

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

Memorandum by the Baroness Miller of Chilthorne Domer

Introduction

1.1 This evidence is submitted by Baroness Miller of Chilthorne Domer, Liberal Democrat spokesperson for Home Affairs.

1.2 It focuses on Part 1 of the Draft Bill.

1.3 Clause 1(1) would repeal sections 132 to 138 of the Serious Organised Crime and Police Act (SOCPA) 2005.

1.4 The rest of clause 1 would make consequential amendments to SOCPA, the Noise and Statutory Nuisance Act 1993 and the Serious Crime Act 2007.

1.5 I welcome the repeal of SOCPA s. 132-138.

1.6 I also welcome the statement in the White Paper that "the Government will not pursue harmonisation of the sorts of conditions that can be placed on marches and assemblies in the Public Order Act 1986".

Overarching questions

2.1 The central theme of the overarching questions issued by the Joint Committee Call for Evidence is the impact of the Draft Constitutional Renewal Bill (DCRB) on the ability of Parliament to hold Government to account.

2.2 Part 1 of DCRB is more important for the ability of British citizens to hold Parliament and government to account.

Balancing our democratic rights

3.1 The Call for evidence asks:

The Draft Bill provides an opportunity to re-balance the right to protest outside Parliament against the right of Parliament to operate effectively and without hindrance. How should this balance be struck?

3.2 I agree that a balance is sometimes necessary between different rights. I consider, however, that the loss of the right to peaceful demonstration imposed by the curtailment of access to the area around Parliament was not proportionate to the benefit to any other rights.

3.3 As Lord Carlile, the Independent Reviewer of Terrorism Legislation, has said:

Have we been too cautious...? I believe that we have. If we have, we need to go one stage further and say that we are prepared, even the Government are prepared, from time to time to admit that we have legislated a step too far... Now let us step back and restore those standards that we regard as essential in our precious democracy. [Official Record, 26 Jan 2007 : Column 1379]

3.4 The European Convention on Human Rights set out the right to freedom of expression (Article 10) and freedom of assembly and association (Article 11).

3.5 Article 11 is, however, a qualified right. It states that "no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others".

3.6 In order for the conditions of this qualification to be met, the restrictions on peaceful demonstration must therefore be necessary for one of these legitimate aims.

3.7 The government has argued that the legitimate aims behind the SOCPA laws were:

- a) protection of Parliament's right to operate unhindered; and
- b) national security.

3.8 I would suggest that the SOCPA powers failed this necessity test for three reasons:

- 1) The powers were not necessary for the smooth operation of Parliament because other, less restrictive but equally adequate powers were already available. Moreover, I suggest, the work of Parliament is in some ways enhanced by the presence of demonstrations, both spontaneous and planned.
- 2) The powers were not necessary for national security because there is no evidence of the threat posed by demonstrations and no evidence of the effectiveness of the SOCPA powers for dealing with the supposed threat. In fact, the powers were nigh unworkable.
- 3) The powers disproportionately curtailed the freedom to demonstrate outside Parliament.

3.9 I shall elaborate on each of these points:

4.1 1) The effectiveness of Parliament

I would suggest that Parliament's role of calling government to account and Parliament's legislative role require that Parliamentarians be in touch with the views of the British public.

4.2 Certainly, in the modern age, there are all sorts of routes of access to lobby Parliamentarians: we have e-mails and easy access to mass media and printing. But the right to peacefully demonstrate remains vitally important.

4.3 Many lobbying channels can be dominated by organisations, NGOs, the private sector. Many have great resources and dedicated Parliamentary liaison workers.

4.4 The right to stand up and demonstrate remains a direct and relevant form of political expression for ordinary people. We saw this in 2001 at the demonstrations concerning the Iraq War.

4.5 In particular, the right to stand up and demonstrate is important for reacting very quickly to events as they happen. This is the most transparent way for the mood of the public to be conveyed to Parliamentarians unfiltered by media or corporations or who can afford what.

4.6 For these reasons, I suggest, far from impeding the work of Parliament, the right to freely demonstrate actually enhances the work of Parliament and the vibrancy of our democracy.

4.7 Of course, it is appropriate that this right should be fairly available to all and not monopolised by a few. Nor should demonstrations overstep certain boundaries of noisiness or disruption. However, powers to control serious infringements were already in place before SOCPA.

4.8 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. Sessional orders are able to apply to members of the public, not just Members of Parliament. For example, an order is made giving the police the power to hold up the traffic outside Parliament in order to let MPs get to the House to take part in debates or to vote. Although the Sessional Orders do not confer any special powers of arrest on the police, we believe that they are sufficient to deal with all ordinary circumstances.

4.9 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 come into play. 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.

5.1 2) National security

I recognise that by necessity we live in a time of heightened security. Since the September 11th attack in the U.S. and the July bombings in this country, it is incumbent on us all to maintain a heightened vigilance. We are not, however, convinced of the case for special limits on demonstrations around Parliament as part of the response to the terrorist threat. The police have a variety of powers to guard against the terrorist threat.

5.2 For example, under the Terrorism Act the police have powers to stop and search in the designated area, and between January and July 2006, 714 searches took place within the government security zone around Westminster and Whitehall and a further 4,465 people were spoken to about their activities [Official Record, 26 Jan 2007 : Column 1369]. As already outlined, the police already have powers under the Public Order Act and a variety of civil remedies for ordering demonstrations that get out of hand.

5.3 We have been made aware of no evidence, apart from anecdotal assertions, of a link between the presence of demonstrators in the Designated Area and any increased security threat. Nor is there any evidence that SOCPA 2005 has helped to improve the security situation around Parliament.

5.4 On the contrary, attempts to enforce the almost unworkable SOCPA laws have taken up large amounts of police time and resources. For example, policing of the "Sack Parliament" protest of October 2006 cost £298,000 [Official Record, 30 Nov 2006 : Column WA76]. The Liberal Democrats are of the opinion that a free and active democratic right to demonstrate is part of the solution to potential danger. An open, active civil society promotes social strength from within that cannot be achieved by legislation.

6.1 3) The "chilling effect" on political participation

The restriction of rights to freedom of expression and freedom of assembly led to the erosion of democratic participation among vital third sector organisations, such as charities, and among the general public.

6.2 Moreover, by the conflation of the question of appropriate demonstrations with the issue of security, the SOCPA powers created highly disproportionate penalties that led to criminal charges for very minor infringements. This has compounded the deterrent effect on public democratic involvement.

6.3 According to the Metropolitan Police Commissioner, between the enactment of SOCPA 2005 and March 2007, 91 individuals were arrested for demonstrations outside Parliament [Official Record, 28 Mar 2007 : Column 1649W].

6.4 These include the cases of Milan Rai and Maya Evans who were both convicted for unauthorised "demonstrations" drawing attention to the victims of the Iraq war. Mark Barrett was arrested for holding a tea party outside Parliament which, according to the police, constituted an illegal demonstration.

6.5 The inconsistency with which the law has been applied has been highlighted by the work of comedian Mark Thomas (<http://www.markthomasinfo.com/>) whose Mass Lone Demonstrations have shown the arbitrary application of the law and the ridiculous situations that have arisen from the unnecessarily strict and shoddy drafting of SOCPA s.132-138. This was confirmed by District Judge Purdy in Westminster Magistrates Court who found difficulties in both the letter of the law and its application [Regina v. Brian Haw, 22/01/07].

6.6 In addition to these obvious effects of the law, there may also have been a deeper effect on the democratic participation of British citizens, who have been caused to doubt their right to demonstrate because of SOCPA and these high profile cases. Although sheer number of demonstrations has remained high, this is partly due to the resolve of those who have been trying to draw attention to the problems caused by SOCPA.

6.7 It is impossible to tell how many ordinary people have decided not to exercise their democratic right to demonstrate because of the "chilling effect" of the SOCPA laws. As I said in the 2nd Reading of the Public Demonstrations (Repeals) Bill, which proposed the repeal of SOCPA 132-138, "People are now afraid that they will get a criminal record for simply holding a placard or even wearing a T-shirt with a slogan on it anywhere near Parliament" [Official Record, 26 Jan 2007 : Column 1368].

6.8 This view was corroborated by the Advisory Group on Campaigning and the Voluntary Sector, chaired by Baroness Kennedy QC, which supported my Bill in its May 2007 report on campaigning and the voluntary sector.

Special considerations

7.1 The call for evidence asks whether there ought to be special provisions for access, loudspeakers, heritage, permanent demonstrations and equal access. I have dealt with several of these questions above.

7.2 As with the work of Parliament, I believe that democratic participation actually enhances the status of Westminster as a World Heritage site. One of the cultural criteria of World Heritage is "to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs". The idea of democracy is closely connected with the idea of an active citizenry, taking part directly in the working of a legislative assembly. As such, the opportunity to express a political opinion outside Parliament makes the site one of living heritage, not just a historical spectacle. Only the most extreme aesthetic offences should be controlled and then using existing laws.

7.3 I do not think that new laws are necessary to control permanent demonstrations, but I do agree that we must allow for other people to have access to the prime "opposite parliament" space too.

7.4 With regard to Brian Haw's encampment, I would agree with Lord West's statement that "responsibility for the management of the grass area of Parliament Square and the enforcement of by-laws falls to the Greater London Authority under the GLA Act 1999" [Official Record, 12 July 2007: Column WA246]. Both the authorities and demonstrators must be reasonable and where one group monopolize access to Parliament existing by-laws should be utilised to provide for fair access.

7.5 In the case of loudspeakers, I believe that there are already sufficient laws in place to prohibit excessive noise. For example, section 2 of the Noise and Statutory Nuisance Act 1993 amends the Environmental Protection Act 1990 as follows:

Noise in street to be a statutory nuisance

2 Noise in street to be a statutory nuisance

(1) Section 79 of the 1990 Act (statutory nuisances) shall be amended as follows.

(2) In subsection (1) (list of statutory nuisances)-

(a) for "Subject to subsections (2) to (6) below" there shall be substituted "Subject to subsections (2) to (6A) below",

(b) after paragraph (g) there shall be inserted-

"(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;", and

(c) after "section 80 below" there shall be inserted "or sections 80 and 80A below".

(3) After subsection (6) there shall be inserted-

"(6A) Subsection (1)(ga) above does not apply to noise made-

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign."

7.6 Nuisance use of a loudspeaker in a demonstration outside Parliament would be covered by the definition of nuisance noise from "equipment" caused "by a political demonstration or a demonstration supporting or opposing a cause or campaign".

Closing comments

8.1 The repeal of SOCPA 2005 is a very welcome step and certainly represents a renewal of our constitutional right to peaceful demonstration, which has recently been eroded.

8.2 Demonstrations add to the vibrancy of our democracy, they do not detract from it.

8.3 I submit to the Committee that the repeal should return the situation around Parliament to the status quo ante. We do not need to create any new rules at this time.

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