without a skilled prosecutor and preferably with unqualified judges. And that's what the government achieved.

The extent to which the prime suspect, Tony Blair, was consulted or complicit in the shaping the process is, of course, unknown, but, whether by accident or design, he has precisely the tribunal he would have devised. An Inquiry has been created that is devoid of the forensic tools properly to enquire. It is a tribunal without teeth providing trial without tribulation.

The author has provided penetrating analysis of the Iraq Inquiry under Sir John Chilcot ever since it was announced (see Spokesman 105). Here he reflects on Tony Blair's testimony to the Inquiry on 29 January 2010.

And, of course, evidence is not on oath.

The results were predictable. In the main areas of controversy the Inquiry has proved itself totally ill-equipped to test or challenge testimony which demands the most rigorous and forensic examination. In doing so it has failed lamentably to investigate deceptions of Parliament, and in particular the central issue of the Attorney General's legal advice to Cabinet and Westminster. In terms of importance this issue has no equal. If Cabinet or Parliament had been told, or believed, that the legal case for war was doubtful, there would have been no war. If it now transpires that Parliament or Cabinet had been deceived or misled on this issue, the effect would resonate across the whole investigation, and would illuminate the extent to which we had secretly been committed to war at the behest of an American machine. Legality is the issue in its own right, and is the prime test of the integrity and bona fides of the architects of war.

The facts themselves are well known and stark. After months in which he had maintained that only a further UN resolution could legitimise war, the Attorney General partially changed his mind. He produced, on 7 March 2003, a written opinion for the Prime Minister. In it he acknowledged that a 'reasonable case' could be made for legality without the UN resolution but (and it is of course a huge 'but') he 'could not be confident that this view would succeed in a court of law'. In other words, put plainly, legality was doubtful.

The effect of this was potentially seismic. Had this view been known to the Cabinet or Parliament, votes for the war would have been unthinkable. Had this unvarnished view been known to our military command and armed forces, many, if not all, would have refused to fight. Had it been known to contractors, civil servants and unions engaged on war work many, if not all, would have withdrawn their labour and support.

At this point 40,000 British troops were massed on the borders of Iraq and war was three weeks away. On 17 March the Attorney General attended Cabinet. The purpose of his attendance was to provide his opinion that the war was legal. His own doubts and equivocations 10 days earlier received no mention. As to the very existence of a written opinion, there was total silence. The following day he repeated his unequivocal view on the law to the House of Lords, whence it came to the Commons. As to the very existence of a written opinion there was, again, total silence.

The reason given for this extraordinary passage of events was, when it came, lame and unacceptable to any lawyer (or indeed anyone). The Attorney General effectively said that he had been approached by the Chief of the Defence Staff and a representative of the Cabinet Office asking that his advice be made unequivocal and he duly obliged.

This lamentable, inexcusable saga demanded from the Chilcot Inquiry searching, forensic analysis and penetrating, relentless enquiry. It received neither. Blair's main inquisitor, Sir Roderic Lyne, failed repeatedly to formulate the essential questions, did not pursue manifest evasion, and allowed interminable responses that steadily eroded the allotted time. It was dreadful.

He had begun badly. Lyne's first, rambling 'question' contained multiple strands and comments inviting a long rambling 'reply' during which Blair noticeably relaxed. This was going to be a cakewalk. Nearly six minutes of time (two per cent of the day's session) had been wasted, and we had discovered precisely nothing.

It got worse. Answer after answer descended into self-serving waffle of total irrelevance. His love of America, his closeness to President Clinton, his admiration for the armed forces, the indescribable nastiness of Saddam, 'the calculus of risk' (what?), his experience as a junior barrister, even his silly asides to Fern Britton expanded endlessly to suffocate meaning. No one demanded a straight answer. No one deplored the obvious strategy of delay.

In the morass, essential questions surfaced briefly, were avoided and remained, amazingly, ignored. Question: 'Had President Chirac phoned to say that his position was being misrepresented out of context? Answer: 'I remember speaking to Chirac on a number of occasions.' Yes? And? What is the answer? We will never know as the examination drifted gently on to another topic, and obscurity remained.

Essential issues – the detailed conversations with Bush, the exact undertakings given by Blair on military support, the Downing Street memo, all surfaced briefly, were evaded ('Look, what I think needs to be made absolutely clear, Sir Roderic ...'), and then drifted harmlessly away.

Then came legality. Here, surely, lay the killer punch – the line of cross-examination that was essential, and from which there appeared no conceivable escape. It was, like the best cross-examination, so simple. 'Why was the Cabinet and Parliament kept in ignorance of the existence (never mind the content) of the Attorney General's only written opinion?' Why did Prime Minister and Attorney General watch their colleagues vote for a 'legal' war without mentioning once the existence of written advice given days before that legality was uncertain? Why? Tell us.

We will not know the answer for one simple reason. The question was never asked. Why was it never asked? Ask the Chilcot inquiry. See if you get an answer.

With grateful acknowledgements to the author for his permission to reprint this article, and to The Guardian, where it was published online on 31 January 2010.