

# Privilege, aristocracy, monarchy

LL Blake reflects on the traditional constitutional role of privilege in Britain.

EDMUND BURKE, in the 18<sup>th</sup> century, wrote and spoke copiously about tradition in this country. On the subject of the constitution, he wrote: "...it is a constitution made by what is ten thousand times better than choice, it is made by the peculiar circumstances, occasions, tempers, dispositions, and moral, civil, and social habitudes of the people, which disclose themselves only in a long space of time". He was not fond of instant "improvements". He said also: "To innovate is not to reform".

Burke would have been saddened by the assertion recently by a Director of Public Prosecutions that we should not be ruled by what happened in the thirteenth century. She spoke in connection with modernising our criminal procedures. In fact the 13<sup>th</sup> century was the time of Magna Carta and the emergence of Parliament in a form recognisable by us; even more it was the century in which the lawyer Bracton gave us the principle which judges invoke almost daily in the High Court, bringing all officials under discipline, "the king must be under no man, but God and the law, for the law makes the king" (and all his officers). Magna Carta was relied on recently by a judge who found that the court system had delayed access to justice for a young woman who was pregnant and had nowhere to sleep save for her car. The judge applied chapter 40 of the Great Charter which states: "To no one will we sell, to no one will we refuse or delay right or justice". In the light of this judgment we may wonder indeed whether the proposal to delay charging a suspected terrorist for a period not exceeding 42 days is legally sound!

We think we know all there is to know about privilege and abhor it. Why should some people have it and not others? But what about parliamentary privilege which protects freedom of speech in Parliament? Members of the Commons and Lords can speak freely in the Houses of Parliament without fear of legal action on grounds of slander. Privilege does have its good side. It is privilege which guards communication between lawyer and client.

Aristocracy is another word that currently has a bad press. We have driven out the hereditary peers from the House of Lords, save for 92 of them. But aristocracy really signifies government of the best, according to its

etymology. What more could we hope for?

Thomas Jefferson, in the early years of the American republic, said that government should be exercised by a 'natural aristocracy'. No doubt this accounted for the requirement in the constitution of the United States that voters vote not for a person to act as President, but a college of electors who would determine collectively who was the best citizen for the post.



That was the intention, although now the college usually tamely follows the popular vote, and elects the man or woman who gained the most votes.

In Britain we had a natural aristocracy, based on families that had demonstrated long and faithful service to the state: families such as the Cecils, who led through the House of Lords. This was natural, because family is the natural basis of the community. However, modern experience has shown that in a number of hereditary peerages the element of service to the country has been put aside for personal gain, such, for instance, as the opposition to justice in regard to the taxation of land values in 1909-10. Accordingly, it was

popularly possible to decree the abolition of the hereditary peerage in the House of Lords (save for the time being of the 92) by the Blair administration. In the circumstances, probably the continued presence of those members would be about right for the 'mix' of the House of Lords – which has such a firm reputation of wisdom and sound common-sense in regulating legislation and debating great issues of the nation.

Monarchy in its modern sense of 'constitutional monarchy' has undoubtedly wide popular support, at least as conducted by the present Queen. Ripples of dismay have, however, disturbed the peace ("The Queen's Peace" as it was known) in such matters as the death of Princess Diana. And frequent protests have been heard about the nature and extent of the Queen's function. What exactly does she do that merits all the splendour and the money?

First let it be said that in foregoing the income from royal estates (which goes to the Treasury) in exchange for a Civil List of moderate proportions, the Queen's services come at a very fair price. The financial cost to the United States taxpayer of a presidency is astronomic in comparison.

Secondly the monarchy brings with it immense dignity and majesty to the government of Britain. It gives light and distinction to the institutions which rule our daily lives. Her Majesty was once asked what she thought her role was; she answered "My function is one of being, not doing". That is exactly so: to have someone at the centre of government who has constant regard to and supervision of the workings of the constitution is a supreme gift. She does not let her gaze fall, she is constantly in touch with the affairs of the state, and she, no doubt, asks the right questions of her prime ministers. When one compares this with the incessant political chatter and hasty decision-making of an American presidency one sees the great virtue of stillness and constant and unbroken vigilance at the heart of the nation. Such stillness ensures our freedom.

Professor Anthony King, in his seminal work on *The British Constitution*, describes the traditional constitution, in part, as follows: "The British system actually delivered the goods – on a very large scale – and it had done so for nearly two hundred years. It delivered liberty, the rule of law, a stable currency, remarkable prosperity, the great industrial