

Privilege, aristocracy, monarchy

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

EDMUND BURKE, in the 18th 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 13th 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

cities of Glasgow, Liverpool, Manchester and Birmingham, the City of London, cheap food, law and order, a navy that commanded the world's oceans, an empire on which the sun never set, victory in the Napoleonic wars and then in two world wars, water that was safe to drink, the world's first railways, half-way decent roads, old-age pensions, unemployment insurance, better and better housing and the National Health Service, among many other things..."

This traditional constitution may be amended, but substantially it should be maintained, as Peter Osborne says in his excellent book, *The Triumph of the Political*

Class: "This is why the presence of our great institutions – judiciary, Parliament, civil service, a free press and (in the private sphere) the family – have such profound importance. They offer protection against the populism that is such a potent feature of the democratic system. They stand for values – fairness, decency, protection of minorities, freedom under law – which inevitably come under strain in a democracy". The theme of his book is countering the onset of tyranny of the political class, given the strains which democracy brings with it.

Tradition thus has a leading role to play in civic affairs. We should all work to maintain it

in the face of increasing populism, the herald of tyranny, which Plato says is the probable outcome of democracy. Our precious heritage of freedom – our gift to the civilised world – depends on tradition, particularly in the form of the rule of law. Despite bad press, privilege, aristocracy and monarchy have enduring roles in the constitution of modern Britain. **L&L**

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Mr Taylor went to his club on nights when Mr Mill came round. Mill married Harriet in 1852; she died in Avignon in 1858. Mill dedicated the rest of his life to overpraising her memory, holding her jointly responsible for his great works *On Liberty* (1859) and *The Subjection of Women* (1869). He exaggerated as regards *Liberty*, but she had certainly helped to radicalise Mill, making him more socialist as well as more feminist.

Like any other radical political economist, Mill believed in land reform. He did not need any push from Harriet; he simply followed directly in the footsteps of Adam Smith and David Ricardo, for whom he had worked in his infant prodigy years. They all shared a very simple view: income from landownership was unearned; it rose and fell for reasons that were irrelevant to the landowner's efforts ("falls into their mouths as they sleep", said Mill). Therefore it was appropriate to tax it more heavily than other income. Mill rejected land nationalisation, but only on pragmatic grounds ("I think it will be a generation or two before the progress of public intelligence and morality will permit so great a concern to be entrusted to the public authorities"). How far have

public intelligence and morality progressed since 1871? Would you entrust land ownership to the public authorities? These remain open questions. In words that might delight Ken Livingstone and either delight or alarm Boris Johnson, Mill concluded: "If the Grosvenor, Portman and Portland estates belonged to the municipality of London, the gigantic income of those estates would probably suffice for the whole expense of the local government of the capital."

Iain McLean

Rebirth

New Life in Old Cities
by Mason Gaffney
Robert Schalkenbach Foundation,
revised edition 2007, 50pp, p/b
ISBN: 0-911312-92-7, \$7

This booklet gives an interesting insight into the growth or decay of American cities over the last hundred years. When, in the 1920s, New York City exempted residential buildings from the property tax while maintaining the tax on land values there was a surge in building and population, creating a city attractive to people and business.

Vancouver under a 'single tax' mayor went further than any US city in exempting buildings, and grew much faster: it quintupled in population after exempting half and then in 1910-1918 all buildings from the above-the-site property tax. It remains one of the most beautiful and livable cities in North America.

Historically, the depression of the 1930s; the fact that the single taxers died or retired, that there seemed to be few heirs to Henry George's ideas; and in many cities selfish vested interests put economic justice aside, had a negative impact on reform.

Perhaps the work going on today will reverse this and restore land value taxation to its rightful place in the canons of taxation.

Geoffrey Lee

'Orange' Peel

Robert Peel
by Douglas Hurd
Weidenfeld & Nicolson, 2007,
440pp, h/c
ISBN: 978-0-297-84844-8, £25

Sir Robert Peel, Prime Minister from 1834-5 and 1841-6, cleared hundreds of archaic criminal laws from the statute book. He created

the modern police force whose constables 180 years later are still known as Bobbies. As a freetrader he repealed the Corn Laws, splitting the Conservative Party.

Curiously, although he was never Chancellor, Peel did largely draft two major Budgets. Inheriting a large deficit from the Whigs, he consulted Gladstone who suggested reviving the house tax. But Peel realised he would never get this through. Deviously circulating Gladstone's paper to other ministers – so that what he did propose, the reintroduction of income tax, would seem attractive by comparison – Peel got his way in the 1842 Budget, with the real Chancellor sitting meekly beside him.

If the climate had been right this would have been the ideal moment to introduce land value taxation, but as an immensely rich landowner, lvt was not something he ever contemplated.

Gladstone, however, Peel's disciple, retained an interest in the land question and read Henry George's *Progress & Poverty*, and eventually introduced a form of lvt into the Liberal Party's programme, where under the LibDems it continues to this day.

Geoffrey Lee