MEDIA SPECTACLES OF LEGAL ACCOUNTABILITY IN THE REPORTING OF AN OFFICIAL HISTORY

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I. INTRODUCTION

In this contribution I consider how the Chilcot Inquiry affects our understanding of international law on the use of force. However, rather than adjudge the effect that the Inquiry process or its Report might have on the final assessment of the legality of the Iraq War, I offer some reflections on the media environment within which legal arguments were framed, presented and narrated. Such reflection calls attention to the situatedness of legal debate and the ways in which the question of international law – its prohibitions, exceptions, permissions and application – is always also a question of politics. And that the 'politics of international law' is not to be found only on an imagined 'international plane' but also in the somewhat artificially bounded 'domestic realm'.

This attention to mediated context calls into question a central assumption at the heart of much international legal scholarship on the use of force: the compliance pull of law and its apparent constraint on the exercise of sovereign power. Such scholarship suggests that international law has a constraining effect by influencing domestic politics, and that the repeated invocation of legal arguments will gradually pull states towards complying with the prohibition.[1] In their analysis, when governments make justifications for using force that are based on international legal arguments, this raises the burden on such governments, thereby limiting their range of options and often (but admittedly, not always) reducing the risk of war. Some scholars argued that states can become *socialised* towards compliance and part of this socialisation occurs through debate and institutional internalisation of international norms.[2] While a detailed engagement with this scholarship is beyond the scope of this contribution,[3] I foreground here the central assumption about the constraining effects of the prohibition. I suggest that if we look back to the legal justification of the Iraq War paying attention to the mediated nature of the debates over policy we see, or we might also see, the facilitative force of international legal arguments. In other words, if we look at the way international law is put to work we might re-orient analysis away from a compliance or constraint model towards a recognition of its use as a resource in political struggle.

This re-orientation takes up the idea that international law operates as a language with a grammar and lexicon that affects those deemed authoritative 'speakers of law'. Every articulation of international law represents a claim to authority: to decide on the scope of action and to empower the state to act as sovereign. But in analyses of these legal utterances

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[1] For examples see L Henkin *How Nations Behave: Law and Foreign Policy* (Council on Foreign Relations, Praeger 1968); K Raustiala and A-M Slaughter, 'International Law, International Relations and Compliance' in W Carlsnaes et al, *Handbook of International Relations* (SAGE 2002); AT Guzman, 'A Compliance-Based Theory of International Law' (2002) 90 California L Rev 1823. On the impossibility of a compliance-based theory of international law see B Kingsbury, 'The concept of compliance as a function of competing conceptions of international law' (1997) 19 Mich J Int'l L 345.

[2] See, eg, O Schachter, 'In Defense of International Rules on the Use of Force' (1986) 53 U Chicago L Rev 113; R Goodman, 'Humanitarian Intervention and Pretexts for War' (2006) 100 AJIL 107; M Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Cornell UP 2003).

[3] See further C Peevers, *The Politics of Justifying Force: The Suez Crisis, the Iraq War, and International Law* (OUP 2013), ch 2.

little attention, if any, is paid to the mediated context within which speech is articulated. By not attending to this institutional environment—specifically the place of the media in public political discourse—we might assume that *by its nature* international law acts as a peace-inducing constraint on military action, or alternatively is *inherently* militaristic, naturally allied to state or imperial power. Such a 'naturalising' account of international law does not recognise that institutional environments can shape our understanding of international law and the authority to wage war. Here, I emphasise the importance of media representations of international law that likewise shape our understanding of the operation of the prohibitory framework.

State institutions – legislative, judicial, executive – are impacted when a government decides to go to war, but how that impact is felt, and its legacy upon future decision-making, debate and institutional learning is not a straightforward process. Media representation of international legal arguments can have profound effects upon the legacy of a given conflict and the legal debates surrounding it. The Iraq War is an obvious case in which the cyclical re-examination of the question of legality, dubious intelligence, and lingering suspicions of government deception through over-zealous 'spinning' has had an effect upon how Britain today, and in the future, will remember the conflict. These lasting effects on public discourse and on the 'learning of lessons' are partly the result of the 'narrative form' of media communication.

The production of narratives frames our understanding of events and simultaneously constitutes the body politic by addressing a 'we' or differentiating a 'they'. This attention to the constitutive force of narrative recognises that the 'domestic' of politics is in part a construction, made and remade by the narration of news through an institution and medium that designates 'home' and 'abroad'. These designations are the structural framework to substantive news on 'public' or 'foreign' policy. Narratives are woven into the fabric of imagined communities and develop into shared collective memories of a particular event, calamity, or scandal. It therefore matters how those narratives are drawn, who authors them, and against what institutional backgrounds they are rendered.

In what follows I offer brief reflections on three phases of public debate in the UK: the autumn of 2002; the period between 2009 and 2011, when the Iraq Inquiry held its public hearings; and the summer of 2016, when the Report was finally published. I split analysis in this temporal way to draw attention to the distinctive debates that emerged around spectacular 'moments' that shaped and were shaped by media reporting. In selecting these moments, I pay particular attention to the disjuncture between private legal advice and public statements invoking legal authority; and to which voices became amplified or repressed in public debates at these different 'moments'.

During late 2002, media reports gravitated towards 'elite'[4] anxieties over the direction of government policy and the need to pursue disarmament through the United Nations. The uncertainties over government policy expressed by elite actors such as diplomatic, military and legal officials and experts represented a "sphere of legitimate controversy" and in this context of "elite dissensus" the media did not simply "manufacture consent" to policy. Instead, it reflected this dissensus by reporting on 'official sources' that questioned the new urgency in disciplining Iraq and the means by which this would be achieved.[5] The

[4] Social theorists have variously defined 'elites' (sometimes singularly as 'the elite' other times in the plural) as those with institutional and organizational authority in society. They often have privileged access to power through government bureaucracy, corporations, the media, and other state institutions. See eg. CW Mills, *The Power Elite* (Oxford University Press, 2000 [1956]); and G William Domhoff, *The Power Elite and the State: How Policy is Made in America* (Aldine de Gruyter, 1990).

[5] See DC Hallin, *The Uncensored War: The Media and Vietnam* (University of California Press, 1989) and application of this media theory to international affairs in P Robinson 'Theorizing the Influence of Media on World Politics', *European Journal of Communication* 16(4) (2001) 536.

government, we now know through the Inquiry's declassification process, was highly attuned to elite and public opposition that could be faced in shifting Iraq policy into a more aggressive mode. It therefore engaged in a media strategy to 'manage public perceptions'. This strategy included the production of the now-infamous September dossier, the publication of which was, I argue, intimately connected to the question of legal justification.

During the course of the Inquiry's hearings, two frames for understanding government policy on Iraq appeared to consolidate: that the war had been 'illegal' and that the public, Parliament, and the media itself had been 'misled'. This framing of the issues was then substantiated, and to a large extent sensationalised, through the caricaturing of heroes and villains in the dramatic revelations of government decision-making. This theatrical spectacle had at least two effects worth noting: it 'sold copy' on the apparent promise of legal accountability and punishment through the Inquiry's Report; and it sustained a particular account of international law, namely that it had been (illegally) ignored and manipulated by the government.

Finally, on publication of the Report, the media emphasised Blair's indictment for an illegal war, representing something of a false or at least misleading premise. The media constructed a villain who had been adjudged guilty in the Report, yet legal accountability remains elusive. And again the media focused on how legal advisers were the subject of a less than satisfactory process, reflective of the government's pursuit of US policy.

In each of these temporal phases of debate on Iraq policy, and particularly the question of international law's influence, I do not claim that the media 'got it wrong' against an 'objectively' more 'accurate' rendering of internal legal debate or argument. Instead, I suggest that we take account of the fact that the media had an important role in representing international law, legal advisers, and government legal justifications. Media representation is not somehow extraneous to the policy-making process, but folded into that process. The way media represents international law can therefore feed back into government decision-making on military intervention, but in ways that might sometimes be unpredictable and subject to the contingencies of framing and context.

The narrow focus on the British experience is not intended as a means of universalising these reflections, but instead is offered as an opening to further investigation through case studies or comparative perspectives with the aim of better understanding the operation of international law. Not every crisis, as we likely know by now, can reveal the critical questions to ask in international legal scholarship,[6] but perhaps the exhaustive and repeated examination of the Iraq War 'crisis' for British democracy reveals just how little is learned if we fail to account for international law as it works in a mediated world.

II. Grounding International Law: Media, Politics and Policy Processes

Grounding international law in a mediated environment entails acknowledgement of several features characteristic of that environment.[7] These include the cyclical nature of media narratives, a focus on discrete events, and the reliance (or dependency) on an ecosystem of official information. During the build-up to war in 2002, and also during the Inquiry's hearings and publication of its Report, these features had a constitutive effect on the way policy was presented, justified, and debated. Sometimes the effect could be registered in rather mundane form: the issuing of press releases, statements, or briefings; or more

[6] H Charlesworth, 'International Law: A Discipline of Crisis' 65 *MLR* (2002) 377.

[7] While contexts differ widely, and so these features are not claimed as universal, they nevertheless reflect the dominating (capital-driven) logics of media political economy. These features are drawn largely from a narrow focus on the British context —though they have significant overlap with the US model—and, as with the examination of international law as justification above, are ripe for comparative analysis and reflection.

dramatically in the recall of Parliament, sensational testimony, or conferences announcing the Report's publication. In other words, the mediated environment was the taken-for-granted context within which government decision-making and public debate would unfold and this had and continues to have important effects on the influence of international law.

The relationship between law, media and policy is often described as patterned by cycles of urgency, creating a sense of climax and hiatus that attaches to a particular policy or set of policy issues. The main production focus of institutional media is on news and the stories, headlines, and narratives to be selected as significant enough for reporting. News is relatively inexpensive journalism to produce: 'it avoids costly in-depth and controversial public affairs issues, and concentrate[s] on … the regurgitation of press releases and public comments by those in power'.[8] The deleterious effects of this cycle of superficial 'infotainment' have been well-documented with critical analysis focusing on the failure to inform public debate and consequent poor decision-making which affects public life.[9] As Robert McChesney argues, it 'makes democracy, the notion of informed self-government, less plausible'.[10]

Secondly, and intertwined with the cyclical nature of news, event-based reporting reflects an emphasis on the drama attaching to news stories. This dramatic aspect of events can result in demands for policy action and therefore act as a driver of policy change. This agenda-setting influence of media reporting came to be termed 'the CNN effect' with the advent of 24-hour news.[11] These 'constitutive effects' on public discourse and the influence this has on how war is understood have not gone unnoticed by those in power. For instance, in an interview with *The Guardian* in March 2003 Jack Straw said '24 hour news actually changes the reality of warfare … it is not just reporting it'.[12] Partly this influence reflects the powerful narrative device of images, whether moving or still, that can heighten public awareness but not necessarily enhance deeper understanding of complex issues.

However, the influence of media reporting is not solely due to this form of saturating news coverage. Media agenda-setting also reflect a shift away from political debate in formal theatres of debate such as Parliament to informal modes of political discourse such as press conferences, briefings and interviews. The development of government strategies for managing the news cycle and the event-based imperatives of a mediated public policy environment in the UK came to be termed rather infamously the 'politics of spin'. Spin relies upon sometimes aggressive briefings to journalists to generate 'positive news' or deflect

[8] RW McChesney, *The Political Economy of Media: Enduring Issues, Emerging Dilemmas* (NYU Press 2008) 456.

[9] For a classic and recently updated analysis see WL Bennett, *News: The Politics of Illusion* (10th edn, U Chicago Press 2016). Focusing on the issue of accelerating speed of 24-hour news, see H Rosenberg and CS Feldman, *No Time To Think: The Menace of Media Speed and the 24-Hour News Cycle* (A&C Black 2008). Specifically on war, see DK Thussu and D Freedman (eds), *War and the Media: Reporting Conflict 24/7* (SAGE 2003); J Der Derian, *Virtuous War: Mapping the Military-Industrial-Media-Entertainment Network* (2nd edn, Routledge 2009); and D Kellner, *Media Spectacle and the Crisis of Democracy: Terrorism, War, and Election Battles* (Routledge 2015).

[10] McChesney, *Political Economy of Media*, 456–7.

[11] In this contribution I do not interrogate further the distinction drawn between 'foreign policy' and 'public policy' that emanates from American political science schools, but do pursue the idea that the notion of crisis—or events—can substantively impact upon the development of policy. See E Gilboa, 'The CNN Effect: The Search for a Communication Theory of International Relations' (2005) 22 *Political Communication* 27; and more recently P Robinson, 'The CNN Effect Reconsidered: Mapping a Research Agenda for the Future' (2011) 4 *Media, War & Conflict* 3.

[12] For further detailed examination of war reporting, which includes extensive analysis of pre- and post-invasion reporting, see H Tumber and J Palmer, *Media at War: The Iraq Crisis* (SAGE 2004).

undesirable coverage of government policy, but it also relies upon the media's professional duty to report official sources in news production.[13]

Finally, the media requires 'official sources' in order to produce news. This dependence explains not just whether or not a story is covered, but *how* that story is covered. Media theorists examine different kinds of dependence that range from the routine (press releases, government briefings and authorised policy interviews) to the informal (through leaks); and connected questions of access.[14] Journalists need a relationship with government officials to gain access to exclusive reports and new or developing stories. They also have a professional duty to report 'official policy'. Numerous studies have shown that in the coverage of the Iraq War there was near total reliance on government-sanctioned sources.[15] The 'officialness' of these sources entails a requirement to report an 'authorised' interpretation of facts, events, and policy. A reliance upon 'official sources' can also mean, however, the seeking out of sources with significant claims to credibility through expertise, first-hand experience, or networked knowledge. The 'officialness' of these sources is tied to their status as 'insiders' or elites and so they can provide greater credibility and legitimacy in questioning or scrutinising government briefings or stated policy.

These sets of dependency relations bring into sharp relief questions of secrecy and security in the realm of use of force decision-making. Many media and intelligence theorists have pointed out that processes of accountability are severely curtailed if not outright extinguished when media operates in a 'crisis' situation where issues of national interest and security are raised.[16] This is partly due to self-censorship and partly due to the legal penalties imposed for 'leaking' information deemed classified or subject to legal secrecy.[17] In the UK self-censorship has long applied to, for instance, the reporting of the use of special forces through the operation of what is now called the Defence and Security Media Advisory Notice system (formerly the D-notice). The structural force of these systems of secrecy has direct influence on how wars or the planning of wars is reported. For instance, the 'invasion' of Iraq becomes marked as beginning with the spectacle of bombings on 19 March 2003 even though special forces had already entered Iraq's sovereign territory engaging in military action (so-called Operation Row, of which there is little mention in the Report).

In sum, institutional media is largely deferential to government policy, especially when it involves urgent issues of national interest or security. As will be discussed below, aspects such as the cyclical nature of news, the focus on event-based reporting, and particular ecosystems of official information often work in the government's favour to dampen scrutiny and critique of policy and its justification. In the relative absence of Opposition scrutiny of executive action, often but not always characteristic of the bipartisanship adopted in 'crisis

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[13] On which see further N Jones, *Soundbites and Spin Doctors: How Politicians Manipulate the Media and Vice Versa* (Indigo 1996); P Oborne, *Alastair Campbell: New Labour and the Rise of the Media Class* (Aurum 1999); N Cohen, *Pretty Straight Guys* (Faber & Faber 2003).

[14] For discussion of the relevant literature see J Palmer, *Spinning Into Control: News Values and Source Strategies* (A&C Black 2000).

[15] P Robinson et al, *Pockets of resistance: British news media, war and theory in the 2003 invasion of Iraq* (Manchester University Press, 2010); Tumber and Palmer, *Media at war: the Iraq crisis* (Sage Publications, 2004); P Robinson, P Goddard and K Parry, 'U.K. Media and Media Management During the 2003 Invasion of Iraq' (2009) 52 *American Behavioral Scientist* 678.

[16] G Hastedt, 'The Politics of Intelligence Accountability' in LK Johnson (ed), *The Oxford Handbook of National Security Intelligence* (OUP 2010). For an analysis of the Cold War period in Britain see C Moran, 'Intelligence and the Media: The Press, Government Secrecy and the "Buster" Crabb Affair' (2011) 26 Intelligence and National Security 676. For analyses of the US context see BH Sparrow, *Uncertain Guardians: The News Media as a Political Institution* (JHU Press 1999) and D Graber, 'The Media and Democracy: Beyond Myths and Stereotypes' (2003) 6 Ann Rev Pol Science 139.

[17] For a now classic account of how these dimensions work together, see D Vincent, *The Culture of Secrecy: Britain, 1832–1998* (OUP 1998).

situations' (except, notably, during the Suez Crisis), the media come to rely upon other 'credible' sources who might challenge the government's policy, evidence, or motives. Here, I argue, is where the relationship between the media environment and international legal justification becomes so critical. In the Iraq case, the media's scrutiny of government policy, at least in the context of the immediate threat of war, relied upon expert opinions to authoritatively challenge public government statements, legal and political. This resulted in publicising legal challenge in part because international law was conceived as the domain of a rather exclusive expertise. It had significant consequences for how opposition to the government's legal justifications was represented and, in turn, how legal rules were translated into media narratives. In the next section I return to the reporting of government policy in 2002 with a focus on reports of legal advice and legal challenge as part of an elite-focused questioning of Iraq policy.

III. 2002: MEDIATED DEBATE ON IRAQ POLICY

In this brief look back to 2002 I discuss two aspects of public debate on the government's policy: the dossier affair and the 'UN route'. Here, I suggest that the pursuit of the 'UN route' and lawful authority that flowed through it was intimately connected with the strategy of perception management exemplified by the September dossier. International law appeared to work as a constraint, raising the justificatory burden on government to demonstrate Iraq's threat and pursue collective security. It also provided the language, process and authority through which the government could sell and then impose its over-riding support for US policy "whatever" the circumstances.[18] I reflect upon the ways in which legal advice, legal challenge and legal debate manifested in news reports during this time. This reporting was characterised by a focus on elite opinion and 'official sources' that called into question the government's publicly-stated legal arguments.

From around July 2002, media reporting shifted noticeably towards the question of military intervention by the US and UK. Reports centred on the failures of UN negotiations over the return of weapons inspectors and an increasing sense that Iraq was now living on 'borrowed time'.[19] Concerns raised about the bellicosity of US statements and press briefings centred upon a fear that decisions would be taken without Parliamentary consultation. Reports in the summer of 2002 started referring to a 'dossier' on Iraq which the government would soon publish, and which would provide the legal framework for any war against Iraq.[20]

The September dossier would become a crucial spoke of the narrative cycle emanating from the government. Its spectacular publication, demanding the recall of Parliament from summer recess, sent the necessary media signal that Iraq was now an exceptional problem of international concern. Its publication and the news coverage of it made disciplining Iraq an urgent crisis. Media reporting of the dossier's publication followed the predictable anchor lines of drama and secret intelligence. Headlines focused on the '45 minute claim' and the onus now being on the Security Council to reach an agreement on doing something about Iraq.[21] Many published the dossier's foreword in full.[22] Front page

[18] Tony Blair's Note of 28 July 2002 to George Bush quoted in Report Vol 6.1 para. 448

[19] Ewen Macaskill, 'UN and Iraq fail in weapons talks' *The Guardian* (6 July 2002) <https://www.theguardian.com/world/2002/jul/06/iraq.usa>; John Keegan, 'Bush sets the clock ticking for war' *The Daily Telegraph* (12 July 2002), 14–15; 'After Saddam' *The Daily Telegraph* (12 July 2002) 27; Leader: 'Sleepwalking to war' *The Guardian* (13 July 2002) <https://www.theguardian.com/world/2002/jul/13/iraq.guardianleaders>.

[20] Peter Beaumont and Paul Beaver, 'Bush rallies US for strike on Iraq' *The Observer* (21 July 2002) 2.

[21] '"Saddam has plans for chemical and biological weapons that could be activated in 45 minutes" – Blair' *The Times* (25 September 2002) 14; 'Mad Saddam set to attack; 45 minutes from chemical war' *Daily Star* (25 September 2002) (see 'The key quotes' *The Daily Telegraph* (6 February 2004)

narratives ranged from militaristic gung-ho support—the *Sun*'s 'He's got em – let's get him'—to emphasising 'the purpose is disarmament'.[23] Immediate scepticism about the claims and pervasive effect of the dossier, at least in these mainstream press publications, appeared limited to letters to the editors.[24]

The production of the dossier was intimately connected to the question of legal justification. For one thing, as the Report notes, the dossier's description of Iraq's capabilities and intent became 'part of the baseline against which the UK Government measured Iraq's future statements and actions and the success of weapons inspections'.[25] Articulating a baseline tied to the UK intelligence services' assessment entailed the displacement of the UN inspectors' assessment. UN inspectors remained credible sources in determining Iraqi compliance but the media's reporting of the dossier evidence and intelligence assessments meant that the government's measurement would become the critical determinant of whether or not Iraq had complied with the disarmament regime. This, therefore, had a direct bearing on the government's scope to argue the justification of military action through collective security. It meant that the pursuit of the UN route laid out a case for UK (and US) policy that would privilege the government's decision because it would be represented as based on credible (though not wholly disclosable) evidence to which UN inspectors did not necessarily have such privileged access. Such a policy management exercise makes no sense—and would not have been possible—without a particular media environment within which the public were expected to receive and debate policy.

At the time one could argue that the dossier's production was largely successful, if we measure success as the achievement of the government's policy aim of driving media reporting and dominating news desks. In a quantitative analysis of mainstream print media during the Iraq debates of 2002–2003 Robinson and others found that the media were, perhaps surprisingly given the extent of post-invasion criticism of Iraq War policy, largely supportive of the government line.[26] The published data suggests that much of the material reported by the media in the lead-up to invasion mirrored press briefings issuing from No 10. Debate over government policy that was expressed in the press tended to figure around senior intelligence sources—as with the questions raised about the September dossier—or debate around the legality of justification, in particular the question of need for versus desirability of the UN route. In other words, challenge came on the basis of law and evidence but these two elements of policy did not emerge in media reporting as 'abstract' questions. They were firmly tied to the sources informing news production, and to the events timetable managed by the government down the UN route.

<http://www.telegraph.co.uk/news/uknews/1453597/The-key-quotes.html>); George Jones, 'Why Saddam must be stopped, Blair wins support for action from reluctant MPs; Dossier reveals Iraq can attack in 45 minutes' *The Daily Telegraph* (25 September 2002) 1.

[22] 'Iraq Dossier – Before 1998 – Since 1998 – Blair – Why Saddam and his weapons have to be stopped – Prime minister cites intelligence in setting out case for dealing with "serious and current" threat posed by Baghdad' *The Guardian* (25 September 2002) 8; 'Iraq the Dossier: Executive Summary the Indictment of Iraq's Saddam' *The Independent* (25 September 2002) 9.

[23] Julia Day, 'War on Iraq; what the papers say' The Guardian (25 September 2002) <https://www.theguardian.com/media/2002/sep/25/pressandpublishing.iraq>.

[24] See for example Letters, *The Times* (26 September 2002) 38. Yet even this reporting led with the headline 'Does the Government's dossier prove the case against Iraq or is doing nothing still an option?', a call to action that echoed government briefings and framing as 'crisis'.

[25] The Report of the Iraq Inquiry (Report of a Committee of Privy Counsellors), 6 July 2016, vol 4, Section 4.2, para 892. All sections of the Report are available at <http://www.iraqinquiry.org.uk/the-report/>.

[26] P Robinson et al, 'Testing Models of Media Performance in Wartime: U.K. TV News and the 2003 Invasion of Iraq' (2009) 59 J of Communication 534; and P Robinson et al, *Pockets of resistance: British news media, war and theory in the 2003 invasion of Iraq* (Manchester University Press, 2010).

Much of the reporting of opposition to government policy focused on 'elite dissensus' rather than popular opposition. That is not to say that opposition from the larger public was ignored, but it was not given as much prominence as 'elite opposition' until much later on when war was largely viewed as inevitable. This elite focus mirrors a body of media research suggesting that it is rarely other than in circumstances of elite dissensus that the media provides the space for challenge to government policy, reflecting the idea that media criticism is a rather passive reflection of elite dissensus rather than independent journalism.[27] Further, media analysts of the Iraq War debates in particular found that reporting of anti-war protest was defined by coverage that amplified 'elite voices' of dissent. Substantive arguments made by anti-war protesters were rarely given positive coverage, instead caricatured as deviantly marginal: communist sympathisers, radical leftists, or anarchists.[28] This meant that systemic critiques and challenges which emanated from the activities of groups such as the Stop the War Coalition were misrepresented, and their articulations of international law largely ignored in the mainstream press. If legal debate mattered, it mattered because experts disagreed with government arguments. That the wider public also utilised international legal argument, albeit in distinct ways, was largely ignored.

This is not to suggest a zero–sum game between experts and activists or 'mass opinion. However, many of the legal arguments against the war from the Stop the War Coalition engaged critique not simply of the interpretation of SC Resolutions but, systemically, the very premise of continuing to discipline and punish Iraq. On this point it is important to note that the anti-war movement was not only focused on Iraq policy. The movement had its origins in the wake of the 9/11 attacks, with key figures arguing that they were 'fighting against a whole set of wars and imperial adventures' as a 'movement of democratic assertion'.[29] I return to the non-account of this movement when considering the final Report of the Iraq Inquiry, but for now highlight the fact that the mediated nature of the public debate meant that these voices of opposition were packaged and represented in particular ways, privileging expertise and marginalising 'ordinary' legal argument. This has significant effects on how public debate over the Iraq War is remembered and how, consequently, international law's legacy in that debate is understood.

IV. Dramatic Testimony and Ceremonials of Truth: Setting the Stage for Damning Verdicts

Another 'phase' in reporting Iraq War policy erupted spectacularly when the Inquiry held its series of public hearings between 2009 and 2011. The Inquiry was established on a non-adversarial, non-prejudicial basis very different from the prior Hutton inquiry (which was a judge-led investigation), and to the Butler review (an *in-camera* review and recommendation process for the use of intelligence in policy-making over Iraq).[30] An official accounting of the Iraq War, then, was to be performed in a radically different form to previous inquiries, the characteristic feature being the absence of legal representation and the publicness of hearings. Part of the reasoning behind the holding of public hearings was to alleviate fears of a whitewash, in turn fuelled by the ongoing controversies and media narratives centring on

[27] See Hallin (1986); WL Bennett, 'Toward a Theory of Press-State Relations in the United States' (1990) 40 *Journal of Communication* 103.

[28] See C Murray et al, 'Reporting Dissent in Wartime: British Press, the Anti-War Movement and the 2003 Iraq War' (2008)23 European J of Communication 7. For a scholar's personal reflections see DM Kennedy, 'Teaching from the Left in My Anecdotage' (2007) 31 *NYU Rev L & Soc Change* 449.

[29] A Murray and L German, *Stop the War: The Story of Britain's Biggest Mass Movement* (Bookmarks Publications 2005) 7.

[30] For a searing critique of the official inquiries into the Iraq War pre-Chilcot see A Danchev, 'The Reckoning: Official Inquiries and the Iraq War' (2004) 19 *Intelligence and National Security* 436.

illegality and the misleading of the public.[31] In his opening statement, Sir John Chilcot acknowledged that the hearings would be the 'activity' which would 'attract the most publicity'.[32] Yet despite the formal orientation away from adversarial proceedings or findings of guilt, the mediated nature of the spectacle of the hearings produced a form of civics lesson quite different than what had perhaps been anticipated.

During the course of testimony, dramatic 'revelations' of how the country had been misled were repeatedly reported by the mainstream press. Enduring suspicions of 'deception' and 'illegality' were given sustenance and column inches through the evidence of legal advisers, and the contradictions between private exchanges and public statements. These stories produced a form of narrative that caricatured characters in the private policy sphere as heroes and villains. Some legal advisers were lionised ('the lioness')[33] and given a standing ovation, some government ministers were heckled in emotive scenes, with public gallery members accusing them of murder and lies.[34] Anyone who attended the hearings could have witnessed these events themselves; I am not suggesting they were somehow fabricated. But they were also translated and interpreted into the headlines and substance of much of the reporting of the evidence. Such translation framed the Inquiry hearings as combative, prosecutorial ritual, even though the Inquiry was at great pains to point out that witnesses were not on trial.

The narratives that the government's entry into war had been 'misleading' and 'illegal' necessarily relied upon verification through oral testimony, and found expression in a series of headlines across the mainstream political spectrum in the lead-up to and following testimony of the FCO legal advisers (Wilmshurst and Wood). Newspapers referred to the lawyers' evidence as 'devastating', highlighting 'astonishing' revelations that left Tony Blair 'facing massive pressure'. Press reports emphasised that the evidence was 'hugely damaging' for Blair and for Jack Straw. Straw was condemned for 'dismissing legal advice on "illegal" invasion'.[35]

Below these headlines, reports recounted some of the private exchanges between the FCO legal advisers and ministers as evidence of the government's duplicitous strategy. Much was made of exchanges between Wood and Straw surrounding the propriety of invoking Kosovo as a precedent, and in turn how legal advice could be rejected by a government formulating its own interpretation of the ambiguities of international law.[36] Wood's evidence,

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[31] See, eg, 'Anger as Gordon Brown announces Iraq war inquiry will be held in private' *The Guardian* (15 June 2009) <https://www.theguardian.com/politics/2009/jun/15/iraq-war-inquiry>; 'Franks inquiry slammed as "whitewash"' *MailOnline* (15 June 2009) <http://www.dailymail.co.uk/news/article-207279/Franks-inquiry-slammed-whitewash.html>.

[32] Sir John Chilcot, Opening Statement, 29 November 2009, <http://www.iraqinquiry.org.uk/the-inquiry/news-archive/2009/2009-11-24-hearing/>,.

[33] 'Lioness gives Chilcot inquiry teeth' *The Guardian* (26 January 2010) <https://www.theguardian.com/uk/2010/jan/26/chilcot-iraq-inquiry-wilmshurst>.

[34] 'Iraq Inquiry: Tony Blair heckled as he finishes giving evidence' *The Telegraph* (29 January 2010) <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/7104589/Iraq-inquiry-Tony-Blair-heckled-as-he-finishing-giving-evidence.html>; 'Tony Blair "regrets" Iraq dead in Chilcot grilling', *BBC News Online* (21 January 2011) <http://www.bbc.co.uk/news/uk-politics-12246410 >.

[35] See, eg, 'Iraq Inquiry: Jack Straw dismissed legal advice on "illegal" invasion' and 'Iraq invasion had no legal basis in international law' *The Telegraph* (26 January 2010) <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/7078872/Iraq-inquiry-Jack-Straw-dismissed-legal-advice-on-illegal-invasion.html>; 'Iraq war was illegal, says top FO lawyer' *The Observer* (24 January 2010) 6; Richard Norton-Taylor, 'Chilcot Inquiry: Lawyers expose pressure to give green light for war' *The Guardian* (27 January 2010) 10; 'Wilmshurst: An ovation for witness of principle' *The Independent on Sunday* (31 January 2010) <http://www.independent.co.uk/news/uk/politics/wilmshurst-an-ovation-for-witness-of-principle-1884541.html>; James Chapman, 'A crime of aggression' *Daily Mail* (27 January 2010) 1.

[36] For an account of these exchanges see transcript of evidence given by Sir Michael Wood, 26 January 2010, <http://www.iraqinquiry.org.uk/media/95218/2010-01-26-Transcript-Wood-S1.pdf>, 31.

which was widely reported, cast him as a form of protector of international law with emphasis given to the diametrically opposed views of how government ought to behave in relation to legal rules given the absence of a court. Wood and Wilmshurst (his deputy), not unlike Fitzmaurice during the Suez Crisis, came across as valiant defenders of a principled commitment to the prohibition on the use of force. In the absence of a court they were duty-bound to draw clear lines of legality because of the risk of dilution of foundational norms. Straw, on the other hand, relied upon the vagueness of international law as a means for asserting the government's authorial power: as sovereign decision-maker the government could take legal advice but was not bound by it if an alternative legal view was plausible, even if amongst only a minority of international legal opinion.

The media arguably set up the expectation that the Chilcot Inquiry would determine the question of legality/illegality once and for all, which of course it was never going to do. It came close in the Report, as others have noted, but a final adjudication on the point was never promised nor pursued. The media also set up the prospect that Blair's appearance would represent an opportunity for judgment and a calling to account: a form of 'reckoning' during which he would be subjected to a ceremonial scaffold of interrogation.[37]

While none of the legal advisers was 'on trial' the appearance of figures such as Blair demonstrated how culpability could be established through a form of trial by media in the absence of judicialised process or legal liability. Here, I focus on the narrow but intriguing issue of the Inquiry's questioning of the unreasonable veto. In January 2003 Blair had made a statement in Parliament that if there was a breach of Resolution 1441 but an unreasonable veto was put down he would not rule out action; in other words, a second resolution was preferable but not necessary.[38] Yet just the day before, on 14 January 2003, he had received the Attorney General's draft advice, repeating advice of October 2002 that the unreasonableness of a veto was not a valid legal argument: the veto was instituted to be exercised at any time by a permanent member and, if a veto was exercised, there would be no Security Council authorisation.[39]

In January 2011 news media picked up on this issue by reporting that the Attorney General (AG) had been asked to clarify certain points and answer some further questions from the Inquiry following his earlier testimony and others' subsequent evidence. The AG's subsequent statement was published on the Inquiry's website days before Blair gave further evidence. The media reported this second giving of evidence by Blair as a 'recall', some alluding to the questions that still remained, others more explicitly calling into question the veracity of Blair's previous answers in light of conflicting testimony and 'gaps' in evidence.[40] Now, on the eve of this second hearing, news media reported that Goldsmith's evidence demonstrated Blair had misled Parliament. Blair's assertion that the government could be authorised to use force even if an 'unreasonable veto' was wielded was directly contrary to the AG's advice. Headlines varied from 'Chilcot Inquiry: Blair shut me out, says former legal

[37] I allude here to the famous opening to Foucault's *Discipline and Punish*, in which Damiens is subjected to the violent force of the state on the scaffold, thereby demonstrating for the audience the state's power. Here, I pursue the idea that this form of spectacular media accountability demonstrated the power of the state not through publicly performed violence, but through the sovereign decision-maker's survival of ritualised interrogation. In other words, far from representing a form of accountability (whether violent or otherwise) the state's power to wage war was left largely unchecked, even through this ceremonial 'scandal'.

[38] HC Deb 15 January 2003, vol 397, cols 677–78.

[39] 'Draft. Iraq. Interpretation of Resolution 1441', 14 January 2003, <http://www.iraqinquiry.org.uk/media/76099/2003-01-14-Minute-Goldsmith-to-Prime-Minnister-Iraq-Interpretation-Of-Resolution-1441.pdf>.

[40] See, eg, Mark Townsend, 'Blair to face probe on Iraq "contradictions"' *The Observer* (16 January 2011) 26.

chief Lord Goldsmith',[41] to 'Tony Blair "misled" Commons over legal advice on war in Iraq',[42] 'Blair did not reflect legal advice on Iraq War',[43] and 'Blair "misled MPs on legality of war"'[44] Television news such as Channel 4 and the BBC also led with the line that 'Blair contradicted legal advice'.[45]

In this reporting, the media talked of 'explosive documents' released on the eve of Blair's 'second grilling' by the Inquiry; and suggested that Goldsmith's statement was 'shattering testimony … a watershed for the Iraq Inquiry'.[46] Others argued that the 'revelations' had 'breathe[d] new life into the inquiry,' placing Blair 'under further pressure', intensifying criticisms of him and also revealing the extent to which Goldsmith was 'no longer consulted' following advice he gave in October 2002.[47] For many of these media presses it was the 'newness' of this evidence which refreshed the potential for interrogating and criticising Blair's pre-invasion decision-making. The resource with which to attack Blair came from disagreement in testimonies concerning the interpretation and (mis)representation of advice on international law.

Media reporting was therefore building towards a consensus position which re-calibrated earlier distinctions between pro- and anti-war newspapers. An over-arching narrative frame was emerging that the media had been duped—on intelligence and on legal advice—which served as a kind of exculpatory device for previously pro-war presses. A democratic institution had been deceived and so, by implication, had the public. This narrative framing served the end of explaining the media's failure to hold the government to account and allowed a recovery of the media's institutional legitimacy and democratic credentials post-facto. Law, specifically legal advice, became the vehicle for challenging Blair's authority and statements made pre-invasion. This was folded into a wider framed story of deception and dishonesty. The reporting of the mismatch between private legal advice and public statements entrenched the sense that the war had been 'illegal'. The question of legality became tied to the question of accountability.

On 21 January 2011, Sir Roderick Lyne engaged in several lines of questioning on how Blair was able to make such statements in the knowledge that the AG had given a clear indication that the point was not legally justifiable. Blair argued: 'I was making basically a political point. However, I accept entirely that there was an inconsistency between what he [the AG] was saying and what I was saying there, but I was saying it not in a sense as a lawyer, but politically.'[48]

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[41] *The Guardian* (17 January 2011) https://www.theguardian.com/uk/2011/jan/17/blair-ignored-goldsmith-chilcot-inquiry, Richard Norton-Taylor, 'Iraq Inquiry: PM shut me out of crucial invasion discussions, says Goldsmith' *The Guardian* (18 January 2011) 11.

[42] *The Daily Telegraph* (17 January 2011) < http://www.telegraph.co.uk/news/politics/tony-blair/8265001/Tony-Blair-misled-Commons-over-legal-advice-on-war-in-Iraq.html>.

[43] Michael Savage, 'Blair did not reflect legal advice on Iraq war – Goldsmith' *The Independent* (18 January 2011) <http://www.independent.co.uk/news/uk/home-news/lord-goldsmith-blair-did-not-reflect-legal-advice-on-iraq-war-2187031.html>.

[44] Tim Shipman and Ian Drury, 'Blair 'misled MPs on legality of war' law chief who advised ex-PM tells Iraq inquiry' (18 January 2011) <http://www.dailymail.co.uk/news/article-1348083/Iraq-inquiry-Tony-Blair-misled-MPs-legailty-war-says-law-chief.html>.

[45] 'Iraq Inquiry: Blair contradicted legal advice' *BBC Channel 4 News* (18 January 2011) <https://www.channel4.com/news/iraq-inquiry-blair-contradicated-legal-advice>.

[46] Tim Shipman and Ian Drury, 'Blair "misled MPs on legality of war"' *Daily Mail* (18 January 2011) <http://www.dailymail.co.uk/news/article-1348083/Iraq-inquiry-Tony-Blair-misled-MPs-legailty-war-says-law-chief.html>.

[47] Michael Savage, 'Lord Goldsmith: Blair did not reflect legal advice on Iraq war' *The Independent* (18 January 2011) <http://www.independent.co.uk/news/uk/home-news/lord-goldsmith-blair-did-not-reflect-legal-advice-on-iraq-war-2187031.html>.

[48] Transcript of evidence given by the Rt Hon Tony Blair, 21 January 2011, <http://www.iraqinquiry.org.uk/media/230337/2011-01-21-transcript-blair-s1.pdf>, 71–72.

Having received a further long and rather winding response, Lyne pressed:

> Can you really distinguish when you are speaking to the House of Commons as Prime Minister between making a political point and a legal point when you are making a point about a legal interpretation of UN resolutions? If you say to the House of Commons 'I am not going to defer to an unreasonable veto,' would they not assume that you are speaking with authority as a Prime Minister, not just making a political point while your Attorney the day before has told you 'This is not a valid point'?

In reply, Blair repeated: 'I mean, look, in the end I was less making a legal declaration, as it were, because I could not do that, but a political point, if there was a breach we had to be able to act… .'[49] Significantly, considering the context in 2002–2003, Blair's statement could be made in the rather secure knowledge that the AG's advice would be unlikely leak to press due to the operation of legal privilege, although its circulation in government departments could make a leak more likely.

In the wake of his 'defiant performance' the *Telegraph* reported '"Gung-ho" Tony Blair unbowed by evidence.' The report stated that after 'four hours' of questioning about 'apparent discrepancies in his earlier testimony and that of other witnesses', evidence was mounting that Blair had misled Parliament.[50] This was, as already argued, a striking elision of legal issues that allowed editors to lead with headlines framing the evidence as 'contrary to legal advice' and 'misleading Parliament' but in relation to a highly specific incidence of 'illegality' and 'misrepresentation'. These 'explosive' headlines, bite-sized packages of news to take away from the Inquiry process, had the effect of perpetuating the lines of argument that Blair had acted, more generally, contrary to legal advice (ie the war was illegal), and that he had misled Parliament (re-opening the still-festering wounds of trust inflicted by the dossier affair). But the story to which these headlines related was, factually, on the much narrower, technical issue of an unreasonable veto.

So while the headlines were not necessarily inaccurate, they clearly had the effect of fuelling the ongoing controversy surrounding quite different legal and political issues: namely the legal/illegal debate; and the dossier's failed intelligence aftermath. Dramatic headlines remade the legal advisers' evidence into a more monumental story of deception and arguably set up expectations of accountability that the Report could never meet—but which would at least draw audiences in to consume the news.

In a sense, these exchanges in the course of testimony—or ceremonials—set up the premise, through media reporting, of a form of para-juridical accountability. Rather than obtain legal redress through traditional channels like judicial review, civil disobedience, or private prosecution, large numbers of citizens who felt aggrieved at how the government had behaved might obtain redress through a 'trial by media'. Legal advisers who, behind the scenes, tried to uphold certain values of the international legal system, namely the prohibition on the use of force, were cast as monumental, heroic figures; while the villains were represented as duplicitous to the last. In one way, therefore, the lasting picture of international law might have been more benevolent when placed in the media's hands than in those of a critic or scholar more attuned to the ways in which international law furnishes the language for justifying force. International law appeared under assault, its committed protectors repeating the injunction against force except in the most limited of circumstances.

So busy were media reports portraying the duplicitousness of ministers, that they rarely if ever reported upon the government's documented insistence on the ambiguity of international law and ultimate sovereign prerogative to wage war. Such media representation was not simply, therefore, a caricaturing of characters in the private policy sphere, it was also

[49] Ibid 73–74.

[50] Rosa Prince, '"Gung-ho" Blair unbowed by evidence; Former PM fends off fresh questions on single-minded pursuit of Saddam' *The Daily Telegraph* (21 Jan 2011) 2.

something of a caricaturing of how international law works. International law could be portrayed as a constraint on the use of force, raising the burden on government to justify its actions, and needing experts to adjudicate on the merits of interpretation. At this point, one might expect a cheer to rise up among international lawyers, and especially those scholars who argue that legal justification will, over time and internalisation, socialise states to comply with international law. The consensus of media narratives and framing produced during the Inquiry's hearings arguably generated a legacy which firmed up the 'bright lines' of the prohibition, cast the Iraq War as illegal once and for all, and ensured the government would now be held accountable for its actions.

VI. Reporting the Report: An End to the Saga of an Official History

The publication of the Chilcot Report on 6 July 2016 was a carefully staged media event. Distribution of the volumes was near simultaneous with a prepared press statement offered by Sir John Chilcot, in which vast numbers of words were condensed into, at times, withering criticism of decisions and policy-making that was broadcast live. The Report's authors were clearly fully cognisant of the scale of criticism they themselves faced given the saga of the Report's delays, and so provided a series of powerful soundbites with which the news cycle would saturate reporting in the days immediately following publication. Tony Blair mounted an air-time battle by holding a two-hour press conference scheduled to take place immediately after the Inquiry statement. In a meandering and defiant display he ensured extensive coverage from rolling news.

Media reports were damning and extensive, filling front pages, broadcast news, and specialist political analysis programmes. The publication event saturated the news in an already news-filled week.[51] All the main presses exonerated Chilcot of a whitewash (an oft-reported fear as publication had been delayed again and again). Many emphasised the government's failure to exhaust peaceful options, quoting the 'striking' conclusion from Chilcot's press statement that '[m]ilitary action at that time was not in the last resort'. They focused also on conclusions that Iraq did not represent an imminent threat and that 'the circumstances in which it was decided that there was a legal basis for UK military action were far from satisfactory'. Each of these headlines personalised the Report's conclusions, focusing on how Blair had deceived the nation.[52]

In the days following publication, prominent politicians gave interviews on television and to newspapers using this same language of 'trials' and 'verdicts' but bringing Parliament into the accountability frame. For instance, David Davis appeared on the *Andrew Marr* show, stating that the Report was a 'trial' but that there had yet to be a 'verdict': it was now clear, according to the report, that Blair had misled the Commons on at least five clear occasions, and Davis called for a contempt motion to be laid in Parliament to 'get that verdict'. Jeremy Corbyn also appeared on the show but was given just half a minute to comment on Chilcot, the rest of the twenty minutes being taken up with questions focused on internal Labour politics.[53] While two days were given over to debating the Report in Parliament, it was not

[51] Though by the next day front pages and column inches returned to the Brexit fallout and simultaneous leadership challenges of the two largest political parties.

[52] Every mainstream newspaper ran with the Chilcot 'revelations' as headline on 7 July 2016: 'Blair's private war' (*The Times*); 'I'd take the same decision' (*The Daily Telegraph*); 'Blair defiant as Chilcot delivers devastating verdict on Iraq war' (*The Guardian*); 'Weapon of Mass Deception – Blair savaged for Iraq war and squaddie deaths; Secret letter to Bush: I'll be with you whatever…' (*The Sun*); 'A Monster of Delusion' (*Daily Mail*); 'I'll be with you whatever…' (*Daily Mirror*); 'Spinning on their Graves' (*The Independent*); 'Blair's War: The Damning Verdict' (*London Evening Standard*).

[53] The selectivity of the interviewing is all the more questionable as Corbyn was a former Chair of the Stop the War Coalition and was simply invited to respond 'yes or no' to the proposed motion on contempt. In his

until 30 November 2016 that the eventual contempt motion was proposed by Alex Salmond. The motion also called for a further inquiry examining Chilcot's conclusions and the issue of Parliament being misled. It was roundly defeated. But this did not close the door on continual struggles for accountability and a 'reckoning'. Legal challenge was brought against Tony Blair and is ongoing.[54] The anniversary of the Report's publication led to further news stories indicting Blair's 'emotional belief' and less than straightness with Parliament.[55]

I am not suggesting that the central focus on Blair's culpability and, in particular, the disclosure of previously private messages making it 'his' war, was wrong compared to something like 'objective reality'. Instead I suggest that the conclusions drawn on the extensive Report were immediate, reactionary, and highly personalised in part because of the demands of near-instant news production and dramatic narratives that media relies upon to sell copy. The language of these reports—of verdicts, guilt, judgment and indictment—also, significantly, rendered the publication of the Report something of a final event in a long saga, and scandal. Such reporting runs counter to the sense in which a reckoning on Iraq policy begins anew with the Report's publication, something that activists recognise and enjoin others to remember: 'it is not the end of the matter, it is a new phase in the movement'.[56]

If we consider the dramatic narratives that attached to the reporting of the hearings and Report's publication—emphasising reckonings, spectacles of suffering, verdicts, culpability, guilt—we could read the Report itself as purposely undramatic. There is something of the language of mundanity that is perhaps a characteristic of an official history—an exhaustive and exhausting chronicle of this contentious episode—but also a counterpoint to forms of mediated accountability for Iraq policy and decision-making. At one level, therefore, its sheer volume and orientation to 'neutral' language, and chronicling narrative voice, highlights the dramatic yet superficial accounting reported by mainstream media. News media's cyclical nature might be read, in the Report's size and form, as positively repellent to, averse to, deeper accounting for how law, policy, evidence and opinion interacted over Iraq.

But, there is also something 'lost in translation' from the performances of the hearings into textual transcript and then into the official chronicling voice of the Report. For instance, the extended exchange between Lyne and Blair was summarised in one line: '[t]hese statements were at odds with the draft advice he had received and discussed with Lord Goldsmith'.[57] The richness of the inquisitorial exchange and the insistent nature of questioning is replaced with a curt yet perhaps damning observation. It remains one that demands a continual re-examination of the Inquiry's archive – as with the "last resort" assessment –if it is to form the basis of potential accountability in the future.

At yet another level, the adoption of neutrality is another performance of expert authority that maintains and entrenches a deferential architecture of policy-making. By documenting only those views deemed 'expert' or 'experienced', far more wide-ranging debate has been written out of the official history of Iraq War policy-making. This has the bizarre effect of excising the very voices that were the object of government media strategies.

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statement to Parliament he made clear his view that it was the 'governing class' that it got it wrong on Iraq and that it was 'our people' who had been right all along: HC Deb 6 July 2016, vol 612, col 889.

[54] See, eg, Owen Bowcott, 'Tony Blair should be prosecuted over Iraq war, High Court hears' *The Guardian* (5 July 2017) <https://www.theguardian.com/politics/2017/jul/05/tony-blair-should-be-prosecuted-over-iraq-war-high-court-hears>.

[55] See interview with Sir John Chilcot, BBC, <http://www.bbc.co.uk/news/av/uk-politics-40516908/in-full-laura-kuenssberg-interview-with-sir-john-chilcot>.

[56] Lindsey German, 'For the anti-war movement, Chilcot is not the end. Blair must face charges' *The Guardian* (6 July 2016) <https://www.theguardian.com/commentisfree/2016/jul/06/anti-war-movement-chilcot-blair-face-charges >.

[57] Report, vol 5, Section 5, para 208.

Knowing that Iraq would be controversial and publicly debated, the government adopted certain legal and political arguments to gain credibility for its policy shift; yet how these arguments were received and engaged with by anyone other than elites or media commentators themselves has been deemed outside the realm of relevance, beyond the mandate of the Inquiry.

The Report makes no specific mention of the extent of public debate, anxiety and protest over Iraq policy, which seems a little odd given the acknowledgement, even if only in throw-away comment during the hearings, that this period was marked by debates that caused family rifts and open hostility, akin to the political rupture seen during the Suez Crisis.[58] One might have expected the extended public debate and ongoing controversy of Iraq to be acknowledged formally and at length in the Report, not least because it was arguably the extent of this ongoing scandal that made the Inquiry inevitable. Recognition of the force of consistent and organised opposition to government policy is, in my view, sorely lacking in a Report that had the scope and opportunity to consider not just how government policy was made on the sofas of government, but also how policy and strategies interacted with democratic politics and public participation.

The Report's conclusions should not act to satisfy headline writers and news producers, only to be re-interrogated at calendared moments of remembering. What has been revealed in the evidence and in the final Report needs continual raking over and re-examination. What is absent needs representation and official recognition, in particular how the largest ever transnational protest movements opposed to war demanded to be heard and accounted for in public debate. The mediated context within which pre-invasion policy, public hearings, and the final Report unfolded requires attention from legal scholars. Questions that remain about the extent of prerogative power to wage war are not the preserve only of constitutional lawyers. Likewise, processes of advice-giving are not limited to understanding international law's role in policy-making. By reorienting our attention towards how policy is debated and, in turn, how international law is translated and thereby remade, we recognise a wider politics of international law. These enduring questions of the operation and, certainly in the case of Iraq, illusory promise of democratic ideals and of the prohibitory framework demand undisciplined interrogation and ongoing struggle.

V. BEYOND THE REPORT: THE ENDURING STRUGGLE FOR ACCOUNTABILITY

Media narratives concluding that involvement in Iraq resulted from intelligence failure or the failures of a 'great man' generate a simplistic rendering the debate over Iraq policy that holds little promise of systemic accountability or justice. The ways in which Iraq was and is debated was significant not simply because of a mismatch between what was said in private and what occurred in public. Or the emotional beliefs that appeared to pervert what was otherwise assumed to be a usually rational policy process. It was *how* that debate—legal and political—was represented by the media that also matters. The pseudo-events that were constituted—made—by news cycles and perception management, including the dossier affair and UN route timetables, had significant input and implications for international law. Law's facilitative authority on the road to war remains an enduring puzzle, one that is not settled by finding illegality in the pages of the Report, or failings of the Inquiry process—at least not those things on their own. If the Inquiry does tell us that governments push the boundaries of what law is, or should be, we ought to take seriously how push-back occurs, how it is

[58] Sir Martin Gilbert revealed during proceedings that two of his three children had been out on the streets protesting the government's policy on 15 February 2003. See transcript of evidence given by Mr Alastair Campbell, 12 January 2010, Afternoon Session, <http://www.iraqinquiry.org.uk/media/95146/2010-01-12-Transcript-Campbell-S1-pm.pdf>, 51.

represented by institutional media, which voices are amplified and which are suppressed, and what the consequent effects are for democratic politics, the justification of war, and the ongoing struggle for accountability.

From a strict 'juridical' perspective, the British decision to invade Iraq in 2003 was, I argue, always subject to institutional deference because of the systemic lacuna of accountability in British 'democracy'. A British government still enjoys the archaic sovereign prerogative to wage war without constitutionally-guaranteed Parliamentary authorisation. When real-time legal challenges were brought against government policy in the courts, judges repeated their reluctance to contemplate a merits review of the government's honest decision on matters of national defence policy, given the unelected status of courts, and how ill-equipped they were for such a task.[59] In the words of Justice Laws, if 'we' the British people are not content with our government's assessment of issues of national security we are free to sound that 'in the ballot box';[60] it is for 'democracy to decide'. But how democracy decides is indistinguishable from how democracy understands, how information on a given policy is transmitted, framed, narrated, and whose voices—of support or opposition—are broadcast and become part of the remembered 'events' of policy debate.

Further, by focusing on a wider-framed politics of international law we might rethink how the power to make law and to make war interact in ways that call into question the stability of the meaning of the prohibition on the use of force. Such a politics of international law recognises that the prohibition operates as a system – not simply technical rules – and that that system embeds sovereign rights by permitting the authoring of exceptions to the rule. The authors of such exceptions are thereby enabled by the language of international law to exercise their sovereign prerogative through international law. A methodological focus on the politics of international legal justification in the British case demonstrates that international law was 'put to work' not simply for argument on the imagined 'international plane', to draw in a coalition of the willing and isolate a rogue state. It was also used to counter 'domestic' opposition to choosing war, whether this emanated from Parliament, elites, activists, or 'the public'. International law was a resource in a struggle that was simultaneously about war, executive power, expertise and public participation. And because of the media's dependency on credible official sources, namely experts and those with first-hand experience, media representations appeared to promote the idea that international law could constrain government action, at least if it was complied with.

So we are left with a puzzle that requires further reflection: on the one hand the compliance pull – the constraining force of international law – was demonstrated through the production of media narratives that privileged legal challenge to government policy. Yet on the other hand, the failure to hold the government to account for its policy of justifying force *in the name of* international law destabilises the idea that we can assume this constraining force. The attention to context suggests that international law's meaning is contingent and what we see in the British case of Iraq policy is a pattern that privileges government authority and expert knowledge but which silences wider public participation in the politics of giving meaning to international law.

There is a significant lacuna in accountability that ought to prompt further reflection: while elite dissensus was reported during 2003 (and beyond), its significance was only revived by the much later, and unique, disclosure of declassified government archives. In other words, in the moment of decision, exchanges of private legal opinion remained just

[59] See *Marchiori v Environment Agency & Another* [2002] EWCA Civ 3 [38]–[40] (Law J); *R (on the application of Campaign for Nuclear Disarmament) v Prime Minister and Others* [2002] EWHC 2777 (Admin), [2002] All ER (D) 245 (Dec) [47] (Brown LJ); and *R v Jones, Milling, and Others* [2006] UKHL 16, [2007] 1 AC 136 [30] (Lord Bingham of Cornhill).

[60] *Marchiori* (n 59), [38].

that, private. In that same moment, the media proved seriously lacking in holding the government to account. Are we therefore suggesting that post-facto accounting is the best we can hope for? Of course inquiries are designed to reveal more than is usual in the course of policy-making. But what if greater attention had been drawn *at the time* to the distinctly undemocratic means by which the government was able to wage a war on Iraq? What if greater focus had been drawn *at the time* to the media's churning out of government briefings and mischaracterisation of large swathes of organised opposition? How might our understanding of international law change if we take account of its authorial power *at the time* and see this side by side with the image we are left of it following the Inquiry and its Report? These are not questions that can be answered without further raking over the Inquiry's evidence and Report, and that process of continual excavation and struggle needs to be renewed, not foreclosed, by the publication of this official history.