



PARLIAMENT
ITS HISTORY, CONSTITUTION
AND PRACTICE

BY
SIR COURTENAY
ILBERT, K.C.B. K.C.S.I.

CLERK OF THE HOUSE OF COMMONS
AUTHOR OF "LEGISLATIVE METHODS
AND FORMS" ETC.

LONDON
WILLIAMS AND NORGATE

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PARLIAMENT

CHAPTER I

ORIGIN AND DEVELOPMENT

THE word "parliament" originally meant a talk. In its Latin form it is applied by monastic statutes of the thirteenth century to the talk held by monks in their cloisters after dinner, talk which the statutes condemn as unedifying. A little later on the term was used to describe solemn conferences such as that held in 1245 between Louis IX of France and Pope Innocent IV. When our Henry III summoned a council or conference of great men to discuss grievances he was said by a contemporary chronicler to hold a parliament. The word struck root in England, and was soon applied regularly to the national assemblies which were summoned from time to time by Henry's great successor, Edward I, and which took something like definite shape in what was afterwards called the "model parliament" of 1295. The word, as we have seen, signified at first the talk itself, the conference held, not the persons holding it.

By degrees it was transferred to the body of persons assembled for conference, just as the word "conference" itself has a double meaning. When Edward I was holding his parliaments institutions of the same kind were growing up in France. But the body which in France bore the same name as the English parliament had a different history and a different fate. The French "parlement" became a judicial institution, though it claimed to have a share in the making of laws.

The history of the English parliament may be roughly divided into four great periods: the period of the mediæval parliaments, of which the parliament of 1295 became the model and type; the period of the Tudors and Stuarts, having for its central portion the time of conflict between king and parliament, between prerogative and privilege; the period between the Revolution of 1688 and the Reform Act of 1832; and the modern period which began in 1832.

Let us try and trace, in broad outline, the elements out of which the parliament of 1295 grew up, and the main stages through which its development passed.

It had always been regarded in England as a principle that in grave and important matters, such as the making of laws, the king ought not to act without counsel and consent. The counsel and consent which the Saxon kings sought was that of their wise

men, and the "Witenagemot" of English constitutional history was a meeting of these wise men. It seems, says Maitland, to have been a very unstable and indefinite body. It was an assembly of the great folk. When there was a strong king it was much in his power to say how the assembly should be constituted and whom he would summon. When the king was weak the assembly was apt to be anarchical. The Saxon witenagemot was not numerous. Small men, especially if they lived at a distance, could not come. Great men often would not come. The institution was not much of a safeguard against oppression. Still it was an important fact that, on the eve of the Norman conquest, no English king had taken on himself to legislate or tax without the counsel and consent of a national assembly, an assembly of the wise, that is, of the great.

The Norman conquest made a great break in English institutions, but not so great as was at one time supposed. In the first place William the Conqueror had to build with English materials and on English foundations. In the next place English institutions had, during the reign of Edward the Confessor, been rapidly approximating to the continental type. What William did was to emphasize, rather than to introduce, certain principles of what was afterwards vaguely described as the "feudal system," and to adapt them to his own purposes. He insisted on the

principle that all land in the country was ultimately held of the king. There were to be no full owners of land under him, only holders or tenants. He insisted on the principle that every landholder in the country owed direct allegiance to the king. The landholder might hold his land under, and owe allegiance to, another lord, but his oath of allegiance to that lord was qualified by his allegiance to the king. And, in portioning out the English soil among the motley band of adventurers who had followed him and whom he had to reward for their share in his raid, he tried to break the strength of the greater men by scattering their estates over different parts of England, and by mixing up with them smaller men, who held their land, not under any intermediate lord, but directly under the king. He did not wholly succeed, as he and those after him found to their cost. But the existence, by the side of the greater lords, of a number of comparatively small landholders, who also held their land directly from the king, had an important bearing on the development of parliament. The Norman kings were despots, untrammelled by any constitutional restrictions, and controlled only by the resistance of powerful and turbulent subjects. But there were the traditions of better things past; there were the charters, often broken but always there, by the help of which kings with doubtful titles obtained succession, and

in which they promised to observe those traditions; and there was a feeling that, apart from these promises, it was prudent and politic to obtain an expression of counsel and consent, if it could be obtained. "Thrice a year," says the Saxon chronicle of the Conqueror, "King William wore his crown every year he was in England; at Easter he wore it at Winchester, at Pentecost at Westminster, and at Christmas at Gloucester; and at these times all the men of England were with him—archbishops, bishops and abbots, earls, thegns and knights." "All the men of England." What did this mean? To the Saxon chronicler it probably meant the men who counted, the wise and great, the men who might have been expected to attend a witenagemot. But William's court was a feudal court, and from the Norman point of view perhaps it was an assembly of the king's tenants in chief. These, however, were numerous, and many of them were small men, so that probably only a select few were summoned. Courts or great councils of the same kind were held under the later Norman kings, but we know little about their composition or functions. All that can be said with safety is that the few legislative acts of this period were done with the counsel and consent of the great men.

What we have to watch is the transformation of the body whose counsel and consent is required from a merely feudal body, a body

of great vassals or tenants in chief, to a body more representative of the nation at large.

Henry II did something when he imposed a tax on movables, the Saladin tithe of 1188, and had it assessed by a jury of neighbours, a jury in some sense representative of the taxpayer and of the parish in which he lived, and thus brought into connection the ideas of taxation and representation.

The Great Charter of 1215 declared that exceptional feudal aids were not to be levied without the common counsel of the realm. But this counsel was to be given by an assembly consisting of prelates and great lords summoned singly, and of tenants in chief summoned collectively through the sheriffs. So it was still a feudal assembly.

A further step was taken when, in 1254, at a time when Henry III was in great need of money, each sheriff was required to send four knights from his county to consider what aid they would give the king in his great necessity. For these knights represented, not the tenants in chief, but all the free men of their county. They were representatives of counties.

Eleven years later, in 1265, Simon de Montfort summoned to his famous parliament representatives, not merely of counties, but also of cities and boroughs.

Edward I held several great assemblies, which were usually called parliaments, and which made some great laws, but some of

these laws were made without the assent of representatives of the commons.

The model parliament, which settled the general type for all future times, was held in 1295. To this parliament King Edward summoned separately the two archbishops, all the bishops, the greater abbots, seven earls and forty-one barons. The archbishops and bishops were directed to bring the heads of their cathedral chapters, their archdeacons, one proctor for the clergy of each cathedral, and two proctors for the clergy of each diocese. Every sheriff was directed to cause two knights of each shire, two citizens of each city, and two burgesses of each borough, to be elected.

Two points should be specially noticed about the constitution of this parliament.

In the first place it was not a feudal court, nor a meeting of the king's tenants, but a national assembly. Edward had suffered much in his father's time from the great barons, who had made him prisoner at the battle of Lewes, and he wished to draw counsel and help from other quarters. His parliament was intended to represent the three great estates or classes into which mediæval society might be roughly divided, the clergy, the barons, and the commons; those who pray, those who fight and those who work, as Maitland puts it. The same idea underlay the States General which were coming into existence about the same time in France, and which met, at intervals, during many

centuries. After an interval of 175 years the three estates of France were for the last time summoned to meet as separate bodies in 1789, but were at once merged in the national assembly which began the French Revolution.

The idea of the three estates was never realized in England. The clause by which archbishops and bishops were directed to bring with them representatives of their clergy, a clause still remaining in the writ by which they are summoned at the present day, was persistently ignored. The clergy as a body preferred to stand aloof, to meet in their own clerical assemblies or convocations, and to settle there what contribution they would make to the king's needs. The archbishops, bishops and greater abbots attended, as they had attended the great councils of previous kings. But then they were not merely clerics, they were great feudal lords and great holders of land.

The knights of the shires were drawn from the same class as the greater barons. The word "baron" originally meant simply "man," and for some time there was much uncertainty as to who should be treated as a man so great as to be entitled to a separate summons, and who should be left to be represented, like other freemen of the lesser sort, by the knights of the shires. The title of baron came eventually to be confined to the greater men who were summoned separ-

ately. The knights who represented the shires, when they came to Westminster, mingled themselves with the representatives of the cities and boroughs. In the time of Edward III there was a risk of the merchants being consulted as a separate class for the purpose of taxation, but this risk was avoided. If things had fallen out somewhat differently the English parliament might have sat as three separate houses, as in France, or might have been grouped in a single house, as in Scotland, or might have formed four houses, as in Sweden. But the inferior clergy abstained from attendance, the greater clergy, the spiritual lords, sat with the lay or temporal lords, and the knights of the shires threw in their lot with the citizens and burgesses. Thus parliament became an assembly, not of three estates, but of two houses, the house consisting of the lords spiritual and temporal, and the house representing the commons, the house of lords and the house of commons.

The other point to be noticed is that parliament was an expansion, for temporary purposes, of the king's continuous council. The Norman and Plantagenet kings, like other kings, needed continuous assistance, both for domestic and ceremonial purposes, and for the business of government, such as the administration of justice, and the collection and expenditure of revenue. The courts or councils composed of the men on whom the king most relied for this assistance bore

various names, varied in number, and exercised varying functions. As the work of government increased and specialized, these nebulous bodies split up into more coherent parts, with more definite functions, and out of them grew the king's courts of justice and the great departments of the central government. When the king held his great assemblies it was necessary that he should have about him the men on whom he was accustomed to place special reliance for advice and assistance. Accordingly there were summoned by name to the parliament of 1295 men who were not earls or barons, but were members of the king's council, and in particular the king's judges. And to this day the judges of the supreme court are summoned to parliament, and some of them take their seats in the house of lords when the king opens parliament.

The fact that the mediæval parliament was an expansion of the king's council explains the nature of the business which it had to transact. The immediate cause of summoning a parliament was usually want of money. The king had incurred, or was about to incur, expenses which he could not meet out of his ordinary resources, such as the revenues of his domain and the usual feudal dues. He summoned a parliament and, through his chancellor or some other minister, explained what he wanted and why he wanted it. The king's speech might touch on other great matters about which he might need advice