

Reflections on the Queen's Speech

For production reasons this column has to be delivered a week in advance. I am writing this the day after delivery of the Queen's speech, and offer a few random thoughts on that. The first thing I note is that the speech is full of references to "modernising". It begins by saying Mr Blair's Government seeks to modernise the country and its institutions. Of course the reason given for this is to "meet the challenges of the new millennium". In fact there is no challenge facing the Government that is produced by the fact that each year will now start with a 2 instead of a 1. How long will it be before we can leave behind this monotonous insistence on what is no more than a calendar quirk?

There was not much evidence of modernising our institutions when I watched the ceremony of opening the new Session. The Parliament building designed by Barry and Pugin early in Queen Victoria's reign consciously echoes the splendid colours and designs of the Middle Ages. It was medieval pageantry that inspired the Victorians who worked out the ceremonial we still see today, despite Mr Blair's professed desire to "modernise" everything. This self-important play-acting was perhaps suited to the great Victorian Empire. Every bit of it has significance for historians of our constitution. It is grand as a museum piece. But for a working legislature suited to "the new millennium"? I wonder.

The jury is one ancient relic Mr Blair *would* like to consign to a museum. "A Bill will be introduced to give the courts themselves the power to decide whether certain defendants should be tried by jury or by magistrates." The judge who conducted the trial of Daniel O'Connell in 1844, Thomas Denham, said that trial by a jury of one's peers is a security to persons who are accused. In America Judge Learned Hand elaborated this by remarking that the institution of jury trial is favoured by the public because jurors are anonymous and the individual can forfeit his liberty only at the hands of those who, unlike any official, are not accountable for what they do. A third reason he gave, perhaps the most important, is that no one is likely to suffer of whose conduct the jurors do not morally disapprove, and this "introduces a slack into the enforcement of law, tempering its rigor by the mollifying influence of current ethical conventions" (*United States ex rel. McCann v Adams* (1942) 126 F. (2d) 774 at 775). One element against which the jury gives protection is the court, yet under Mr Blair's proposals "the courts themselves" will have power to withdraw jury trial.

What will Labour do about the terrorists? "A Bill will be introduced to modernise [of course] and make permanent the powers available to respond to all forms of terrorism." (Yet was it not Labour who year after year used to oppose annual renewal of the statutory powers against terrorists?) The voting system is to be "modernised". "My Government will . . . bring forward a Bill to reform our electoral procedures to make it easier for people to participate in elections." Under this there will be polling booths in supermarkets. Perhaps an Internet facility will be offered, as with on-line banking. Does all this cheapen the hard-won democratic right of universal suffrage? A move the other way would be to copy the Australians and make failing to cast one's vote a criminal offence. But this would nowadays be considered too "judgemental".

The gracious Speech gave an airing to two reforms proposed in the First Special Report of the Select Committee on Modernisation [that word again!] of the House of Commons, Session 1998-99. The Committee recommended (1) the carry over from one Session to another by agreement of certain Bills and (2) more pre-legislative scrutiny of draft Bills. Carrying over a

Bill scraps the salutary rule that you start a new Session with a clean sheet. It is a great nuisance to have to publish a draft Bill because ex hypothesi a draft Bill is one that is not yet ready to see the light of day. Never mind all that wisdom of the past. On (1), the Financial Services Bill introduced last Session “will be carried over to this”. On (2), “My Government will continue to provide greater openness by publishing legislation in draft for public scrutiny.” A start on this will be made with Bills enabling the UK to ratify the International Criminal Court, promoting more efficient water use and leasehold reform as well as commonhold for flat owners. I sympathise with my former colleagues in the Parliamentary Counsel Office.

By way of tailpiece I offer a nice oxymoron. “A Bill will be introduced to give people greater access to the countryside and to improve protection for wildlife.”

Francis Bennion

1999.020 149 NLJ 1795 (26 November).