

A “MEANINGLESS CHARADE”?

PUBLIC PETITIONING AND THE INDELIBLE MARKS OF HISTORY

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Worldwide, democracy is reportedly “backsliding”¹, moving from “recession”, after the “democratic boom”² of the twentieth century, to “retreat.”³ The United Kingdom (UK) is by no means immune from the trend. The Democracy Index reveals that our democratic system is, today, characterised by “exceptionally low”⁴ levels of participation which are “among the worst in the developed world.”⁵ The Hansard Society’s Audit of Political Engagement identifies a “disgruntled, disillusioned and disengaged”⁶ electorate. Active participation in politics is “in the doldrums”, with the majority of voters content to engage as “spectators rather than players.”⁷ High risks are associated with a high level of democratic disengagement. Firstly, policy-, law- and decision-making are made to depend upon the consent of a disengaged and disinclined citizenry and, as such, may want for legitimacy. Secondly, openings are created for ‘extremists’ who promise to fill the void left by regular politics. Third, a democratic deficit emerges and, fourth, the urgent need for change makes for sometimes rash or untested choices for renewal.⁸ The problems of declining participation and its attendant risks have not gone unnoticed and, with the aim of “shifting the agenda” towards “actively assisting a greater degree of public participation” and “nourishing representative democracy”⁹, a series of re-

1 Economist Intelligence Unit *Democracy Index 2010: Democracy in Retreat* (EIU, 2010), p.1

2 L. Diamond *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World* (Times Books, 2008), p.12

3 P. Skidmore and K. Bound *The Everyday Democracy Index* (Demos, 2008), p.29

4 Economist Intelligence Unit *Democracy Index 2010: Democracy in Retreat* (EIU, 2010), p.2

5 Economist Intelligence Unit *Democracy Index 2010: Democracy in Retreat* (EIU, 2010), p.22

6 Hansard Society *Audit of Political Engagement 9: Part One* (Hansard Society, 2012), p.17

7 Hansard Society *Audit of Political Engagement 8* (Hansard Society, 2011), p.19

8 P. Skidmore and K. Bound *The Everyday Democracy Index* (Demos, 2008), pp.33-35

9 Select Committee on Reform of the House of Commons, First Report, *Rebuilding the House*, (2009-10 HC1117) Summary

engagement proposals emerged.¹⁰ Directed not only at encouraging citizens' exercise of the right to vote and improving voter turnout (perhaps the most obvious and instrumental indicator of levels of participation) but also at boosting public engagement with politics beyond specific and relatively infrequent electoral events, proposals included plans for the reinvigoration of public petitioning.

The idea that, reformed, the ancient practice of petitioning Parliament might provide a stimulus for democratic engagement in the modern world is neither rash nor untested. Certainly, over the lifetime of three Labour governments between 1997 and 2010, petitioning was consistently envisaged as one of democracy's saviours, albeit little progress was made beyond the opening of a much-criticised e-petitioning facility on the 10 Downing Street website. In the run up to the 2010 General Election, the Conservative Party pledged that, in power, it would "reinvigorate the ancient tradition of the public petition", giving it "greater force than it has ever had in Parliament's history" and, in a sideswipe at the Downing Street model, promised "[r]eal people power; not online gimmicks."¹¹ Post-election, plans in that regard were lifted by the newly formed coalition government directly from the Conservative Party's general election manifesto¹² and resulted in the creation of a new e-petitioning facility hosted on the DirectGov website, which went live on August 4, 2011. An e-petition may be submitted about anything for which the government is

10 See, for example, Ministry of Justice *The Governance of Britain*, Cm.7170 (2007); House of Commons Procedure Committee, First Report, *Public Petitions and Early Day Motions* (2007-8 HC513); House of Commons Reform Committee, First Report, *Rebuilding the House* (2008-9 HC1117)

11 G. Young "New Politics" http://www.conservatives.com/News/Speeches/2010/02/Sir_George_Young_New_Politics.aspx accessed April 30, 2012

12 *Invitation to Join the Government of Britain: The Conservative Manifesto 2010* (Conservative Party, 2010), p.66

responsible with 'real people power' being manifested through a debate in Parliament on the subject of a petition attracting 100,000 signatures or more which is deemed eligible by the Backbench Business Committee (BBBC). Here it will be argued that whilst, in its first year of operation, nearly 30,000 petitions have been lodged¹³, with seven triggering a parliamentary debate, the initiative has left, unacknowledged and unaddressed, a number of indelible historical, constitutional and political marks which, remaining as traces and impressions on the principles, purposes and practices of 21st century petitioning, may condemn it to failure as Jenkins' "meaningless charade"¹⁴ of past experience.

The Origins of Petitioning

The significance and extent of petitioning has fluctuated over the centuries yet, despite Lawson and Seidman's claim that, in the modern context, the practice seems artificial and meagre¹⁵, there is no denying its historical importance as a manifestation of political discourse in an evolving political community. It is claimed by Mark, however, that the history of petitioning is "to constitutional and legal history as the history of alchemy is to the history of chemistry or the history of science" meaning that it is significant but, he states, "lacks immediate relevance."¹⁶ Whilst they might be temporally distant, it is contended here that ancient and modern petitioning possess greater contiguity than Mark credits. The labelling of the study of early petitioning as occultist and esoteric is, therefore, mistaken since its principles and practices resonate in modern times. The historical excursion undertaken here is not

13 At April 30, 2012

14 D. Judge "Public Petitions and the House of Commons" (1978) 4 Parl. Affs. 391, 395

15 G. Lawson and G. Seidman "Downsizing the Right to Petition" (1998) 93(3) Nw. U. L. Rev. 739

16 G. Mark "The Vestigial Constitution: The History and Significance of the Right to Petition" (1998) 66(6) Fordham Law Rev. 2153, 2158

designed to fulfil the role of Flaherty's "rhetorical trope."¹⁷ Nor is it intended simply to gaze upon petitioning through Whiggish spectacles since, as Leys has observed, petitioning has a "notably discontinuous"¹⁸ history. It is, however, necessary to identify the origins of the petitionary framework, which persists to this day, in order to reveal certain of its surviving, and problematic, characteristics.

Function

Based on the Anglo-Saxon, Edgarian idea of redress, petitioning has its roots in the Middle Ages, with the first recorded petition being presented to King Aethelred in 1013.¹⁹ Whilst, according to Radin, "Medieval political theory fully accepted the doctrine that power might be wrongfully exercised"²⁰ and, according to Lawson and Seidman, Medieval law fully recognised "the moral concept that a wrong ought to be made right"²¹ only three means of redress were then recognised: "rebellion ... outward submission and inward indignation."²² Early petitioning thus reflected the socio-political and legal conditions of medieval England where, for those subject to the conflicting, tripartite authority of an immature legal system, a stratified society based on fealty and homage, and a monarch acting as God's vicegerent, it performed as a crude and intermittently used mechanism of outward submission aimed at "mediating conflict between norms of legality and feudal structures."²³ Although petitioning was a well-established practice by the time of the

17 M. Flaherty "History Lite in American Constitutionalism" (1995) 95(32) Columbia Law Rev. 523, 524

18 C. Leys "Petitioning in the Nineteenth and Twentieth Centuries" (1955) 3(1) Polit. Stud. 45, 45

19 N. Smith "Shall Make No Law Abridging: An Analysis of the Neglected, but Nearly Absolute, Right to Petition" (1985-6) 54 U. Cin. L. Rev. 1153, 1154

20 M. Radin "The Myth of Magna Carta" (1947) 60(7) Harvard Law Rev. 1060, 1067

21 G. Lawson and G. Seidman "Downsizing the Right to Petition" (1998) 93(3) Nw. U. L. Rev. 739, 744

22 M. Radin "The Myth of Magna Carta" (1947) 60(7) Harvard Law Rev. 1060, 1067

23 G. Lawson and G. Seidman "Downsizing the Right to Petition" (1998) 93(3) Nw. U. L. Rev. 739, 739

“symbolic turning point”²⁴ of Magna Carta in 1215, it was established “with a finality much more imposing than its subsequent observance.”²⁵ As such, Spanbauer conceives of early petitioning as a form of empty-gesture politics. Petitions would be submitted, to which the monarch’s response was “little more than a hollow act of grace”²⁶ exhibiting indifference, retaliation or whim: the King’s inclination to consider his subjects’ petitions was a matter of “pragmatic calculus rather than legal requirement”²⁷, priority was inevitably accorded to his own or his cronies’ interests and petitioners risked punishment for petitioning, as it were, ‘out of turn’.

Magna Carta itself was the end result of “a long process of friction, discontent and negotiation”²⁸ involving “different but converging forces, some ... progressive and some reactionary” but all “goaded into opposition”²⁹ by the King’s abuses of feudal structures and relationships, his rejection of the idea and nascent culture of good government and his oppression of the people.³⁰ By Magna Carta’s terms, the King was bound to observe its conditions and protections and, if he did not, receive any “petition to have that transgression redressed without delay.”³¹ Yet, with many of its provisions ignored, amended by implication, or systematically expunged, as a means of coercing an aberrant monarch the Charter proved at best “crude and ineffective”³² and, at

24 D. Rollison *A Commonwealth of the People: Popular Politics and England’s Long Social Revolution* (Cambridge University Press, 2010), p.83

25 D. Smith *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations* 1971 (unpublished thesis), p.10

26 J. Spanbauer “The First Amendment Right to Petition Government for Redress of Grievances: Cut From a Different Cloth” (1993-94) 21 *Hastings Const. L.Q.* 15, 22

27 G. Lawson and G. Seidman “Downsizing the Right to Petition” (1998) 93(3) *Nw. U. L. Rev.* 739, 762

28 J. Loengard *Magna Carta and the England of King John* (Boydell Press, 2010), p.46

29 W. McKechnie *Magna Carta: Text and Commentary* (Maclehose, 1914), pp.35-37

30 W. McKechnie *Magna Carta: Text and Commentary* (Maclehose, 1914), pp.35-37

31 Magna Carta 1215 did not appear in sections but, in translation, the provisions in respect of petitioning the monarch appear at Clause 61.

32 J. Spanbauer “The First Amendment Right to Petition Government for Redress of Grievances: Cut From a Different Cloth” (1993-94) 21 *Hastings Const. L.Q.* 15, 22

worst, “a failure.”³³ Moreover, in substance, it delivered “little real power to one attempting to assert redress if the monarch or a royal favourite had a substantial interest in the matter”³⁴ and applied only to the narrow class of free men. Whilst it may not have succeeded in tempering the King’s will, or extending guarantees to a significantly enlarged sector of the population, and whilst its true legacy remains hotly contested, for present purposes it is sufficient to note that Magna Carta embodied, envisaged and recognised the petition as the means of securing redress of grievances. Its effect in this regard was threefold. Firstly it “familiarise[d] people with the idea that by means of a written document it was possible to make notable changes in the law.”³⁵ Secondly, it formally identified a vehicle for remediation. Thirdly, it provided a channel for grievance and, sometimes, agitation.³⁶ The petition became the accepted mechanism for making political complaints, suggesting changes in law and policy, and seeking review of the actions of government officials.³⁷ In fact, so significant was petitioning to the ritual of government and routine parliamentary business that it became subject, relatively promptly, to form and process management.

Procedure

The reign of Edward I – that “hesitation between feudalism and the political community”³⁸ – first witnessed the regular, and regularised, submission of petitions to clerks appointed by the King to receive, sort and refer them,³⁹ a

33 J. Holt *Magna Carta* 2nd edn (Cambridge University Press, 1992), p.1

34 D. Smith *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations* 1971 (unpublished thesis), pp.14-15

35 T. Plucknett *A Concise History of the Common Law* (Liberty Fund, 1929), p.26

36 G. Lawson and G. Seidman “Downsizing the Right to Petition” (1998) 93(3) *Nw. U. L. Rev.* 739, 746

37 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” *Petition* (1998) 66(6) *Fordham Law Rev.* 2153, 2166

38 J. Joliffe *The Constitutional History of Medieval England* (Adam and Charles Black, 1937), p.355

39 P. Brand “Petitions and Parliament in the Reign of Edward I” (2004) 21(1) *Parliamentary History* 14, 24-27

consequence of which was their presentation in writing rather than orally.⁴⁰ Since redress that could not be procured at law could be obtained only via the King's grace and favour, and convention mandated that each petition would receive a response, addressing petitioners' grievances dominated parliamentary business.⁴¹ The fledgling Parliament was largely an instrument for securing satisfaction and redress⁴² - "the facilitator of royal government and justice"⁴³ - with the petition serving as the stimulant for action. That redress might now be sought by the people "at large"⁴⁴ meant that, to a degree, Parliament had "opened up"⁴⁵ to the broader population. Dodd joins Brand in viewing this as the consequence of a "deliberate shift in government policy"⁴⁶ during the 1270s which, though motivated by the desire to check and control local officials and affairs, made the Crown more accessible and responsive.⁴⁷ The Crown's subjects remained "servants of the prerogative"⁴⁸ to the extent that redress remained in the gift of the King but at least it might now be sought and secured at the point of a pen rather than the point of a sword.⁴⁹ Such were the numbers of petitions submitted that, soon, yet more intricate procedures for their management were devised. Over time, specialist panels of receivers and triers of petitions were constituted. Hard cases were reserved for the attention of the King, King and Council, or, from the late

40 T. Plucknett *A Concise History of the Common Law* (Liberty Fund, 1929), p.178

41 G. Haskins "The Petitions of Representatives in the Parliaments of Edward I" (1938) 53(209) *Engl. Hist. Rev.* 1, 18

42 G. Haskins "Parliament in the Later Middle Ages" (1947) 52(4) *Am. Hist. Rev.* 667, 668

43 G. Dodd *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford University Press, 2007), p.6

44 G. Haskins "Parliament in the Later Middle Ages" (1947) 52(4) *Am. Hist. Rev.* 667, 668

45 G. Dodd *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford University Press, 2007), p.1

46 G. Dodd *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford University Press, 2007), p.6

47 P. Brand "Petitions and Parliament in the Reign of Edward I" (2004) 21(1) *Parliamentary History* 14, 16

48 G. Haskins "Parliament in the Later Middle Ages" (1947) 52(4) *Am. Hist. Rev.* 667, 667

49 J. Joliffe *The Constitutional History of Medieval England* (Adam and Charles Black, 1937), p.404

1400s, the Court of the Star Chamber, whilst the remainder was dispatched to appropriate departments of government to be resolved by officials.⁵⁰

By today's standards, fourteenth and fifteenth century procedures were "primitive" and "rudimentary"⁵¹ but petitioning flourished and remained a "large and steady"⁵² charge on King and Council's time. By Edward III's reign it was established that, at the opening of Parliament, the Chancellor would declare the King willing to consider the petitions of the people.⁵³ Petitions thus provided an interface between Parliament and the wider community⁵⁴ and, for the time, "an extremely wide band of English society participated in politics by petitioning for redress of grievances."⁵⁵ Petitions were submitted in quantity, by a broader range of citizens than ever, with the "petitionary diplomatic"⁵⁶ becoming increasingly sophisticated and rule-bound. Alongside ordinances defining petitionary processes⁵⁷, there arose a degree of consistency in how they appeared: short, written on strips of parchment and authored "in accordance with the rules of the specific genre of this type of document".⁵⁸ They were drafted in Latin or, most often, French (though English would predominate from the fifteenth century), adopting a recognisable style and diplomatically submissive form of words. In addition to recording individual

50 T. Plucknett *A Concise History of the Common Law* (Liberty Fund, 1929), pp.178-9

51 A. Myers "Parliamentary Petitions in the Fifteenth Century: Part II Petitions of the Commons and Common Petitions" (1937) 52(Oct) No.208 *Engl. Hist. Rev.* 590, 604

52 T. Plucknett *A Concise History of the Common Law* (Liberty Fund, 1929), p.179

53 N. Smith "Shall Make No Law Abridging: An Analysis of the Neglected, but Nearly Absolute, Right to Petition" (1985-6) 54 U Cin L. R.ev 1153, 1155

54 G. Dodd *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford University Press, 2007), p.132

55 G. Mark "The Vestigial Constitution: The History and Significance of the Right to Petition" (1998) 66(6) *Fordham Law Rev.* 2153, 2169

56 A. Myers "Parliamentary Petitions in the Fifteenth Century: Part I Petitions from Individuals or Groups" (1937) 52(Jul) No.207 *Engl. Hist. Rev.* 385, 387

57 D. Rayner "The Forms and Machinery of the Commune Petition in the Fourteenth Century I" (1941) 56(Apr) No.222 *Engl. Hist. Rev.* 198, 202-4

58 P. Brand "Petitions and Parliament in the Reign of Edward I" (2004) 21(1) *Parliamentary History* 14, 30

grievances, petitions were employed to register collective complaints, that being an indication of a future, fundamental purpose.

As feudalism broke down, political institutions evolved, forms of representation began to develop and a centralised bureaucracy took hold⁵⁹, petitioning remained a constant in the realms of mundane parliamentary business. It had, however, been marked in three distinct ways. First, it embedded, rather than challenged or changed, existing structures of authority. Second, increasingly arduous procedural requirements had become the means by which petitioning, and access to it, was controlled. Third, it was open to capture by troublemakers, both common and elite. In what follows it will be argued that those marks remain and pose distinct dangers to petitioning's renewal as a participatory initiative in the 21st century.

Structures of Authority

It is manifest that early petitioning exhibited a tension. On the one hand it was understood as “the foundation of politics”⁶⁰, inviting both individual and collective participation in political life. On the other, as a form of entreaty and submission to authority, it replicated and reinforced extant hierarchies.⁶¹ Consequently, petitioning “incorporated a certain type of constitutional politics and constitutional structure”, namely that which “embodied the deference and formalisms attendant on a relatively hierarchical community”⁶² and was “premised on a vision of ultimate royal authority.”⁶³ Thus, whilst petitioning provided channels of expression for citizens' occasional “explosion of

59G. Lawson and G. Seidman “Downsizing the Right to Petition” (1998) 93(3) Nw. U. L. Rev. 739, 746

60 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2174

61 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2174

62 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2174

63 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2163

irritability”⁶⁴, and whilst a responsive monarch or Parliament proved the “vitality”⁶⁵ of the practice, Hoyle notes the ultimately “deeply conservative” nature of petitioning and its ingrained observance of “existing political structures.”⁶⁶ These characteristics allowed petitioning to be tolerated unless it involved large groups, became dangerously regionalised or threatened the status quo, when an assertion of royal or parliamentary authority might redefine it as sedition, respond to it as rebellion⁶⁷ and, so, re-establish the natural order of things. Active petitioning formed part of the backdrop to notable incidents of rebellion and repression: the widespread Peasant’s Revolt of 1381, for example, employed petitions as a means of pressing for the abolition of villeinage; the 1536 Pilgrimage of Grace saw petitioning manifest cross-class attachment to the Roman Catholic church; Norfolk-based Ketts Rebellion of 1549 proceeded from petitioning against enclosures in an area where petitioning would continue to feature prominently as a means of agrarian agitation.⁶⁸ Particularly in the crises of authority and legitimation caused by Plantagenet economic and dynastic struggles and the Henrician reformation, therefore, elite anxiety about, and contempt for, popular political opinion resulted in bouts of repression: “socialised into an authoritarian world-view, it was sometimes difficult for the early modern elite to comprehend popular complaint as anything other than seditious”⁶⁹ claims Woods.

64 D. Guth and J. McKenna *Tudor Rule and Revolution* (Cambridge University Press, 1982), p.143

65 D. Guth and J. McKenna *Tudor Rule and Revolution* (Cambridge University Press, 1982), p.143

66 R. Hoyle “Petitioning as Popular Politics in Early Sixteenth Century England” (2002) 75 *Hist. Res.* 365, 367

67 R. Hoyle “Petitioning as Popular Politics in Early Sixteenth Century England” (2002) 75 *Hist. Res.* 365, 367

68 R. Hoyle “Agrarian Agitation in Mid-Sixteenth Century Norfolk: A Petition of 1553” (2001) 44(01) *Historical Journal* 223

69 A. Wood *The 1549 Rebellions and the Making of Early Modern England* (Cambridge University Press, 2007), p.117

The state-citizen relationship was not the only one subjected to hierarchical conditioning, since petitions were often the weapons of choice in the struggle for supremacy between the monarch and Parliament. Guth and McKenna remark that, in Tudor times, whilst Parliament was “an effective vehicle for an organized and focused body of public opinion” it also proved “a blunt but serviceable instrument”⁷⁰ in petitioning against the monarch, notably as an initiation for, or response to, royal proclamations.⁷¹ Similarly, in the years preceding the Protectorate, the Stuart monarchy, as a means of re-asserting its own power and perpetuating hostilities with Parliament, would answer a petition favourably when the Commons opposed it.⁷² In two important respects, therefore, petitioning should not be viewed simply as a benign manifestation of public involvement in politics since, firstly, it represented a contingent, hierarchically ordered form of participation for the citizenry and, secondly, was inherently subject to manipulation by those in authority. It should also be recognised that Parliament, hierarchically populated and inclined, was as much a danger to citizens expressing their grievances through petitions as an absolutist King. Spanbauer notes, for example, that whilst the rise of Parliament entailed a shifting of power, for petitioners all that shifted was the source of their punishment.⁷³ Should citizens be permitted to make true participation out of petitioning, therefore, a modification to the distribution, rather than the locus, of power was needed.

70 D. Guth and J. McKenna *Tudor Rule and Revolution* (Cambridge University Press, 1982), pp.137-140

71 D. Guth and J. McKenna *Tudor Rule and Revolution* (Cambridge University Press, 1982), pp.137-140

72 D. Smith *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations 1971* (unpublished thesis), p.38

73 J. Spanbauer “The First Amendment Right to Petition Government for Redress of Grievances: Cut From a Different Cloth” (1993-94) 21 *Hastings Const. L.Q.* 15, 20

That may be argued to have occurred as a result of the turbulence of the seventeenth century, culminating in the Glorious Revolution, with petitioning as one of its motors. Indeed, Smith has it that the Case of the Seven Bishops – charged with seditious libel and imprisoned for submitting a petition to the King opposing his order that the second Declaration of Indulgence be read in church - led directly to the Revolution.⁷⁴ Schnapper cites the Bishops' eventual acquittal as a “cause of rejoicing throughout England” and, likewise, “a major step towards the Glorious Revolution.”⁷⁵ Zaret claims that petitioning gained important ground in this period, when “no communicative practice for sending messages from the periphery to the center had greater legitimacy.”⁷⁶ Moreover, the character of petitions had fundamentally altered, evolving from notes of private grievances into expressions of overwhelmingly public concern aimed at changes in the law. Rather than performing the role of simple supplicatory device, therefore, petitions now generated and asserted public opinion in a public sphere that they helped create. Knights also sees the mid seventeenth century as an important tipping point for participatory politics, arguing that the public “acquired new prominence and importance ... with an enlarged role as a legitimizing power and as an umpire.”⁷⁷ This was not simply the inevitable consequence of the Glorious Revolution, but was also attributable to developments in printing, education and the dissemination of information alongside the presence of Enlightenment-driven ideological conflict - including conflict about the identity and rights of ‘the people’. As a

74 N. Smith “Shall Make No Law Abridging: An Analysis of the Neglected, but Nearly Absolute, Right to Petition” (1985-6) 54 U. Cin. L. R.ev 1153, 1160. See also D. Hosford “The Peerage and the Revolution of 1688” (2008) 27(2) Parl. Hist. 198.

75 E. Schnapper “‘Libelous’ Petitions for Redress of Grievances: Bad Historiography Makes Worse Law” (1989) 74 Iowa L. Rev. 303, 308

76 *Origins of Democratic Culture: Printing, Petitions, and the Public Sphere in Early Modern England* (Princeton University Press, 2000), p.81

77 M. Knights *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford University Press, 2005), p.5

result, for Knights, petitioning was one of the “key points of interface”⁷⁸ between a Parliament and populace engaged in negotiating and constructing a new political order, albeit couched in the “polite discourse”⁷⁹ of old. Whilst intuitively appealing, this depiction of an emerging heterarchy, is, perhaps, illusory.

Heterarchy

Although petitioning may have served as a rough substitute for representation⁸⁰, becoming “the formal mechanism whereby the disenfranchised joined the enfranchised in participating in English political life”⁸¹, Spanbauer maintains that the history of petitioning is largely divorced from the politicisation of the citizenry. Instead, she views petitioning simply as a weapon in the power struggle between monarch and Parliament until, in the seventeenth century, Parliament gained control and petitioning took on political and rights-based meaning for the people at large.⁸² For Carpenter, however, that meaning was more symbolic than real since the increasing centrality of Parliament threatened to undo the popular utility of petitioning. The petition became less a “meaningful political instrument” and more “an expression of sentiment” which was, at best, “orthogonal to the institutions of the realm.”⁸³ There is, therefore, a strong sense in which, despite invocations of progress in participation, representation and, ultimately, full democracy, petitioners as manifestations of ‘the people’ were seen either as something to

78 M. Knights *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford University Press, 2005), p.110

79 M. Knights *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford University Press, 2005), p.113

80 G. Lawson and G. Seidman “Downsizing the Right to Petition” (1998) 93(3) *Nw. U. L. Rev.* 739, 761

81 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) *Fordham Law Rev.* 2153, 2169

82 J. Spanbauer “The First Amendment Right to Petition Government for Redress of Grievances: Cut From a Different Cloth” (1993-94) 21 *Hastings Const. L.Q.* 15, 22-25

83 D. Carpenter *The Petition as a Tool of Recruitment: Evidence from the Abolitionist Congressional Campaign* Conference on Crafting and Operating Institutions, Stanford University, 2003, p.10

be ignored, or as “gullible and perhaps hypo-critical pawns in a power game they only partially understood.”⁸⁴ Not all would agree, however, since Bradley’s examination of petitioning in the context of English perceptions of the American Revolution, reveals contemporary practice as a more ideological and strategic than straightforwardly supplicatory activity undertaken by an ignorant and malleable public.

In the late eighteenth century, the American revolution caused the English public to focus intensely on the viability of Parliament’s supremacy and role as a representative institution.⁸⁵ This revealed two distinct tenets of public opinion, as expressed in the “paper combat”⁸⁶ of petitioning. Those who favoured a “participatory, active and independent expression of political life” petitioned against those who sought to maintain “order, deference to authority”⁸⁷ and exclusivity in the exercise of political expression. As such, popular politics involved:

“both political ideology and political interest, with the competing interests profoundly divided over the appropriateness of alternative political strategies and the validity of broader political participation”⁸⁸

and public opinion was revealed as “factious, contradictory, and irrational.”⁸⁹

84 M. Knights *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford University Press, 2005), p.113

85 J. Bradley “Parliament, Print Culture and Petitioning in Late Eighteenth Century England” (2007) 26(1) *Parl. Hist.* 96

86 M. Knights *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford University Press, 2005), p.112

87 J. Bradley “Parliament, Print Culture and Petitioning in Late Eighteenth Century England” (2007) 26(1) *Parl. Hist.* 96, 102

88 J. Bradley “Parliament, Print Culture and Petitioning in Late Eighteenth Century England” (2007) 26(1) *Parl. Hist.* 96, 111

89 S. Zaeske *Signatures of Citizenship: Petitioning, Anti-Slavery and Women’s Political Identity* (University of North Carolina Press, 2003), p.12

Fraser, whilst accepting that those profound divisions existed, and agreeing that the involvement of the masses “electrified the issues of the day with a novel and barely-understood type of urban terror”⁹⁰, takes issue with what he sees as the overly simplistic and romanticised characterisation of the pre-Reform era as a series of “dangerous and convulsive agitations”⁹¹ in a class struggle which would eventually be resolved by the passing of the 1832 Reform Act. Arguing that the depiction of a repressive and out of touch Parliament dominated by self-interested aristocrats pitted against a radical and newly assertive public is misleading, Fraser prefers to view the heightened scale and power of popular agitation as a result of the Crown’s declining authority, the growing influence of the press, and Parliament acquiring “assumptions of democracy”, “forging “subtle and organic links” with the community and revealing itself to be adaptable to change.⁹² That change was taking place was seemingly self-evident, and petitioning was an important factor in expanding the role of public opinion as an initiating, rather than simply restraining, force.⁹³

Although assessments of the pre-Reform era’s external political environment might be insufficiently refined for Fraser’s tastes, he does concede that Parliament’s internal environment engendered a receptiveness to public opinion as expressed in petitions that was hardly dispassionate: the House of Commons, he states, “responded effectively to articulate opinion ... [that] ...

90 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) *History* 195, 197

91 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) *History* 195, 198

92 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) *History* 195, 199

93 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) *History* 195, 196

mirrored accurately the social pre-eminence of the middle classes⁹⁴, allowing only that class to achieve prominence as a force in politics. Although many of its members had supported the reformist movement of the late eighteenth century, the middle class - galvanised by its emotional responses to the extremes of the Peterloo Massacre and prosecution of Queen Caroline's adultery, and "newly enlightened as to its own economic self-interest"⁹⁵ - was as alarmed as the upper by "the great underswell of popular discontent"⁹⁶ generated by popular radicalism when all it was seeking for itself was acceptably moderate reform, driven by a desire for political stability and preservation of the status quo. Members of the working class were destined to remain outsiders, therefore, being unable to challenge either the monopoly of the gentry or the hostility of the middle class and being "fatally handicapped by a lack of sound leaders, sound economic theory ... persistence or solidarity."⁹⁷ As a result, the hierarchy would remain intact⁹⁸ even under assault from the Chartist movement at its height, between the late 1830s and early 1850s, when petitioning underwent "prodigious growth"⁹⁹ and the petition came into its own as a "legitimate weapon" and "instrument of political struggle."¹⁰⁰

The impetus for Chartism was to secure, through the People's Charter of 1838, that which, despite the Reform Act 1832's enfranchisement of around 18% of the population, still eluded the majority. If adopted, the Charter would

94 P. Fraser "Public Petitioning and Parliament Before 1832" (1961) 46(158) History 195, 207

95 P. Fraser "Public Petitioning and Parliament Before 1832" (1961) 46(158) History 195, 199

96 P. Fraser "Public Petitioning and Parliament Before 1832" (1961) 46(158) History 195, 204

97 P. Fraser "Public Petitioning and Parliament Before 1832" (1961) 46(158) History 195,199

98 P. Fraser "Public Petitioning and Parliament Before 1832" (1961) 46(158) History 195, 207

99 P. Pickering "And Your Petitioner &c': Chartist Petitioning in Popular Politics 1838 – 48" (2001) 116 Eng. Hist. Rev. 368, 371

100 D. Judge "Public Petitions and the House of Commons" (1978) 4 Parl. Affs. 391, 392

afford suffrage to males aged 21 and over (unless a felon or insane), effect the secrecy of the ballot, removal of property qualifications for MPs, payment of MPs and equal representation and establish annual parliaments. It was supported by petitioning on an unprecedented scale, with the three national petitions of 1839, 1842 and 1848 garnering 1.2, 3.3 and 2 million signatures respectively.¹⁰¹ The first national petition noted that “the few have governed for the interest of the few, while the interest of the many has been neglected, or insolently and tyrannously trampled upon”¹⁰² and explicitly acknowledged the failure of the Reform Act 1832 to remedy that state of affairs. Where it had been “the fond expectation of the people that a remedy for ... their grievances, would be found in the Reform Act of 1832” they had, instead:

“been bitterly and basely deceived ... The fruit which looked so fair to the eye has turned to dust and ashes when gathered. The Reform Act has effected a transfer of power from one domineering faction to another, and left the people as helpless as before. Our slavery has been exchanged for an apprenticeship to liberty, which has aggravated the painful feeling of our social degradation, by adding to it the sickening of still deferred hope.”¹⁰³

According to Pickering, although Chartists petitioned “with ferocity and doggedness”¹⁰⁴, the advent of democracy weakened both the popularity and *raison d’être* of the practice. Similarly, Emden argues that once the struggle

101 P. Pickering “And Your Petitioner &c”: Chartist Petitioning in Popular Politics 1838 – 48” (2001) 116 *Eng. Hist. Rev.* 368, 373

102 G. Cole and A. Filson *British Working Class Movements: Select Documents 1789-1875* (Macmillan, 1951), p.354

103 G. Cole and A. Filson *British Working Class Movements: Select Documents 1789-1875* (Macmillan, 1951), p.354

104 P. Pickering “And Your Petitioner &c”: Chartist Petitioning in Popular Politics 1838 – 48” (2001) 116 *Eng. Hist. Rev.* 368, 386

for the vote had been won, petitioning declined, since provision for the representation of the people alongside a marked extension of the franchise meant that there were no longer “deficiencies to be mitigated”¹⁰⁵ by it. There is, perhaps, mileage in Emden’s point but, even if petitioning did provide a ‘fix’ for defective representation, the suggestion that enfranchisement eliminated the need for alternative means and modes of participation overlooks the fact that voting and petitioning are two separate, rather than interchangeable, manifestations of democratic involvement. Indeed, it may be contended that petitioning is at risk from voting when they are viewed as interchangeable as that overlooks the fact that they perform different functions within our democratic processes. They are distinct and complementary, rather than synonymous, participatory activities each capable of extinguishing the other’s utility. It is not, therefore, evident that enfranchisement per se obviates the need for petitioning. Moreover, if petitioning did ever constitute a workable substitute for voting, it certainly did not achieve natural redundancy via a process of gradual enfranchisement. As will be seen, petitioning was serially and systematically dismantled through successive procedural initiatives. Political manipulation rather than democratic capitulation assisted its demise. As Judge observes, “restrictive rules, emasculating the parliamentary potency of petitions, contributed far more directly to the decline of petitioning than did the extension of the franchise.”¹⁰⁶

The Mirage of Democratic Participation

The drift towards democratisation as generally experienced by the west – a gradual expansion of the franchise, overseen by elites and accompanied by

105 C. Emden “The People and the Constitution” (Oxford University Press, 1956), p.79

106 D. Judge “Public Petitions and the House of Commons” (1978) 4 Parl. Affs. 391, 394

the faltering emergence of civil associations amongst the included - might be argued to inhibit the kind of participation envisaged by petitioning and engender the entrenchment of existing hierarchies. Democratisation makes alterations to the public arena of politics such that, having been open to all, even if only illusorily, in reality it becomes closed to all but the enfranchised – initially, and almost without exception, “wealthy ... white ... male.”¹⁰⁷ This echoes Knights' observation that “representation can be the preserve of authoritarians as well as liberal democrats, a means to exclude as well as include the people.”¹⁰⁸ The demise of petitioning experienced in the twentieth century therefore occurred precisely because:

“the rise of a liberal polity gutted petition of its original constitutional and political meaning and left those persons not directly included in the liberal enfranchised polity with an even more tenuous toehold in formal politics than petition had provided.”¹⁰⁹

Admittedly, from this perspective, *full* enfranchisement would provide the corrective required to achieve functioning participation for as many citizens as possible, but full enfranchisement also appears to have fallen short of its target, prompting a return to old participatory mechanisms, albeit in new technological forms.

It has been argued that “institutional fixes” such as “more proportional voting systems, more power devolved from the centre to the local, greater use of

107 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2158 2160

108 M. Knights *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford University Press, 2005), p.11

109 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2160

citizens' juries and other novel methods for involving the public in decision-making" do nothing more than "expose the inadequacies of institutional reengineering"¹¹⁰ as a solution to democracy's apparent regression, adding to citizens' "sense that when they get involved in the political process they can make no real difference."¹¹¹ In the current context of governmental attempts to boost political engagement via, inter alia, petitioning, Carman claims that:

"it is not enough for transformative reforms ... simply to 'allow for' public engagement. If advocacy reforms are to foster ... a participatory political culture and connect the public with governing institutions, then those individuals who do engage with the advocacy reforms must see the process by which these reforms work as politically neutral and potentially influential. This is due to the nature of advocacy reforms, which reserve the final decision-taking authority to the parliament."¹¹²

This chimes with the assertion that, absent meaningful participation, democracy becomes merely an "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote"¹¹³ whereby "popular control of government is limited to after-the-fact decisions on this question alone" and the electorate functions only "to legitimate governmental authority"¹¹⁴ rather than direct or influence governmental and legislative decision-making. As Davis maintains, this "sharply reduces the extent and the intensity of

110 P. Skidmore and K. Bound *The Everyday Democracy Index* (Demos, 2008), p.37

111 Hansard Society *Audit of Political Engagement 8* (Hansard Society, 2011), p.21

112 C. Carman "The Process is the Reality: Perceptions of Procedural Fairness and Participatory Democracy" (2010) 58(4) *Political Studies* 731, 736

113 J. Schumpeter *Capitalism, Socialism and Democracy* (Routledge, 2010), p.269

114 L. Davis "The Cost of Realism: Contemporary Restatements of Democracy" (1964) 17(1) *Western Political Quarterly* 37, 39

necessary individual participation in democratic politics”¹¹⁵ but is fully consistent with the Westminster model, as evolved, which “emphasises governing capacity over other competing principles ... such as participation or fairness”¹¹⁶ and excludes public access to government from conceptions of representative democracy. This is related to power-holding which reveals “executive hostility” as the “greatest hurdle to reform”¹¹⁷ and the remodelling of petitioning as merely a cosmetic exercise. In 1978, Judge argued that no Parliament would willingly limit its supremacy and this, coupled with executive antipathy to any diminution of its own power, meant that, whilst publicly presented as a means of resolving democracy’s ills and paid lip service, the rejuvenation of petitioning would be firmly resisted inside Parliament.¹¹⁸ It may, of course, be contended that no inevitable limitation of sovereignty will flow from the reform of petitioning and that, as a result, Judge’s is a rather empty or extreme argument to make. A firmer rebuttal may also be made since, with the benefit of hindsight, it is apparent that his appreciation of Parliament’s stewardship of its own sovereignty was imprecise. Political developments resulting in, for example, membership of the European Union (EU), devolution, and the passing of the Human Rights Act 1998 (HRA), mean that the application of parliamentary sovereignty has, by legislative choice, been limited. That is not to say, however, that Judge’s assertion in the specific context of petitioning is not a credible one. The issue of prisoner voting, for example, provides clear, recent precedent for Parliament’s desire to retain its omnipotence in respect of our democratic processes and it is

115 L. Davis “The Cost of Realism: Contemporary Restatements of Democracy” (1964) 17(1) *Western Political Quarterly* 37, 39

116 M Flinders *Democratic Drift* (Oxford University Press, 2010), p.24

117 D. Judge “Public Petitions and the House of Commons” (1978) 4 *Parl. Affs.* 391, 398-400

118 D. Judge “Public Petitions and the House of Commons” (1978) 4 *Parl. Affs.* 391, 404

strongly suggested here that our legislature would be less troubled, both constitutionally and politically, by the assertion of that omnipotence in respect of petitioning since, unlike the right to vote, the right to petition lacks explicit protection either from the European Convention on Human Rights and Fundamental Freedoms 1950 or from the HRA. Given the rather speculative nature of any enquiry into the likely effect on Parliament's sovereignty of the rejuvenation of petitioning, perhaps the real strength of Judge's argument should be deemed to lie in its appreciation of executive, rather than legislative, resistance to change.

Keane suggests that the 21st century has seen the emergence of “monitory democracy”¹¹⁹ where “mechanisms of power scrutiny ... make democracy and democrats more accountable and more democratic ... [and] ... work as antidotes against the hubris of power that constantly threatens the functioning of representative systems.”¹²⁰ In an eclectic mix of the formal and informal, the public and private, the traditional and modern, those mechanisms are said by Navarraia to include “activist courts, electoral commissions and consumer protection agencies, blogs, online forums, and online petitions.”¹²¹ Although some of these monitory forms – not least our courts, whether in activist mode or not - might well serve meaningful reminders that representatives have no absolute power or immunity from control¹²², in the case of petitions the ancient

119 J. Keane *The Life and Death of Democracy* (Norton & Co, 2009), p.686

120 G. Navarraia *The Internet and Representative Democracy: A Doomed Marriage?* (2012) <http://www.igi-global.com/chapter/governance-civic-engagement/60087> accessed on April 30, 2012

121 G. Navarraia *The Internet and Representative Democracy: A Doomed Marriage?* (2012) <http://www.igi-global.com/chapter/governance-civic-engagement/60087> accessed on April 30, 2012

122 G. Navarraia *The Internet and Representative Democracy: A Doomed Marriage?* (2012) <http://www.igi-global.com/chapter/governance-civic-engagement/60087> accessed on April 30, 2012

hallmarks remain: the input is free but outputs are conditioned, conditional and in the gift of a hierarchical elite.

Judge argued that “executive hegemony” within the House of Commons would “automatically confine ... the most radical procedural reform, namely the debating of public petitions, to oblivion.”¹²³ “For as long as the executive is ‘in and of the House’“, he argued, “the fissures between the needs of the effective governmental action and the necessity of questioning, controlling and addressing such action will remain apparent.”¹²⁴ Given that a number of debates on petition topics have occurred in the early life of the reformed system, it would be difficult to claim the absolute veracity of Judge’s statement but concerns persist. Objections have been made that the e-petitioning system was introduced “without any consultation, debate or vote”¹²⁵, causing disquiet that petitioning ‘belongs’ to government, rather than Parliament. Its presentation to the public obscures that fact, and conceals whether reform of the practice was intended to improve or outflank representative processes. Government’s ownership has permitted the e-petitions scheme to be pitched at citizens in such a way that it leads to “a perception ... that there is a direct line between signing an e-petition and changing the law, and there is not.”¹²⁶ The suggestion here is not that, by taking ownership of petitioning, modern government stands in the shoes of ancient Kings - the interpolation of representation and procedure necessarily prevents that, not least by mediating and managing the directness of the relationship between legislator

123 D. Judge “Public Petitions and the House of Commons” (1978) 4 Parl. Affs. 391, 400

124 D. Judge “Public Petitions and the House of Commons” (1978) 4 Parl. Affs. 391, 397

125 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), Ev3

126 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), Ev3, [24]

and citizen. Government ownership may, however, be argued to infect today's petitioning with its past incarnations' characteristics of pragmatism and gesture.

Albeit that the coalition soon resiled from its position that a petition attracting 100,000 signatures would automatically trigger a debate in Parliament, and that petitions with 'the most' signatures would result in a Bill being presented, to one where 100,000 signatures merely signified the eligibility threshold for a debate, what might be viewed as fudging on the issue of petitioners' entitlement to Commons' time led to high expectations left unfulfilled and to further institutional distrust. That is lent support by the Procedure Committee's recent confirmation of the *actual* significance of passing the 100,000 signature threshold being that it merely "triggers a letter from the Leader of the House to the Backbench Business Committee."¹²⁷ Members of Parliament were clearly alive to the dangers:

"It is very possible that, if those expectations exceed what the House is prepared to offer, the consequence will be that the system is discredited and undermined and the reputation of the House, in particular in respect of its commitment to improving its engagement with the public, will be damaged."¹²⁸

Despite claims for the success of the reformed system, damage has occurred. Dissatisfaction with the arbitrary provision, and palliate nature, of responses to individual petitions, and with the incoherent, random approach to the listing of petition subjects for debate, has led to criticism of the e-petitioning facility as

127 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), Ev3, [26]

128 House of Commons Procedure Committee, First Report, *E-Petitions* (2007-8, HC136), [23]

“another promise broken”¹²⁹, revealing the executive’s “contempt for democracy.”¹³⁰ As well as causing disappointment to those outside Parliament, a disservice is also being done to the interests, duties and democratic role of representatives inside Parliament.

Procedural Control

From the earliest times, petitions and petitioners could be avoided by, for example, failing to convene Parliament, by proroguing or dissolving, or invoking suspending powers, by aversion through mechanisms such as the Court of the Star Chamber, or by appointing carefully to Council and committees of receivers and triers. As our parliamentary system evolved, some of these means of avoidance were themselves regulated by legislation or convention or a culture of accountability and were not so readily used but other devices of abnegation emerged to take their place. Petitioning’s subjection to procedural control was, more often than not, a form of inhibition rather than regularisation and tended to be provoked by turbulence, most notably in the crucible of seventeenth century political and religious conflict.¹³¹

At the conclusion of Parliament’s struggle for supremacy, the Bill of Rights declared it “the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegal.”¹³² Although forged out of the rhetoric of revolution, and despite its constitutional footing, the right to petition remained prone to regulatory undercutting provoked by practical political reality. This was felt keenly from the late 1700s, beginning with the

129 John Reynolds (Stalybridge and Hyde, Labour) Hansard, HC col 1022 (March 8, 2012)

130 David Anderson (Blaydon, Labour) Hansard, HC col 666 (March 20, 2012)

131 M. Lobban “From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime 1770-1820” (1990) 10(3) O.J.L.S. 307

132 1688 Chapter 2 1 Will. and Mar. Sess 2

1795 Gagging Acts'¹³³ inhibitions on political activity which, Fraser claims, triggered the procedural restraint of petitioning which had, by now, gained incredible momentum.¹³⁴

In the period preceding the Reform Act 1832, it became clear that “the game had been overplayed”¹³⁵ and that public opinion, whilst influential, could no longer be accommodated in the traditional way: the flourishing of petitioning had caused it to outgrow its channels for delivery¹³⁶ leaving currents of opinion “struggling for a vent.”¹³⁷ Leys puts the growth down to “rapid economic change ... agricultural unrest, popular radicalism, and incipient working-class organization” resulting in an increase from 880 to 70,369 in the number of petitions submitted annually between 1789 and 1841.¹³⁸ Restrictions of 1831 which confined the presentation of petitions to pre-5pm, after public business and on Saturdays and, in addition, mandated that petitions should merely be handed in, without discussion, failed to stem the tide. Actions instigated in 1832, however, commenced a 10-year assault on petitioning, provoking a “procedural revolution”¹³⁹ and ushering in the modern system.¹⁴⁰

Foundations of the Modern System

A review of petitioning undertaken by the 1832 Select Committee on Public Petitions made four recommendations: that a Standing Committee for the receipt of petitions be created, that petitions be categorised by the Committee

133 Treasonable and Seditious Practices Act (36 Geo III, c. 7) and Seditious Meetings Act (36 Geo III c.8)

134 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) History 195, 202

135 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) History 195, 209

136 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) History 195, 196

137 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) History 195, 196

138 C. Leys “Petitioning in the Nineteenth and Twentieth Centuries” (1955) 3(1) Polit. Stud. 45, 47

139 P. Pickering “And Your Petitioner &c’: Chartist Petitioning in Popular Politics 1838 – 48” (2001) 116 Eng. Hist. Rev. 368, 372

140 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) History 195, 209

which should periodically report on the content and number of signatories; that the Committee be afforded the discretion to print any petition it thought fit to bring to the House and that any member presenting a petition should be permitted to speak to it only once.¹⁴¹ The second and third of these recommendations were adopted via sessional orders of 1833 but the resultant nine hours a week dedicated to the consideration of petitions was wholly inadequate. The House of Commons continued to struggle with balancing the demands of its representative functions against the clamour of citizens' petitions of every political hue. The tension was resolved in favour of representation over participation via robust standing orders of 1842 preventing petitions from stimulating parliamentary debate, which effectively "cauterized"¹⁴² citizens' ability to influence parliamentary business. The deceit of the new regulations was obvious: they were designed "constrain", "circumscribe"¹⁴³ and atrophise petitioning whilst ostensibly pretending conformity with the right of citizens to engage in the activity.

The regulatory framework of 1842 persisted until 1974 when the Public Petitions Committee (PPC) was dissolved. The reasons for its dissolution are revealing, and emerged from an enquiry of the Select Committee on Procedure undertaken in the 1972-3 parliamentary session in response to criticism of the restrictions placed on the petitioning system and management of it, made by the PPC itself. The PPC's members expressed dissatisfaction with its role being restricted to reporting to the House on signatory numbers and preparing abstracts of petitions to aid MPs' digestion of their content. The

141 D. Judge "Public Petitions and the House of Commons" (1978) 4 Parl. Affs. 391, 393

142 D. Judge "Public Petitions and the House of Commons" (1978) 4 Parl. Affs. 391, 393

143 D. Judge "Public Petitions and the House of Commons" (1978) 4 Parl. Affs. 391, 393

reports were compiled by the PPC's clerk, rendering Committee meetings no more than a rubber-stamping exercise and, given the PPC's lack of power beyond that, extended to Parliament an invitation to sit on its hands in respect of discussing and taking forward grievances and issues raised by petitions. Indeed, the Select Committee enquiry received a memorandum from the Chair of the PPC in which he described the activities of his own Committee as "a waste of time."¹⁴⁴ Rather than address and repair these deficiencies, the Select Committee on Procedure reached the conclusion that the PPC should be abolished. To hand it more power would offend the spirit of the 1842 regulations which, as has been indicated, smothered rather than embraced petitioning. Thus, in its dissolution, the PPC followed precisely the trajectory of petitioning.

With the Committee no longer responsible for oversight, and with nothing to replace it, minimalism reigned: petitions and responses to them were rendered into printed form only and petitionary business relegated to the end of public business, pre-adjournalment agenda. Judge has it that:

"the Parliamentary 'management', having turned off the megaphone of petitions in 1842, now simply hustled the former virtuoso out of the limelight of the opening of the daily sitting into the shadows of the adjournment"¹⁴⁵

144 Select Committee on Procedure, *Minutes of Evidence* (1972-3, HC202), p.12

145 D. Judge "Public Petitions and the House of Commons" (1978) 4 *Parl. Affs.* 391, 396

The 1974 regulations remain intact¹⁴⁶ and have, it may be argued, “rendered sterile”¹⁴⁷ the practice of petitioning, which declined markedly throughout the 20th and into the 21st century. As noted by Leys:

“[w]hatever sorts of pressure can be brought to bear by means of petitions, they are not since 1842 the pressure of debate in Parliament and publicity in parliamentary reports; the machinery which was then evolved released the parties in Parliament from the threat of this sort of pressure.”¹⁴⁸

The number of petitions submitted continued to spike in response to political turbulence but in much reduced numbers than at petitioning’s height. Post-Thatcher, numbers hovered between 100 and 200 annually, with the fewest petitions – 36 – received in the 2000/1 session.¹⁴⁹ The degradation of petitioning was, thus, complete and it is doubtful whether, in its latest incarnation, it will be permitted a significant recovery from its “moribund”¹⁵⁰ state since, rather than being “an easy way ... to influence government policy”¹⁵¹, it is subjected to the kind of procedural gatekeeping that lends the lie to the idea of direct, participatory democracy as a prominent feature in the modern political landscape.

Powerholding and Gatekeeping

Government has been accused of “abdicating responsibility”¹⁵² for the petitions initiative by handing its administration lock, stock and barrel to the

146 Standing Orders of the House of Commons 2011, orders 153-157

<http://www.publications.parliament.uk/pa/cm201011/cmstords/700/700.pdf> accessed on April 30, 2012

147 D. Judge “Public Petitions and the House of Commons” (1978) 4 Parl. Affs. 391, 404

148 C. Leys “Petitioning in the Nineteenth and Twentieth Centuries” (1955) 3(1) Polit. Stud. 45, 63

149 S Lightbown and B Smith *Parliamentary Trends: Statistics About Parliament* (House of Commons Research Paper 09/69, 2009), p.22

150 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) Fordham Law Rev. 2153, 2155

151 http://www.direct.gov.uk/en/Diol1/DoltOnline/DG_066327 accessed on April 30, 2012

152 N. Engel <http://news.bbc.co.uk/1/hi/2009/9631000/9631097.stm> accessed April 30, 2012

BBBC which was “not designed”¹⁵³ for the task. Moreover, accommodating participation by petition has impacted on Parliament’s freedom to set its own agenda. The BBBC has accused Government of “clogging up” its procedures and “bed blocking”¹⁵⁴ its activities by requiring that time is set aside for debate on petitions. The BBBC’s Chair, with 35 days of parliamentary time available to her, has spoken of the dilemma of choosing to debate either issues raised by successful petitions or those that are politically pressing, or topical, or have cross-party support, but which government and the official opposition are for some reason reluctant to have debated. She has also spoken of the importance of ensuring that petitioners’ “good faith”¹⁵⁵ in a system promising direct contact with Parliament is not “sorely disappointed”¹⁵⁶ by the reality. Although the handling of petitions is currently under examination, from Judge’s perspective any suggestion that contemplates extra-Parliamentary involvement will be seen as a threat to executive autonomy.¹⁵⁷ Likewise, any suggestion of enlargement of the powers of the intra-Parliamentary sifting mechanism is likely to be met with refusal as an “unwarranted extension”¹⁵⁸ of the BBBC’s power.

In justifying the e-petitioning initiative, the Leader of the House, Sir George Young, stated that “[p]eople have strong opinions, and it does not serve democracy well if we ignore them or pretend that their views do not exist.”¹⁵⁹

Whilst it might be politically desirable, or expedient, to encourage, or be seen

153 Natascha Engel (North East Derbyshire, Labour) Hansard, HC col 332WH (April 26, 2012)

154 Natascha Engel (North East Derbyshire, Labour) Hansard, HC col 1017 (February 2, 2012)

155 Natascha Engel (North East Derbyshire, Labour) Hansard, HC col 1017 (February 2, 2012)

156 Natascha Engel (North East Derbyshire, Labour) Hansard, HC col 332WH (April 26, 2012)

157 D. Judge “Public Petitions and the House of Commons” (1978) 4 Parl. Affs. 391, 398-9

158 D. Judge “Public Petitions and the House of Commons” (1978) 4 Parl. Affs. 391, 400

159 Daily Mail, August 4 2011

to be encouraging, participatory initiatives, from the perspective of power-holding it is also desirable that executive and parliamentary control is maintained over policy- and law-making, and Parliament's time. Consequently, whilst petitioning inevitably attracts procedural control since it is an *avenue* of participation, not a freeway, it may be argued to be a-typically susceptible to such control, meaning that the need to ration access to Parliament so that it remains a creature of representative, rather than random, direct democracy, results in the right to petition appearing to be significantly undercut. According to how it manifests, and depending upon the strictures imposed, the exertion of procedural control over petitioning may be viewed as sensible balancing or as (political) manipulation and inhibition of communication with, or access to, elected representatives and policy-making. The impact is exacerbated when popular petitioning is, indeed, popular, since regulatory command and control tends to wax and wane with the administrative and political burdens imposed by the activity. Generally speaking, the greater its weight, the more strictured petitioning becomes. In other words, petitioning is the classic victim of its own success.

Gatekeeping occurs through agenda-setting and through strategies of avoidance via the imposition of specific rules and regulations governing petitionary practice. On the first count, it is apparent that a degree of substantial agenda-setting – generally by way of inhibitions on the kinds of issues that are appropriately subject to petitioning - may occur. The National Framework for Citizen Engagement, for example, specifically identified four areas that would benefit from greater public participation: those resulting in

significant constitutional change (such as membership of, or withdrawal from, the EU); where individuals need to act (smoking, obesity); where government is open-minded on policy options and where it would be beneficial to explore options.¹⁶⁰ This top-down conceptualisation of the proper role and focus of politically engaged citizens exercising their participatory rights may be argued to have infected e-petitioning practice, not least given Sir George Young's comment, at launch, that government wanted "the best"¹⁶¹ petitions to be given parliamentary airtime. Selection criteria for 'the best' petitions remained elusive but the 100,000 signature threshold proved a red herring. Whilst substantial support might not be required neither would it necessarily be sufficient. In its January 2012 report, the Procedure Committee indicated clearly that, irrespective of the presence of the 100,000 signature threshold, any e-petition might be eligible for debate¹⁶², yet no debate has occurred on any sub-100,000 signature e-petition, or seems likely to given the government's suggestion that the threshold be doubled in order to reduce the pressure on Parliament's ability to handle petitions.¹⁶³ Too hasty a decision to elevate the threshold is likely to exacerbate disillusionment but it is, of course, tricky to predict future demands on current procedural arrangements. The dilemma was posed succinctly by the Procedure Committee: "Demand may decrease once the novelty ... has worn off; on the other hand, petitioners, the media and campaign groups may become more expert at gathering the

160 Ministry of Justice *A National Framework for Greater Citizen Engagement: Discussion Paper* 2008, p.11

161 The Daily Telegraph, July 29, 2011 <http://www.telegraph.co.uk/news/politics/8669763/Popular-e-petitions-will-now-be-debated-in-Parliament.html> accessed on April 30, 2012

162 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [26]

163 The Guardian, November 16, 2011 <http://www.guardian.co.uk/politics/2011/nov/15/epetitions-rethought-urgently-labour-mp> accessed on April 30, 2012

requisite number of signatures.”¹⁶⁴ Not that meeting the criterion for numerical support carries any guarantee: a 160,000 signatory petition on NHS reforms was denied debating time, and the 149,104 signatories to a petition to have Babar Ahmed tried in the UK were satisfied neither by a debate nor formal response. The discrepancies in procedural outcomes procured by petitioning in individual cases are in marked contrast to the consistency of outcomes in dealing with the mass of petitions registered where, like salmon swimming upstream, only the fittest survive to spawn a response or debate.

In the twelve months since the launch of the e-petitions facility 29,038 petitions have been lodged online. Nearly half have been rejected. Reasons for rejection are fivefold: that the petition contained confidential, libellous, false or defamatory statements; that it covered matters beyond the responsibility of HM Government; that it concerned honours or appointments; that it was an offensive, joke or nonsense petition or that duplicated the subject matter of an existing petition.¹⁶⁵ This last reason provided the basis for rejection in 62% of cases in the first quarter of the system’s operation.¹⁶⁶ There is no means by which signatures to a duplicate petition are automatically added to a ‘mother’ petition on that subject: the petition, and the participatory endeavour it represents, is lost. The second highest number of rejections occurred in the ‘offensive, joke or nonsense’ category, accounting for 12% of all rejections. Whilst a much smaller number, this might be regarded as a significant interference with the fundamental right of freedom of expression, which affords protection to offensive, joke or nonsense ‘speech’. Free expression

164 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [10]

165 <http://robertleather.wordpress.com/2012/03/24/water-company-anti-leak-e-petition-rejected/> accessed on April 30, 2012

166 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), p.208

“includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence.

Freedom only to speak inoffensively is not worth having.”

This is especially important in the democratic sphere where “the free communication of information, opinions and argument about the laws which a state should enact and the policies its government at all levels should pursue is an essential condition of truly democratic government.”¹⁶⁷

Thus far, in considering the implications of procedural regulation of e-petitions, the focus has been on human resources, rather than human rights. It is, of course, understood that, in order to be pitched as an enhancement to democracy, the system must be seen to function, or at least not to malfunction. That said, it is hardly satisfactory that the maintenance of the practical functionality of petitioning threatens to undermine one of the bedrock principles of the democracy it is intended to serve, yet that is not the only way in which democracy may be undermined by the reality of petitioning. There is a conundrum which emerges from the juxtaposition of modern liberal democratic rights with the ancient participatory practice of petitioning. That conundrum is not unique to petitioning since it manifests in respect of many “devices of democracy”¹⁶⁸ where modern philosophies of formal equality of access fail to translate into substantive equality of inputs or outcomes. The upshot is that those devices are rendered open to capture by some, to the exclusion of others.

¹⁶⁷ *R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport* (2008) UKHL 15, [27-8]

¹⁶⁸ F. Schauer “Judicial Review of the Devices of Democracy” (1994) 94(4) Col. L.R. 1326

Capture by 'Troublemakers' and Elites

It is difficult to read the participatory and political implications of early collective petitionary activity. Opinion is certainly divided. Harding, for example, notes that "the one steady development in thirteenth century agrarian society was the incorporation of the peasantry into a common culture of rights and obligations."¹⁶⁹ This does not mean that there existed a fully functioning, enfranchised political community freely exercising those rights and liberties which would, today, attend democracy but, by the later Middle Ages, there existed limited power "to act in the affairs of the community, and to exert influence on one's fellows, free from the interference of the sovereign government."¹⁷⁰ Harriss characterises the late medieval political system as an "historical amalgam"¹⁷¹ where participatory activity, reflecting the turbulence of the era, meant that "baronial opponents placed constraints on royal power ... the middling classes claimed authority through parliament to reform government for the common good ... [and] the plebs revolted in the name of natural justice."¹⁷² In Mark's view, the early practice of petitioning demonstrated a "participatory consciousness that extended well beyond even that which underlies some quite modern concepts of enfranchisement".¹⁷³ What is clear is that a "significant minority"¹⁷⁴ of petitions was submitted in the name of groups, communities and classes and would often assert a broad public interest rather than one more narrowly and specifically tailored to an

169 A. Harding *England in the Thirteenth Century* (Cambridge University Press, 1993), p.73

170 A. Harding "Political Liberty in the Middle Ages" (1980) 55 *Speculum* 427, 427

171 G. Harriss *Shaping the Nation: England 1360-1461* (Oxford University Press, 2005), p.5

172 G. Harriss *Shaping the Nation: England 1360-1461* (Oxford University Press, 2005), p.5

173 G. Mark "The Vestigial Constitution: The History and Significance of the Right to Petition" (1998) 66(6) *Fordham Law Rev.* 2153, 2170

174 P. Brand "Petitions and Parliament in the Reign of Edward I" (2004) 21(1) *Parl. Hist.* 14, 31

individual.¹⁷⁵ The evolution of group, public interest-type petitioning may be argued to have engendered a qualitative shift in the nature of petitioning.

The first aspect of petitioning as it evolved is that, whilst it sometimes entailed group political activity, it had not yet become a tool of mass political participation. It remained, more often than not, an instrument employed to protect the interests of the gentry, the clergy and political and urban elites.¹⁷⁶

Ormrod notes that although petitioning provided a “significant outlet” for what might loosely be termed popular politics, for centuries “the voice of the establishment expected to carry greater weight than that of the poorer sort.”¹⁷⁷

Generally speaking, therefore, petitioning was conducted largely by, and for the benefit of, elites within society and, well into the 1800s would continue to reflect “the interests of corporations, religious denominations, economic bodies, and all the fixed and settled adjustments of a society whose spirit was traditional and static.”¹⁷⁸ Traditional and static society might have appeared

but that did not signify an absence of tension arising out of, for example, dissatisfaction with patronage politics, industrialisation, the emergence of new ideas and policy choices and expanding government.¹⁷⁹ The combination of

the ‘establishment’ tenor and usage of petitioning, coupled with the presence of motivated, factional interests inside the establishment itself, resulted in petitioning being employed to exert pressure both from without and within. As

has been indicated, petitions were often used as weapons in the battle for

175 D. Rayner “The Forms and Machinery of the Commune Petition in the Fourteenth Century I” (1941) 56(Apr) No.222 Engl. Hist. Rev. 198

176 J. Spanbauer “The First Amendment Right to Petition Government for Redress of Grievances: Cut From a Different Cloth” (1993-94) 21 Hastings Const. L.Q. 15, 24-25

177 “Medieval Petitions in Context” in M. Ormrod, G. Dodd and A. Musson (eds) *Medieval Petitions: Grace and Grievance* (York Medieval Press, 2009), p.2

178 P. Fraser “Public Petitioning and Parliament Before 1832” (1961) 46(158) History 195, 200

179 See A. Lizzeri and N. Persico “Why Did the Elites Extend Suffrage? Democracy and the Scope of Government, with an Application to Britain’s Age of Reform” (2004) 119(2) Quart. J. Econ. 707

supremacy and were thus “central to Parliament’s accumulation of power.”¹⁸⁰ The gaining of power did not exhaust the utility of petitions for the ruling elite, however, since they continued to prove their value in setting the political agenda, sometimes covertly. Petitions regularly emerged out of the manipulation and organisation of petitioning “from above”¹⁸¹, both by direct command and control of groups of petitioners, and by fomenting petitioning through indirect means, namely print and propaganda. Thus, influence was wielded via petitions which, although they appeared to be generated by ‘the people’, were often anything but. In the modern context, too, it has been noted that “those who have control of the levers of powers have speedily used e-petitions to advance their causes.”¹⁸² It is, perhaps, noteworthy that, of the ten petitions garnering 100,000 signatures or more in the year since the coalition’s e-petition system went live, only four could be deemed free of interest group or professional links.¹⁸³

Arguing that the kind of collective activity promoted by petitioning was never necessarily benign, Ormrod states that, even in its earliest incarnation, it was often underpinned by “cynically opportunistic ... mobilisations of the theme of common profit for the pursuit of sectional, factional or class interests”¹⁸⁴ buttressed by the avowal of commonality, a “long and strong tradition” undertaken by communities “either formally constituted ... or pragmatically

180 G. Mark “The Vestigial Constitution: The History and Significance of the Right to Petition” (1998) 66(6) *Fordham Law Rev.* 2153, 2167

181 J. Peacey *News, Politics and People 1603-1714* <http://gale.cengage.co.uk/state-papers-online-15091714/essays.aspx> accessed on April 30, 2012

182 Backbench Business Committee *Work of the Committee in Session 2010-12: Second Special Report* (2010-12, HC1926), [30]

183 Those petitions reaching 100,000 signatures were submitted by Brian Irvine (This is Anfield), Robert Halfon MP, Sir Andrew Green (Migration Watch UK), DR Kailash Chand (GP and Chair of Tayside & Glossop NHS Trust), Martin Lewis (Money Saving Expert), Ashfaq Ahmad (Free Babar Ahmad), Ken Sharpe, Stephen Mains, Anne Williams and Jim Singer.

184 “Murmur, Clamour and Noise: Voicing Complaint and Remedy in Petitions to the English Crown, c.1300-c.1460” in M. Ormrod, G. Dodd and A. Musson (eds) *Medieval Petitions: Grace and Grievance* (York Medieval Press, 2009), p.152

imagined.”¹⁸⁵ Indeed, political pragmatism loomed large in petitioning activity. Leys notes, for example, that where, initially, petitions had been employed to alert Parliament to a genuine grievance in the hope of securing redress, later “a substantial crop of petitions [were] presented by political activists under no sort of illusion either that the grievance was unknown or that Parliament might reasonably be expected to respond by redressing it.”¹⁸⁶ The petition had arguably “changed in the minds and the hands of people from a form of submission to an instrument of mischief.”¹⁸⁷ It might therefore be employed to “serve the agenda of those who want to influence popular consent in support of questionable politics”¹⁸⁸ or as a “popular mechanism”¹⁸⁹ for publicity generation and awareness-raising.

Those problems of elite capture and troublemaking undoubtedly persist, with the view being expressed that “[n]ational direct democracy can be vulnerable to being manipulated by the wealthy and powerful who can dominate single issue campaigns more easily than the complex layers of political activity that characterise the operation of parliamentary democracy.”¹⁹⁰ It has also been observed that democracy is “increasingly an interest of the better-off and the better educated”¹⁹¹, an observation borne out in a study of the e-petitioning system in Scotland. The Scottish Parliament launched its e-petitions system

185 “Murmur, Clamour and Noise: Voicing Complaint and Remedy in Petitions to the English Crown, c.1300-c.1460” in M. Ormrod, G. Dodd and A. Musson (eds) *Medieval Petitions: Grace and Grievance* (York Medieval Press, 2009), p.137

186 C. Leys “Petitioning in the Nineteenth and Twentieth Centuries” (1955) 3(1) *Polit. Stud.* 45, 45

187 S. Zaeske *Signatures of Citizenship: Petitioning, Anti-Slavery and Women’s Political Identity* (University of North Carolina Press, 2003), p.1212

188 G. Navarra *The Internet and Representative Democracy: A Doomed Marriage?* (2012) <http://www.igi-global.com/chapter/governance-civic-engagement/60087> accessed on April 30, 2012

189 P. Lynch and S. Birrell “Linking Parliament to the People: The Public Petitions Process of the Scottish Parliament” (2001) 37 *Scottish Affairs* 1, 10

190 Ministry of Justice *A National Framework for Greater Citizen Engagement: Discussion Paper* 2008, p.10

191 Ministry of Justice *A National Framework for Greater Citizen Engagement: Discussion Paper* 2008, p. 8

in 1999 as a “transformative reform ... designed to foster ... advocacy democracy”¹⁹² yet found that petitioners were, in the main, older, male, middle-class and educated.¹⁹³ The German Bundestag’s petitioning system reveals a similar profile¹⁹⁴ and, whilst Westminster e-petitioners remain to be studied in detail, there is no reason to suppose that any particular demographic variance will be apparent. What might well be revealed, however, is the presence of a professional elite. In the Scottish system over a quarter of petitions had been submitted by professionals.¹⁹⁵ For Smith the presence of professional petition creators and circulators engaged in raising enough signatures to meet procedural thresholds indicates that ability to pay is a “highly significant”¹⁹⁶ enabler of political participation even where innovations are targeted at regular citizens. The concerns are magnified when the media - another source of professionalisation – becomes involved. The BBC was, for example, cautioned that it should be “wary of manipulation by the media” and should not be surprised that e-petitioning was “increasingly being reclaimed from Parliament by the real powers in politics—the media and the Government.”¹⁹⁷ It was, moreover, noted that “[m]any” e-petitions were started by national newspapers and were “breaching the 100,000 signature threshold in under a week.”¹⁹⁸ This is not corroborated by an examination of the e-petitions themselves. Newspapers, or the media more generally, do not tend to start petitions but they are able to stimulate signatories. The concerns expressed are threefold: that representative government will be

192 Public Petitions Committee *Assessment of the Scottish Parliament’s Public Petitions System 1999-2006* (2007, SP Paper 654), [5]

193 Public Petitions Committee *Assessment of the Scottish Parliament’s Public Petitions System 1999-2006* (2007, SP Paper 654), [15]

194 .R Linder and U. Riehm “Broadening Participation Through E-Petitions? An Empirical Study of Petitions to the German Parliament” (2011) 3 *Policy & Internet*

195 G. Smith *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge University Press, 2009), p.33

196 G. Smith *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge University Press, 2009), p.33

197 Backbench Business Committee *Work of the Committee in Session 2010-12: Second Special Report* (2010-12, HC1926), [31]

198 Natascha Engel (North East Derbyshire, Labour) Hansard, HC col 455 (December 10, 2011)

disempowered, that accountability will be reduced and the system poisoned by “orchestrated campaigns promoted by the media or professional lobbyists.”¹⁹⁹ In other words, petitioning, as revived and reformed, may exacerbate the very issues it was intended to eliminate, or at least avoid.

Conclusion

Skidmore and Bound state that “the decline in support for representative institutions has been more erosion than earthquake: ... gradual, but persistent, and in the long term, dramatic.”²⁰⁰ It remains to be seen whether initiatives of democratic renewal, such as e-petitioning, can halt that decline. It has been suggested here that petitioning suffers a number of defects attributable to its constitutional and political heritage. First, it maintains a model of authority based upon a traditional, top-down hierarchy which is antagonistic to the facilitation of bottom-up decision-making. That petitioning lends itself to this kind of model is highly indicative of its early roots as a means of supplication and entreaty. That, in its freshest incarnation, it appears to retain those qualities, raises questions about its stated utility as a device of modern, dialogic democracy. Second, it permits the democratic process to be populated and driven by the interests of the political haut monde and ‘troublemakers’. Again, the vestiges of the past may be seen but the capture of democratic processes is perhaps as much a manifestation of present conditions as past ones, albeit for different reasons. Third, its efficacy is susceptible to procedural undercutting. Viewed from any perspective, ancient or modern, a soon-discovered need for procedural ‘management’ has become the leitmotif of petitioning practice. The government’s e-petitioning

199 Backbench Business Committee *Work of the Committee in Session 2010-12: Second Special Report* (2010-12, HC1926), [24]

200 P. Skidmore and K. Bound *The Everyday Democracy Index* (Demos, 2008), p.32

facility may be argued to have been successful in “building a bridge between people and Parliament and in ensuring that the House’s diet reflects the interests of those outside.”²⁰¹ It may also be contended that, as conceived and subsequently experienced, in the first months of its operation the e-petitioning facility has exhibited some of the attributes of the smoke-and-mirrors phony participation to which Judge referred. Whatever the truth, e-petitioning as now practised has drawn attention both to the “lumbering nature of parliamentary procedure”²⁰² and to the importance of procedure as a facilitating or checking mechanism on political participation. That has, however, been clear for centuries. The launch of the new system has revealed its procedural issues most clearly. As such, the focus has been on practical, quick-fix procedural tweaking at the expense of principled philosophical debate. In its January 2012 report, the Procedure Committee eschewed the “wider philosophical question”²⁰³ of the public’s engagement with Parliament as beyond the scope of its enquiry. Instead a more “constructive dialogue”²⁰⁴ between petitioners and Parliament was sought through procedural change. Recommendations included innovations in the location, scheduling and casting of debates²⁰⁵, modifying the copy on the DirectGov website²⁰⁶, linking the DirectGov and BBC websites more prominently²⁰⁷, advising petitioners on selecting an MP to sponsor and steer the petition through the BBC²⁰⁸ and alerting MPs to any petition cresting the

201 N. Engel http://news.bbc.co.uk/democracylive/hi/comment/newsid_9631000/9631097.stm accessed April 30, 2012

202 N. Engel http://news.bbc.co.uk/democracylive/hi/comment/newsid_9631000/9631097.stm accessed April 30, 2012

203 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [22]

204 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [22]

205 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [21]

206 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [25-27]

207 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [29]

208 House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [33]

100,000 signature mark.²⁰⁹ Whilst this procedural finessing is very welcome, it seems unlikely that it will overcome the more profound issues raised by declining democracy and attempts at its repair.

²⁰⁹ House of Commons Procedure Committee, Seventh Report, *Debates on Government E-Petitions* (2010-12, HC1706), [33]