

**THE WAR
AGAINST
THE BBC**

**THE HUTTON REPORT
AND ITS AFTERMATH**

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THE WAR AGAINST THE BBC

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INTRODUCTION

How Prime Minister Blair put Houdini to shame

IT WAS the week British Prime Minister Tony Blair looked political death in the face and escaped in a manner which would have put Houdini to shame; the week that the BBC lost its bitter battle with the government and looked in danger of imploding; the week when, at last, senior American officials admitted that reports of Iraq's weapons of mass destruction could prove unfounded.

At the root of the war between the government and the BBC was this: Blair insisted that he had irrefutable evidence from intelligence sources that Iraq possessed weapons of mass destruction and could deploy them within 45 minutes to endanger British interests. The BBC, instead of simply reporting that assertion in the manner of a Pathe Newsreel, allowed Andrew Gilligan to seek the views of the foremost expert on Iraq's WMD programme, Dr David Kelly. Kelly suggested to the BBC Today journalist that the intelligence dossier had been exaggerated (not fabricated) to improve its chances of selling the war.

With that challenge, No 10 Downing St went "ape". The prime minister's adviser, Alastair Campbell, who has built his reputation on being able to control the political agenda, had already bombarded the BBC with serial complaints over its coverage of the conflict in Iraq, each one demanding immediate apologies. The BBC stood its ground, stood by its reporter, and defended the BBC's journalism. That added fuel to the fire and the government responded by alleging the BBC's response showed it was monopolistic, self-serving, arrogant and economical with the truth.

Campbell's threats were code for: we will get you. The government may have thought it had its revenge when Hutton directed all his criticism at the BBC, for allowing what he described as unfounded allegations to be broadcast and for failing to properly check their veracity when challenged.

The subsequent resignations of Gavyn Davies, the chairman of the board of governors, Greg Dyke, the director general, and Gilligan himself were icing on the cake.

But Lord Hutton's report on the suicide of Dr David Kelly and the events which led to it had such a narrow remit that his findings were bound to be circumscribed. Put another way, Blair carefully chose the referee and got the result he wanted.

Blair's victory comes at a high price. A YouGov poll published on Friday showed that twice as many people now trust the BBC compared to Tony Blair (67% v 31%). So in the end, whatever Hutton may have found, the people's verdict is in.

The Hutton inquiry may have sidestepped the two questions the world wants answered – where is the evidence of Iraq's WMD arsenal and if there is none why did we go to war? – but it now looks certain that the truth will come out.

In the coming week the prime minister and the head of MI6 will appear before new parliamentary inquiries investigating the case for going to war. This time the questions Blair faces will be of a different nature because everyone now knows there are no WMDs, that there never was a "45-minute threat". Will Houdini do it again? Or will he finally admit that the case for war was "sexed up" or, to use Lord Hutton's parlance, unfounded?

PART ONE

The destruction of the BBC

The long-awaited Hutton report and Alastair Campbell's victory may have brought the BBC to its knees, but gloating may be premature. Support for the broadcaster is growing and the government is losing the war for the public's trust, reports **Torcuil Crichton**

“**W**HEN we received the letter from Campbell complaining about a report by Andrew Gilligan broadcast by the Radio 4 Today programme, the big mistake was to defend our reporting in the general sense rather than replying to the specific complaints,” says the BBC executive with the benefit of broadcast quality hindsight. “As mistakes go, Gilligan’s broadcast was flawed journalism but hardly a hanging offence.”

As the careers of the chairman Gavyn Davies, the director-general Greg Dyke and the journalist Andrew Gilligan sank following Lord Hutton’s indictment of the BBC last week, these executives were left to rue their errors.

None of them could have foreseen that Campbell’s angry missive would have left the BBC engulfed in the biggest crisis in its 82-year history. It now faces the possibility of a future cowed by a government that some have said went to war against it to distract from the fallout from the real life-and-death conflict in Iraq.

Campbell’s attack was misinterpreted as the latest in a long line of complaints from Tony Blair’s spin master; Alastair Campbell sounding off yet again at the BBC’s refusal to toe the government line on the war against Iraq and its insistence to challenge the whole premise of the conflict.

“You have to understand, we just could not cope with the barrage of complaints from Campbell,” a BBC insider told the *Sunday Herald*. “Long letters detailing alleged mistakes and misrepresentations and demanding that we answer every specific point we raised. We felt under undue pressure as an organisation. We felt it was a case of daily harassment.”

Andrew Gilligan’s fateful report is now the stuff of legend. During an unscripted section of a programme broadcast at 6.07am on May 29 he asserted that the British government had inserted the claim that Iraq could launch weapons of mass destruction at British interests within 45 minutes, knowing that it was false.

The claim was not included in the 17 subsequent broadcasts Gilligan made on his story throughout that day but an article for the *Mail on Sunday* compounded his error. He said a senior intelligence source told him the 45-minute claim had been inserted at Campbell's insistence.

"If the BBC's governors and editorial executives had immediately launched an investigation into the 6.07 report and apologised for the insinuation, the matter would have ended there," said the insider. "But they did not do so." The result of that mistake was beamed live from Court 76 of the Royal Courts of Justice last week, when Lord Hutton presented the findings of his inquiry into the death of David Kelly, the former weapons inspector who killed himself after being revealed as the "senior intelligence source" who spoke to Gilligan.

Of all the politicians, senior executives and other parties who played a role in the saga which led to the discovery of Kelly's body on Harrowdown Hill, Hutton was clear who should shoulder the vast majority of his criticism: the BBC.

When it comes to car crash television, the excruciating disintegration of a subject under the unblinking lens of the camera, no-one does it better than the BBC, particularly when it is the BBC that is heading for the bollards.

Every wincing detail of its own wretched humiliation at the hands of Hutton and the government was detailed minute by minute by the station across television, radio and the internet. The corporation even printed a special edition of its in-house journal *Ariel* to detail Hutton's findings.

Over 48 hours every excoriating moment, from Hutton's ringing condemnation to Campbell's "ungracious" acceptance of the guillotine basket containing the heads of Davies and Dyke was broadcast. Throughout it all the BBC, the largest news organisation in the world, could not put forward a spokesperson to put its case.

On Thursday afternoon, when the corporation broadcast pictures of its own employees walking out in support of their deposed director-general, the media monitoring staff in Downing Street had difficulty deciding whether the reporting was a triumph of objectivity or surrealism.

It was not until Andrew Gilligan resigned that a backlash of sorts began. Gilligan walked the plank on Friday night but not without issuing a defiant rallying call. Yes, he had made mistakes, but the BBC, he said, had been dealt a "grave injustice" by the law lord who had failed to consider "fairly" the evidence and testimony before him.

Dyke, who is now as loose a cannon as Gilligan, has promised a detailed response to

Hutton, making it clear he does not accept the conclusions. Neither did his replacement, Mark Byford, although the BBC would rather move on quietly than rake over the Hutton findings in public.

Portents of what awaited the BBC at the hands of Hutton arrived with the first editions of *The Sun* newspaper on Tuesday evening. By then senior executives, parties to the inquiry who had received the conclusions in advance of the public, knew the worst, but could not brace their staff. As Wednesday morning wore on, rumours circulated throughout the BBC that *The Sun's* version of the report was spot-on. Hutton completely exonerated the government and completely demolished the BBC.

Astonishment is the only word to describe the reaction inside the BBC. In that laborious, monosyllabic tone, Hutton spelled out the systematic failure of the BBC. Gilligan's claims were "unfounded".

When it came to checking the story the BBC editorial systems were "defective". Managers failed to investigate the increasingly strident complaints of Alastair Campbell.

Of course, the relationship between the BBC and the British government – any British government – has often been tense. But rarely has a government figure pursued the BBC with the fury and relentlessness of Campbell. The former political editor of the *Daily Mirror* has made no secret of his contempt for cynical newspaper journalism that sees its primary role as undermining politicians. He felt the phenomenon was spreading to infect the impartiality of the BBC and wanted the corporation brought back into line.

Several of Campbell's political and news management agendas merged over the Gilligan report. For sure he had to clear the Prime Minister's name and his own but in the summer of 2003, despite prosecuting a successful war in Iraq, Blair was beginning to feel the backlash over the failure to find any weapons of mass destruction in the Iraqi sands.

Two parliamentary committees were examining the WMD document that formed the basis of Blair's case for going to war and an increasingly sceptical public were picking up on the mood that they had been duped over the claim that WMD could be fired within 45 minutes of Saddam's order. Gilligan's report had contributed greatly to the public unease. Campbell knew decisive action was needed to counter the bad headlines.

Having refused to appear twice in front of a parliamentary investigation into the government's WMD dossier, Campbell chose the foreign affairs committee as his stage to make a table-banging denouncement of BBC "lies" in the Gilligan report. This was on June 25, nearly four weeks after the Gilligan report had been broadcast.

There was an over-arching strategy at play. The effect of Campbell's appearance was to

ramp up the row which escalated when David Kelly was outed as the source for Gilligan's report and led to his death.

Dyke and Davies had an agenda of their own. Both had been traduced on their appointment as being cronies of Tony Blair. Dyke was a big donor to the party and Davies's partner, Sue Nye, is Chancellor Gordon Brown's private secretary.

This eagerness to prove themselves as independent guardians of the BBC combined with the BBC's weariness at Campbell's complaints. They both decided to counter-attack. No one close to the scene is denying now that a fair deal of testosterone contributed to the spiralling row. Campbell was stomping across television screens like a rogue elephant intent on stamping out the BBC. The BBC, as head of news Richard Sambrook made clear in his increasingly terse responses to Campbell, was ready for a rumble.

The weekend after Campbell stormed into the Channel Four news studios issuing a furious on-air rant against the BBC, even Gilligan was surprised when the director general rolled up his sleeves and jumped to his defence as the barrage from Downing Street broke overhead. Rather than stay above the fray Dyke got into the trenches with his troops. Big mistake.

When Dyke offered his resignation on Wednesday over the dinner that the BBC's board of governors share on the eve of every meeting, he expected them to refuse it. But without his key ally – Davies – he was left exposed. The governors, now led by Lord Ryder, another man with no great regard for journalists, had no stomach for a fight after such a devastating indictment from the law lord. "I don't want to go but in the end if you screw up, you have to go," Dyke said afterwards.

The departure of a popular boss and the contrite apology from Lord Ryder, the new acting chairman, which followed proved too much for some employees. Many left their desks and protested outside BBC studios.

There was considerable anger with the remaining governors for being so craven to the government. Dyke said he couldn't understand why they had apologised when he had already done so the day before. There was also anger against Gilligan whom many other journalists, BBC lifers, regarded as a loose cannon.

But mixed in with the anger was a growing fear that Campbell and Blair would not be satisfied with the scalps they had; that they would go further to make sure the BBC could never pose a threat again.

The BBC is facing a review of its Royal Charter and a clamour from its terrestrial and satellite rivals for the licence fee to be abolished. A new director general will be appointed

by the board of governors but they are unlikely to do so until a new chairman of the board is appointed. That is done by appointment through the Department of Culture, Media and Sport. The Nolan rules on public appointment will apply but no appointment is ever free from the hands of the Prime Minister, who has proved that he can walk on water.

In a celebratory mood on Thursday evening, Campbell auctioned his signed copy of the Hutton Report for £10,000 to a Labour party supporter at a charity event in London. The following evening his "Alastair Campbell live 2004 tour" kicked off in South Shields with his familiar line that the media are the bad guys and the politicians are the good guys.

But just as he should be basking in his victory he cannot help but be aware of a growing dissatisfaction in the country.

He will be aware of post-Hutton opinion polls showing that more people are willing to trust the BBC than the government. He may know that the Today programme has received more than 20,000 e-mails, most supporting the programme. He will have read the growing number of newspapers levelling accusations of whitewash .

Doubts on WMD, the root of Gilligan's story and Campbell's war on the BBC, are increasing and Dyke and Gilligan have been set loose to carry on their defence of themselves. One distracting battle that cost the life of a dedicated scientist is over, but the debate over why Britain went to war in Iraq is back where it started and the BBC will still be in the front line asking the awkward questions.

PART TWO

The heart of the matter: Did Iraq have WMD?

There's plenty of evidence that Saddam had ditched WMD, but little to show how the Blair government came to a contrary conclusion. By Investigations Editor **Neil Mackay**

TONY BLAIR and Alastair Campbell are clinging desperately to their story that Iraq had an arsenal of weapons of mass destruction (WMD), but they are members of an ever dwindling club. In America, WMD claims are unravelling fast. David Kay, the head of the Iraq Survey Group picked by the CIA to find banned weapons in post-war Iraq, has come out and said “we were all wrong”.

Then Condoleezza Rice, President George W Bush's national security adviser, said last week: “I think that what we have is evidence that there are differences between what we knew going in and what we found on the ground.”

Secretary of state Colin Powell has also said that Iraq may not have had WMD. His former chief weapons expert, Greg Thielman, has accused Bush and Blair of failing to give an accurate picture of intelligence on Saddam's WMD. The “political leadership” in both countries distorted the Iraqi threat and the claim that Saddam could deploy WMD in 45 minutes was exaggerated, he added. Thielman also said Iraq was not a threat. And Rolf Ekeus, former head of Unscm, the UN special commission in Iraq, blamed the heads of UK and US intelligence agencies for “trying to play up to their political masters”.

Then there's US Defence Secretary Donald Rumsfeld. He said in a report to the Senate armed services committee: “The coalition did not act in Iraq because we had discovered dramatic new evidence of Iraq's pursuit of WMD. We acted because we saw the evidence in a dramatic new light – through the prism of our experience on 9/11.”

Two former chief UN weapons inspectors, Hans Blix and Scott Ritter, have also questioned claims that Iraq had WMD. Ritter further claims Britain “sexed-up” intelligence to make it look as if Saddam was armed and dangerous. Before taking up his new position, Charles Duelfer, the former UN weapons inspector appointed by the CIA to replace Kay, said he did not believe banned weapons would be found.

A recent report by the British American Security Information Council pours cold water on the WMD claims and the Carnegie Endowment for International Peace says the threat from Iraq's WMD was "systematically misrepresented".

The Iraqi scientists who built Saddam's WMD in the 1980s have also weighed in to the fray, saying Blair lied to the British people over Iraq's capabilities. Dr Emad Shamsaldi said Blair should resign, adding: "We had no WMD when Britain and America invaded. I should know because I spent much of the 1980s involved in Iraq's nuclear programme." Shamsaldi also said UN inspectors accepted there was no WMD and that David Kelly contacted his department last year saying he was unhappy with what Bush and Blair were saying.

On Friday, Bush himself said he wants to know "the facts" about why WMD hadn't been found. Bush, the commander-in-chief of the US armed forces, has unsparingly told the world for the last year that Saddam was armed to the teeth with WMD, but now he seems vague on what the threat actually was.

All of which makes Blair's insistence that WMD exist look a little desperate.

Last week, intelligence chiefs told the *Sunday Herald*, ahead of the Hutton report, that they would not be blamed for intelligence failures. They said they had been politicised and pressurised into cherry-picking intelligence to justify the war. There has also been CIA dissent. David Albright, an ex-colleague of Kay, said claims about Iraqi weapons were questioned by many intelligence experts.

The UK intelligence community is getting its side of the story in early because if it comes to pass that there was no threat – no justification for the war – the politicians will have to blame the quality of the intelligence they received. Blair has already said that his belief that Iraq had WMD which posed a threat was based on intelligence reports. What the spies are saying is that they were sceptical about WMD claims; were under government pressure to provide intelligence that Iraq had WMD; that damning intelligence was selectively chosen; intelligence that might have worked against the build-up to war was sidelined, and that intelligence had become politicised under Labour.

Among the evidence that Hutton either ignored or decided was not relevant was an e-mail sent from Danny Pruce, a Downing Street press officer, to his boss Alastair Campbell, which said: "Much of the evidence is largely circumstantial so we need to convince our readers that the cumulation of these facts demonstrate an intent on Saddam's part." Phil Basset, a senior special adviser to the PM, said the document was "intelligence-lite" adding: "We've got to find a way to get over this by having better intelligence material." Downing Street, it seemed, was also pressurising John Scarlett, the former MI6 officer who chaired the

joint intelligence committee (JIC), which was supposed to have sole ownership of the dossier detailing the case for war. Spies were told: “Number 10 ... wants the document to be as strong as possible within the limits of the available intelligence.”

Campbell, who chaired intelligence meetings, asked Scarlett’s team to strengthen nine passages in the dossier. Scarlett, who Campbell called a “mate”, wrote back saying: “We have been able to amend the text in most cases as you proposed.”

Jonathan Powell, Blair’s chief of staff, asked the JIC to toughen up a passage which read: “Saddam is prepared to use chemical and biological weapons if he believes his regime is under threat.” It became: “Saddam is willing to use chemical and biological weapons.”

Sir Rodric Braithwaite, who preceded Scarlett as head of the JIC, has warned that intelligence officers “have to avoid getting into the magic circle” which surrounds the PM. He thinks the JIC, under Scarlett, became an unwitting political tool to rally a sceptical public. “It’s not (the JIC’s) job to fiddle with documents in order to make them more presentable,” he said. “If they start doing that, then instead of analysis, which is their job, they get involved in presentation, and presentation means not falsifying the facts but presenting them in an order which is designed to produce a particular impression on the audience. It is ceasing to be objective, it’s becoming an advocate.”

One example of the corrosion of objectivity is Operation Rockingham, a covert “dirty tricks” unit exposed by the *Sunday Herald* last summer. It was designed to produce misleading intelligence that Saddam had WMD. This would give the UK a justifiable excuse for war.

It was established by the MoD’s Defence Intelligence Service in 1991 to “cherry-pick” intelligence proving an active WMD programme and to ignore or quash intelligence which showed that Saddam, compliant with UN demands, had destroyed or wound down stockpiles. David Kelly was also a key figure in Operation Rockingham, whose staff wrote reports for the UN Security Council and were, therefore, able to influence decisions on Iraqi sanctions. Ritter hinted that Kelly may have helped overstate the threat from Iraq, saying: “Kelly became Rockingham’s go-to person for translating the data that came out of Unscm into concise reporting. Kelly had a vested interest in protecting his image, which centred around his exposure of an Iraqi bio-weapons programme that had to continue to exist for him to hold centre stage.” Another example of skewed objectivity was MI6’s Operation Mass Appeal which saw spies plant stories about Iraqi WMD. Most have since been described as “garbage”.

Air Marshall Sir John Walker, the former chief of defence intelligence, said it was clear that

claims about Saddam's WMD capabilities were "wrong", and he also scorned the idea that intelligence chiefs were not influenced by Number 10.

There is now mounting pressure in Britain and America for wide-ranging inquiries into the alleged exaggerations that took the allies to war. Labour, LibDem and Tory politicians want an independent inquiry. Shadow foreign secretary Michael Ancram called on Blair to explain why he still believed the WMD intelligence and pressed for a full inquiry into the lead up to the Iraq war. He said: "It seems Tony Blair is the only person still certain that weapons of mass destruction will definitely be found. He must explain why he is the odd man out and produce evidence as to why."

Robin Cook took another swipe at Blair saying the PM should admit the intelligence he presented to parliament on Iraq was "wildly wrong". Cook, who resigned as former foreign secretary over the war, added: "Now that even the White House has admitted they may have got it wrong, it's embarrassing to watch our government still trying to deny reality. The game is up."

Ex-foreign office and defence minister Doug Henderson has also urged the government to "clarify its position", asking: "Does Britain now accept, as the US government now seems to believe, that WMD will not be found?" LibDem leader Charles Kennedy and Tory leader Michael Howard also backed an inquiry. Blair's spokesman brushed aside the calls saying: "The PM has said that he did believe the intelligence was right and he did believe there would be an explanation ... The (ISG) is still pursuing its work and we should wait for that."

In the US, government loyalists have poured scorn on the reasons for war. One senior Republican said: "They've made a pretty huge mess of it. They wove this giant story, based on intelligence assessments that, in hindsight, were wrong." The White House, however, fears any inquiry would spin out of control in an election year. It could also spin wildly out of control in the UK as well. Prosecutors at the International Criminal Court at The Hague are to consider a request by an international body of lawyers to investigate Blair for alleged war crimes. Former defence minister Peter Kilfoyle has asked the Commons library for a briefing on whether impeachment was still part of the UK constitution, and was assured that it was. Senior Tories have also let it be known that they would favour the impeachment of the Prime Minister.

The unravelling could begin sooner than we think. Blair is to be put on the spot by the Commons liaison committee on Tuesday. Labour committee member Donald Anderson said Blair would be asked whether he is the "last person to believe the intelligence assessment". Sir Richard Dearlove, head of MI6, will soon be summoned before the

intelligence and security committee to give more evidence on why he believed the WMD intelligence.

The dilemma for the government is that it is now trapped by the Hutton report. Hutton found against the BBC and heads rolled; if it is eventually dragged out of the government that there were no WMD, or that the intelligence services were encouraged to exaggerate the threat, or that lies were told, then the blood-letting at the Beeb could look like a playground punch-up in comparison to the savage harvest that would unfold in Whitehall.

WHAT THEY SAID THEN ... AND NOW

George W Bush – January 29, 2003: "Twelve years ago, Saddam Hussein faced the prospect of being the last casualty in a war he had started and lost. To spare himself, he agreed to disarm of all weapons of mass destruction. For the next 12 years, he systematically violated that agreement. He pursued chemical, biological and nuclear weapons even while inspectors were in his country."

George W Bush – January 30, 2004: "I want the American people to know that I too want to know the facts. I want to be able to compare what the Iraq Survey Group has found with what we thought prior to going into Iraq."

Condoleeza Rice – January 23, 2003: "Instead of a commitment to disarm, Iraq has a high-level political commitment to maintain and conceal its weapons, led by Saddam Hussein and his son Qusay, who controls the Special Security Organisation, which runs Iraq's concealment activities."

Condoleeza Rice – January 29, 2004: "What we have is evidence that there are differences between what we knew going in and what we found on the ground."

PART THREE

The credibility gap:

Why is there is a chasm between what we expected from the inquiry and what we got? For the answer, look to the author's background, says Political Editor **Douglas Fraser**

IT WAS probably the longest and most momentous mumble in British political history, monotonously sifting evidence and torturing sentences with layers of legalistic, subordinate clauses. Without the drama that might have accompanied the subject matter of suicide, weapons of mass destruction, war and the Prime Minister's future, resting precariously in Lord Hutton's hands, what really got him fired up came after the completion of his prepared text.

The learned and noble lordship "deplored" *The Sun's* publication of a leaked account of his report on Wednesday: "As is all the more regrettable, the newspaper published this report ... when the public only had to wait half a day before I published the full report. I am now giving urgent consideration to what investigative and legal action I should take against the newspaper and its source."

It was a brief, angry postscript to a long report. But it betrayed the problem at the heart of Hutton's report: if he cannot understand what drives a paper to run a scoop, and if he thinks he can take legal action against it for doing so, he does not begin to understand the process of journalism on which he had just passed such a strange judgment. *The Sun's* luscious, flame-haired editress, Rebekah Wade, is no doubt quaking at the prospect of legal action by such an eminent lawyer. But under which law, m'lud? And which planetary jurisdiction would that be on?

Gavyn Davies, exiting the BBC chairman's office, observed "you can't pick your referee" – though it has been pointed out that Tony Blair had done precisely that in selecting Hutton. In the heat of summer, and with the shock of David Kelly's suicide, that was a decision by the premier which was universally regarded as impartial and statesmanlike. Law lords, after all, have increasingly become the means by which political knots are unpicked. Until now, that has been broadly welcomed.

Hutton was the chap to get to the bottom of things; respected judge in the Lords; from Northern Ireland, and unencumbered by metropolitan establishment elitism; faced down

terrorists from the bench in his native province; Kirk Douglas looks, just the right amount of intimidation over his half-moon specs. This guy was from central casting, and born to be the lawman, striding into town to crack down on the hoodlums. One of the strangest twists of a strange week in politics has been the slow but sure unravelling of that storyline.

Davies may have departed for an early bath graciously, and remaining players, such as acting director-general Mark Byford, struggled to avoid criticism of the report while pointedly refusing to accept its findings. But to the watching media and public there was a dawn of realisation that the Ulsterman in whom they had invested so much trust, blew the final whistle and only then made clear that he was scoring according to rules no-one knew. The BBC were expected to abide by the strictest of offside laws, while whatever rules the government wished to use would be just fine with the ref.

So how can we explain the outcome? And given the gulf between inquiry image and report reality, who is Baron Hutton of Bresagh in the County of Down?

He was born James Brian Edward Hutton in June 1931, the son of a rail executive and attended an exclusive prep school and won a scholarship to Shrewsbury public school in England. Another scholarship took him to Balliol College, Oxford, before he returned to practise law in Northern Ireland from 1954 onwards.

For all his Ulster roots, he was not without his establishment influences. His career blossomed at a time of challenge for law and government administration in Northern Ireland.

As the Troubles began in 1969, he started work as a junior counsel for the Stormont administration. He became legal adviser to the Ministry of Home Affairs in 1973 when terrorism was being countered with internment. After the devolved administration was abolished in favour of direct rule, Hutton was prominent in defending the British government when internment was challenged at the European Court of Human Rights.

In 1979, he became a judge of the High Court of Justice in Northern Ireland, and nine years later was made the Lord Chief Justice, remaining in that post until 1997. Then he was appointed one of the 12 judges who sit at the House of Lords.

Hutton was neither noted by observers of Northern Ireland law as one of the more reactionary figures, nor was he an upsetter of applecarts. Irish Republicans highlight his decision in 1986 to acquit an officer of the Royal Ulster Constabulary on trial for the killing of Sean Downes, with the evidence suggesting a plastic bullet had been fired at close range.

On the other side of the audit, Sir Brian Hutton, as he then was, made a notable judgment in 1992 in the case of Republican Patrick Nash, on trial for 22 charges including plotting to

murder four judges among other senior figures, and aiding the murder of a taxi driver. Nash claimed to have been tortured, and although Hutton judged him to be “an accomplished liar”, he could not be sure the RUC had not beaten him. The accused got the benefit of the doubt and was acquitted.

Significant to understanding Hutton’s world view are the unusual circumstances in which he worked. The so-called Diplock courts were used through the Troubles for terrorism trials in which judges ruled without any juries, because jurors could be too easily intimidated.

Judges had been targets for paramilitaries, and Hutton spent nearly two decades in a cocoon of high-security protection. According to a profile in the *Belfast Telegraph*, a former student said of him: “He is the very epitome of a judge. He doesn’t have much contact with ordinary people – how could he have? He dresses conservatively and always wears a hat. Yet he is the fairest man I know.”

He is known to have been the most conservative of the 12 law lords. Through this period, Hutton was, of course, much too wise to express political opinions. But in the context of Northern Ireland, one example of his legal opinion stands out as making his conservative inclinations clear. When handling a 1999 legal challenge by two Republican lawyers to the requirement that Queen’s Counsel should take an oath of allegiance to the Crown, Hutton wrote to the Attorney General, warning: “If you decide to remove the requirement for a declaration, it will appear that you are being influenced by political pressure to alter the procedure relating to an office which links Northern Ireland with the Crown”.

You can read that two ways: either ingrained conservatism, or his determination to withstand political pressure.

One suggestion is that such defenders of the Unionist status quo in Northern Ireland were no fans of the BBC. In the 1980s, the corporation was criticised by, among others, Margaret Thatcher, for giving “the oxygen of publicity” to the IRA, leading to a broadcast ban on the voice of anyone speaking on its behalf. It is worth at least asking if Hutton developed an antipathy to journalists who were then trying to present a balanced view of the Troubles, with the BBC being most criticised because it was most prominent.

What clearly underpinned his judgement on Wednesday was a negative view of the media. Dr David Kelly was criticised for unauthorised contact with it, despite no weight being given to his previous authorised briefings. There is a nod to the value of investigative journalism in a democracy, but only on condition that nothing false is reported. His definition of falsehood is anything that cannot be proved to be true. And in the frequent absence of such proof, the role of the informed source in journalism is given no

consideration at all. This was a judgment where the precise rules of evidence in court clashed with the gathering of information from a secretive government. And underlying the judgment was an implicit view that journalists are unreliable, untrustworthy and predatory outsiders, hostile to the smooth operation of government, the barbarians at the gates of good order.

When it came to judging what was said in the crucial meeting between Kelly and Andrew Gilligan on May 22, 2003, in the Charing Cross Hotel, Hutton admitted he did not know. Without Kelly available, all he had was Gilligan's word and some unreliable notes he had made.

The judge chose to ignore clear evidence from Newsnight journalist Susan Watts – recorded, he notes with a touch of unworldliness, “on a tape recorder” – that supported Gilligan's account of events, choosing to disbelieve the reporter.

There were other startling omissions of evidence. The attack on the BBC's complaints procedure took no account of the context, in which the corporation faced a blizzard of complaints coming regularly from Alastair Campbell's office, of which the one about Gilligan's May 29 broadcast was oddly slow to gain momentum, culminating in the communication director's broad-brush assertion in front of a Commons committee that the corporation was running an anti-war agenda.

If Hutton took any account of the evidence he heard from intelligence sources of concern that the Iraq dossier was being “over-egged” and “spun” – assertions which came from defence and weapons experts – he appeared to ignore it. His only hint at the pressure being brought to bear on intelligence officers to toughen the wording of the dossier is the suggestion that they might have given “subconscious” weighting to political considerations, though he only raised this possibility to dismiss its significance.

He chose not to question whether it was normal or appropriate for the Prime Minister and his communications chief to involve themselves so closely in the news management of Kelly's naming, superseding Ministry of Defence disciplinary procedures. Nor does he question the assertion that Kelly's name would inevitably emerge, when set against the interest the government had in ensuring that it did. And in contrast with his meticulous attention to precise language in his judgement, there is a glaring absence of any consideration to the rewriting of the dossier to shift the intelligence suggesting there “may” be an Iraqi capacity to launch an attack within 45 minutes to the assertion that it had that capacity. Nor does he challenge the downplaying in the rewrite of such weapons being only available for battlefield use.

It is important, too, that he chose to make no judgment on the reliability of the intelligence feeding into the dossier. Since July, when the inquiry was set up, that has become an ever more difficult issue for the government – made more so by embarrassing admissions in the past week from Washington that the key weapons inspector reckons intelligence got it wrong, and a president who empathises with public confusion.

Was there a conspiracy to draw the Hutton Inquiry remit so tightly that the big, awkward questions about the path to war could be avoided? Probably not. It should be remembered that this inquiry was set up within hours of the shocking news about Kelly's suicide. There was little complaint then that it lacked a sufficiently wide remit. It is only in light of recent events that the other questions have become more urgent.

In retrospect, what seems so strange about Hutton is the mismatch. On one hand, there was an inquiry which gained universal acclaim for its impartiality, tough questioning of all witnesses, probing into places that both government and BBC would prefer not to be illuminated, and all with a speed not normally associated with lawyers: on the other hand it was a judgment which has none of those properties.

Judge Alan Levy, QC, commenting on the report, said: "I think whitewash might be too strong, but I'm uneasy that criticism was not attached to other parties. It seems the BBC has every reason to cry foul."

The problem Hutton now faces is that his inquiry gained so much publicity and coverage that many others can claim to have as much expertise as he does in reaching very different conclusions.

Notably, that includes journalists, through whom Hutton's findings – along with the government's delight at being so comprehensively exonerated – are necessarily mediated. Even within newspapers which can be expected to be hostile to the BBC role in the broadcast marketplace and its liberal leanings, there has been no way to avoid the various responses of puzzlement, incredulity, outrage and injustice.

EVIDENCE THAT HUTTON IGNORED

* Jonathan Powell, the Number 10 chief of staff, said he had "a bit of a problem" with a passage suggesting Saddam Hussein would only use weapons of mass destruction if attacked.

He wrote: "I think you should redraft the para." John Scarlett, chairman of the Joint Intelligence Committee, changed it to state Saddam was "willing to use

chemical and biological weapons”.

Alastair Campbell suggested 15 changes. He described a passage saying Iraq “may be able” to deploy WMD within 45 minutes as “weak”. Scarlett later changed it to “are able to”. Hutton, however, concludes only that Scarlett and other members of the JIC may have been “subconsciously influenced” by Downing Street into making the wording of the dossier stronger.

* During a tape-recorded interview with Dr Kelly by Newsnight journalist Susan Watts, the doctor gave statements that supported what Andrew Gilligan claimed Kelly had said to him during their meeting on May 22 in Charing Cross Hotel. Despite this, Hutton chose to disbelieve the Today reporter.

* During evidence, Richard Taylor, Geoff Hoon’s special adviser, said the defence secretary was present at a meeting to discuss a “naming strategy” for Dr Kelly. Mr Hoon had not mentioned this in evidence.

*Sir Kevin Tebbit, chief civil servant to the MoD, said to the inquiry: “I was told the Prime Minister was following this very closely indeed ... the intelligence was he wanted something done about the individual [Dr Kelly] coming forward.”

PART FOUR

Blair's great escapes

It was meant to be his toughest week in politics, but while Tony Blair has emerged victorious, he is in no way unscathed. Westminster Editor **James Cusick** reports

IT WAS the predicted political funeral that turned into an escapology festival. Five narrow votes clinched victory, a whiter-than-white, squeaky-clean, guilt-free verdict from Lord Hutton and tear-filled resignations to enjoy from his BBC enemies as they fell on their swords. If this is what can happen in the toughest week of his political life, Tony Blair can be forgiven for believing he is invincible.

But in the wake of his Commons victory, and amid the stench of panic that is now emanating from the corporate corridors of the BBC, Blair's victories seem to have been achieved with hidden costs whose price has yet to be determined.

In Blair's moment of triumph at the dispatch box on Wednesday, he told a disarmed and disappointed Conservative leader, Michael Howard, that: "Yesterday was a test of policy and he failed. Today is a test of character and he failed that too." Blair, however, could just as easily have turned his accusations around and faced them himself. The government may have won the vote on tuition fees by five votes – 316 to 311 – but it was no policy triumph for a party with a 161 majority.

As the tension began to ease visibly from Blair's face and his body language in the Commons began to resemble a death-row inmate who'd just been marched back to his cell after a last-minute reprieve, Blair seemed to know his escape would be followed by an equally impressive leap to freedom when Lord Hutton delivered the next day. The heightened enjoyment going on inside Blair's mind would have been immense.

But just how hard Blair had to work behind the scenes, and what that will cost him in terms of authority, is only now beginning to be teased out. Tony Blair may still be the Prime Minister, but "the adventures of Tony Blair", as one MP put it, "are now over".

At 12.40pm on Tuesday, when the education secretary opened the debate on top-up fees for the government, Blair was more confident of winning the vote that would take place in just over six hours' time than he had been for a month. Although the Deputy Prime Minister John Prescott had told the BBC's Today programme that morning that the

government was on course to lose the vote, Prescott did not know that Blair, the Chancellor Gordon Brown and one of the main architects of the rebellion, Nick Brown, were about to meet in hastily arranged peace talks.

Nick Brown is widely regarded as the Chancellor's lieutenant on the back benches; fiercely Brownite and loyal to the Chancellor – normally. But on variable tuition fees, Nick Brown was saying, even on Monday night, that this was “a matter of principle”.

Gordon Brown had, it was said, previously tried to reel in Nick Brown. Brown, a former chief whip, appeared not only to resist his master's advice, but to be recruiting and encouraging the rebellion. He was also resisting the notion that a defeated vote on tuition fees would be a disastrous result for the government. When the three met early on Tuesday morning, the tone of the Chancellor's advice is said to have changed. One source said: “The meeting was open, frank and brutal and Nick Brown was left with no choice. It wasn't a long discussion.”

The implication is that the whips' office arithmetic was explained to Brown. The government would lose the vote and because of Nick Brown's loyalty to Gordon Brown, the Chancellor would be blamed for the defeat, the party would be damaged, and thus any prospect of a bloodless succession, with leadership passing to the Chancellor, would be in jeopardy. Brown was ordered to publicly change his mind and to make the announcement as soon as he could.

When Tom Kelly, the Prime Minister's official spokesman, spoke at 3.45pm to parliamentary journalists, he came prepared to knock down the excuses that Brown had given for changing his mind. By that time Blair and his advisers had been reading Hutton for almost three hours and knew Blair was off all hooks. Brown of course had mentioned nothing of his meeting with the Prime Minister and Chancellor, instead saying he'd been told of last-minute new concessions.

Kelly said this was all nonsense. Talk of new money being on the table? There was no new money. Talk of an independent inquiry looking at the impact of fees? There was no inquiry, merely a department of education report. Talk of a review of the entire idea of variability (which Brown had said was crucial in getting him to change his mind)? No, there was no such offer. Kelly was clear the review would take place three years after variability had been introduced, adding: “There are no new concessions.”

In his speech during the debate, Nick Brown said he still had his “four-fold” objections to the bill as it stood. Although he insisted his views had not been influenced by Gordon Brown, they had been. Another back-bench colleague said: “This re-defection back to the

government was not that surprising. Gordon Brown knew a few votes could make a crucial difference – to Gordon Brown. And Nick Brown’s principles? Oh Christ, what were they again, I forgot.”

Blair’s political instinct, developed in nearly 10 years as leader of the Labour Party, told him that victory, even by one vote, was victory nonetheless. But needing only 81 to vote against the government, and the Labour revolt only falling a handful short of that, showed the scale of split on the government benches. And while Gordon Brown was shown to have less of an influence on the outcome than many in the PLP had expected, what Brown had shown was a clear ability to determine the outcome of such close votes. Just as Blair knows one vote was enough to win, he also knows one vote was enough to lose.

The sight of one of Brown’s close supporters, pointing to a rebel who had apparently had a change of mind and then quietly saying “what a bastard”, indicates the complexity of Labour’s pro-Brown, pro-Blair split. But one former Cabinet adviser was clear on what mattered. “Gordon couldn’t be seen to have contributed to the defeat, no matter if that were true or not. That would have meant open disloyalty and the party would have made him pay for that.

On Tuesday morning, nobody knew Hutton would be so pro-government. But there was a possibility that, had Blair lost the education vote, with Gordon seen as a contributing factor, then had Hutton gloriously cleared Downing Street – as it did – Blair would have had every justification in getting rid of the Chancellor. Would he have done so? Hell knows. But what is clear is that Brown turning Brown made the difference – and that weakens Blair not Brown.”

By Friday, having survived the knife-edged tuition fee vote by five, and then escaping all criticism in Hutton, Blair attempted his version of public contrition. In future, he would do things differently, he had no remaining secret plans, there would be more social democratic context to his domestic agenda, he would learn this lesson, there would be no more top-down policy. Translation? “I’m really, sincerely, sorry. I mean, I promise I’ll ask first before doing anything else, honest.”

But this apology-in-trust failed to disguise that although he was still Prime Minister, although he was still in power after the ultimate 24-hour test of his premiership, his authority was weakened and the policy “adventures” would stop. Another MP said: “Blair has been leader since 1994. This summer he’ll have been running the Labour Party for 10 years; a decade at the top. And there is already speculation that is the focus of the deal that’s been done with Gordon. Blair survived the week, kept his reputation and his record and

kept the party at least unified from the outside. Last week that looked a good outcome.”

The extent of Blair’s eroded authority was beginning to show itself, with the champagne glasses barely dry from the post-Hutton celebrations. A strengthened Blair would have seen little advantage in gloating over the post-Hutton resignation frenzy of Gavyn Davies and Greg Dyke – both one-time friends of the Blairs – and then Andrew Gilligan himself. A strengthened Blair would have reeled in Alastair Campbell, who was positively revelling in the blood-spilling and encouraging more. And a strong Blair could have personally offered reassurances that a rudderless, demoralised BBC had not been a prime government objective. Instead, Tessa Jowell, the culture secretary, offered lightweight reassurances about the BBC’s future with John Reid, the health secretary, playing again the high moral card in his hushed serious tones.

But Blair is paying for Hutton’s complete exoneration. In a kind of reverse revenge, media and political attention has returned to the one issue Blair has resolutely avoided post-war. The question Hutton said he wouldn’t address, is being re-addressed by the media given the extraordinary noises now coming out of Washington on Iraq’s weapons of mass destruction.

A weakened Blair will also embolden his Cabinet colleagues to demand that their version of how to return lost trust and an air of competence to the government is given full consideration.

In an interview with The Times yesterday, Peter Hain took advantage of the post-Hutton vacuum by demanding that Blair honour commitments in Labour’s last election manifesto. Hain, the leader of the Commons, revived the debate over the shape of the reformed House of Lords. He insisted the government should “be seen to keep its promises”, adding: “There is a trust issue for the government and a trust deficit as a whole.” Hain, with a reputation as a maverick able to speak his own mind outside the remit of collective Cabinet responsibility, has in the past delivered unauthorised views on tax and Europe. His latest outburst appears timed to put the Lords reform issue back into public view.

But with Blair’s authority dented, Hain’s resurrection of an issue Downing Street thought it had buried or kicked into the long grass, indicates other issues – such as the UK’s side-lined entry to the euro – could resurface.

Hain told The Times he was concerned over a second chamber that was completely appointed – or filled with “Tony’s cronies”, as critics have suggested. But on Blair’s wider problems, Hain said the government had to accept some blame of what he called the “corrosive cynicism” inside Britain’s political culture. He suggested that if the government,

the media and the opposition “did not solve the problem together” it would be a “problem for democracy”.

However, in the week that he survived a Commons vote and cleared the hurdle of Hutton, only to find himself back to square one on the issue of Iraq’s missing WMD, a philosophical analysis of Britain’s democratic deficit might not head Blair’s priorities. An invincible Prime Minister always has better things to worry about.

COMMENTARY

Mistakes can be worth making

Lord Hutton's criticism of Andrew Gilligan's report should not be allowed to stifle investigative journalism. By **Iain Macwhirter**

Since contrition is the order of the day, let me take this opportunity to apologise, unreservedly, for errors in my coverage of the Hutton Inquiry. Lessons have to be learned. I now realise I was wrong to believe that a 70-year-old Northern Irish High Court judge was likely to give an even-handed verdict on the Kelly affair. However, I am not going to accuse Lord Hutton of being a malign hatchet-man from the planet whitewash. We have Rod Liddle to do that. Nor am I going to indulge in 20/20 hindsight and try to pretend that I foretold all of this six months ago. I didn't. I was simply wrong. Perhaps I should just sack myself, here and now.

It is often sobering to re-read what you've written about a story like this. I said that the Hutton Inquiry was a model for future investigations of the conduct of government. That the evidence published in the course of the hearings told us more about the inner workings of government than the Freedom Of Information Act. I even said that Lord Hutton was precisely the kind of independent, untouchable, impartial figure needed to restore public respect for politics.

Strangely, I find that I still hold to most of that, even though Lord Hutton's verdict hasn't restored that public respect. More than half the population are more inclined to trust the BBC than the government despite Hutton's condemnation of the corporation's journalism, according to polls in *The Guardian*, *Daily Telegraph* and the *London Evening Standard*.

Hutton's verdict was unashamedly one-sided. Had it been a court ruling, there would no doubt have been an appeal. But, of course, this was not a court of law and there is no court of appeal. Nor was it a formal judicial inquiry, like the Scott Report into the arms to Iraq affair, which might have required more measured and balanced conclusions.

I suppose, in a way, Hutton was only doing what journalists do every day of the week. Pronouncing on an issue, laying down the law, exposing his prejudices. The report was one man's view. As a veteran of the original Widgery inquiry into Bloody Sunday, he clearly felt more comfortable with officialdom and gave it the benefit of the doubt where possible.

Along with most of the liberal establishment, the broadcasting organisations, the

opposition parties and large sections of the Labour Party, I had expected the BBC to come in for criticism for sloppy journalism. But I expected the other partners in the 'deadly dance of death', as the Kelly affair has been described, to come in for some criticism also.

But, there's no point in trying to replay the Hutton Inquiry. The evidence is all there on the website for anyone to look at. We accepted the rules, we accepted the referee, and I suppose we have simply to accept his ruling. The government has won a remarkable victory, against all the odds. The BBC lies shattered, headless, suffering the institutional equivalent of post-traumatic shock syndrome. The corporation will never be the same again.

The BBC's apologies have been so abject that it reminded the Russian press minister, Mikhail Lesin, of life under communism. "Statements such as 'we must now study the Hutton report carefully, learn appropriate lessons and implement relevant measures' from acting Director-General, Mark Byford", said Lesin on Friday, "are painfully reminiscent of what Soviet writers used to say in response to criticism from the CPSU [Communist Party of the Soviet Union] Central Committee".

Former BBC chiefs are appalled. Alasdair Milne, who was forced out as DG in the 1980s, says the BBC had simply panicked and that there was no need for Greg Dyke to go. I'm not so sure that is right. Dyke had to go because he could not bring himself to utter the craven apologies that the government was demanding. Under those circumstances his position was untenable. Moreover, he had been criticised by a semi-judicial inquiry.

How ironic, though, that it should be the man who brought us Roland Rat who ends up doing the decent thing. When can you last remember a politician resigning after being criticised? Ministers cling desperately to office amid failings like the Millennium Dome, the collapse of British Rail or – dare I say it – the non-appearance of weapons of mass destruction.

Ministers and civil servants are experts in covering their backsides with protective layers of protocol. They observe the rules of procedure and, by doing so, immunise themselves from blame when things go wrong. Like many, I thought the inquiry and the material it produced lifted a veil and allowed us to see how a government, intoxicated by its own hubris, could talk itself into going to war on a false pretext. But that wasn't how Lord Hutton saw it. Instead, he applied the standards of proof required in a court of law to a single piece of journalism – the infamous live 6.07am broadcast in which reporter Andrew Gilligan said that Number 10 'probably knew' the 45-minute claim was wrong. That was a mistake. Gilligan sexed up his own report. With hindsight, the BBC probably should have apologised for that aside, which was anyway corrected in later bulletins. But it wasn't a

hanging offence. In the context of the war of attrition from Alastair Campbell, it wasn't even a slap on the wrist offence.

If such strict standards of proof are to be applied to every story, journalism will become impossible. If there has to be a Hutton-style inquiry into every story before it can be written or broadcast, then news will grind to a halt. The public will not be informed that whistle-blowers like Dr Kelly are raising questions about the way the government was handling intelligence.

This is where the public right to know clashes with the requirements of formal accuracy. I don't want to suggest that hacks shouldn't get their facts right. Of course, they should double-check their information wherever possible. But sometimes it is simply impossible to find out for certain whether something is or is not true. The provenance of the 45-minute warning for example.

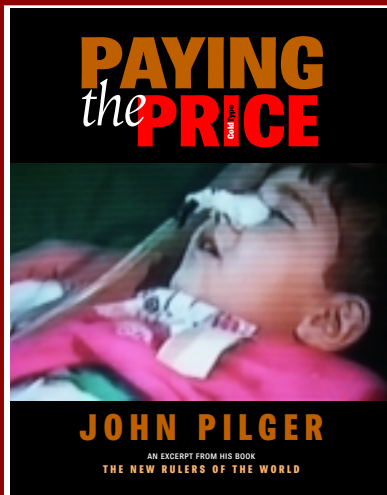
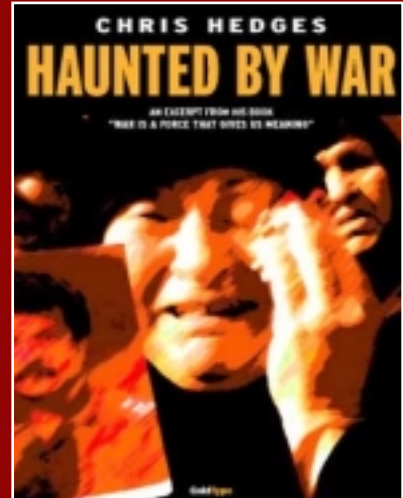
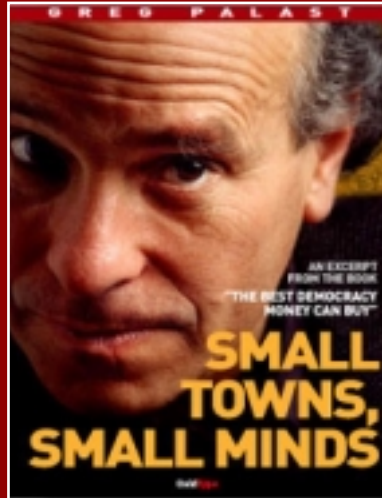
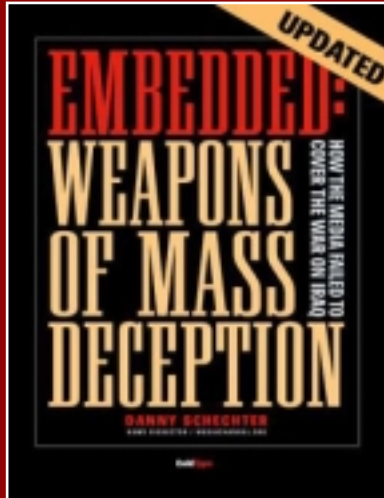
The fear now among editors and investigative journalists – as expressed by Greg Dyke on Friday – is that Hutton may have established a new legal precedent. That in future it will not be enough to accurately report what a source is saying in good faith. Yet journalists sometimes have to fall back on the reliability of their sources. Dr David Kelly was Britain's foremost authority on Iraq's WMD and had oversight of the dossier. If he felt it had been over-egged, then it was surely important that the public knew about it.

Gilligan's note-taking was not inspirational. He cut too many corners and expressed himself badly. But I have yet to find a newspaper editor or experienced journalist who would not have run his story, warts and all. Now he has left the BBC, I suspect he will have a long career ahead of him in print journalism.

So, where stands the BBC as he leaves? Shattered is too small a word for it. But I don't think TV interviewers should be reduced to asking ministers if 'they have something they'd like to share with the nation. Indeed, such has been the public reaction against Hutton's findings, the BBC may be in a much stronger position than it realises. The people seem to be on its side and so is much of the press.

There does need to be change, however – and this applies to all forms of political hackery. As the godfather of liberal journalism, Jon Snow, put it, the culture of cynicism in political journalism has become an obstacle to truth and understanding. Politicians aren't all crooks and liars. If journalists, especially on TV, continue to treat them as if they are, then the fabric of democracy is undermined. Maybe it took the catharsis of Hutton to finally persuade both sides of the political fence that relations have to be mended. At least until the next time.

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