GROWTH OF THE POWERS OF THE HOUSE OF COMMONS (1295 TO 1450)

THESIS

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To the student of English history, the period from the thirteenth to the fifteenth centuries, during which occurred the origin and growth into mature power of that peculiarly English institution, the House of Commons, must ever be of surpassing interest.

In the local administration, the representative principle had hitherto long been employed. The full county court contained, besides the archbishop, bishops, abbots, priors, earls, barons, knights, and freeholders the reeve and four men from each township and twelve citizens from each borough. In practice, however, the regular monthly court was attended by only those who had business before the court and by the officers and the representatives of the township. At extraordinary sessions as at the visit of the itinerant judges, a special summons was issued and a full assemblage was held. This court transacted the judicial and military business of the county and assessed and collected, through its representatives, the levies made by the officers of the exchequer upon the county.

There were, in general, two types of borough government in England; that in which the administration was in the hands of a ruling body of magistrates, and that in which the town-people in general retained the power. Under both these systems, however, the boroughs were obliged to send representatives to meet the itinerant justices in the county court. But they generally had power to compound for their taxes independently of the action of the county officials.
The extension of this representative system to national affairs resulted from the growing needs of the King, which impelled him to bring together in one meeting the representative of the tax-paying bodies throughout the realm, in order that he might, with greater ease, secure a larger and more uniform grant of supplies.

The first record of the summons of representatives from the shires to a council for this purpose occurs in 1214, when John, pressed on all sides by his enemies, summoned four discreet men from each shire to confer with him concerning the business of his kingdom. In 1254 writs were issued commanding the attendance at the national council of two knights from each shire. The need for an aid to assist the King in his troubles in Gascony was the cause of this summons. The famous gathering of Simon de Montfort, in 1265, to which were summoned, besides the magnates, two discreet knights from each shire, together with two representatives from each city and borough, was, however, the first complete parliament.

In 1273 a convocation of the entire kingdom was held, to take the oath of allegiance to Edward I, which was composed of archbishops, bishops, earls and barons, abbots, priors, and four knights from each shire, and four citizens from each town. This assembly transacted parliamentary business and may practically be called a parliament. In 1283 a parliament held at Shrewsbury was attended by two knights from each shire and the representatives of twenty-
one towns.

The parliament assembled by Edward I in 1295 contained a full and complete representa-
tion of the entire nation and is consequently known as the "Model Parliament". To this gather-
ing Edward, not only pressed by his foreign complications, but also anxious to place into practice
his advanced theories of government, caused to be summoned not only representatives of the shires
and boroughs, but also, for the first and last time, those of the lower clergy. Thenceforth,
the minor clergy, preferring to grant their taxes separately in their convocation, where they
could be free from outside influence, refused to attend the parliament sittings, and as their
grants were regularly and generously made, the matter was not seriously pressed by the King.
From this date the right of both shires and towns to parliamentary representation is unquestioned,
and the third estate assumes a permanent and ever increasing share in the control of the affairs
of the nation.

The functions exercised by the representatives of the Commons in the parliament of 1295
appear to have been very limited. Their grants of taxes appear to have been made after independ-
ent deliberation. From the forms of the writs issued for the assembling of Parliament it is
inferred that the powers of the Commons were limited to consent to taxes, the plans for which had
been already laid, while the Lords were expected to give advice and counsel in all matters touch-
ing the welfare of the realm.
In spite of the generous grants made by the Parliament of 1295, the King's troubles continued to thicken. The war with Scotland exhausted his revenues. The clergy, incited by the bull, Clerici Laicos, refused to contribute anything to the state expenses. The baronage, whom Edward wished to send to Gascony, while he himself conducted the war in Flanders, refused to go without him. This thwarted in his desires, Edward decided upon extreme measures. He ordered an illegal seizure of supplies, and commanded that a military levy of the entire kingdom, regardless of tenure, be made. The barons, exasperated by these unconstitutional procedures, openly revolted, and prevented the collection of the illegal taxes until a confirmation of the charters, containing guarantees against further encroachments upon the rights of the nation, and especially limiting the powers of the Crown in the matters of taxation, which provisions had been omitted from every reissue of the charters since 1215, should be made. The government yielded, and the desired confirmation was made, the King promising that thereafter no aids, tasks nor prises should be taken, but by the assent of the realm and for the profit thereof, "saving the ancient tasks and prises due and accustomed". By these limitations, therefore, the important right of parliamentary consent to taxation, which had been omitted from every reissue of the charters since 1215, was again recognised and admitted.

It is not positively known, whether, in the earliest parliaments, the estates debated
together, or separately. From the fact, however, that in the parliaments of the reign of Edward I and those of the greater part of the reign of Edward II, the lords and knights grant one sum, while the burgesses and citizens grant another, the presumption arises that the whole body of parliament never sat together and that the lords and knights were originally assembled together. Though there are evidences of the union of the knights and burgesses at an earlier date, the first distinct statement of such a union occurs in the records of the parliament of 1332. In 1352, the lower house withdrew to the chapter-house at Westminster, which became thence after its meeting place.

The union of the knights of the shire with the burgesses, and not with the lords, forms a combination entirely unknown to any other nation, as in all continental states the country gentry form the lower nobility. This union of the interests of the town and the country placed the strength of the Nation in the lower house, and made possible the wonderful growth in power and influence of that body, which, within a century of its organization, became the most powerful factor in the English government.

The reign of Edward II, which is chiefly occupied with struggles between the King and his barons, furnished little opportunity for the exercise of the powers of the House of Commons. In the first parliament of his reign, held in 1309, a petition was presented complaining of abuses in the administration of the kingdom, on the redress of which the grant of a 25th was
The dissatisfaction caused by the conduct of Edward's favorite, Piers Gaveston, brought on an uprising among the barons, who obtained the consent of the king to the appointment of a commission called the Lords Ordainers, who were to take charge of the administration for a limited time. This body issued a set of articles intended to limit the powers of the Crown, but in which the limitations were in favor of the baronage, without regard to the Commons. During the regime of the Ordainers, few parliaments were held, and little legislation was enacted. In 1322, after Edward had defeated the Earl of Lancaster and regained control of the government, a parliament was called at York, which repealed the ordinances and enacted that, in the future, any matter to be established "for the estate of our lord the King, and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established, in parliaments by our lord the King, and by the consent of the prelates, earls, and barons, and the commonalty of the realm, according as has been heretofore accustomed," thus recognising expressly, for the first time, the right of the Commons to participate in legislation.

The reign of Edward III furnished an opportunity for accessions of power, of which the House of Commons were not slow in taking advantage. The long wars of this reign made heavy revenues imperative and necessitated frequent sessions of parliament. Edward, whose foreign complications occupied much of his attention, was not so jealous of his prerogative as had been
some of his predecessors. The nation, at the same time, was growing wealthy, and could afford
heavy grants, which the representatives used as means for securing privileges, which had hitherto
been beyond their reach. The right of consent to taxation, which was affirmed by the confirma-
tion of the charters, but which was not finally acknowledged in its widest sense until this reign,
opened the way for the establishment of the right to participate in legislation, and to secure a
just and proper administration of the laws, with power to punish offending officials.

The sources of extraordinary revenue, to which the Crown resorted at this time, were
of various kinds. Of the ancient levies, talliage— the tax assessed against boroughs on royal
domain— the three feudal aids, and scutage— the tax assessed in commutation of military service—,
were in use up to this time. These ancient forms of taxation, however, were less productive
and more cumbersome than those which were coming into prominence, and as a consequence, were fall­
ing into disuse. They were superseded in general, by grants of subsidies, and by customs duties
on imports and exports. In the laying of subsidies, the necessity for parliamentary consent
was always recognised, and no attemps to collect them illegally were made. The customs duties
consisted mainly of duties on exportation of wool and on importation of wine and liquors.

The first protest against arbitrary taxation, made by the House of Commons, occurs in
1252. Edward III had, some months before, assessed a talliage against the boroughs on the royal
demense. The parliament, on assembling, protested and granted a liberal sum on condition
that the King withdraw his assessment. The King accepted the condition, promising that, in
time to come, he would not set such tallage "except as it had been done in the time of his
ancestors, and as he might reasonably do". This is the last instance of the employment of talli-
age as a form of taxation.

The wool industry had recently become one of the staple lines in England. Exportations
to the continent were very heavy, and the taxes placed on this commodity were very remunerative.
The customs on wool originate in the grant by the Great Council of a permanent revenue to be de-

derived from a tax at a fixed rate on wool and leather. The rate of assessment then fixed was
recognised by the Confirmatio Chartarum, in which any increase in the rate was expressly forbid-
den. In 1337, a heavy revenue being imperative, Edward III made large increases in the rates
collected. The feeling aroused by this illegal exaction was intense, and when Parliament met
in 1339, the Commons complained and demanded its withdrawal. In the parliament of 1340, the
lower house presented a schedule of grievances, accompanied by an offer of 30000 sacks of wool,
if they should be redressed, and of 2500 sacks if refused. As a result the Commons obtained the
concession that thereafter no change or aid whatsoever should be taken but by common consent of
the Lords and Commons of the realm.

This was a complete recognition of the illegality of any taxation to which the con-
sent of parliament had not been given. In spite, however, of this acknowledgment, Edward
continued occasionally to violate the rights of the Commons in the matter of taxation. In 1346 at the knighting of the Black Prince, feudal aid was taken, and Edward even went so far as to take it at double the customary rate. This old feudal charge was becoming obsolete, however, and thenceforth gave the Commons no trouble.

The King, further, by agreements with the merchants, continued to exact excessive rates on the wool. The Commons made this the subject of numerous petitions, and, in 1362, were finally rewarded by the enactment of a statute declaring that thenceforth no charges or subsidies should be laid upon the wool, by agreement with the merchants or any other body, unless by consent of Parliament, securing to the Commons a complete right of assent to this branch of taxation.

The tax on wine originated in the royal right of "prisage" which gave the King one cask in ten from each ship load entering the ports. In 1308, Edward II had remitted this prisage, and substituted a tax at a fixed rate on the tun of wine. This tax comes under the jurisdiction of the Commons in 1373, and thenceforth tunnage and poundage becomes a regular parliamentary grant.

The Crown had been accustomed, however, to resort to more indirect methods of raising revenues, which did not necessitate actual taxation. The means thus employed were the systems of purveyance, and of commissions of array. While these resorts were open to the Crown, the control of the Commons over the taxing power was necessarily incomplete.
The right of purveyance, by which provisions and supplies for the Crown were collected, being paid for at arbitrary rates set by the purveyors themselves, was one of the most ancient privileges of the Crown. The system first began to be oppressive in 1309, when its abuse was made the subject of petition of the Commons. The practice was forbidden by the Ordinances, but reestablished by Edward II in 1322. It thenceforth becomes the subject of almost constant petition by the Commons, until, in 1352, it was abolished by Edward III, who limited the right of purchase to supplies for the personal wants of the King and Queen, and changed the name of the purveyors to the less odious term, "buyers".

The Commission of Array originated in the combination of the privilege arising from the Assize of Arms, the right of the Crown to impress laborers, and the custom of furnishing and maintaining quotas of troops from the various townships. The frequent demands of the Crown and levies had begun to work great hardships. The system of commutation of service into money made this an easy means of raising funds. The abuses to which the system was subject, were set forth in the numerous petitions of the Commons, and, in 1327, the invasion should the people be compelled to arm themselves at their own cost. During the wars which soon followed, however, the provisions of this statute were disregarded, and the matter again became one for which redress was demanded. On the petition of the Commons in 1352, it was enacted that, except in the case of invasion, no one should be compelled to go out of his county, and if he should be compelled
period to fight in a foreign country, his expenses should be borne by the King. This provision secured the people from further trouble on this score during the peaceful reigns following.

The Commons had, then, thus early, established the principle that no taxation, however indirect, should be laid without their consent, and had furthermore imposed restraints on the power of the Crown to raise supplies without resort to actual taxation.

Directly connected with the privilege of consent to taxation, and consequent upon it, is the growth of the right of participation of the Commons on legislation. The Commons were quick to take advantage of the opportunity afforded by their gathering at the seat of government, to present petitions to the Crown, asking for some measure of legislation of reform, which they or some of their constituents desired. The manifest advantages of their method of presenting grievances caused its use to increase rapidly, and it was not long before the Commons connected this privilege with their original duty of granting supplies, and made their grants dependent upon the consent of the Crown to the matters asked in the petitions. By this system of bargain and sale, most of the advances made by the Commons in their period were gained. The petitions of the Commons form the basis of the greater part of the legislation of the century. While the right of petitioning the Crown did not, in itself, legally involve participation in legislation, the fact that the petition on which the legislation was based was presented by the Commons involved in that legislation. This actual share in legislation soon became recognised, and in 132
when Edward II regained control of the government, the statute abolishing the Ordinances asserted the right of the Commons to assent to all matters of legislation.

The fact, moreover, that the matter to be enacted was brought forward by a petition of the Commons, involved a tendency toward an initiatory power in that body. The petition was, at this period, presented to the Crown in the form of a respectful request. The King, after taking the matter into consideration, usually gave his answer, which was generally a favorable one, during the same session of parliament. After adjournment, the statute was drawn up from the petition and answer. This system was liable to grave abuses. The King, whose money supply depended largely on the turn of his answer to the requests of the Commons, was not disposed to give a downright refusal to these requests. He was, therefore, forced to seek less open means of evading the unpleasant encroachments so often threatened. His diplomatic method of putting off a direct reply to the petitions, by politely replying, "Le roi s'adviser," probably was interpreted more literally than in later times. His favorable answer did not insure the statutory enactment of the matter requested. In the process of drawing up the statute, omissions or charges were frequently made, which nullified important concessions. The statute, after being enacted, might be suspended or even entirely nullified by the Crown.

To meet these dangers, the Commons adopted various expedients. They petitioned in 1347 that statutes made by the lords and commons might not be repealed or defeated. In 1347, they
asked that all petitions, presented by them might be answered in Parliament, and that the answers be made in writing, while in 1343, in presenting a petition to the Crown, they asked that when that petition should be granted, the answer should remain on record without change.

More effective means were, however, at hand. By postponing the grant of supplies until the last day of the session, they secured a hearing and generally a favorable reply to their petitions. This device did not insure the proper enrollment of the statute and its enforcement, however. Their petitions to secure this end, although granted by the King, were not effectual in stopping the evil. After many years of such attempts, the Commons finally, in the reign of Henry VI, adopted the expedient, (heretofore occasionally used by the Crown, when business was pressing, and a bill had to be rushed through quickly) of presenting their petitions already drawn up in the form of statutes. This put an end to the alteration of petitions without their consent, and insured the full enactment of the matter proposed, whenever the Crown should accept the requested legislation; and moreover secured to the Commons a full right of initiation in legislation.

The legislative powers of the Commons were still limited by the royal right of making ordinances, which did not require the consent of Parliament. These ordinances, which had the force of laws, were considered temporary and were more easily altered than a statute, and were not enrolled on the statute-book. They were made by the King, with the advice of his council.
Often, at this period, the Commons preferred the use of an ordinance to a regularly enrolled statute, as being more easily modified in the future.

The right of the Commons to advise on matters of war or peace was one which they accepted with hesitation. Edward III, desirous of placing the responsibility for the prosecution of the war on the Commons, and thus preventing any chance of opposition to grants for the purpose of carrying it on, at various times asked their advice as to the policy to be adopted with regard to the war. The Commons, however, were very backward about taking any responsibility in the matter, pleading their ignorance of such weighty matters as an excuse for not committing themselves.

Growing out of the right of consent to taxation, the power to appropriate money for specified purposes was acquired by the House of Commons during this period. During the long wars of Edward III, in asking for grants of supplies, the Crown frequently named the purpose for which the money was wanted. The funds granted in response to these requests were often expended for other purposes, and the Commons frequently adopted the expedient of specifying in the grant, the object for which the money was to be spent. In 1343 and again in 1348, grants of money were made for the defense of the kingdom against the Scotch, who were then troublesome. In 1380, an aid was granted contingent on the maintainence of the war. In 1390, a duty on wool was appropriated, to be expended partly for the war and partly for the expenses of the King.
This privilege, however, was of little account unless such a control over the administration as would ensure proper expenditure could be secured. In 1340, the Crown was forced to render an account of the receipts and expenditures to the Commons, while in 1341 both the Commons and Lords asked that a commission be appointed to audit the accounts of those who had taken the aids granted the King, and of those who had handled the money spent since the beginning of the war. This request was granted by the King, but in 1378, it was again necessary for the Good of Parliament to ask an audit of accounts, and the Commons requested that treasurers be appointed to secure a proper expenditure of the subsidy. In 1379 the King, at the opening of Parliament submitted to the Commons the accounts of the year without waiting to be asked. From this date the treasurers of subsidies were appointed regularly on nomination of the Commons, and an account of their receipts and expenditures was regularly submitted at the opening of the next Parliament.

Not only did the Commons desire to control the expenditures of the kingdom, but they early showed a desire to regulate the administration by exercising a control over the great officers, or by securing the right to punish mal-administration by an officer already appointed.

The first attempt of this nature was made in 1341, when the Commons asked that the great officers of the kingdom be selected from nominees of the Parliament. Edward III granted this request at the time, but later repudiated it. This demand was not again made until the first parliament of Richard II, when the Commons asked that the executive officers be appointed
This was granted for the period of the King's minority, but when he personally assumed the reins of government, he declined to allow any interference by Parliament in the nomination of his officers.

The other expedient was more successful. The ministers had always been responsible to the King, and the examples of royal vengeance were readily followed by the nation, in its attempts to secure a just administration of the laws. The first instance of this remarkable assumption of power occurs in 1376. The Courtiers about the throne were extremely distasteful to the nation. The Commons, believing that they were squandering the funds of the treasury, presented charges against these officers, and secured their removal and imprisonment. In 1386 Michael de la Pole, the king's favorite, who had made himself exceedingly obnoxious to the people, was tried on impeachment of the Commons, and, in spite of every effort the King could make to save him, was found guilty and stripped of his offices and possessions. This impeachment showed the power and strength of the Commons, and firmly established the responsibility of ministerial officers to the nation.

Not only did the Commons during this period, establish their share in the government on a wide and sure basis, but, by securing the recognition of invaluable privileges, they rendered themselves secure from outside influence in the exercise of these powers. The election, in
1373, of a speaker for the house, was the final step toward the completion of an independent organization. The right of free speech was to be gradually won. Under Edward III, freedom in debate seems to have been universally conceded, although no express provision for such a privilege had been made. The arrest and prosecution of Haxey in 1397 by Richard II, for remarks made in the Commons regarding the royal household, is the first case of violation of this privilege. Upon the accession of Henry IV, however, the case was again brought up, and the judgment against Henry annulled "as well for the furtherance of justice as for the saving of the liberties of the Commons".

The next case of violation of this privilege occurs in 1451, when Thomas Young complained that he had been imprisoned for statements made in the Commons. In this case, the King referred the matter to his council for redress, authorizing to make such compensation as they deemed reasonable. The right of the Commons to absolute freedom of speech seems, therefore, to have been generally recognized thus early.

The privilege of immunity from arrest was derived from the rights resting in members of the old national assembly. This right of members of the National Council to immunity from arrest, while going to or from sessions, was recognized as far back as the time of Edward the Confessor. The extension of this privilege to members of the House of Commons followed as a matter of course, since they formed part of the parliament of England. In 1404 a statute was
enacted declaring that this immunity extended to the servants of members. Nevertheless, in 1453 Thos. Thorpe, speaking of the house, was imprisoned for trespass. Upon a protest, the judges declared that if any member of Parliament be arrested for any offense but treason or felony, he should be released, in order that he might freely attend Parliament. Notwithstanding this recognition of the law in this matter, the Commons had difficulty in securing the release of a member confined in violation of this privilege, and it was not until the next century that they took matters into their own hands, and, by the authority of the mace, enforced this provision.

The House of Commons, then, by the middle of the fifteenth century, had thoroughly established its claims to powers entitling it to a most prominent position in the national government. It had secured a complete right of assent to all taxation, and had limited the right of the Crown to obtain revenues without resort to actual taxation. It had secured a share in legislation, which was limited only by the royal power of making ordinances. It had established its right to appropriate money for specific purposes, and to impeach erring officials. The attempts to secure the right to nominate royal officers, although successful for a time, had ultimately failed. The organization of the House had been completed and its modes of procedure fixed, but the privileges of the House and its members, which had been the subject of much dissention, were not completely established until the succeeding century.

Therefore, although some of its claims were not undisputed, and other powers were not
entirely complete, its position in general was so well established that a long period of despoti
c government was unable to affect it; and after resting nearly dormant for a century, the lower house was ready, when its time came, by building upon the foundations then laid, to obtain the ascendancy which it now possesses.

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