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HUTTON AND BUTLER

*Lifting the Lid on  
the Workings of Power*

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Lessons for  
Governmental Process

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The Hutton and Butler inquiries were directly concerned with aspects of the Iraq saga. They were high-profile events in the long public inquisition into the merits – political, legal and moral – of the war into which Mr Blair took the United Kingdom. (It is not unfair to characterize the matter thus, for UK participation was driven by the Prime Minister's personal choice in a degree unmatched, as Peter Hennessy reminds us, since Anthony Eden's role in the 1956 Suez enterprise.) Public commentary on the inquiries naturally concentrated upon their significance in that context, but one may doubt whether in the event they had much effect in changing minds on the fundamental issue – they were not, and politically could not have been, addressed head-on to that. They tidied up the debate usefully, in that they cut the ground from under the wilder suspicions that sinister agents had done away with Dr David Kelly, or that Mr Blair had been both wicked and rash enough to tell downright and deliberate lies about Saddam Hussein's possession of weapons of mass destruction (though there is more to good faith than merely the avoidance of direct mendacity, and indeed the assertion that the evidence was 'extensive, detailed and authoritative' surely skirted the boundaries of that). It had, however, been plain enough well before either inquiry reported, and was thereafter amply confirmed by other means, that the WMD threat had been far more limited and less imminent than was proclaimed – most emphatically by Mr Blair – in advance of the war. No new facts or considerations emerged from either inquiry to shift, other than marginally, the divide already well established between those who believed, with the claims by President Bush and Mr Blair, that the removal of a malign tyrant anyway justified the war and those who believed that neither the principle of this nor the balance of costs incurred did so. The inquiries could, for example, play no part in clarifying the scale of Iraqi deaths, a major factor from

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which governments on both sides of the Atlantic continued sedulously to avert their gaze.

The two inquiries had, however, interest and significance reaching beyond the Iraq issue, in two main general ways. (I do not here revisit the more specific question, uncomfortably crystallized around the awkward matter of whether Mr John Scarlett should so precipitately have been given advancement as the new Chief of the Secret Intelligence Service while the Butler inquiry was still in progress, of what responsibility in public office ought to entail when things go wrong, as they plainly did within Mr Scarlett's field in more respects than just mistaken intelligence assessment.) First, the inquiries prompted questions about the place of such investigations in British constitutional practice. Second, the unfettered access they were given to people, papers and emails yielded an extraordinarily close and revealing portrait of how contemporary government at the centre of the British system has been functioning.

### *The use of inquiries*

Inquiries by special process had been widely undertaken in recent decades, as for example into the disposal of the body parts of dead children at the Alder Hey Hospital in Liverpool, or the shortcomings of police and local-authority procedures and actions as they bore upon the murder of two schoolgirls at Soham in 2002. The distinctive class into which the Hutton and Butler inquiries fell is, however, that of investigation into the doings of central government in major matters. (The death of Dr Kelly, though in itself a very particular event, was of wider public interest because of the policy context within which it occurred.) Other recent examples of the genre, after the inquiry led by Lord Franks into the origins of the 1982 Falklands War, include the 1992-96

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investigation by Sir Richard Scott into the supply of military equipment to Iraq, the 1997–2000 review led by Lord Phillips of the debacle over bovine spongiform encephalitis, the long-running scrutiny of the ‘Bloody Sunday’ happenings which Lord Saville began in 1998, the relatively swift inquiry – not now much remembered – by Sir Thomas Legg and Sir Robin Ibbs in 1998 on the movement of arms into Sierra Leone, and Dr Ian Anderson’s 2001 examination of how the foot-and-mouth outbreak was handled. All the issues thus examined had become the subject of heated political argument, and a natural initial question about them as a class is why they could not have been left to be dealt with by Parliament as the prime constitutional forum for the Government’s accountability.

The answer seems to lie in three sets of perceived limitations upon Parliament’s investigatory effectiveness. One of these concerns credibility. Rightly or wrongly, it is feared that where the standing of the Government as a whole, or of a particular minister, is under challenge, the pressures of party allegiance and interest will impair the rigour with which exploration is pursued or distort the objectivity with which conclusions are reached.

A second perceived source of limitation relates to the powers available for parliamentary investigation. The Hutton, Butler and similar inquiries were given a licence to demand detailed information about Government’s inner workings that no major party, at least when in office, has been prepared to concede generally to parliamentary committees. The reason for the difference, against the background of an underlying belief that good government requires the dependable ability to conduct business in private, is an understanding that special inquiries can be given – and generally trusted to adhere to – tightly-defined remits and are conducted by individuals not actuated by the protective or adversarial concerns of elected politicians. The presence of Mrs Ann Taylor and Colonel Michael Mates on the

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Butler Committee is an interesting semi-exception to this, but they constituted a minority within the Committee, as did Members of Parliament in the Franks Inquiry; and all these moreover were Privy Counsellors, who had accordingly taken an oath of confidentiality. That status and the constraint it imposes could not easily or regularly be insisted upon in parliamentary committees.

The third perceived limitation relates to resources and skills. In the past 25 years the more systematic framework of Departmental Select Committees has undoubtedly strengthened the ability of the House of Commons to examine what Governments do. Some of the Committees, and individual Members of Parliament within them, have developed considerable expertise – and occasionally a notable independence of party – in that role. It cannot however be expected, amid the diverse demands upon MPs and the exiguous staffing support (both personal and collective) available to them, that they will easily find time for the research and cross-examination needed to get to the root of complicated issues in the depth of detail that we have seen in the Hutton and Butler inquiries. When public confidence is seen as demanding that depth, normal parliamentary process will inevitably be at a disadvantage. That disadvantage is compounded by limitations – again understandable, and interestingly now acknowledged by the House of Commons Liaison Committee – in the armoury of forensic skills which MPs can normally be expected to bring to bear.

On this analysis, three further questions next arise. Are special inquiries actually achieving what we want from them? Should we mind if we find ourselves continuingly or even increasingly impelled to use them for investigations which constitutional theory would ideally assign to Parliament? Can anything be done to ease the parliamentary limitations which are thought to drive us that way?

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Achieving the aim? The immediate task of such inquiries is to establish thoroughly what has happened, so as to allay any public fears of cover-up. Beyond that, the careful consultative paper on inquiries published in May 2004 by the Department for Constitutional Affairs stated that 'the primary purpose of an inquiry is to prevent recurrence'<sup>1</sup> and 'the main aim is to learn lessons, not apportion blame'.<sup>2</sup> (One might add to that the value of enhancing deterrence for the future.) But it has to be acknowledged that this is not how public opinion, as voiced or shaped by the media, generally sees matters. There is a sense of need for cathartic lancing of boils; the predominant expectation may be that the 'guilty' will be identified and pilloried, and it is the disappointment of that expectation that prompts accusations of 'whitewash', as it did in respect of the Hutton Inquiry and might still have done even if the report's conclusions had had a little more to say about shortcomings on the Government as well as the BBC side. (The expectation needs nevertheless to recognize that the more salient the 'blame' theme is made within an inquiry, the stronger the pressures become for careful lawyerly process, with all its costs in time and money.) There is no ready escape from this disjuncture between official purpose and popular hope, or from the suspicion that, for Governments, the motivation for setting up inquiries may sometimes have a component of near-term desire to buy time, cool temperatures, and hope for distractions. But none of this makes inquiries bad or useless instruments. Both the Hutton and the Butler reports will have prompted valuable improvements in fields of public concern; and reflection upon their contribution may help deepen, for next time, cumulative understanding of what can and what cannot reasonably be expected from such exercises.

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<sup>1</sup> *Effective Inquiries: A consultation paper produced by the Department for Constitutional Affairs*, CP 12/04 (May 2004), para. 39, p. 19.

<sup>2</sup> *Ibid.* para. 82, p. 31.



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Should we mind using the inquiry device? We ought perhaps to recognize two grounds for being wary of over-ready recourse to it. One is cost. Even if we set apart, as wholly exceptional, the £155 million expected cost of the Bloody Sunday Inquiry, the figure given for the BSE Inquiry is £26 million and that for the Scott Inquiry £7 million excluding – surely a large exclusion? – the costs of legal aid and Government legal services. These are not trivial demands upon the taxpayer. Beyond this, there may be a less precise but not less important risk that, although in formal terms the inquiries are usually an aid to Parliament and not a substitute for it, their continual use might further erode the authority, experience and practical competence of Parliament's own mechanisms in holding Government to account.

Can Parliament be made more effective, and more commanding of public confidence, in dealing directly with complex and contentious issues? There is no evading the facts of party allegiance and the inhibitions this imposes, especially within a parliamentary as distinct from a separation-of-powers constitutional framework. In addition, it is neither realistic nor desirable that parliamentary committees should be accorded general rights of deep excavation into internal Government process on the scale that Hutton and Butler were enabled to exercise. No executive anywhere could function well under a permanent and comprehensive political shadow of such a kind. Parliamentary limitations might, however, be modestly alleviated by the improved resourcing of staff support, for which there is a case also on other grounds; and it will be interesting to see whether the Liaison Committee's idea of specific training in cross-examination skills is taken up, and whether it makes a difference.

It is tempting to add that Parliament's authority depends also upon its ability to exploit the product of inquiries in discharging its own role as penultimate holder-to-account (the ultimate one being the electorate). Whatever one's view of the merits of the Iraq

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war, it seemed remarkable that the contribution of ministers in listening to and winding up the 20 July debate on the Butler report in the House of Commons – and indeed the reporting of that debate in the media, including the BBC – apparently felt able to take so little account of the weight of censure powerfully expressed by most speakers from all sides of the House. (Of twenty-three back-bench speakers, twelve of them Labour, only three voiced unequivocal support for the Prime Minister.) The discomfort of a Leader of the Opposition impaled upon the eager support of the war to which his predecessor had committed his party clearly played a major part in that impunity, but the event overall brought home the reality that, however bright and accurate the searchlights, effect in the end rests with the anti-aircraft batteries.

Given that inquiries will continue to be an occasional tool of public audit of central government, do the Hutton and Butler experiences offer any new messages about how they should be constituted and operated? After the Scott Inquiry several commentators argued that its value had been vitiated or at least impaired (quite aside from its near-four-year duration and 1800-page summary-less report) by needlessly adversarial style and failure to comprehend adequately the governmental realities of having to conduct complicated business under pressure of scarce time and diversely-overflowing in-trays. It was suggested *inter alia* that such perceived imperfections in the inquiry could have been eased by the assignment, if not of co-members, at least of weighty assessors able to bring to bear relevant practical background. Lord Hutton also sat alone, but was seen as succeeding in avoiding these pitfalls (though that might perhaps have been less easy if he had interpreted his remit as broadly as some of the subsequent grumbles thought he should have done). The pattern doubtless needs to be weighed case by case, and there are good and bad examples to be found in either direction. It is, however,

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questionable whether the matter should turn on a fear that the addition of supporting members or assessors will undesirably extend the time taken. That scarcely seems necessarily so (especially in the light of Scott's solitary marathon) and even if it were, the price might be worth paying for higher quality-assurance in the outcome.

William Twining and Michael Beloff differ on the appropriateness of having judges take part in inquiries. To someone from outside the legal world the question 'Who better, on a balance of public interest?' presents itself; and appeal to the United States analogy of customary refusal needs to be qualified by the fact – as we were vividly reminded by the Supreme Court's consideration of the outcome of the 2000 Presidential election – that the US environment provides less public acceptance than does ours of judicial freedom from political bias.

The composition of the Butler Committee was more diverse and less politics-free than had latterly been usual for such inquiries. That inescapably carried potential drawbacks, and it would be surprising if there were no truth at all in media speculation that there had to be bargaining about some of the report's language and conclusions. The report was, however, successfully delivered against a tight deadline without need for minority dissent, and proved by no means unable to say trenchant things likely to be found uncomfortable within Government. That achievement was a tribute to the particular skills and attitudes within the Committee and its support, but served also to encourage retention of its structure and method among options for the future.

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### *The working of Government*

The Government wisely felt, as its forerunner had done with the Scott Inquiry, that for reasons both of substance and of public credibility the Hutton and Butler inquiries must be manifestly free to probe without limitation the details of internal Government activity in the relevant field. The result was that both inquiries, in different and complementary ways, yielded an exceptionally unconstrained and unvarnished picture of how the centre of the current Government had been working. A great deal of this, for all that it might raise the eyebrows of the public or the media, came as neither unexpected nor particularly disquieting to anyone who had worked closely in Whitehall across a span of administrations.

There were however significant exceptions to that relaxed recognition. The exposure, in the evidence which Lord Hutton elicited, of the remarkable informality (to use no sharper term) of how business was transacted within No. 10 was surely an uncomfortable surprise even to *cognoscenti*. The Butler Report voiced justifiably adverse comment upon how the relationship had come to function between the intelligence world and key policy-concerned figures in and around No. 10. Most strikingly of all, that report then ended with what was, in its context, a dramatically critical six-paragraph *envoi* about the general way in which Mr Blair had organized and run the collective Cabinet dimension of his leadership.

We should bear in mind the antecedents of the situation revealed. Whenever there is a change after one party has had a long run in office, the incomers are always tempted to suspect that those who worked for their predecessors may be deficient in understanding of or commitment to a new agenda. The neutral mindset of thorough and loyal service redirected as necessary to support whomever the electorate may place in power can seem alien or even incredible to those whose operating context has been

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the political struggle, perhaps especially younger activists for whom partisan conviction has been the mainspring of action. A particularly protracted period out of office can intensify such attitudes.

Mr Blair was the first Prime Minister since Ramsay MacDonald in 1924 to come to No. 10 without previous experience of his own at any level within Government, and he was surrounded by party colleagues who were mostly little if any better equipped in that regard. It was moreover not immediately obvious that those colleagues embodied an apt range and depth of talent to fill the entire span of Cabinet posts. When Labour had last come to power, Harold Wilson was able to preside over a Cabinet including, for example, Denis Healey, James Callaghan, Anthony Crosland, Roy Jenkins, Barbara Castle and Anthony Benn. It is surely not just nostalgic *laudatio temporis acti* that sees more than merely a difference of experience in the contrast between 1974 and 1997. (In fairness, a similar comparison of other party front benches over time might suggest that the inference to be drawn relates to the condition of British political life and participation, not of one party only.)

Mr Blair thus entered office with limitations both in the resources available to him and in his own feel for the customary running of public business. (Whatever one may think of the balance of might-have-beens in other respects, John Smith – for whom I once worked closely and with trust on both sides upon a project of whose merits he knew I became sceptical – would surely have understood the Government machine more clearly and confidently, and handled issues of structure and procedure differently. But that is alternative history.) Against that background, it is neither surprising nor illegitimate that a Prime Minister of Mr Blair's abilities, energy and self-confidence, coming to and subsequently retaining power moreover with the endorsement of the electorate in exceptional degree, should have

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chosen to operate in a more centralized way than almost any predecessor, and in doing so should have been keen to reshape working practices in new ways (including swift and determined management of media concerns) which he regarded as more suited to his task and aims than older ones.

It is, however, open to question, as we survey the scene disclosed by Hutton and Butler, whether the changes — often, it seemed, reflecting a marked impatience with collective process — always rested upon sufficient understanding that existing patterns had not been developed without practical reason, and that departing from them might therefore have a downside that needed careful consideration beforehand. Where, as in Britain, there is no written constitution and governmental practice rests largely upon convention rather than entrenched rule or statute, changes may be more easily made than in a more formalized setting; but that does not render thorough, timely and transparent evaluation any the less important. In the governance of a major country, a highly centralized — even personalized — system of work may moreover be in extra need of careful method and record.

The absence of thorough analysis, and of a system for conducting it, had already been conspicuously displayed in the near-shambles surrounding the attempt to abolish the post of Lord Chancellor; but Hutton and Butler in combination suggested that the effects might run more widely. It was increasingly to be suspected that Mr Blair's administration had often had little interest in or tolerance for distinctions of function and responsibility between different categories of actor within the Government machine (except perhaps when political defences needed to be erected, as over the purported 'ownership' of the September 2002 dossier). Not only in the interface with the intelligence structure and in the way Alastair Campbell operated within and beyond No. 10, but also in matters such as the saga of Jo Moore and Martin Sixsmith in the Department of Transport,

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there was a sense of all participants – ministers, civil servants, special policy advisers, public relations handlers – being treated as part of an undifferentiated resource for the support of the central executive. Flexibility and a fostering of ‘all-of-one-company’ goal-oriented spirit are of course assets, and to make a fetish of role-demarkation does not serve the public interest. Ignoring professional boundaries, however, carries a temptation to – or may be a reflection of – lack of consistent and dependable system; and that was the impression left by some of what the Hutton and Butler reports disclosed.

Mr Blair has sought to bring to his Prime Ministership a strong focus upon delivery – the achievement of practical results. This salutary concern can, however, slide into a sense that outcome is the only true reality and that process is flummery. But the two are not antithetical, still less inimical to one another. Process is care and thoroughness; it is consultation, involvement and co-ownership; it is (as we were reminded by the failure of international process in the run-up to the Iraq war) legitimacy and acceptance; it is also record, auditability and clear accountability. It is often accordingly a significant component of outcome itself; and the more awkward and demanding the issue – especially amid the special gravity of peace and war – the more it may come to matter.

The closing paragraphs of the Butler Report, remarkable enough in themselves, were made more so by the facts both that their inclusion represented something of a stretch of the Committee’s remit, and that the Committee’s composition meant that they carried the assent of Mrs Ann Taylor, who had been a participant in Mr Blair’s Cabinet. Mr Blair swiftly indicated his intention to make adjustments in the light of the report, but it was not immediately apparent whether he would choose – or be induced by Cabinet colleagues – to carry these far enough to constitute a real change of approach. Cabinet government of the

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traditional model has manifestly atrophied over the past seven years, and moreover by deliberate neglect, not accident. Should we mind? If a collective Cabinet system no longer functions well, and Parliament is in practice docile or impotent, we may be nearer to 'elective dictatorship' than when Lord Hailsham's coining of that phrase, a quarter of a century ago, was widely dismissed as hyperbole. Perhaps the country is content that the media should be left as the prime constraint upon highly-centralized power. But the issues surely deserve public discussion.

Tests of whether Mr Blair truly intends reformation might include whether opportunities are to be exploited, as personnel changes arise, to revive the full scope and authority of the Cabinet Secretary post (to an observer from yesteryear the invisibility of the incumbent during the events recounted by Hutton and Butler was striking) and to restore the focus of the Secretariat upon support of the Cabinet as a whole. Another test, even if its immediate impact be modest, might be the serious pursuit of a Civil Service Act to entrench certain basic safeguards. In an age where established convention mostly (and healthily) commands less ready reverence than in the past, it may well be appropriate that roles, procedures and systems be more explicitly defined, even if sometimes only by administrative instrument, than used to be thought necessary. That may be the more desirable given the possibility, increasing as time passes, that the next change of Government may again bring into office a team with no more than limited and distant experience.

The remedying of what went amiss, whether through misjudgement or oversight, matters accordingly for reasons stretching beyond the further life (even if it be a long one) of the present Government. Governing parties are more than just tenants of the constitutional structure; they have a right, even a duty, to modify it where they judge that the people will thus be better served (though any such modification ought to be made openly,



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with proper discussion and accountability). But they remain less than owners; they are more like trustees, with an obligation to maintain the structure and hand it on to eventual successors in good working order. The Hutton and Butler scrutinies in effect called into question whether the obligation was being fully secured. On that showing, Mr Blair and his proper advisers had repair work to do, and to demonstrate.