

HOUSE OF LORDS
HOUSE OF COMMONS
JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

Memorandum submitted by Baroness Mallalieu QC (President of The Countryside Alliance) (ev 13)

OVERVIEW

· As President of the Countryside Alliance I have been closely involved with eight major demonstrations which have taken place either within Parliament Square or which have passed through it. The Alliance has, therefore, perhaps unique experience of demonstrations in the vicinity of Parliament over a number of years. All save two were totally peaceful. All involved close co-operation with the police. Where there were disturbances we believe that co-operation had broken down.

· The principal demonstrations were:

December 2000 - A vigil held in Parliament Square during Second Reading of Hunting Bill in the Commons.

15 May 2002 to 22 September 2002 - A round the clock vigil in Parliament Square.

22 September 2002 - The Liberty & Livelihood March. 407,791 people march, with over 100,000 "marching in spirit". This is the largest civil liberties march in modern history culminating in Parliament Square.

16 December 2002 - A march from Hyde Park Corner to Parliament Square for a mass lobby of Parliament, to mark the Second Reading of the Government Hunting Bill in the Commons.

29 to 30 June 2003 - Women's Vigil over two days to coincide with the Report of the Hunting Bill in the Commons.

9 July 2003 - Demonstration involving working dogs, owners and handlers in Parliament Square during the Hunting Bill's Third Reading in the Commons.

15 September 2004 - Demonstration in Parliament Square, arranged at short notice to coincide with All Stages of the Hunting Bill in the Commons.

· On only two occasions did any public disorder occur. The fact that the vast majority of demonstrations were peaceful and orderly indicates that demonstrations involving Parliament Square do not of themselves pose any greater risk of trouble than demonstrations elsewhere. On the 16 December 2002 disturbance occurred as a direct result of the police, without prior warning, trying to prevent the march from reaching Parliament Square. On the 15 September 2004, when more serious disturbances occurred in Parliament Square, problems of crowd control was exacerbated by inadequate police communications on the ground and some heavy handed tactics. Stewards who identified trouble makers, unrelated to the protestors, who appeared to be inciting an otherwise peaceful crowd, were unable to liaise with police quickly enough to have them removed effectively. There was inadequate communication on the ground - the Countryside Alliance having been refused permission for loud speakers in all corners of Parliament Square in order to communicate with the crowd. Where organisers and police work together and the policing is appropriate and sensitive then trouble is rare.

· The 2005 Serious Organised Crime and Police Act, in respect of Parliament Square has proved ineffective and the Government's intention to repeal these provisions is welcome. The ban on protest without police authorisation (the right to assembly under the European Convention on Human Rights) is unacceptable in a democracy.

· The repeal of these provisions however, should not be used to "harmonise" the differing regimes in respect of marches and static assemblies under the Public Order Act 1986. Such a move would seem inevitably to lead to considerably more control of assemblies across the UK and would place unnecessary limitations on the right to protest. The differences in the existing regimes reflect practical considerations between a moving and static protest.

· Harmonisation could result in the police being able to arrest someone simply for handing out leaflets about a local issue on their high street, even if he was law abiding in every other respect. This is clearly unacceptable.

· A requirement to give notice of protests, in the designated area or elsewhere, is unacceptably bureaucratic and threatens to criminalise spontaneous protest and to make people feel unable or unwilling to participate.

· Censorship of placards/banners, allowed under the 2005 legislation, is absolutely unacceptable unless there is a clear offence of incitement to violence or racial/religious hatred.

- There is a substantial, and growing, array of legislation and provisions already in place, giving the police powers to control protestors throughout the UK. Around Parliament the Sessional Orders are in place to ensure access by parliamentarians and bye laws exist to protect the 'World Heritage Site' of Parliament Square.

- The whole purpose behind a Constitutional Renewal Bill must be to re-engage people with the process of government and to encourage participation in our democracy, not to isolate Parliament from the voice of the people and legitimate protest.

- Lastly, Parliament is world famous not only as a building but more importantly as the "mother of parliaments". Free speech and the right to peaceful protest is an essential prerequisite of a healthy democracy. It is important that these freedoms are seen and understood not just by our own citizens but by those who visit this country, sometimes from countries which do not enjoy these freedoms. However unsightly a protest may be the right to protest must be protected. Parliament's status as a tourist attraction is incidental to its primary purpose and the rights and freedoms which it embodies.

REPEALING THE CURRENT LAW

- The provisions of the Serious Organised Crime and Police Act 2005 are not a reasonable way to deal with demonstrations around Parliament. They are too restrictive of the rights of freedom of expression and assembly and have proven to be ill-defined and hard to implement on a practical level, as legal cases have demonstrated. Both the nature of conditions that can be imposed on demonstrations and the circumstances in which conditions can be imposed are too broadly defined. The rules should revert to those of the Public Order Act 1986.

- The powers under the Public Order Act 1986, the byelaws relating to Parliament Square Garden and the requirements place upon the police under Sessional Orders provide sufficient powers to the police to deal with demonstrations in the vicinity of Parliament.

- Parliament as the seat of our democracy is rightly the focus of protest. It is imperative that the right to free speech is protected and I am unpersuaded that the area around Parliament should be treated differently than anywhere else in the country. Demonstrations, under the 1986 Public Order

Act and other legal provisions give the police ample powers to ensure the security of the public and Parliament and at the present there is no case for additional police powers.

- It should be noted that the current area designated under the 2005 Act does not simply extend to Parliament and Parliament Square but also covers civil service and security service buildings. This was not what the 2005 Act was supposed to cover and indicates a lack of proper distinction between Parliament and Government and is a far greater area than that which would be required to ensure the protection and proper functioning of Parliament. It is unacceptable, for example that people such as Maya Evans and Milan Rai should face criminal sanctions for protesting outside Downing Street by reading out names of Iraqi and British dead killed in the invasion and occupation of Iraq.

ACCESS

- We agree that the business of Parliament must be allowed to continue unhindered and that the police need appropriate powers to ensure that this takes place. The Sessional Orders, which are renewed each session at the Opening of Parliament, require that the Commissioner of the Metropolitan Police ensures that access to Parliament is kept free. Although the Sessional Orders do not confer any special powers of arrest on the police, they are sufficient when taken together with other police powers, including under the Public Order Act 1986, to deal with all ordinary occurrences.

- In considering whether the police actually need additional powers to enforce Sessional Orders, it is important to remember that the Public Order Act 1986 already contains the power for a senior police officer to impose conditions when he or she considers that an assembly may cause "serious disruption of the life of the community". This power would be activated if any serious or prolonged disruption to parliamentarians was reasonably envisaged. Given the variety of access points to the Palace of Westminster and other parliamentary buildings, the obligations on the police under Sessional Orders, when taken together with existing police powers, are more than sufficient to ensure the free movement of parliamentarians and their staff to and from Parliament and to ensure the continued functioning of Parliament during protests. The arguments of the police for additional/specific powers is unfounded in our opinion.

- In the case of persistent obstructions, general powers such as the power to arrest for obstructing a police officer in the execution of his duty, for breach of the peace, or for public order offences would operate. For larger gatherings, the Public Order Act 1986 provides powers to prevent disruptions to the life of the community, for example. In addition, the Greater London Authority has authority over the central gardens and Westminster City Council has responsibility for the pavements, which can be exercised in the event of serious obstructions.

- While understanding the importance of ease of access to parliamentary buildings and especially for divisions, we would suggest that rather than unduly banning or restricting demonstrations Parliament might consider other options to respond to the very rare occasions when a protest might render access to Parliament less easy. Parliamentarians have various options for accessing Parliament which do not all access onto Parliament Square itself. It is also worth remembering that any sizeable assembly due to take place in Parliament Square, of the type capable of causing a hindrance to parliamentarians, would be widely publicised in advance, allowing the opportunity for suitable arrangements to be made by the relevant authorities in Parliament.

- Accepting that the right to demonstrate in a peaceful and responsible way is a key human right and aspect of democracy, Parliament could consider special provisions where a particularly large demonstration has restricted access to the Palace via one or more entrances involving for example greater flexibility in the timing and duration of divisions.

NOISE

- The ban on loudspeakers in the designated area is unacceptable because it makes protest ineffective. It is now almost impossible for people to hear speeches at demonstrations or for large groups of people to be addressed by organisers. This is a significant infringement on freedom of assembly. It also restricts the ability of peaceful protesters to co-ordinate, express themselves collectively and protest effectively.

- There is no doubt that excessive noise impinges on the work of those working within the parliamentary estate. This however is a small price to pay for free speech and it does not prevent work continuing. Moreover, both chambers are sufficiently removed from Parliament Square that it seems unlikely that noise from the Square would make sitting impossible. The same would apply to many other parts of the Palace.

- Moreover the police have powers under the 1986 Act to place conditions on the place and duration of a static demonstration which can be used to ensure that the use of loudspeakers and any inconvenience caused is managed. In any case written permission of the Mayor of London is required in respect of Parliament Square Gardens for the use of a loudspeaker. What is required is a proportionate and proper use of existing powers not draconian restrictions which undermine basic democratic rights.

PERMANENT PROTESTS AND ENCAMPMENTS

· While unsightly and possibly irritating to some parliamentarians tolerating longer term protests is a small price to pay when what is at stake is a fundamental democratic right. Bylaws already exist in respect of Parliament Square Gardens. It is also against the law to block footpaths and public roads. It would seem that the laws and police powers already exist to prevent permanent encampments on Parliament Square or indeed elsewhere. In respect of permanent protests, such as that mounted by Brian Haw, there appears to be a lack of willingness by the authorities to act not an absence of laws which allow them to do so. Between the Mayor of London's byelaws, and other legislation the police could remove him. Perhaps the reluctance of the respective authorities to co-ordinate and use their powers is a healthy indication that the right to protest is seen as more important than legal niceties, or the aesthetics of the area around Parliament. The Countryside Alliance throughout the summer of 2002 held a longstanding vigil and a variety of themed protests, all of which were peaceful and admirably tolerated by the authorities although there must be doubt as to whether they were all within the strict letter of the law.

· The Government has stated that 'we need to ensure that all groups have the opportunity to protest peacefully at the seat of the UK elected Parliament'. Indeed former Prime Minister Tony Blair famously said in a speech at the George Bush Senior Presidential Library on 7 April 2002: "When I pass protestors every day at Downing Street, and believe me, you name it, they protest against it, I may not like what they call me, but I thank God they can. That's called freedom."

· However, the Government also wants this to be consistent with Parliament Square a World Heritage site and visitor attraction. The right to protest is as much a part of that 'heritage' which should be celebrated, as the buildings. Parliament Square is a 'living' place and the presence of protestors is in itself an example to the world that we are a free and democratic society. While Brian Haw's protest is aesthetically unpleasing it has commanded a huge amount of respect worldwide and is an attraction for visitors. As I have said above the freedom to protest is more important than any considerations which relate to Parliament and its environs as a tourist attraction. The right of protest must be safeguarded regardless of World Squares or indeed any other proposals.

· When discussing the Serious Organised Crime and Police Act (Designated Area) Order 2005 on 14 July 2005, Lord Dholakia reminded the House of Lords of the words of Lady Amos, who had said, in response to questions on her Statement about the terrorist attacks in London on 7 July: "On the issue of democratic liberties, which was raised by the noble Lord, Lord Strathclyde, I cannot think of any other country in the world where the demonstration that is going on right outside Parliament this afternoon-right outside my window-would be going on. We should take immense pride in that." [Official Report, 11/07/05; col. 905].

- Following on from Lord Dholakia, Baroness Williams of Crosby argued:

"Parliament is properly described as 'the people's house'. It is the house of the representatives of the people; it is not a house that belongs to the Government, but a house that belongs in the end to the people. Therefore, there has to be some way in which the people can have access or enable their feelings to be heard by Parliament. That is a duty on Members of Parliament, as much as members of the Government, and I find it extraordinary that we should be segregating members of the public from those that they elected." [Official Report, 14/07/05; col. GC 154].

SECURITY AND PUBLIC SAFETY

- No evidence has been provided that the security risk has been reduced around Parliament as a result of the 2005 Act. A public demonstration poses no more of a security risk than large numbers of tourists. Moreover, the scope of the 2005 Act which criminalises lone protesters undermines the official justification. It is illogical to suppose that a single person demonstration could pose a security risk or indeed hinder the business of Parliament; or compromise the equal right of protest.
- Under the 1986 Public Order Act the police already have specific powers in respect of public safety and these are more than adequate, coupled with powers of arrest.

PRIOR AUTHORISATION

- Sections 11 to 14 of The Public Order Act 1986 cover public marches and public assemblies. A march involves people moving along a route although the law does not define a minimum number of persons who constitute a march. An assembly is defined as two or more persons in a public place in the open air. It was under the 1986 legislation that the various Countryside Alliance demonstrations took place.

Marches

- Under section 11 organisers of marches must give advance notice to the police. Notice must be given six clear days in advance, in writing and must include the date, time, proposed route and name and address of the organiser.

- Notice need not be given if it is not reasonably practicable to do so as in the case of spontaneous marches and if a march is planned at short notice then the organiser is required to deliver notice as soon as reasonably practicable.

- A senior police officer can impose conditions if he reasonably believes the procession may result in:

1. Serious public disorder
2. Serious damage to property
3. Serious disruption to the life of the community
4. Or, that the purpose of the march is to coerce by intimidation.

- Failure to comply with these provisions knowingly and within one's control is a criminal offence.

- Under Section 13 the chief officer of police may apply to the local authority for an order banning a march if he reasonably believes imposing conditions will not prevent serious public disorder. Such an order requires the Home Secretary's consent. In London the Commissioner of the Police of the Metropolis may seek consent for such an order from the Home Secretary directly. It is a criminal offence to participate in a banned march.

- The importance of allowing spontaneous protest has been highlighted in the recent case *Bukta and Others v Hungary* (2007) in which the European Court of Human Rights found that:

"in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly".

Assemblies

- Unlike marches there is no requirement to give prior notice to the police. In practice organisers usually consult the police to ensure a safely managed event.

- Section 14 does allow a senior police officer to impose conditions on a public assembly for the same reasons as given for marches above. However, conditions may only relate to:

1. Place

2. Duration

3. Number of persons who may assemble

- There is however no power to ban a public assembly, although under Section 14A of the Public Order Act the Chief Officer of Police can apply to a district council for an Order prohibiting the holding of a trespassory assembly i.e. one which is on land to which the public has no, or limited right, of access, and where it is likely to be held without permission of the landowner and is likely to result in serious disruption to the life of the community. A protest in Parliament Square Gardens would be a trespassory assembly.

- To require notification in all circumstances is overly restrictive. The principle that notification should be given by organisers as soon as possible is desirable but not always practicable.

POWERS OF ARREST

- The existing law provides the police with ample powers of arrest. In respect of persistent noise disruption, there are the existing byelaws which cover Parliament Square Gardens and under the 1986 Public Order Act there are provisions which could be used to limit the duration of protests.

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