Parliament and Parliamentarians: The Worrying Case of the City of London (Ward Elections) Bill

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Parliamentary procedure and the role of the representative

THE British constitution is often viewed either with scorn or with awe. Those who are sceptical of the capacity of an uncodified constitution to ensure standards of justice and fairness compatible with a representative liberal democracy may point to the lack of a clear separation of powers as supporting evidence. For instance, the power of Margaret Thatcher and of Tony Blair as Prime Ministers has been widely criticised by parliamentarians and commentators alike.

Those who are positive about the flexibility of the British constitution point to its ability to weather both threats to national security and dramatic change with minimal disruption, pointing to the stability of the constitution through the first forty years of the twentieth century as evidence of the former. As evidence of the latter, the crisis over the House of Lords in 1911 did shake the stability of the parliamentary system, but perhaps because of its organic uncodified form, the constitution and the Parliament were able to accommodate this change. (The British constitution is better described as uncodified rather than unwritten; large sections of it are written, but their distribution in a variety of sources is uncodified.) However, although interesting, it is not my intention here to provide a string of evidence for either position on the constitution as such. Rather, I intend to highlight how the sort of constitutional conventionalism practised in the British Parliament can be abused. The consequence of this is that when conventional procedures are manipulated, we may be faced with severe legitimation problems.

Further to the formal political institutions, the British constitution may justly be held to depend upon institutions and entities outside the formal political system, such as the public and the media. These also have a responsibility to act as checks and balances to the government, representatives and Parliament as a whole. Although there is no direct constitutional reference to the sovereignty of the people, it is widely accepted that the sovereignty of Parliament is claimed in the name of the people; that is, the sovereignty of the people is vested in institutions. Here I do not wish to follow a definition of sovereignty as that which 'is incapable of legal limitation', but rather that democratic sovereignty is a system of rule in which the subjects of law are its authors. That is, sovereignty is self-limiting, via a balance of powers.[1]

Such conceptions have a long pedigree in constitutional thought. Indeed, it was Burke who, in *Thoughts on the Present Discontents*, judged that 'the King is the representative of the people; so are the Lords; so are the Judges'. This sentiment was echoed in Austin's *The Province of Jurisprudence Determined*, in which he states that it is not the elected

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representatives who are sovereign, but those who they represent. More recently, Tony Blair asserted that 'Parliament and the Executive are structures of power. They owe their legitimacy not to themselves, but to the people—the electors' (*Hansard*, 13 July 2000, col. 1098). In accord with this, elections, referendums, public consultation, public service information, and rights such as the right to assembly, have all evolved over the past three or four hundred years, establishing the rights that are required for self-government. Regarding the media, it was Carlyle who attributed to Burke the phrase the 'fourth estate', adding that this is 'not a figure of speech, or a witty saying; it is a literal fact'.[2] We might, then, surmise that legitimate law making accords not only with a parliamentary procedure in the interests of 'the people', but with a broader conventional procedure that includes communication with the public and media.

The difficulties of determining the details of such representation are well known in both theory and practice. Indeed, the central issue to be raised, though not answered, in this article concerns the appropriate motivations of representatives in their decision making. Burke's dictum in his speech to the electors of Bristol that Members of Parliament should be considered trustees, as against Rousseau's delegates, has proved itself to be an important source of authority on the role of the MP. However, although Burke's judgement on the role of a representative has been influential, the party system prevents MPs from having the autonomy that would enable them to exercise the sort of independence of mind that would allow them to make decisions in accord with what their intellect may move them towards. The majoritarian nature of the British Parliament, a feature not similarly present in Burke's day, means that the party with the most seats controls both the legislature and the executive. It is this tendency, accompanying the rise of party politics, that led Lord Hailsham to speak of the ever-present threat of 'elective dictatorship'.

Unless MPs are able to exercise a degree of independence, they can all too easily become stooges rather than representatives. In some instances, the individual MP's actions must be driven not by party loyalty as such, but by fulfilling manifesto pledges. Whilst we may agree that MPs should be held to the implementation of the manifesto promises that are the basis of their election, though this is of course 'merely' a convention, there is a large amount of parliamentary business over which MPs might be expected to exercise independent political judgement. Accordingly, when parliamentary business is taken up not by translating manifesto proposals into law, a different logic of action should prevail. It is no longer the case that representatives are led by the democratic will of the people *expressed in their accord with a given manifesto*. Rather, in these circumstances representatives ought to consider their actions in accord with their best judgement, whilst taking advice from the party, constituents and other interest groups. It is thus that the representative is neither a trustee as such nor a delegate who is expected to carry out the will of the electors to the letter. Indeed, when the representative toes the party line on non-manifesto matters, it should be expected that she or he does so because she or he judges it to be right in the short term or long term or preferably both.

It may well be objected that representatives neither have the time nor mental capacity to cast a serious independent judgement on each and every issue on which they cast a vote (or simply abstain), nor are they able to foresee the consequences of their actions. There are issues that are important to one MP that may be inconsequential for another. Accordingly, the former may have an interest in voting a particular way even if against the party

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line, whilst the latter would be quite happy to follow the whip. If the latter feels reasonably strongly on the issue, but not strongly enough to take a risk, she or he may strike some kind of deal. Even if this is the factual mode of politics in the British Parliament, this does not make it right. To be sure, trading legislation for a job—regardless of what one thinks one could achieve in the desired post—or for support for another piece of legislation, leads us to consider deontological ethics: it is rare that the ends justify the means, as the latter so often come to define the former. The issue of voting for career progression is one that MPs may often accuse each other of. However, whether this is an entirely bad reason or not is uncertain. Such reasons are not always cynical, but may enable MPs to better achieve their long term aims.

We are led from this brief, vague, and no doubt inadequate general discussion of motivation to consider a particular instance. From here I will introduce a specific example how the uncertainty that comes from constitutional conventionalism can result in a somewhat warped decision making process.

The City of London (Ward Elections) Bill

> Probably, if there is any body more than another which an educated Englishman nowadays regards with little favour, it is the Corporation of London. He connects it with hereditary abuses perfectly preserved, with large revenues imperfectly accounted for, with a system which stops the principal city government at an old archway, with the perpetuation of a hundred detestable parishes, with the maintenance of a horde of luxurious and useless bodies. For the want of all which makes Paris nice and splendid we justly reproach the Corporation of London; for the existence of much of what makes London mean and squalid we justly reproach it too. (Bagehot, *The English Constitution*)

In 1999 the most ancient fully functioning political entity in the UK sought to alter its constitutional provisions by presenting a bill to Parliament that would enable it to redistribute the right to vote within its boundaries. The provisions of the bill will be explained shortly, but first it is in order to give a background to the promoter of the bill. The Corporation of London developed to govern the City of London, and was chartered in 1067. It has weathered the invasions, wars and civil disturbances that have beset the country over the past 1000 years with remarkable resilience. Often, the Corporation has been associated with what history has decreed to be progressive causes, most notably in its protection of parliamentarians during the Civil War.

The Corporation's constitution is also an interesting aspect, which has changed little since its foundation. The two courts that make up the decision making body of the Corporation are the Court of Aldermen and the Court of the Common Council. The former traditionally consisted of representatives of guilds, elected by the members of those guilds, but now serves little function, largely because of the decline of traditional crafts and the selective rejection of change. Nevertheless, the potential of the Corporation as a guild-based London-wide government should not be underestimated. In Maurice Glasman's account, London's guilds were 'the most important institutions in the moral regulation of the economy in terms of education, quality control and fair dealing'.[3] Indeed, such a model of work-based self-regulation has a long history, and has seen periodic renaissances in the nineteenth and twentieth centuries,[4] and is particularly appealing when so many recent corporate scandals have shown crony capitalism to be alive and well. The latter court has become the preponderant one, so is the main decision making body. The Court of Common Council is made up of freemen of the City who have been elected by her or his constituents. One Alderman and three

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to four Common Councillors serve each ward.

There are two possibly related oddities about the constitution of the Corporation of London that I would like to briefly consider. First, the fact that the Corporation has been more or less untouched for almost a thousand years is remarkable. Even in more distant history, the Corporation remained unscathed by upheaval. William the Conqueror left the City with its liberties intact, and the Magna Carta specified that City of London's liberties should be maintained.[5] It turns out that neither the monarchy nor Parliament has been able to seriously threaten the Corporation's independence, in large part due to constitutional conventionalism. As the authority of Parliament and the monarchy rest on convention, to challenge convention would be to risk undermining the basis of their own authority. The other oddity is the way that the Corporation has responded to change. Whilst resisting calls for change from outside, both courts have undergone internal reconstruction. That is, the Corporation itself has initiated changes that essentially destroyed its constitution in the sixteenth and seventeenth centuries, largely by reducing, and then eliminating, the role of the guilds. Glasman argues that this reconstruction altered the constituency of the Corporation from the diverse interests in the City to the now dominant interests of finance capital.

Perhaps the most disturbing aspect of the Corporation's resistance to change has been that which relates to what can rightly be termed progressive change undertaken in the rest of the country, such as the extension and equalisation of the franchise, and procedural regulation, such as the Municipal Elections (Corrupt and Illegal Practices) Acts. The property qualification, which was abolished in national elections in 1948 and local elections in 1969, remained in place in the City of London. Clause 23 (4) of the 1969 Representation of the People Act) expressly states that '[T]he repeal by this Act of section 5 of the Representation of the People Act 1949 [re property qualification] shall not affect the operation of any provision of that section as applied by section 4(2) of the City Act'. Indeed, the parliamentary debates over that bill saw persuasive arguments that not only was it desirable to abolish the property qualification, but that it was a matter of principle to do so and that it was in keeping with the movement of history; as William Ross MP said at the time, 'the whole trend of the franchise for a long time—and I hope that we shall not turn the clock back—has been away from property qualifications' (*Hansard*, vol. 294, col. 775). Why the Corporation should be excluded from this or any other reforms that befit the rest of the UK is a question that has never been satisfactorily answered.

A more recent illustration of the insulation of the City of London is its regressive move not only to retain the business vote (in elections to the Corporation), but to extend it and increase its disproportionality. This reform was set out in the City of London (Ward Elections) Bill (hereafter, 'the City Bill'). First presented to Parliament in November 1998, the Bill received its first reading on 25 January 1999, its second reading on 24 February 1999 (Ayes 198, Noes 91), and its third reading on 15 April 2002 (Ayes 278, Noes 30), and gained Royal Assent on Thursday 7 November 2002. Prior to the City Bill, the Court of the Common Council was elected on a dual franchise. On one hand, each citizen had one vote, and on the other, certain businesses also had one vote each. That is, resident or non-resident sole traders and partners in partnership-based firms with premises in the City also had a vote. The City Bill proposed to 'modernise' this electoral system.

The City's proposals for 'modernisation' did not accord with conventional

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interpretations of political modernisation, namely the end of the business vote and the establishment of one person one vote. Instead, the Corporation proposed to deliver more votes to businesses with premises in the City. To do this, the proposal gave 'qualifying bodies' the right to *nominate* voters in local elections. A 'qualifying body' is described as 'a body corporate or an unincorporated body other than a partnership'. This 'qualifying body' 'ordinarily occupies as owner or tenant any premises situated in that ward'. In this case, 'occupying' means 'occupying for relevant purposes by personal physical presence', which could be 'through a director, officer, employee or agent of that body' or 'through a holder of any paid or unpaid office for the performance of whose functions accommodation is being provided by a qualifying body'. To facilitate this plural voting, initially it was suggested that a sliding scale should operate whereby a vote would be allocated for every £10,000 step in rateable value to a value of £1 million, and 1 vote would be allocated per £100,000 step thereafter. After being presented to Parliament, the Bill was amended so that the basis for vote allocation would be the number of employees of the firm. Thus, it proposed that a 'qualifying body' should be able to appoint voters based on the number of employees. Eligible employees are those for whom their 'principal or only place of work is within the City and has been within the city for the whole of the twelve months preceding the qualifying date' and who has 'worked for the qualifying body proposing to appoint him and has so worked throughout those twelve months'. Voters will be persons 'appointed in writing as voters by a qualifying body which ordinarily occupies as owner or tenant any premises situated in that ward'. On this basis, one voter is to be appointed for every five workers up to 50 workers. Beyond 50, one voter will be appointed per 50 workers. It was also proposed that the qualifying body should ensure that 'the appointments which it makes reflect, so far as is reasonably practicable, the composition of the workforce'. In addition, if a business occupies multiple premises in one ward, or even in multiple wards, each premises will have at least one vote.

The inadequacy of these provisions was exposed by petitioners when the Bill went to the Lords. However, no block was made on these grounds; that is, what 'reflect' means. In the context of the debates over the Bill, the purpose of reflecting the constitution of the workforce can only be understood as a representative mechanism. However, the crucial question of *what* is reflected remains unanswered. Should class, political affiliation, ethnicity, gender, religion or all of these features be reflected? The Lords committee, on hearing evidence from Revd William Campbell-Taylor, did ask the Corporation to draft guidelines to clarify this procedure. The 'clarification' reads as follows: 'This guidance should not be seen as proposing a new consultation mechanism for organisations whose existing arrangements can be deployed satisfactorily for this purpose. The process of appointment should be open and clear'.[6]

The passage of the City Bill

> We no longer have political representation based on financial interests. That is one of the major changes that has come about in our constitutional debates, and it would be a retrograde step if we went back on that. (William Hamling MP, 1968, *Hansard*, vol. 773, col. 977)

My intention here is not to assess the qualities of the City Bill itself, but, rather, to assess the procedural processes that the Bill went through—though, of course, engagement with the Bill and the Corporation itself are part of this assessment.

When introducing a private bill into Parliament basic publicity is required,

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but when undertaking significant constitutional proposals, broad publicity is *essential* for the legitimacy of that proposal. There are Standing Orders (SO) that issue minimal procedural requirements for those who promote private bills. SO 10 and SO 11 (Commons Private Businesses) demand that proposed bills are publicised properly; specifically, that 'if the Bill is promoted by, or alters functions of, a local authority', it must be publicised in 'a newspaper or newspapers circulating in the area of the authority' (SO 10), and that all bills are presented in the London, Edinburgh or Belfast *Gazette* (SO 11). The City Bill was presented in the *London Gazette* on 4 December 1998, as required by SO 11. However, there are good reasons for the Corporation to have surpassed the minimal requirements. In the first instance, the Corporation wished to introduce significant constitutional amendments; in the second we see that to accord with SO 10 is less straightforward with regards to this particular bill, not least due to the fact that the Bill would affect not just those 'in the area of the authority', but in the main, those from without.

This issue was particularly pertinent given that the logic of the Corporation's proposing the Bill was that it was needed precisely because the people who spend most time in the City *didn't* live there. Further to this, many of the arguments put against the Bill related to the fact that votes were being distributed in accord with the size of the workforce, but workforces seemed not to have been consulted. A survey of 488 people in the City of London conducted on behalf of the petitioner of the Bill in the Lords, Revd William Campbell-Taylor, found that of those surveyed 79 had heard of the Bill, and 399 had not. Of those questioned, 12 thought that representatives should be selected by unions, 72 thought they should be selected by senior management, and 399 thought they should be selected on the basis of one person one vote. The survey was organised by Dr Mike McGuire from London Metropolitan University, and the data was collated, and in this instance analysed, by me.

There were further reasons for surpassing the minimal requirements that go beyond the immediate issue of the reform of the Corporation's voting arrangements, and they point to a much greater degree of procedural irregularity than the Corporation could bear sole responsibility for. The position of the government gave rise to a number of serious questions relating to the status of the Bill and to the influence of the Corporation.

It is generally the case that neither governments nor political parties tend to explicitly support private bills. Representatives may support bills as individual MPs exercising their discretion, but it is rare and problematic for a government to support a private bill. If a bill gains support from the government, its status as a private bill may become questioned, as the government must represent the public rather than private interest. Indeed, Erskine May states that 'no private bill is ever introduced by the Government, and it has been stated that the reason for this is that the Crown cannot petition itself'. The government and Parliament can, however, contest the status of a bill. Indeed, in many respects, it must contest the private nature of bills that have implications beyond their private application.

In relation to private bills, Parliament acts in a judicial as well as a legislative capacity. In the latter capacity, Parliament 'is concerned to safeguard the interests of the public', and 'if Parliament considers that it may be damaging to the community as a whole, it has the power to reject a bill'. Furthermore, a bill can be designated public instead of private because of 'the magnitude of the area and the multiplicity of the interests involved'. For example, the 1939 London Rating (Site Values) Bill was objected to as a private bill since 'the Bill raised questions

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of public policy of great importance and affected interests of vast magnitude'.[7] It is therefore important for the government's position on a private bill to be clear, otherwise there may be uncertainty as to the status of the bill, and by consequence as to the procedures the bill undergoes and the reasoning that decides its passage.

Problematically, the government's position on the City Bill was not clear, and neither was the position of the majority party. In order to understand the government's position on the City Bill, and the reasons for passing it, it is necessary to look at the changing position of the Labour party on the issue of the Corporation of London. In 1983, the party manifesto stated that, if elected, a Labour government would 'ensure that the City of London is absorbed into a reformed democratic system of local government'. Even early influences on New Labour, such as Will Hutton, called for a reorganisation of British capitalism and a reduction in the power of finance capital, and by implication the City. As part of this call, Hutton noted 'That the nearest that London has to any form of governance is a committee of Conservative-supporting businessmen is an affront to any sense of democracy'.[8]

However, by 1997, as Labour became 'newer', all references to democratising the Corporation of London, and challenging the centrality of the archaic City of London in British politics, had gone. Of course, it seems strange that the process of 'modernising' the party would include reversing a hundred and fifty years' progress in democratisation. In one sense, the party continued to recognise the need for reform in the Corporation (as did the Corporation itself), but the change of position related to whether that reform would be internally or externally driven. As this was the period in which the Labour party strove to reform its own image as an anti-business party, when the Corporation sought to initiate reforms itself, the Labour hierarchy saw to it that it could do so. This was most clearly stated in the Labour Party's 1996 policy document *Road to the Manifesto: A Voice for London*. In this, the party stated that the Corporation of London's 'present electoral arrangements cannot be defended and must be changed'. However, it also made it clear that there were no proposals to abolish the Corporation and stated that the government looked forward to detailed discussions with the Corporation over its proposals on its franchise.[9]

Thus we have a situation where a reform bill initiated by the Corporation would gain tacit support from a Labour government. However, when the Bill entered Parliament, the government were more coy about expressing explicit support for the City Bill. Although Keith Hill, Under-Secretary of State for the Environment, Transport and the Regions, suggested that the 'Government support continued consideration of the Bill' (*Hansard*, 2 November 1999, col. 189), when questioned on the government's position, Margaret Beckett (whilst leader of the House of Commons) stated that 'the Bill is private business and it is for individual hon. Members to determine how to vote' (*Hansard*, 11 May 2000, col. 1015). Further, when questioned on the government's position on the resuscitation of the Bill, Beckett stated simply that this was 'not a matter for the Government. It has always been subject to a free vote, precisely because it is private business. That will no doubt remain the case if it is reintroduced' (*Hansard*, 3 May 2001, col. 997).

This position, however, contrasts starkly with accounts of both the promoter and the main objectors to the Bill. The former, Peter Brooke MP, stated confidently that 'historically, the Government have purported to support the City of London (Ward Elections) Bill, but Government Whips last night were actively discouraging Ministers from voting for further progress on the Bill' (*Hansard*,

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3 May 2001, col. 996). Though Beckett denied this, opponents of the Bill expressed concern that the Labour party hierarchy was using whips to ensure that Labour members voted for the Bill. Of course, government whips being employed to secure the passage of a private bill raises serious procedural questions, not least as to the status of the Bill.

Another issue that served to cloud the position of the government relates to the suspension of the 10 o'clock rule. It is the case that the 10 o'clock rule is suspended *only in exceptional circumstances* when related to private bills. Indeed, their status means that there are many clear time restrictions for private bills. However, it has been claimed that the suspension took place not at the instigation of the Chairman of Way and Means, but at the behest of senior figures in the Labour government. Andrew Mackinlay MP raised a point of order on just this issue:

> Mr. Speaker. I seek your help, guidance and clarification on business later today. Will you confirm and clarify my understanding that, at 7 o'clock—when we begin consideration of the City of London (Ward Elections) Bill—the 10 o'clock motion, which cannot be debated, will be put? Is there any vehicle by which hon. Members who have consistently resisted that grubby little measure—born of a clandestine and wholly illegitimate grouping of the City of London corporation and Ministers—might ensure that it is rightly the subject of a free vote? Certain hon. Members are under the illusion that it is Government business, and that they might somehow gain preferment, but they will not.
>
> There is also a serious parliamentary point at issue. This is a private Bill and according to the traditions of the House, which you jealously safeguard, the vote, by definition, is a free vote, but the plot is that it is not. The nod and wink from those on the Treasury Bench is that Members should be present to provide parliamentary time through the night to see this squalid little measure through. (*Hansard*, 15 April 2002, col. 364)

John McDonnell MP was at the fore of calls for clarification of the Bill's status. He stated that the Prime Minister intervened on the Corporation's behalf in order to ensure enough time for passage. However, McDonnell pointed out that, in accord with parliamentary practice, 'except in the severest need, the House had decided against all-night sittings as part of . . . [the] modernisation programme', which was at the fore of New Labour theory. He went on to call for the Deputy Speaker to say whether he would:

> investigate whether the motion [for an all night sitting] has been placed on the agenda at the direct request of the City corporation, because I have evidence to prove that it has? On repeated occasions we have been informed that this is a private Bill and not a Government Bill, yet the Prime Minister's name is now associated with it. What status does the Bill have? Has the Prime Minister made any declarations of interest in relation to the Bill?' (*Hansard*, 15 April 2002, col. 420)

The point was that the Prime Minister's intervention meant that the status of the Bill could be challenged. McDonnell went on to argue that:

> the Bill should now become a Government Bill because the motion is in the name of the Prime Minister . . . In a series of debates in the House, we have been informed that this is a private Bill that has no association with the Government and no Minister in charge, yet the Prime Minister has put his name to the motion to secure the Bill tonight. (*Hansard*, 15 April 2002, col. 421)

This call was particularly important, because at the same time as he claimed irregularities over the parliamentary process, McDonnell also suggested that undue pressure was put on representatives to support the Bill. McDonnell claimed that he had been offered inducements to drop his opposition to the Bill and that others had been offered inducements to support it. McDonnell further suggested that ties between the government and the Corporation, especially with regard to the latter's funding of the Millennium Dome, had resulted in government support for

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the Bill. These points were all made during the third reading of the Bill. MPs Kelvin Hopkins and Robert Wareing suggested that these accusations were serious enough to warrant an investigation, and therefore a pause in the progress of the Bill. McDonnell withdrew from the debate and the final vote because he believed his position to have been compromised by the inducements offered.

It could be argued that these accusations were sufficient to postpone the passage of the Bill. However, the Deputy Speaker was not persuaded, and suggested that McDonnell direct his accusations to the Parliamentary Commissioner for Standards. The Parliamentary Commissioner for Standards did hear McDonnell's case, and found that there was insufficient evidence to uphold his complaint. McDonnell had claimed that Peter Brooke MP (the promoter of the Bill) had, during a meeting between the two of them, the Chair of the Corporation of London's Policy and Resources Committee, and Paul Double, Director of the City Remembrancer's Office, offered him a place on the Northern Ireland Select Committee if he dropped his opposition to the Bill. Brooke admitted that he had raised the question of McDonnell's membership of the committee, but denied that this was in relation to his position on the Bill. Strangely, the City Remembrancer could recall the issue being raised, but couldn't remember 'precise terms in which it had been discussed'.[10]

The issue of the status of the Bill is made more controversial when considered alongside other government business. Conventionally, manifesto bills are the most sacred of parliamentary business, hence the aforementioned obligation of government MPs to support their passage. Manifesto pledges have come to be considered as serious commitments to particular goals during the life of a Parliament. During the period of the City Bill's passage, however, manifesto commitments on corporate killing, fox hunting, the Homes Bill, and of course, parliamentary reform were delayed or abandoned through a lack of parliamentary time. The point here is not to criticise the government's commitment to its manifesto pledges, for it surely has ensured the passage of a great deal of reform. Rather, the point is that the tools that should be used to ensure the passage of government proposals had been used to pass a private bill at the expense of others, whilst bypassing many of the mechanisms through which constitutional reform should pass.

Discourse in the Commons

> [The Corporation] is not entitled, in my judgement, to have anything in the shape of privileges. It is not entitled, for example . . . to expect that when the whole electoral system of the country is being changed, and the business vote is being abolished, if there is one exception to be made it should be that of the City vote. (Ernest Thurtle MP, *Hansard*, 17 February 1948, col. 1096)

This article is not about the pros and cons of the City Bill as such, as they are, to most reasonable people, self-evident, and have been accounted elsewhere.[11] As far I am concerned, the two main arguments against the Bill (besides the obvious democratic problems) relate to its position under human rights law and to the nature of a corporate body.

In the first instance, the argument was put forth that the Human Rights Act didn't apply to the Corporation of London, as 'local councils are not ''legislatures'' within the meaning of Article 3 of the Protocol No. 1' of the Human Rights Act (Letter from Chairman of the Joint Committee on Human Rights to Lord Avebury re: the City Bill, 17 July 2002). However, a case was taken to the European Court (*Mathieu Mohin and Clerfayt* v. *Belgium*, ECHR case 9/1985/95/143) in which it was determined that 'the word ''legislature'' *does not necessarily mean only the national parliament*, however; it has to

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be interpreted in the light of the constitutional structure of the State in question'. The court also ruled that 'the phrase ''conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'' implies essentially—apart from freedom of expression (already protected under Article 10 of the Convention)—the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election'.

Again, we are faced with having to ascertain the constitutional position of the Corporation and City of London. Even if it is accepted that the Corporation *is* like any other local authority, and therefore not subject to the Human Rights Act, it is subject to the European Charter of Local Self-Government of the Council of Europe, which the Labour government signed up to in 1998. Article 3 of the said document suggests that local government is a concept of self-government that 'shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage'. Article 13 allows signatories, on ratification, to the scope of application, and to choose which local authorities the Charter should apply to. Here we see that, in England, county councils, district councils, London borough councils and the Council of the Isles of Scilly are all included, but the City Corporation is not. Indeed, the government has stated that 'It is the understanding of the United Kingdom that the term ''local authority'' in the Charter does not include local or regional bodies such as police authorities which, by reason of the specialist functions for which they are responsible, are composed of both elected and appointed members.' For more details on the status of the Corporation, see Revd William Campbell-Taylor's petition to the Lords Committee on the City Bill, 9 October 2002.

In the second instance, the whole point of a corporation is that it is treated as a single legal entity, much like a human citizen. Therefore, to nominate numerous voters with diverse backgrounds and interests to fragment the vote of that single legal entity is a legal nonsense. If the intention is not to fragment those interests, then why should the Bill have proposed the *nomination* of a number of voters rather than have a single person vote?

These pros and cons aside, the parliamentary discourses relating to the Bill help clarify some of the claims made by the Bill's opponents. Thus, it is important for the present discussion to chart the *form* and *context* of the debate.

One might expect that for a private bill to take three years to pass there must have been strong support and equally strong opposition. To be sure, this is one of the reasons for the delay in the fox hunting legislation. However, the arguments for the Bill that came from Labour members showed none of the dedication that one might expect for a bill whose passage had been so long and turbulent. In fact, most arguments were of an almost resigned form. For example, Nick Raynsford admitted, 'I understand why its opponents, including many of my hon. Friends, find the expansion of a property-based business vote unacceptable. However, the reality is that such a franchise already exists for local elections in the City' (*Hansard*, 15 November 2001, col. 1064).

Simon Hughes made the similar point that his vote was 'on the basis that the proposal, however flawed, was better than the present system' and that he 'had to argue strongly with other colleagues who say that, although the proposal is better, it is indefensible. Collectively, therefore, we have no great enthusiasm for the Bill' (*Hansard*, 2 November 1999, col. 186). What made Hughes's vote in favour of the Bill remarkable, though this was not unique, was that he admitted that 'No Member of the House thinks that the proposals on the table will change the

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City of London from an old-fashioned, out-of-date local government structure into a modern, up-to-date one' (*Hansard*, 2 November 1999, col. 191). The argument here was that some reform was better than none, and although some is not enough, it would have to do.

Whilst the support for the City Bill was at most half-hearted, and seemingly embarrassed, the coherence of the government's arguments in favour was non-existent. As noted, the debate over the City Bill took place during a period of 'modernisation'. One of the main aspects of this was that the House of Lords was under attack from the government, as a major plank of its 1997 and 2001 manifestos was to reform this archaic body. What distinguished Labour from the previous government was that the 'Conservatives seem opposed to the very idea of democracy. They support hereditary peers, unaccountable quangos and secretive government'.[12] One might suspect that a Labour government would therefore seek to modernise all of the undemocratic, unaccountable and secretive relics, the forces of conservatism that have been perceived to have thwarted previous Labour administrations' attempts to reform the British constitution.

I am not so concerned with the arguments put forward by Conservative representatives in this debate, for they could consistently and coherently support the City Bill. The utterances of Labour representatives, however, can be seen to be inconsistent and, as we have seen, somewhat contradictory. The sources of these contradictions are the Labour party's traditional opposition to the business vote, the Labour party's reform of the Lords, and the long-standing commitment to City-wide London government. All of these commitments are founded upon a central dedication to the principle of democracy, and a parallel belief that the appeal to tradition is certainly not enough to justify a position.

Many of the arguments in defence of the Bill might not be considered to have been arguments at all, but merely relayed the perceived 'traditional' status of the Corporation; that is, the Bill should pass because the Corporation is 'special' or the City is 'special', and they should therefore be allowed to carry out their will. This was often the response to the lengthy arguments put by Labour opponents. For example, early in the debates, Ian Pearson argued that he wanted 'to make it clear that my view is that the City of London is a unique institution for which unique arrangements might apply. I would by no means support any arrangement other than one person, one vote for any other franchise' (*Hansard*, 24 February 1999, col. 476). Phil Sawford MP stated that 'As I understand it, the City of London corporation predates Parliament. Therefore Parliament does not have the power to dictate terms to the City of London. We do not have the legislative power to make . . . changes' (*Hansard*, 2 November 1999, col. 183), with Keith Hill, Parliamentary Under-Secretary of State for the Environment, Transport and the Regions, following with his remark that 'changes to the electoral system recognise the unique nature of the square mile' (ibid., col. 190). Both Shaun Woodward and Nigel Waterson referred to the actions of the previous Labour (Callaghan) government to justify their positions, with the former claiming that the 'non-residential franchise', the 'very small resident population' and the 'heavy local government responsibilities' meant that the City constituted a 'special and exceptional case'. Woodward and Waterson then propose, somewhat tautologically, that 'The special and exceptional case continues to be a reason for us to recognise that the Bill should be carried over. For those reasons alone, the Bill, and the work and parliamentary time that went into creating it, should not be wasted: it should be carried over' (ibid., col. 182).

The inadequacy of these statements was highlighted by John Cryer MP early

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on in the debates. He stated that: 'The documentation that I have received from the Corporation of London does not attempt to defend the Bill. It simply says that the present system is pretty awful so we must move to a different system that is not quite as bad.' He added that 'surprisingly, the Association of London Government [ALG] thinks that the Bill is worthy of support. That came as an enormous shock', adding that the basis of ALG support was that the Corporation of London has in the words of the ALG 'contributed financial and administrative support to many London-wide initiatives, including the London Study, the Agenda 21 process and the London Drugs Policy Forum'. After exposing these 'inducements', Cryer went on to expose the flawed logic of the Bill's Labour supporters at the time, arguing that 'We could mount a similar defence of hereditary peers by saying that a few of them are quite nice old boys who donate a lot of money to homes for retired donkeys and other causes' (*Hansard*, 24 February 1999, col. 478).

Conclusions

There are a number of conclusions to be drawn from this case study, though few can be presented with great certainty. What can be stressed with some certainty is that the Corporation of London is a constitutional anomaly that seems to have been able to avoid the normal modernising (read: democratising) pressures. We can also demonstrate that when a parliament is faced with such a constitutional anomaly, the uncertainties of constitutional conventionalism not only expose procedural loopholes but also provide stock 'justifications' that disable rational argumentation. Such loopholes and the formulation and selective application of procedural processes may be rooted in two unusual characteristics of the UK constitution. First, the lack of a separation between executive and legislature necessarily enables the former (as it is formed out of a majority of the latter) to exert influence on the *procedure* of the latter, and second, the fact that the House makes and interprets its own rules of procedure (*qua* Hart's sovereign as 'incapable of legal limitation') means that the majority is able, under some circumstances, to abuse this responsibility.

The other main conclusion relates to the motivations and actions of political actors in Parliament. There is little in analyses of political discourse that points to consistency and coherence in all matters. Although the arguments against the City Bill had little resonance with the supporters of the Bill, they make a very important point about the logic of argumentation. The notion that an entity should get special treatment 'because it is special' is not only absurd, but it also sets a bad precedent. Indeed, it was surprising that Jim Fitzpatrick MP didn't contest this notion, not just because his constituency of Poplar and Canning Town is a neighbour of the City, but because it includes Canary Wharf, which is also a 'special' area with an unusually high ratio of business to residents.

It is also surprising that the reasons for the City's special status (that it refused to grow with London) were not addressed. If they were considered, perhaps the answer to the question of reform would be to follow Maurice Glasman's recommendation of incorporating the City into the rest of London, thus enriching its poverty-stricken neighbours and the rest of London. Of course, this move would have had to entail a government bill, such as the Greater London Authority Act, which the government, and many in Parliament, for some unspecified reason, saw as undesirable. One might suggest that the reason for the City Bill's passing was that the government sought, in accord with its conventional responsibilities, to fulfil its manifesto pledges with the minimum of obstacles. However, given the time taken to pass the City Bill

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through Parliament, this simply does not hold as a reason. Indeed, one might suspect that the reasons for the passage of the City Bill in 2002 are similar to those for its exclusion from the 1969 Representation of the People Act; that is, we aren't entirely sure. What we can be reasonably certain about is that the beneficiaries of the redistribution of votes will be the large banking and finance houses that populate the City. The major losers will be the citizens and small businesses.

Notes

1 H. L. A. Hart, *The Concept of Law*, London, Oxford University Press, 1994, p. 71.
2 T. Carlyle, 'The hero as man of letters', in *On Heroes, Hero-Worship and the Heroic in History*, Oxford, Oxford University Press, 1904.
3 M. Glasman, 'Whatever Happened to London? A Tale of Two Cities', unpublished paper, 2003.
4 For example, E. Durkheim, *Professional Ethics and Civil Morals*, London, Routledge & Kegan Paul, 1957; G. D. H. Cole, *Guild Socialism*, Westminster, The Fabian Society, 1920; and more recently, P. Hirst, *Associative Democracy: New Forms of Economic and Social Governance*, Cambridge, Polity Press, 1994.
5 M. Glasman, 'Whatever Happened to London?'
6 Corporation of London, 2003.
7 W. R. McKay and D. Limon, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22nd edn, London, Butterworth, 1997, pp. 851–3.
8 W. Hutton, *The State We're In*, London, Cape, 1995, p. 293.
9 Labour Party, *Road to the Manifesto: A Voice for London*, London, Labour Party, 1996, paras. 1.10–1.11).
10 Standards and Privileges Committee, *Standards and Privileges—Tenth Report*, House of Commons, 23 July 2002.
11 For example, D. Power, 'Working and voting for a world class city? A critical viewpoint on the Corporation of London's place in London governance', *The London Journal*, vol. 26, no. 2, 2001.
12 Labour Party, *New Labour because Britain Deserves Better*. 1997 Election Manifesto, London, Labour Party.

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