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Section 28 and all that

Several features of our parliamentary processes, as revised by the modernist Mr Blair, were displayed on December 6 when the Lords debated the Local Government Bill. Moving the second reading, the environment minister Lord Whitty said, in the usual grandiloquent way of 'modern' politicians, that the Bill will revitalise local democracy and change the way local communities govern themselves and how they shape their future. He produced no evidence that local communities want to be thus revitalised, but this is not now considered necessary. We must get what Mr Blair thinks good for us.

The Bill gives new powers to local authorities, which are said to be to promote the economic, social and environmental wellbeing of their communities. It creates new executive arrangements for councils, involving separate executive and scrutiny structures with powerful roles for all councils. It introduces a new ethical framework for councillors and council officers. It provides for more frequent local elections to improve the accountability of councils to their electorates. It enables local authorities to fund support services for vulnerable groups via a new single budget. Finally it repeals what is commonly known as section 28 (of which more anon).

The 'modernised' parliamentary procedure is exemplified by the fact that last summer Parts II and III of the Bill were scrutinised in draft by a Joint Committee of both Houses. The draft Bill had been published, as part of the Government's policy document *Local Leadership, Local Choice*, for debate and discussion by local authorities and local communities. The Government later published their formal response to the Joint Committee's report, accepting some of its recommendations.

Lord Whitty explained that by the committee stage the Government would bring forward amendments to the Bill in response to recommendations by the Joint Committee and also "to better reflect the policy set out in *Local Leadership, Local Choice*". In other words the vaunted modernised procedure meant that the House was called on to give a second reading to a text which did not remotely represent the Government's final thoughts on what should be in this very important Bill, which sets the longstanding basis of our country's local government on its head. Their Lordships displayed the confusion one would expect from this Alice in Wonderland procedure, so reminiscent of "sentence first, verdict afterwards".

Tagged on to the general provisions of the Bill is clause 68. By itself this occupied half the time of the House in the second reading debate, so I shall occupy the remaining half of this article with it. As Baroness Seccombe sardonically remarked, in the new-fangled explanatory memorandum the controversial clause 68 "commanded all of three lines":

> "Clause 68 repeals section 2A of the Local Government Act 1986 (inserted by section 28 of the Local Government Act 1988), which prohibits local authorities from intentionally promoting homosexuality, or from promoting the teaching in their schools of the acceptability of homosexuality as a 'pretended family relationship'".

The section 28 issue is like the foxhunting issue: either you think one way or you think the other, and you are not open to be converted. This sort of dispute presents great problems for democracy, for it is not necessarily right that the opinion which at the crucial moment is held by the Commons majority should in the end prevail.

The pro-section 28 argument was put forcibly by the Duke of Norfolk: “I am against homosexuality because, in the first place, it is unnatural. One must go into frank details in this matter. The male body is made to go with a female body, not to go with another male body. That is how the male body has evolved.” Simple really.

As usual, the Bishop of Oxford sat on the fence and faced both ways. The church “looks to marriage as the proper context for full sexual intimacy”. At the same time “it needs to be recognised that in any class there are likely to be one or more pupils who feel attracted to members of their own sex”.

Lord Whitty disagreed strongly with the Duke of Norfolk. Section 28, he said, is a pernicious piece of legislation. “The number of assaults, self-inflicted wounds and suicide attempts among young gay people bears witness to that”. Oh yes?

What no one in the debate pointed out was that in its judicial capacity the House of Lords has already disowned section 28. In *Fitzpatrick v Sterling Housing Association Ltd* [1999] 4 All ER 705 Lord Clyde (at 729), citing a New York judge who ruled that “family” includes “two adult [homosexual] lifetime partners whose relationship is long term and characterised by an emotional and financial commitment and interdependence”, said “the concept of ‘family’ is now to be regarded as extending to a homosexual partnership”. In the Appellate Committee this view prevailed by three to two.

The committee stage of the Bill will be on January 25, after this column has gone to press. Next week I will report what happens.

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