

Erskine May, Vol. II, Chapter VII, pp. 98-112

Control of the Commons over Expenditure and Supply

Taxation

One of the most ancient and valued rights of the Commons, is that of voting money and granting taxes to the crown, for the public service. From the earliest times, they have made this right the means of extorting concessions from the crown, and advancing the liberties [99] of the people. They upheld it with a bold spirit against the most arbitrary kings; and the Bill of Rights crowned their final triumph over prerogative. They upheld it with equal firmness against the Lords. For centuries they had resented any 'meddling' of the other House 'with matter of supply;' and in the reign of Charles II., they successfully maintained their exclusive right to determine 'as to the matter, the measure and the time' of every tax imposed upon the people.

In the same reign, they began to scrutinise the public expenditure; and introduced the salutary practice of appropriating their grants to particular purposes. But they had not yet learned the value of a constant control over the revenue and expenditure of the crown; and their liberality to Charles, and afterwards to James II., enabled those monarchs to violate the public liberties.

Estimates and Appropriation

The experience of these reigns prevented a repetition of the error; and since the Revolution, the grants of the Commons have been founded on annual estimates,—laid before them on the responsibility of ministers of the crown,—and strictly appropriated to the service of the year. This constant control over the public expenditure has, more than any other cause, vested in the Commons the supreme power of the state; yet the results have been favourable to the crown. When the Commons had neither information as to the necessities of the state, nor securities for the proper application of their grants,—they had often failed to respond to the solicitation of the king for subsidies, [100]—or their liberality had fallen short of his demands.(1) But not once since the reign of William III. have the demands of the crown, for the public service, been refused.(2) Whatever sums ministers have stated to be necessary, for all the essential services of the state, the Commons have freely granted.(3) Not a soldier has been struck from the rank and file of the army: not a sailor or a ship from the fleet, by any vote of the Commons.(4) So far from opposing the demands of the crown, they have rather laid themselves open to the charge of too facile an acquiescence in a constantly-increasing expenditure. Since they have assumed the control of the finances, the expenditure has increased about fifty-fold; and a stupendous national debt has been created. [101] Doubtless their control has been a check upon ministers. The fear of their remonstrances has restrained the prodigality of the executive: but parsimony cannot be justly laid to their charge. The people may have some grounds for complaining of their stewardship: but assuredly the crown and its ministers have none.

While voting the estimates, however, the Commons have sometimes dissented from the financial arrangements proposed by ministers. Responding to the pecuniary demands of the crown, they have disapproved the policy by which it was sought to meet them. In 1767, Mr. Charles Townshend, the Chancellor of the Exchequer, proposed to continue, for one year, the land tax of four shillings in the pound: but on the motion of Mr. Grenville, the tax was

reduced to three shillings, by which the budget sustained a loss of half-a-million. This was the first occasion, since the Revolution, on which a minister had been defeated upon any financial measure.

Throughout the French war, the Commons agreed to every grant of money, and to nearly every new tax, and loan, proposed by successive administrations.(5) But on the termination of the war, when the ministers desired to continue one-half of the war property tax, amounting to about seven millions [102] and a half,—such was the national repugnance to that tax, that they sustained a signal defeat. Again in 1852, Lord Derby's ministry were out-voted on their proposal for doubling the house tax. But when the Commons have thus differed from the ministry, the questions at issue have involved the form and incidence of taxation, and not the necessities of the state; and their votes have neither diminished the public expenditure, nor reduced the ultimate burthens upon the people.

Nor have the Commons, by postponing grants, or in other words, by 'stopping the supplies,' endeavoured to coerce the other powers in the state. No more formidable instrument could have been placed in the hands of a popular assembly, for bending the executive to its will. It had been wielded with effect, when the prerogative of kings was high, and the influence of the Commons low: but now the weapon lies rusty in the armoury of constitutional warfare. In 1781 Mr. Thomas Pitt proposed to delay the granting of the supplies for a few days, in order to extort from Lord North a pledge regarding the war in America. It was then admitted that no such proposal had been made since the Revolution; and the House resolved to proceed with the committee of supply, by a large majority. In the same session Lord Rockingham moved, in the House [103] of Lords, to postpone the third reading of a land tax bill, until explanations had been given regarding the causes of Admiral Kempenfeldt's retreat: but did not press it to a division.

The precedent of 1784, is the solitary instance in which the Commons have exercised their power of delaying the supplies. They were provoked to use it, by the unconstitutional exercise of the influence of the crown: but it failed them at their utmost need,(6)—and the experiment has not been repeated. Their responsibility, indeed, has become too great for so perilous a proceeding. The establishments and public credit of the country are dependent on their votes; and are not to be lightly thrown into disorder. Nor are they driven to this expedient for coercing the executive; as they have other means, not less effectual, for directing the policy of the state.

Exclusive Rights of the Commons

While the Commons have promptly responded to the demands of the crown, they have endeavoured to guard themselves against importunities from other quarters, and from the unwise liberality of their own members. They will not listen to any petition or motion which involves a grant of public money, until it has received the recommendation of the crown;(7) and they have further protected the public purse, by delays and other forms, against hasty and inconsiderate resolutions.(8) Such precautions have been the more [104] necessary, as there are no checks upon the liberality of the Commons, but such as they impose upon themselves. The Lords have no voice in questions of expenditure, save that of a formal assent to the Appropriation Acts. They are excluded from it by the spirit, and by the forms of the constitution.

Not less exclusive has been the right of the Commons to grant taxes for meeting the public expenditure. These rights are indeed inseparable; and are founded on the same principles. 'Taxation,' said Lord Chatham, 'is no part of the governing, or legislative power. The taxes are a voluntary gift and grant of the Commons alone. In legislation the three estates of the realm are alike concerned: but the concurrence of the peers and the crown to a tax, is only necessary to clothe it with the form of a law. The gift and grant is of the Commons alone.' On these

principles, the Commons had declared that a money bill was sacred from amendment. In their gifts and grants they would brook no meddling. Such a position was not established without hot controversies.(9) Nor was it ever expressly admitted by the Lords:(10) but as they were unable to shake the strong determination of the Commons, they tacitly acquiesced, and submitted. For one hundred and fifty years, there was scarcely a [105] dispute upon this privilege. The Lords, knowing how any amendment affecting a charge upon the people, would be received by the Commons, either abstained from making it, or averted misunderstanding, by not returning the amended bill. And when an amendment was made, to which the Commons could not agree, on the ground of privilege alone, it was their custom to save their privilege, by sending up a new bill, embracing the Lords' amendment.

Right of the Lords to reject Money Bills

But if the Lords might not amend money bills, could not they reject them? This very question was discussed in 1671. The Commons had then denied the right of amendment on the broadest grounds. In reply, the Lords argued thus:—'If this right should be denied, the Lords have not a negative voice allowed them, in bills of this nature; for if the Lords, who have the power of treating, advising, giving counsel, and applying remedies, cannot amend, abate, or refuse a bill in part, by what consequence of reason can they enjoy a liberty to reject the whole? When the Commons shall think fit to question it, they may pretend the same grounds for it.' The Commons, however, admitted the right of rejection. 'Your Lordships,' they said, 'have a negative to the whole.' 'The king must deny the whole of every bill, or pass it; yet this takes not away his negative voice. The Lords and Commons must accept the whole general pardon or deny it; yet this takes not away their negative.' And again in 1689, it was stated by a committee of the Commons, that the Lords are 'to [106] pass all or reject all, without diminution or alteration.'(11) But these admissions cost the Commons nothing, at that time. To reject a money bill, was to withhold supplies from the crown,—an act of which the Lords were not to be suspected. The Lords themselves were fully alive to this difficulty, and complained that 'a hard and ignoble choice was left to them, either to refuse the crown supplies when they are most necessary, or to consent to ways and proportions of aid, which neither their own judgment or interest, nor the good of the government or people, can admit.'(12) In argument, the Commons were content to recognise this barren right; yet so broad were the grounds on which they rested their own claims of privilege,—and so stubborn was their temper in maintaining them,—that it may well be questioned whether they would have submitted to its practical exercise. If the Lords had rejected a bill for granting a tax,—would the Commons have immediately granted another? Would they not rather have sat with folded arms, rejoicing that the people were spared a new impost; while the king's treasury was beggared by the interference of the Lords?

Taxes were then of a temporary character. They were granted for one year, or for a longer period, according to the exigencies of the occasion. Hearth money was the first [107] permanent tax, imposed in 1663. No other tax of that character appears to have been granted, until after the Revolution; when permanent duties were raised on beer, on salt, on vellum and paper, on houses, and on coffee. These duties were generally granted as a security for loans; and the financial policy of permanent taxes increased with the national debt, and the extension of public credit. This policy somewhat altered the position of the Lords, in relation to tax bills. Taxes were from time to time varied and repealed; and to such alterations of the law, the Lords might have refused their assent, without withholding supplies from the crown. But such opportunities were not sought by the Lords. They had given up the contest upon privilege; and wisely left to the Commons the responsibility and the odium, of constantly increasing the public burthens. Taxes and loans were multiplied: but the Lords accepted them, without question. They rarely even discussed financial measures; and when, in 1763, they opposed the third reading of the Wines and Cider Duties Bill, it was observed that this was the first

occasion, on which they had been known to divide upon a money bill.

But while they abstained from interference with the supplies and ways and means, granted by the Commons for the public service, they occasionally rejected or postponed other bills, [108] incidentally affecting supply and taxation: bills imposing or repealing protective duties: bills for the regulation of trade; and bills embracing other disputable matters of legislation, irrespective of taxation. Of these, the greater part were measures of legislative policy, rather than measures of revenue; and with the single exception of the Corn Bill of 1827, their fate does not appear to have excited any jealousy, in the sensitive minds of the Commons.

The Paper Duties, 1860

At length, in 1860, the Lords exercised their power, in a novel and startling form. The Commons had resolved, among other financial arrangements for the year, to increase the property tax and stamp duties, and to repeal the duties on paper. The Property Tax and Stamp Duties Bills had already received the royal assent, when the Paper Duties Repeal Bill was received by the Lords. It had encountered strong opposition in the Commons, where its third reading was agreed to, by the small majority of nine. And now the Lords determined, by a majority of eighty-nine, to postpone the second reading for six months. Having assented to the increased taxation of the annual budget, they refused the relief by which it had been accompanied.

Never until now, had the Lords rejected a bill for imposing or repealing a tax, raised solely for the purpose of revenue,—and involving the supplies and ways and means, for the service of the year. Never had they assumed the right of reviewing the calculations of the Commons, regarding revenue and expenditure. In principle, all previous invasions of the cherished rights of the Commons, [109] had been trifling compared with this. What was a mere amendment in a money bill, compared with its irrevocable rejection? But on the other hand, the legal right of the Lords to reject any bill whatever, could not be disputed. Even their constitutional right to 'negative the whole' of a money bill, had been admitted by the Commons themselves. Nor was this strictly, and in technical form, a money bill. It neither granted any tax to the crown, nor recited that the paper duty was repealed, in consideration of other taxes imposed. It simply repealed the existing law, under which the duty was levied. Technically, no privilege of the Commons, as previously declared, had been infringed. Yet it was contended, with great force, that to undertake the office of revising the balances of supplies and ways and means,—which had never been assumed by the Lords, during two hundred years,—was a breach of constitutional usage, and a violation of the first principles, upon which the privileges of the House are founded. If the letter of the law was with the Lords, its spirit was clearly with the Commons.

Had the position of parties, and the temper of the times been such as to encourage a violent collision between the two Houses, there had rarely been an occasion more likely to provoke it. But this embarrassment the government was anxious to avert; and many causes concurred to favour moderate councils. A committee was therefore appointed in the Commons, to search for precedents. The search was long and intricate: the report copious and elaborate: but no opinion was [110] given upon the grave question at issue. The lapse of six weeks had already moderated the heat and excitement of the controversy; when on the 5th July, Lord Palmerston, on the part of the government, explained the course which he counselled the House to adopt. Having stated what were the acknowledged privileges of the House, and referred to the precedents collected by the committee, he expressed his opinion that the Lords, in rejecting the Paper Duties Bill, had no desire to invade the constitutional rights of the Commons: but had been actuated, as on former occasions, by motives of public policy. He could not believe that they were commencing a deliberate course of interference with the peculiar functions of the Commons. But should that appear to be their intention, the latter would know how to

vindicate their privileges, if invaded, and would be supported by the people. He deprecated a collision between the two Houses. Any one who should provoke it, would incur a grave responsibility. With these views, he proposed three resolutions. The first asserted generally, 'that the right of granting aids and supplies to the crown, is in the Commons alone.' The second affirmed, that although the Lords had sometimes exercised the power of rejecting bills of several descriptions, relating to taxation, yet the exercise of that power was 'justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant supplies, and to provide the ways and means for the service of the year.' The third stated, 'that to guard for the future, against an undue exercise of that power by [111] the Lords, and to secure to the Commons their rightful control over taxation and supply, this House has, in its own hands, the power so to impose and remit taxes, and to frame bills of supply, that the right of the Commons as to the matter, manner, measure, and time, may be maintained inviolate.'

The aim of these resolutions was briefly this:—to assert broadly the constitutional rights of the Commons: to qualify former admissions, by declaring their jealousy of the power exercised by the Lords of rejecting bills relating to taxation; and to convey a warning that the Commons had the means of resisting that power, if unduly exercised, and were prepared to use them. They were a protest against future encroachments, rather than a remonstrance on the past. They hinted—not obscurely—that the Commons could guard their own privileges by reverting to the simpler forms of earlier times, and embracing all the financial arrangements of the year, in a single bill, which the Lords must accept or reject, as a whole. The resolutions, though exposed to severe criticism, as not sufficiently vindicating the privileges of the House, or condemning the recent conduct of the Lords, were yet accepted,—it may be said, unanimously. The soundest friends of the House of Lords, and of constitutional government, trusted that a course so temperate and conciliatory would prevent future differences of the same kind. It was clear that the Commons had the means of protecting their own rights, without invading any [112] privilege claimed by the Lords; and having shown an example of forbearance,—which might have been vainly sought, in an assembly less conscious of its strength,—they awaited another occasion for the exercise of their unquestionable powers. Having gained moral force, by their previous moderation, they knew that they would not appeal in vain for popular support.(13)

Footnotes.

1. In 1625, the Commons postponed the supplies demanded by Charles I. for carrying on the war with Spain.—Parl. Hist., ii. 35. In 1675, they refused a supply to Charles II. to take off the anticipations upon his revenue.—Ibid., iv. 757. In 1677, they declined a further supply till his Majesty's alliances were made known.—Ibid., 879. And in the next year they refused him an additional revenue.—Ibid., 1000. In 1685, James II. required £1,400,000; the Commons granted one half only.—Ibid., 1379.
2. The reductions in the army insisted upon by the Commons, in 1697 and 1698, were due to their constitutional jealousy of a standing army, and their aversion to the Dutch Guards, rather than to a niggardly disposition towards the public service.—See Lord Macaulay's Hist., v. 18, 24, 151, 177.
3. With a few exceptions, so trifling as sometimes to be almost ridiculous, it will be found that, of late years, the annual estimates have generally been voted without deduction. In 1857, the Committee of Supply refused a vote for the purchase of a British chapel in Paris: in 1858, the only result of the vigilance of Parliament was a disallowance of £300 as the salary of the travelling agent of the National Gallery! In 1859, the salary of the Register of Sasines was refused; but on the recommitment of the resolution, was restored!
4. On the 27th Feb., 1786, Mr. Pitt's motion for fortifying the dockyards was lost by the casting vote of the Speaker; and no grant for that purpose was therefore proposed.—

Parl. Hist., xxv. 1096.

5. On the 12th May, 1796, the numbers being equal on the third reading of the Succession Duty to Real Estates Bill, the Speaker voted for it: but Mr. Pitt said he should abandon it.—Parl. Hist., xxxii. 1041. Lord Colchester's Diary, i. 57. Lord Stanhope's Life of Pitt, ii. 369. On the 12th March, 1805 the Agricultural Horse Duty Bill was lost on the second reading.—Hans. Deb., 1st Ser., iii. 861.
6. See supra, Vol. I. p. 80.
7. Standing Order, Dec. 11th, 1706.
8. See May's Law and Usage of Parliament, 6th ed., 549.
9. The Reports of the conferences between the two Houses (1640-1703), containing many able arguments on either side, are collected in the Appendix to the third volume of Hatsell's Precedents, and in the Report of the Committee on Tax Bills, 1860.
10. To the claim, as very broadly asserted by the Commons in 1700, at a conference upon the Bill for the sale of Irish Forfeited Estates, the Lords replied: 'If the said assertions were exactly true; which their Lordships cannot allow.'
11. Hatsell, iii. 452. This admission, however, is not of equal authority, as it formed part of the reasons reported from a committee, which were re-committed, and not adopted by the House.
12. Conference, 1671; Hatsell, iii. 405.
13. In the following year,—after the date of this history,—the Commons effectually repelled this encroachment, and vindicated their authority in the repeal and imposition of taxes, by including the repeal of the paper duty in a general financial measure, granting the property tax, the tea and sugar duties, and other ways and means for the service of the year, which the Lords were constrained to accept.—24 and 25 Vict. c. 20. Hans. Deb., clxii. 594; clxiii. 68, etc.

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