

Chapter 12

The Renaissance of Impeachment - political and legal accountability in the 21st century

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12.1 Introduction

This essay provides a personal account of the origin and conduct of the campaign by some members of the British House Commons to use the idea and process of impeachment to bring the then Prime Minister Tony Blair MP to account for his conduct in the run up to the invasion of Iraq in 2003. It also makes suggestions for the modernisation of the impeachment process and the connection between the impeachment effort and any future international attempt to bring Blair before a court.

12.2 The Renaissance of Impeachment

Impeachment is an active instrument of the British Constitution. In the aftermath of the 2003 invasion of Iraq it was revived in an effort to hold the then Prime Minister, Tony Blair, to account for his actions leading to the war. Sparked by my newspaper article²; impeachment was confirmed as an active part of the Constitution in the period 2004-2016, by the Speaker of the House of Commons and the many Members of Parliament who supported a motion to that effect culminating in a debate in the House of Commons in 2006.

The campaign began when out of the blue the phone rang and it was a man I had never met on the line. As I recall the caller said, 'This is Adam Price MP, I read your article in the *Guardian* recommending the impeachment of the Prime Minister. We have had a meeting of the nationalist MPs and would like to meet you to discuss impeaching him.'

For me, the interest in impeachment had begun in a postgraduate class on administrative and constitutional law twenty years earlier. At the time there was some controversy on the lack of Cabinet and Parliamentary involvement in the decisions by the Labour governments of Harold Wilson and James Callaghan on expenditures and changes to the Polaris nuclear warheads through the Chevaline programme³. It occurred to me that Holdsworth's opinion that the ancient process of impeachment should be considered as still usable might be relevant, and of course this was only a few years after global attention to the impeachment of President Nixon over Watergate. Such historical depth seemed natural in the ideological context of Christopher Hill's *The World Turned Upside Down*,⁴ freshened up by the punk band The Levellers.

This chapter provides an account of the effort to revive and impeach Tony Blair and I hope usefully offers a personal account of the social context that led me to think that such an antique process might have contemporary use. An approach which in the context of the foundational period of international systems in the 1940s, with other International Relations scholars, Rebecca Adami and Amitav Acharya, we offer within the theoretical framing of the restorative archaeology of knowledge.⁵

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² Dan Plesch, 'There's Always Impeachment' *The Guardian* (London, 28 January 2004)

³ John Baylis & Kristan Stoddart, 'Britain and the chevaline project: The hidden nuclear programme, 1967-82' (2003) 26 (4) *Journal of Strategic Studies* 124

⁴ Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (Penguin 1991)

⁵ Rebecca Adami, Dan Plesch and Amitav Acharya, 'Commentary: The restorative archeology of knowledge about the role of women in the history of the UN – Theoretical implications for international relations' in Rebecca Adami and Dan Plesch (eds), *Women and the UN: A New History of Women's International Human Rights* (Routledge 2021)

Years later and another and far larger scandal concerned secret approvals of weapons supplies to Saddam Hussein for his wars against the Kurds and Iran. The Scott Report⁶ into the matter was damning but the consequences for the government were unclear. This time *The Independent* was kind enough to publish an article of mine on the topic and I remember a positive conversation with the then Liberal Democrat chief whip Archie Kirkwood MP, but the issue fizzled out. A decade later public anger was far greater.

In the run up to the Iraq invasion I was working as Senior Fellow at the Royal United Services Institute in Whitehall having recently returned after some fifteen years founding and directing the British American Security Information Council in Washington DC. I worked with the late Sir Michael Howard to organise an event at RUSI in the aftermath of 9/11 in which he fore-fronted a political and policing – rather than military - strategic response to these terrorist attacks. His sound advice⁷ was swept aside by President George W Bush's 'War on Terror'. Seeking to continue the effort I wrote a book on strategies for world peace which included a recommendation for a sustained celebration of our democratic heritage as an ideological response to Islamism.⁸

Personally, family matters provided further impetus to reinforce democratic heritage. Two of my ancestors, Richard and William Moore had been amongst the twelve drafters of the People's Charter of the 1830s, and yet they are not to be found amongst the statues decorating central London, illustrating the weakness of British democratic culture.

In the period up to the attack on Iraq, it was clear to me and colleagues in Washington that the WMD threat from Saddam Hussein was grossly exaggerated and I wrote as much at the time. In Britain, the late Robin Cook best summed up the exaggerations in his resignation speech. It is well outside the scope of the present work to assess these claims. However, as the invasion found no WMD at all, and turned into a grinding, terrorism-generating insurgency, public anger grew.

At this point, in January 2004, I argued in the *Guardian* that, 'There are some MPs who believe that a great crime has been committed over Iraq - a crime without precedent in modern British history. If their concern is as serious as they say, then impeachment is a tool they should use.'⁹ The weapons inspector David Kelly was called to give evidence to the Commons and was reminded that it was to the high court of parliament that he was giving testimony by the MP Andrew McKinlay. The residual memory of the Parliament's role as a court remained.

On my advice, the Labour MP Peter Kilfoyle had already asked the research wing of the library of the House of Commons to provide a briefing on Impeachment. This study¹⁰ confirmed that impeachment while obsolete was still serviceable. The arguments against impeachment were the length of its disuse, the doctrine of the ministerial code and the development of statute law, and fair trial principles.

On the first matter, there was the precedent lasting the whole of the Tudor dynasty for its disuse. In the early 1600s parliamentarians searched the records for procedures to hold the King and his ministers to account, and applied the impeachment process so that it was reestablished as an accepted part of the constitution.

The doctrine of the ministerial code appeared to have eroded over the supply of arms to Iraq up to 1990. UK statute law did not cover some of the issues at stake in the early 2000s – secret agreements with a foreign power – a key issue at the time of the Stuarts; and a war in violation of the UN Charter. Elizabeth Wilmshurst had argued that the invasion was a crime of aggression in her letter of resignation¹¹ from her role as Deputy

⁶ Vernon Bogdanor, 'The Scott Report' (1996) 74 Public Administration 593

⁷ <[Al-Qaida is winning war, allies warned | UK news | The Guardian](#) 32 October 2001>

⁸ Dan Plesch, *The Beauty Queen's Guide to World Peace: Money, Power and Mayhem in the Twenty-first Century* (Politicos 2004)

⁹ Dan Plesch, 'There's Always Impeachment' *The Guardian* (London, 28 January 2004)

¹⁰ Jack Simson Caird, 'Impeachment' (Research Briefing 2016) <<https://commonslibrary.parliament.uk/research-briefings/cbp-7612/>> accessed 23 April 2023

¹¹ BBC News, 'Wilmshurst resignation letter' <http://news.bbc.co.uk/1/hi/uk_politics/4377605.stm> accessed 23 April 2023

Head of the Foreign Office's legal department shortly before the invasion, but it is even now unclear how this matter might be dealt with in a British Court.

Those opposing the reintroduction of impeachment make much of the fact that repeated recommendations of parliamentary committees on reform recommended its abolition, sidelining the reality that Parliament never acted to abolish impeachment, thereby implicitly confirming it.

The lack of democratic accountability and fairness in the processes of the early 1800s – when impeachment was last fully used – is still used as a reason against impeachment. However, any Committee of the Commons tasked with drawing up charges would have to address this matter. The obvious process change would be for the Commons to present charges to the Supreme Court rather than the House of Lords itself. A point lost on those who sought to dismiss impeachment as inconsistent with modern principles of fair trials.

Discussions with MPs continued throughout 2004 against the backdrop of the deteriorating situation in Iraq and the inquiries of Lord Hutton¹² into the death of the weapons inspector David Kelly and by Lord Butler into the accuracy of intelligence on Iraq's WMD¹³. Hutton chose to focus on the infamous '45 minutes' claim of Iraq WMD threats made by the government. The day this dossier was released and made the front pages I wrote for the *London Evening Standard* inside pages that the dossier was unconvincing.¹⁴ I was not surprised that Hutton did not ask me why I had reached that conclusion. The Butler report was published in July 2004, and for many critics it also fell short on key issues. For example, on the relationship of UK and US officials and agencies, it was silent. The weakness of the Butler report triggered the Scottish and Welsh Nationalist MPs, led by Plaid Cymru's Adam Price, to launch the campaign on impeachment.

Over that summer I wrote 'A Case to Answer' with Glen Rangwala, a summary of the evidence against Blair and that Impeachment was a living part of the constitution that should be used against him.¹⁵ It included the opinion of barristers Rabinder Singh QC and Professor Conor Gearty that Impeachment was a valid process and that there was a case to answer – a *prima facie* – case against Blair. They, and I drew support from the Olympians of the Constitution: Dicey, Holdsworth, Halsbury's Laws and Erskine May on the validity of Impeachment as a parliamentary procedure. It is beyond the scope of this short Chapter to reprise this published work.

The campaign involved the *Spectator* magazine, Channel 4 News (Di versus Goliath was their working title), Welsh newspapers and the website: impeachblair.org. I also wrote again for the *Guardian*.¹⁶

Scorn from the Labour Party was withering. However, Lord Norton of Louth, professor of government at the University of Hull, told BBC News Online: 'It is still on the books so it's open technically for the Commons to vote for impeachment.'¹⁷ In giving an award to Norton in 2003, the Political Studies Association had described him as 'the greatest living authority on Parliament.'¹⁸

The comprehensive account of the development of the Impeach Blair campaign to the spring of 2005 is provided by Isabel Hilton's feature for the *Financial Times Magazine*, accompanied by an editorial describing it

¹² BBC News, 'Hutton rejects 'whitewash' claim'

<http://news.bbc.co.uk/1/hi/uk_politics/3709243.stm> accessed 23 April 2023

¹³ The Rt Hon The Lord Butler of Brockwell, 'Review of Intelligence on Weapons of Mass Destruction' (14 July 2004)

<www.butlerreview.org.uk/report/report.pdf> assessed 24 April 2023

¹⁴ Dan Plesch, *Evening Standard*, West End final ed.; (London, 24 September 2002).

¹⁵ Glen Rangwala and Dan Plesch, *A Case to Answer* (Spokesman, 2004)

¹⁶ Dan Plesch, 'There is no doubt Blair misled parliament over the war' *The Guardian* (London, 24 September 2004)

¹⁷ BBC News, 'Blair impeachment campaign starts'

<http://news.bbc.co.uk/1/hi/uk_politics/3600438.stm> accessed 23 April 2023

¹⁸ Political Studies Association (2008)

<<https://web.archive.org/web/20110607110736/http://www.psa.ac.uk/Content.aspx?ParentID=2&SearchID=1002008>> Accessed 24 April 2023

as ‘an important chapter in Britain’s democratic process’¹⁹. An initial motion on impeachment was tabled in November 2004 but very soon replaced with a shorter one of broader meaning. The following motion was finally introduced and attracted 158 signatures by the time it was tabled in November 2005,

CONDUCT OF GOVERNMENT POLICY IN RELATION TO THE WAR AGAINST IRAQ at this House believes that there should be a select committee of seven honourable Members, being members of Her Majesty's Privy Council, to review the way in which the responsibilities of Government were discharged in relation to Iraq and all matters relevant thereto, in the period leading up to military action in that country in March 2003 and in its aftermath.²⁰

Parliamentary supporters included Douglas Hogg, Menzies Campbell, Michael Ancram and Sir Malcolm Rifkind. Outside Parliament, media figures as diverse as Frederick Forsyth and Corin Redgrave were joined by the former Bosnia force commander Sir Michael Rose.

Prolonged discussions continued for some months between proposers of the motion and the Commons authorities – with, we might assume, some interest from officials of Blair’s government. Then in October 2006 the final act in this episode of impeachment took place with an afternoon of debate on the floor of the House of Commons on the motion to create the Committee of Privy Council Members.

Price opened the debate and laid out the claims of misleading Parliament and making a secret agreement with a foreign power. In winding up, the then SNP leader Alec Salmond explained how the original motion on impeachment had broadened into a call for an enquiry, the first step, and that there was concern about the role of the House of Lords as judges, but more importantly to get the maximum support in the House. Such tactical manoeuvres are the natural stuff of politics, but it was the Impeachment concept that provided the political propellant. The Labour government won the debate and the matter closed, for a while.

In 2011 an updated House of Commons Library briefing paper on Impeachment²¹ noted: ‘The Iraq Inquiry, was established by the new Prime Minister Gordon Brown, to discover if there could be lessons learned from the conflict. This could be seen to be a response to the group of MPs deciding to try and impeach the then Prime Minister.’ That some within the Parliamentary system considered that it was plausible that the Chilcot enquiry resulted from the impeachment campaign is important when conducting an overall assessment of the effectiveness of impeachment.

As the Chilcot inquiry proceeded too slowly for some, impeachment was again back on the political agenda. In 2014, David Cameron was asked at Prime Ministers Questions by Sir Peter Tapsell MP, the father of the House, (its longest serving member), ‘Is the Prime Minister aware of the growing sentiment that, as the publication of the Chilcot report has been so long delayed, the ancient but still existing power of Backbenchers to commence the procedure of impeachment should now be activated to bring Mr Tony Blair to account for allegedly misleading the House on the necessity of the invasion of Iraq in 2003?’²² And the SNP and Plaid Cymru again considered acting at the time of the Chilcot report.²³ After the publication of the Chilcot Report the sentiment dispersed as even in the era of Jeremy Corbyn’s leadership, Labour members were not going to act against their former leader, while Conservatives back in power had other priorities.

¹⁹ Isabel Hilton and John Lloyd, ‘The Ditch Blair Project’ *Financial Times* (London, 5 March 2005) 1

²⁰ House of Commons, ‘Conduct of Government Policy in Relation to the War Against Iraq (EDM 2005) 1088 <<https://edm.parliament.uk/early-day-motion/29437>> accessed 23 April 2023

²¹ House of Commons Library Standard Note SN/PC/02666 June 2011.

²² HC Deb 18 Jun 2014, vol 582, col 1105 <<https://hansard.parliament.uk/Commons/2014-06-18/debates/14061868000004/OralAnswersToQuestions>> assessed 24 April 2023

²³ Rajeev Syal, ‘Tony Blair faces calls for impeachment on release of Chilcot report’ *The Guardian* (3 July 2016) <www.theguardian.com/politics/2016/jul/03/tony-blair-may-face-impeachment-on-release-of-chilcot-report> assessed 23 April 2023

By 2016 the House of Commons library produced a further revised note on Impeachment acknowledging the technical availability of Impeachment, omitting much of the discussion on its relevance- not least the issue of secret agreement with a foreign power but featuring a lengthy quote from a former Clerk of the House, Sir William McKay in which he declared that its use would ‘defy all logic’ and be ‘absurd’. Among the objections advanced was that it was unclear in what room a trial might be held. Among the other omissions were, that 158 MPs had supported the motion calling for a committee of investigation back in 2005 and the debate and vote on that motion in the House of Commons in October 2006. A debate and vote on such a motion had not taken place for more than a century and is of some significance in the history of the Constitution.

12.3 Context, Continuity and Conclusions

There is a broader global context to impeachment which is usually considered in a US context. An internet search beyond Bush, Trump and Blair shows Impeachment to be a global phenomenon. Examples from the Philippines²⁴, South Africa²⁵ and Peru²⁶ should point to the insufficiency of limiting historical and policy research to the Anglosphere – not least because there are doubtless useful examples from other countries that can usefully inform Anglo-American practice.

Understanding that Impeachment is a world-wide constitutional practice provides further evidence of the oddity of those British who happily discard a device the English invented and which other cultures find most useful.

Should British normatively orientated academia with a public policy brief be content to let Impeachment fall back into disuse? Is there a case that the establishment of standards that led Impeachment to fall into disuse are now more robust than in the early years of this century? Or perhaps the difficulty in upholding the ministerial code is greater, that fraud in for example government connected Covid cases, seem beyond the reach of the law, that the law of ‘misconduct in public office’ is strangely unapplied, and that the Metropolitan Police — what passes for a national police in Britain - seem ineffective and compromised? And Newspaper proprietors not even domiciled in the United Kingdom feel at liberty to brand the Judiciary as the Enemies of the People, aping perhaps what has become normal in Hungary and Poland.

Accountability to Parliament by Ministers continues to weaken and statute law and its enforcement arm are tragically inadequate, as demonstrated by the crises of the Conservative governments since 2010. The resignation issue that brought down Peter Mandelson in the 1990s, the disclosure of mortgage payments on a flat, seems quaint in comparison to the missing billions in Covid related government spending; and the Prime Minister’s partying whilst ordering the aged to die alone.

The Iraq invasion and the lack of accountability may be seen as watershed permitting further levels of lack of accountability. Nevertheless, surges and rip tides of politics may yet bring circumstances in which party management is less dominant and the Parliament more able to exert itself as an institution.

At the time of writing the accountability – or rather the lack of it – of Heads of State for international crimes including the Crime of Aggression is again high on the international political agenda following Russia’s attack on Ukraine. States that successfully delayed and weakened the Crime of Aggression in the context of the International Criminal Court are leading demands for the indictment of Vladimir Putin. Even Gordon Brown,

²⁴ Eimor P Santos, ‘Unseating Sereno: A tale of two ousters’ *CNN Philippines* (10 May 2018)

<www.cnnphilippines.com/news/2018/05/10/Chief-Justice-Sereno-impeachment-quo-warranto.html> assessed 24 April 2023

²⁵ Jason Burke, ‘South Africa’s parliament votes against motion to impeach Cyril Ramaphosa’ (13 December 2022) *The Guardian*

<www.theguardian.com/world/2022/dec/13/south-africas-parliament-votes-against-motion-to-impeach-cyril-ramaphosa> assessed 24 April 2023

²⁶ Reuters, ‘Peru’s Congress votes to remove president Castillo in impeachment trial’ (7 December 2022)

<www.reuters.com/world/americas/perus-congress-votes-remove-president-castillo-impeachment-trial-2022-12-07/> assessed 24 April 2023

Chancellor under Tony Blair at the time of the attack on Iraq, is calling for a tribunal to try Putin – carefully constructed to avoid his own liability.

Should political dynamics evolve such that Tony Blair might be brought to trial internationally, then the attempt at impeachment may be relevant. At SOAS with support from the Leverhulme Trust²⁷, we are researching the complementarity of national (domestic) legal processes and those of international courts. One principle is that the International Criminal Court should only get involved where the national processes are ineffective. In the case of Tony Blair and the invasion of Iraq it is possible to argue that the rejection of the impeachment by the House of Commons demonstrates the ineffectiveness of British legal systems in this regard. In a related issue, our research indicates that Heads of State should not be considered immune from prosecution – as is the common assumption – if World War Two indictments of Hitler are taken into account.

In this context scholars have a duty to develop policy for a modernised Impeachment process – as Holdsworth called for a century or more ago. Its revival in the early part of the present century can only help this along.

One obvious change would be to have the Commons prosecute the case before the Supreme Court which has taken on the legal duties that used to rest with the Law Lords in the House of Lords. Perhaps the Institute for Government, the Constitution Unit and other organisations could lead the way to sharpening the tools of democracy as the internal threats to it appear disturbingly renewed. The issue of secret agreements with foreign powers is not one that is likely to disappear.

It is to be hoped that the broader project led by Dr Monaghan and his colleagues can provide the necessary resource for public and parliamentarians to hold the executive to account as they seek to navigate the political perils of the twenty-first century.

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²⁷ SOAS University of London, *Renewing positive complementarity: reframing justice relations after atrocity*.

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