

# War and the emergence of the English parliament, 1297-1360

Gerald L. Harriss

*Although the opening of the Hundred Years' War led the kings of France and England to make similar demands upon their subjects, the effect on the monarchy and on the Estates was markedly different in the two countries. In England taxation gave parliament a central role in the medieval polity while in France it strengthened first local autonomy and then absolute monarchy. Because parliament had an inescapable obligation to grant taxation for common defence, the Commons sought to limit this to periods of open war, and to criticise and control the handling and expenditure of the tax. The character of taxation, as levied by common assent and for the common profit, likewise permitted resistance to the extension of prerogative rights and the assertion of parliament's right to grant the tax on wool. In these matters the Commons were forced into a defensive dialogue with the Crown over their obligations which educated them in political argument and the techniques of parliamentary opposition. The power to levy taxation on grounds of 'necessity of state'*

*strengthened both monarchies; but in England this was subject to the assent and authority of parliament which thereby emerged as a political institution concerned with the common needs of the realm.*

- 1 Historians have long been aware that in the first half of the fourteenth century the feudal monarchies in France and England began to exhibit divergent trends until in the next century they would be regarded as different types of government. This did not reflect different views of kingship. Indeed the dominant Aristotelianism of the late thirteenth and fourteenth centuries ensured a remarkable consensus about the duties of kingship and the obligations of subjects (Dunbabin 1965:73-9; Keen 1965:121-4; Lewis 1968:78-110). The divergence was rather in the institutions of government and reflected the influences of geography and of inherited political and administrative traditions. Thus A. R. Myers argued (1961:141-53) that the distinctive prestige of the French monarchy which enabled it to become the focus of unity after the three Estates had been discredited by defeat and dissension, and the size and regionalism of France, together thwarted the creation of a central assembly able to represent and bind the whole nation. In England by contrast the monarchy was weakened and humiliated by the limitations imposed on John and Henry III and the depositions of Edward II and Richard II, while the greater unity of the realm was reflected in the frequent assembly of representatives from traditional units of local government in a national parliament.
- 2 These are valid points, yet it is doubtful whether such differences would have manifested themselves so quickly, or so profoundly have affected political mentalities, had it not been

for the pressures of war. From 1297, and then more evidently from 1337, war began to acquire a national character. It was no longer merely the king's war, waged for the preservation of his honour and the recovery of his rights, but a war which touched the safety of one and all. In both kingdoms the reality of this was borne home to ordinary subjects by the Crown's attempts to mobilise their services and goods for defence and by the actual dangers and destruction of enemy raids. There was in consequence increasing reference to and debate upon the obligations which subjects owed to the king for the preservation of the realm. In both realms such debates were conducted in terms of the legal and scholastic – one might say the 'constitutional' – doctrines of the age. We must therefore ask how it was that in England these doctrines became entrenched in the procedures of parliament and even in the law of the land as constitutional limitations while in France they did not. With regard to the French side the answer is being given by the work of J. B. Henneman (1971). In this article I want to ask how war compelled Englishmen to acknowledge certain public obligations, how they were led to define these by reference to current political ideas, and how they contended for them in dialogue with the king in parliament. It will be argued that the emergence of parliament as a political institution was vitally influenced by the strains of war.<sup>1</sup>

**3** From their different standpoints the king and his subjects both treated parliament as an instrument of government for the common profit of the realm, the king requiring parliament to recognise the needs of the realm and subjects using it to present the ills of the realm. Parliament thus became the vehicle of the whole political community, enshrining its conflicts as much as its common assumptions.

This was important, for it was not so much the existence of representative institutions as the work which they were made to do which distinguished English and continental practice.

We can best begin by examining how the English Crown obtained taxation, for there the parallels and contrasts with France are most striking. Gaines Post and Ernst Kantorowicz have shown how, during the thirteenth and fourteenth centuries, civil and canon lawyers popularised the legal principles of state authority (Kantorowicz 1957; Post 1964). For obvious reasons the power to tax attracted immediate and widespread attention from rulers. The Romano-canonical doctrine of 'necessity' stated that, for a necessity of the realm which touched the common safety and good of the kingdom, the ruler could legitimately demand taxation from his subjects which they were obliged to give. The doctrine comprised safeguards for the subject as well as obligations. The 'necessity' had to be one which touched the welfare of the realm, and not merely its ruler; hence it could not be proclaimed by the king alone without some kind of adjudication or acceptance of it rendered by subjects on behalf of the realm. Since the tax was asked for a specific purpose, the obligation was limited to the achievement of that purpose. Finally, since free subjects were thereby deprived of their goods, they had to give their free assent. This was, therefore, a doctrine of political obligation. It postulated a political society of free men, who agreed that the preservation of the state was to their common profit and acknowledged a fundamental and inescapable obligation to contribute their wealth for this purpose. The inspiration for this doctrine came partly from Aristotle, partly from Roman law, while it could be grafted on to the customary feudal

obligation to render aid to a lord in his time of need. But what made it such a formidable weapon in the hands of monarchs was the beginning of national wars and the efficiency of administrative methods which permitted them to control and exploit the resources of their kingdoms. **4**

Even during the light and occasional warfare of Henry III's reign, the doctrine of 'necessity' was used to justify the demand for national taxation, but both in England and France it was in the last decade of the century that the obligation on all subjects to contribute to a war waged for their common defence was firmly stated (Harriss 1975:27-74; Rothwell 1945:18ff; Strayer 1948:289-96; Bisson 1966:75-102). In France the almost annual levy of taxes for the defence of the realm, without consent, produced a reaction after 1300 to safeguard local rights against the doctrines of the royal lawyers. The successors of Philip IV were never able to press the case of 'necessity' with such authority: at most they could hope to win general acceptance from a central assembly of the case for taxation, being compelled thereafter to secure actual grants by local negotiations which often involved exemptions, local choice of the tax, and local control over its use. The idea of national danger could only be aroused at moments of exceptional crisis, as in 1346 and 1356. Neither the nobility nor the towns were willing to countenance taxation on a national basis, being too distrustful of each other, and of the military capacity of the king, to submit their particular interests to the demands of common safety. Philippe de Mézières advocated local control of taxation on grounds of both convenience and efficiency (Coopland 1969:392-400). In fact French kings found it more effective to proclaim the *arrière ban* and negotiate taxation as a commutation of tra-

ditional military obligation, or to trade their fiscal prerogatives for grants. Not until after the battle of Poitiers did the French crown begin to develop a routine system of tax collection on a national basis. This lack of a legal or institutional basis for national taxation was an undoubted French weakness at the beginning of the Hundred Years' War (Strayer 1938:45-6; Henneman 1971).

In England, by contrast, the forty years between 1297 and 1337 saw fourteen lay subsidies granted by fully representative assemblies, eleven of which fell in the thirty years after Edward I's death. Taxation was thus frequent enough to be a normal act of government, but it was not sufficiently persistent or continuous to threaten its occasional, emergency character. Only from 1294 to 1296 and in 1315-6 was it levied in consecutive years. Moreover during this period every tax with one exception was for the war against Scotland. Each grant was made for a particular emergency, presented as a threat to the realm and Church, and often accompanied by graphic propaganda about the murder and devastation wrought by Scottish raids (Nicholson 1965:1-3; Keeney 1947:534-49; Willard 1908:237-42). Correspondingly, during periods of truce on the border from 1322 to 1327 and 1328 to 1332, taxation ceased. Parliament was in this manner accustomed to the notion of an obligatory tax for a defensive war which constituted a 'necessity' of the whole realm. Already in the *Modus tenendi parliamentum* (1321) its essential character is clearly defined. Aids, the author says, must be asked in full parliament, they must be for actual war, request and response must be in writing, and each estate must give its assent. Thanks in no small measure to the recurrent threat from Scotland, Edward III entered the larger war with France possessed of a firm tradition of

parliamentary grants for a defensive war which could be collected as a matter of administrative routine.

5 In the next twenty-three years he put this to good effect. For thirteen of these England was engaged in open hostilities with either France or Scotland, the remaining ten being short periods of truce. Most of the fighting consisted of aggressive raids on foreign soil. For seventeen of these years the realm was paying direct taxation specifically asked and granted for a necessity of the king and kingdom involving the safety and defence of the realm. As the state of war was prolonged, taxation thus became continuous and apparently permanent. This marked a vast increase in the resources and authority of the Crown and enabled Edward to plan and fight a war over a period and on a scale hitherto unconceived, without the disruption which truces caused to French finances.

6 In England, therefore, the practice of taxation conformed with great fidelity to Romano-canonical teaching. The 'necessity' became identified with national war and was explained and justified before the realm in parliament; parliament adjudicated and accepted the case of 'necessity' and to meet it granted taxation which the whole realm was obliged to pay. To explain the anomaly that such doctrines were more effective in the land of the common law than under the lawyers of the late Capetian and early Valois kings, we can point to the greater unity of political society and the long tradition of central government and local answerability to it within the smaller, more easily controlled realm. If the English monarchy lacked the peculiar prestige of the French, its executive authority had always been greater.

Although we should not be surprised that notions of state authority found fertile ground

in England, this raises problems for our accustomed interpretation of the relations between the Crown and its subjects in parliament. For historians have been unanimous in holding that Edward III's dependence on parliament for war taxation both strengthened the Commons and eroded the royal prerogative. In McKisack's words (1959:221) "Edward's wooing of the Commons depended for its success largely on his readiness to concede their demands and abandon most of his extra-parliamentary resources"; and more recently M. H. Keen has concluded that "the pattern of the reign was concession. He needed money and soldiers and was prepared in return for them to relax royal control...he was pliant at home in order to permit adventure abroad" (1973:158-9, 163). Implicit in such judgements is the assumption that taxation was a matter of free bargaining in which the Crown's needs placed it at a perpetual disadvantage. But is it true that it was "within the Commons' power to give or withhold supplies", as A. R. Myers believes (1961:147); or was Stubbs right when he declared that "as to taxation, parliament found itself able to give but not to withhold" (1887, 2:421)? Our interpretation of the concessions which the Commons secured depends not a little on our answer. For if the Commons were obliged to grant taxation then their main concern must have been to define the limits of their obligation rather than to erode the royal prerogative. Hence we should first ask how far the Commons were able to restrict the king's demands for taxes and control his expenditure of them. How was it that the king could secure taxation in the name of common defence whilst conducting devastating attacks overseas for personal gain? Did the continuance of war threaten the Commons with permanent

taxation, and how was taxation justified in time of truce? Until we have defined the rights and obligations of the king and his subjects in respect of taxation it is hardly possible to assess their political relationship or their disputes over prerogative rights. For such a relationship evolved out of their direct confrontation and debate over these matters.

Let us begin with the limitation of taxation to a defensive war. In the canonists' view the plea of 'necessity' could only be invoked in the defence of the realm and for the recovery of just rights, not for an aggressive attack on alien territory. Boniface VIII had condemned Edward I's Flanders campaign in these terms and the doubts he raised found echoes amongst the baronial opposition of 1297 (Rothwell 1945:21). There is no doubt that in 1337 parliament supported the war with France as an ineluctable extension of the threat from Scotland rather than as a prelude to a generation of imperialist conquest and profitable venture (Campbell 1965:184–216; Fryde 1969:250–69). Thereafter French coastal raids and projects for invasion lent credibility to the king's plea that his continental strategy was essentially defensive. Edward's claim to the French throne gave further legality to the war while it enabled him to merge the feudal concept of war as fought for the king's honour and rights into the new one of national survival. He asserted that the rejection of his claim would "overthrow him and his realm of England", and his pleas that he was fighting "to recover his rights overseas and defend his realm" found echoes in the patriotic verses of the time (*Rotuli parliamentorum* 2:237, 157).

Although the Commons never questioned their obligation to grant taxation in these terms, theirs was a heavy burden, and as the war was prolonged the threat of perpetual taxation to meet a continuing necessity be-

came a grim prospect. In the canonists' view, 'necessity' should be invoked only to meet a dire and exceptional emergency; yet the war with France had brought a state of emergency from which a final peace offered the only escape. The Commons indeed bemoaned the "false truces" which deprived them of the decisive battle which would bring conclusive victory; in 1344 they granted the second year of the subsidy on condition that the king went in person "to make an end to the said business" and in 1354 voiced their eager assent to the peace terms proposed (*Rotuli parliamentorum* 2:147–8, 200, 237, 264). But it was only in the nine years of peace following the Treaty of Brétigny, when the case of 'necessity' could no longer be pleaded, that they were finally released from demands for direct taxation.

Were there any ways in which parliament could challenge or limit the king's demand for taxation while this state of war persisted? In France the monarchy was forced to recognise that the plea of 'necessity' could only be pressed in situations of actual danger: that where a region was not directly threatened by invasion it could not be made to pay, and that when a truce intervened taxation should cease and what had been collected should be repaid (Henneman 1971:30, 117, 130, 155). Such regional opposition to taxation did not occur in England. Taxation was consistently granted and levied on a national basis, though it was not always spent thus. Both king and Commons recognised that the north of England was a theatre of war on its own and from 1337 to 1349 the taxes from north of the River Trent were appropriated to its defence. A closer parallel with regional control of taxation as practised in France was the use of the subsidy of 1359 to pay for local defence forces on a county basis. This was not, in fact, a parliamentary subsidy and stands unique as

*[The image shows a highly degraded and low-resolution scan of a historical document page. The text is written in a dense, cursive medieval script, likely Gothic or a similar hand. Due to the poor quality of the scan, the individual characters and words are largely illegible. The page appears to be a single column of text with some marginalia or smaller entries interspersed. The overall appearance is that of a parchment or paper document from the 14th century, as indicated by the caption.]*

Figure 1. An entry in the Parliament Roll, (2:148) recording the grant of taxation in 1344 and reciting the king's plea of 'necessity'. Public Record Office C 65/11/10.

an experiment in England.

J. B. Henneman has pointed to the very considerable difficulties which the French monarchy suffered from being unable to obtain taxation before the expiry of a truce in order to meet the cost of preparations for war and the permanent charges for defence, as well as from a sudden truce which might deprive it of taxation needed to meet war expenditure already incurred. Edward III dealt with this problem more successfully. To secure taxation in time of truce – in 1344, 1348 and 1352 – he was able to adduce evidence that the enemy planned to resume the war and thus establish that a grant was necessary to forestall this. By this means he secured biennial and triennial subsidies which underpinned his finances, although the Commons sought to limit their obligations by restricting their grants to the purposes for which they were sought. In 1344 they asked that the subsidy be safely stored until it was used for the proposed expeditions; in 1348 that the aid be assigned solely for current war expenses and not for the payment of ancient debts; in 1352 that it should be kept for the war according to the king's intention. By ensuring that the tax was not spent before it was needed the Commons hoped to avoid a renewed demand when the emergency finally came. They also sought to cancel the tax should the emergency cease. In 1346 and 1348 they stipulated that the final year of the tax should not be levied if truce or peace had by then been achieved (*Rotuli parliamentorum* 2:148, 201, 252). None of these conditions which the Commons made was illegitimate for they merely elaborated the purpose for which the tax was asked. Nor, by contrast with French practice, were they very effective. Edward did, in fact, collect the final years of the subsidies granted in 1346 and 1348 despite more than usual opposition in the

shires; he was technically within his rights in so doing as in both cases the truce briefly expired before being renewed. Nevertheless the Commons' reiterated limitation of their grants to open war prepared the ground for their later attempts to free themselves from direct taxation in time of truce. In 1356 they managed to break the pattern of continuous triennial subsidies by granting the wool subsidy for six years, thus initiating its development as a recurrent tax for the permanent charges of defence.

8 Equally, the Commons could exercise no control over the king's use of the subsidies. Before the capture of Calais taxation was wholly consumed by the needs of war; but from September 1347 to early in 1355 although there were only fifteen months of active warfare the king received lay subsidies for practically the whole period. Much of this taxation was spent on repaying the debts of previous campaigns, but from 1352 onwards Edward was able to apply a large proportion of it to his household.

If one safeguard against permanent taxation lay in emphasising the temporary, emergency quality of 'necessity', another was to insist that a common obligation needed common assent. The divergence of French and English traditions was to be most marked in the requirement of assent to taxation. This was the result less of different views of its nature than of the different ways in which taxation was negotiated. In both countries the assent of representatives was rendered not primarily to the grant of taxation but to the 'necessity' which justified and required taxation. Proclaimed as it was by the king and attested by the council, the 'necessity' had also to receive the assent of the realm if the king's free subjects were to be deprived of their goods. The 'full power' with which rep-

representatives were invested to render such assent did not give them any right of free or unrestricted refusal if the necessity was urgent and evident; yet at the same time they rendered something more than the legal assent given by suitors and attorneys to the judgment of a court (Post 1964:91–162). It was rather a political assent, the free acknowledgement of an obligation, following consultation and issuing in agreement. In France, as in England, such assent was at first rendered centrally; but whereas in England the agreement between monarch and subjects on a specific tax to meet the necessity was negotiated in parliament, in France such bargaining took place in local assemblies where local interests were paramount and often overrode the needs of the kingdom. The fact that the real negotiation over the terms of taxation took place locally had led by the end of the fourteenth century to the atrophy of the estates general as an assenting body, leaving merely the assent of the council as necessary for authorising an aid (Lewis 1962:4, 9; Henneman 1971:325–7). Writing in 1389 Phillipe de Mézières deplored the decline of representative assent in France (Coopland 1969, 2:390) and in the following century Sir John Fortescue treated assent to taxation as the key distinction between mixed and absolute monarchies (Plummer 1885:113). Yet here again the contrast with England should not be overstressed for it was only extremely rarely that the Commons successfully challenged the king's plea of 'necessity' in the later middle ages. Perhaps the most notable occasion was when they resisted the demand for a lay subsidy in 1376. Even so they could adduce 'sufficient cause', not merely on grounds of poverty, but because the tax was demanded in time of truce. Moreover they coupled their refusal with the renewal of the

wool subsidy and a promise to aid the king when the need arose (*Rotuli parliamentorum* 2:322).

9 The distinctive development of parliament in the later middle ages was indeed related to assent to taxation, but it sprang from the responsibility of the Commons as representative of the whole realm to negotiate the terms of the tax. For this purpose they were informed of and involved in royal policy; and as a corollary they became, in some degree, the Crown's agents in the shires. Empowered by their constituents to grant a tax and negotiate its conditions, they had an equal responsibility to the king to ensure that what they granted was collectable. This meant that they had to strike a perpetual balance between the king's needs and the grievances of their communities. For as representative of the whole realm they were empowered not merely to adjudicate its common needs but to attest its common ills.

The Commons' dual responsibility was manifested in 1341, 1344, and 1348 when they sought to appease their constituents by securing letters patent which recited both the king's plea of necessity and the concessions which they had secured by their grant. Only in 1339 did they not dare to meet the king's demands for fear of local opposition, asking to refer back to their constituents and thereby threatening the cornerstone of the edifice of representation, their *plena potestas*. Formal assent in parliament was thus dependent on actual assent in the shires. Except in moments of acute political crisis, when they acted in concert with the Lords, it was this threat of opposition in the shires rather than the ability to refuse the king's legitimate demands which gave the Commons their most effective bargaining counter with the Crown. Even when, as in 1348, they incorporated their grievances

and demands for redress as conditions in their grant, these were binding only in so far as the king freely accepted them. The Commons could not dictate conditions as the price of taxation, for while they were bound by obligation to meet the king's demands, the king was only bound to meet theirs by his free grace. Their right of assent required their participation in matters which touched the whole realm; it involved them in political responsibilities and political dialogue; but it did not give them a veto over the legitimate demands of the Crown.

It was thus of prime importance that the Commons' adjudication of and assent to these demands was made in terms of the common profit. Appeal to the common profit had underlain the baronial opposition to Henry III and was made explicit in the Remonstrances addressed to Edward I in 1297. In consequence the principle that taxation should be levied for the common profit as well as by common assent was enshrined in *Confirmatio cartarum* (1297) and this invited a direct association between taxation and the presentation of grievances. For while in demanding taxation, the king interpreted common profit as common peril, the Commons judged the effects of taxation in terms of common welfare. Taxation for the profit of the realm should not impoverish it, for it was the mark of a tyrant to impoverish and enslave his subjects. That was the message of the Remonstrances of 1297, passed on by the Ordainers, and eventually assimilated by the Commons. Thus the fact that taxation was freely given for the common good made it the natural vehicle for criticism of royal government, and the terms of such criticism were frequently similar in France and England (Henneman 1971:254, 258, 284, 321, 324; Coopland 1969, 2:364-6). Complaint was most immediately

aroused by the burdens of prerogative levies, which were the inevitable accompaniment of war, and by the exactions of royal officials. The king had a general obligation to heed complaint and to redress illegalities, but there was no inherent connection between these and the grant of taxation. More directly it might be alleged that the tax had not been used to defend the community of the realm, or that it had been used for the profit of individual subjects. Although once the tax was granted to the king it became legally his and he could not be required to render account, such criticism implied that subjects had a legitimate concern with the expenditure of the tax. Debate over these matters helped to establish the character of taxation as public revenue and was profoundly educative for the middling landholders who granted the tax and represented the communities who shouldered its burden.

The general success of English arms in the first phase of the Hundred Years War meant that there was little occasion for criticism over the expenditure of taxation. It is true that in 1297 the barons had questioned the wisdom of Edward I's aggressive expedition in Flanders and that the Ordainers were critical of Edward II's defence of the northern border, but it was the combination of burdensome taxation and military setback in 1340 that brought the most specific attack on the handling of taxation by the king and his ministers. In their petition the Commons did not directly question Edward III's strategy but claimed that the taxes which had so impoverished the community had failed to reach the king, ascribing this to the ministers and merchants who had handled them. They demanded that these should be brought to account and sought to place the expenditure of all future grants under the control of a committee of peers who would in turn be answer-

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able in full parliament. Thus the king would be aided and his people's burdens lessened. Edward, under pressure, conceded all this and more (Harris 1975:253-60, 518-20). This marked the Commons' first attempt to enforce changes in the structure of royal government by using their authority to grant taxation. Their success owed much to the exceptional political situation in 1340; even so it revealed their impressive grasp of the dialectical and tactical opportunities for criticism in terms of the common profit.

The diversion of taxation for private gain was one reason for hostility to the privileges of the king's merchants in the decade following 1340 (Unwin 1918:179-255; Fryde 1959:1-17). Although this primarily related to the wool trade (which we shall discuss presently) the merchants' contracts with the king frequently embraced the lay subsidies as security for loans and provided opportunities for buying discredited royal bonds on which full payment was secured from the lay subsidy. This brought a protest from the Commons in March 1348, which they coupled with another against the handling of the forced loan of 20,000 sacks of wool. Recalling that divers aids had been granted to and taken by the king from his poor Commons in aid of his war, to be used entirely for his profit, the Commons complained that the king's merchants were handling the levy in wool to their own profit and the king's loss. There was some substance in their allegation, for the king had sacrificed to the merchants a substantial proportion of the profit theoretically accruing from the sale of wool to secure an immediate if much smaller advance. As in 1340 the Commons demanded a commission of enquiry (on which they were to be represented) to

ensure "that the goods of his subjects should reasonably and fully come to the king's profit". But Edward, now in a much stronger position than eight years before, repudiated any obligation to answer for his employment of the tax (*Rotuli parliamentorum* 2:170, 200-1; *Calendar of patent rolls*, 1348-50:104).

The same grasp of the public nature of taxation – that what was levied from the goods of subjects for their common safety should be used for their common profit – informed the Commons' efforts to establish their right of assent to the wool subsidy, the *maltolt*. The view of B. Wilkinson, broadly shared by E. Power, was that the Commons' primary object was to abolish the *maltolt*; that they went on demanding this up till 1348 and that it was only between then and 1350 that they came to accept it as inescapable and (in Wilkinson's words, 1937:72-6) "fearfully and reluctantly offered in future to vote the tax themselves". If recognition of the king's needs was one reason for this, recognition of the true incidence of the tax was another. In their petitions of 1343, 1348 and 1351 the Commons complained that the merchants passed on the tax to the growers, to whom they paid correspondingly lower prices for the wool. As they came to understand that it was not the merchants but the community who paid the tax, so they came to demand that they, who represented the community, should grant it. By then, too, the internal dissensions of the estate of merchants and the consequent support given by the lesser merchants to parliament had strengthened the demands of the Commons. Eventually the king was brought to accept these as the greater merchants proved broken straws in supplying his needs. Thus Eileen Power (1941:74-5, 82) was led to

Figure 2. The Commons petition of 1340, from the Winchester Chartulary, item 297.

the conclusion that "if the Commons fought the issue on abolition and not consent it was because they were more interested in the economic consequences of taxation than in constitutional theory", a judgement that certainly reflected her own interests. But there are grounds for thinking that the Commons were neither ignorant of nor indifferent to the principles of public taxation.

What, to begin with, was the nature of the *maltolt*? If it was an imposition, levied at the will of the king, then parliament had good reason to seek its abolition and, failing that, to try to make it legal by consent. But if the *maltolt* was an aid for a necessity of the realm, as was the lay subsidy, then it was by definition obligatory, impermanent, and dependent on assent. It is not difficult to show that from its inception in 1294 up till the grant of 20 shillings the sack in September 1336 the *maltolt* conformed to all these requirements. It was granted by merchant assemblies for limited periods to meet an acknowledged necessity of the realm, and was paralleled by grants of lay subsidies by parliament. The merchants were expected to endorse or adjudicate the necessity and assent to a tax on mercantile wealth as the Commons did on lay and the clergy on clerical wealth. It is not surprising therefore that in 1340, 1343, 1348, 1351, 1353 and 1356 assent was received for the levy of the *maltolt* for a limited period and for a necessity of the realm. What is remarkable is that on all these occasions it was the Commons who authorised it, coupling this with a firm rejection of the claims of either the merchants or the great council to give assent. It is certainly not true that the Commons were only won over to assent after 1348. It is true that they continued to demand the abolition, or rather cessation, of the tax in 1340, 1343, 1346, 1348 and 1351, but these demands re-

lated to the grants made by other bodies and were frequently accompanied by offers from the Commons to grant it themselves.

What made the Commons so dissatisfied with the earlier tradition of assent by the merchants, and on what grounds did they claim an exclusive right of assent for themselves? The grant of 20 shillings in September 1336 had all the characteristics of its predecessors, but by May 1338 this had been raised to 40 shillings as part of the king's agreement with the Contract Merchants whose monopoly of export would enable them to recover their loans to the Crown from the additional subsidy more speedily. The tax was to continue until these loans were repaid and it was still being taken when parliament met in October 1339 and demanded its cessation. That parliament, as we have noted, saw a bitter outburst against the king's merchants who were widely suspected of embezzling and mishandling the taxes. Their privileged position rested, of course, upon the prerogative preemption and export of wool under monopoly, which was designed to benefit both merchants and king (Fryde 1952:8-24). As originally conceived, the Contract scheme had extended the monopoly widely, it had the assent of the merchants, and it aimed to provide the growers with acceptable minimum prices. There was some attempt to get back to these conditions in 1342, but the general tendency of such schemes in 1338-40 and in the next decade was towards a narrow monopoly which excluded the lesser merchants from the trade, which probably enabled the king's merchants to depress prices paid to the growers, and which, even if it did not ruin these two classes by the disruption of the market, effectively excluded them from the large profits which the king's merchants were - in intention at least - enabled to secure.



Figure 3. A fourteenth-century representation of the gathering of taxes. BL Royal MS 10 E IV, f. 38.

These economic effects of the monopoly schemes are well established and in so far as the wool growers and lesser merchants were represented in parliament undoubtedly explain the bitter hostility of parliament to the king's merchants for the next twenty years. But the Commons' protests over the *maltoll* rested on a broader basis than outraged sectional interests, for as negotiated with the merchants in 1337 and 1342 and sanctioned by the council in 1346 and 1347, the *maltoll* lost its public character as an aid and formed part of an economic bargain for the mutual profit of the parties. Although one of those parties was the king acting in the public interest, the other represented the particular or 'singular' interests of individual merchants. Moreover, since the purpose of this agreement was the profitable exploitation of the wool trade, there was no reason why it should be confined to financing a war or why it should not continue to operate as long as it proved profitable. As granted by the merchants after 1336, the *maltoll* thus violated all the principles of the aid: it was for 'singular' not common profit, it was not restricted to an emergency, and the assent rendered to it was no longer part of the common assent of the realm. After 1340, in the Commons' view, common assent meant assent by parliament. This they reiterated persistently, until in 1351, after the

bankruptcy of the farmers of the customs, it was secured along with safeguards for free trade.

The Commons then asked that "such singular grants of the *maltoll*" by the merchants should be void, remarking in the same breath "in case it pleased the king in this his great necessity to have the 40 shillings subsidy for a half year or a year, let him show his wishes to the Lords and Commons". Thereupon "for great necessity...by common assent" they granted the subsidy for two years (*Rotuli parliamentorum* 2:229). Five years later, in 1356, by granting the *maltoll* for an unprecedented period of six years they were able to interrupt the Crown's continuous demand for lay subsidies and initiate the long history of the wool subsidy as a renewable tax for the safeguard of commerce and the recurrent charges of defence. Direct taxation could be increasingly restricted to periods of open conflict or particular expeditions. Thus by 1360 the character of direct and indirect taxation had been established for the following centuries with momentous consequences for English political development. The demands of war had forced Crown and subjects to define their rights and obligations in the context of common safety and common profit.

The twin criteria for public taxation -- that it should be levied by common assent and for

the common profit – likewise served the Commons in their struggle against taxation by extensions of the Crown’s prerogative rights. The most burdensome were the levy of war supplies through purveyance and the demand for unaccustomed military service.<sup>2</sup> The first had become a major grievance in 1296–7 when in the fourteen months preceding July 1297 three great prises covering many counties had been ordered to provision the royal army. These did not differ in nature from the ancient prises for the king’s household, but they did differ in degree. On what basis could they be opposed? The baronial Remonstrances gave the lead by asserting that such tallages and prises had reduced the people to poverty so that they could not aid the king: such levies were by definition contrary to the common profit. *Confirmatio cartarum* identified such national prises as war taxes, acknowledging that they had no basis in custom and requiring them to be levied for the common profit and by common assent. It thus encouraged subjects to expect that taxation should be used to pay for supplies taken for war. Payment was at the heart of the issue, for if the subject received satisfaction for his goods he was not being taxed. In the years immediately following 1297 prises for the Scottish war do seem to have been authorised by assent, centrally in the council and locally in the shires, and payment for them provided from the taxes granted for it.

With the opening of the French war large-scale prises were again needed, particularly in 1337–40 and for the siege of Calais in 1346–7. Much of the protest in parliament centred on the illegal actions of royal purveyors as defined by existing legislation. It elicited promises of redress and stricter control of officials from the king, and eventually issued in the elaborate code governing purveyances in the great

statute of 1362. Alongside this the Commons castigated purveyances which were not paid for as a form of taxation without common assent. In 1339 they asked that purveyors who had taken goods without payment and had assessed and levied sums of money from communities in respect of victuals should have their commissions repealed “so that no free man be assessed or taxed without common assent of parliament” (Richardson and Sayles 1935:269).<sup>3</sup> In the parliaments of 1346 and 1348 they went further and asked that commissions to take prises should be issued only by assent of parliament, and in 1351 when purveyors had been scouring the country for corn to supply the garrison at Calais they protested that “no such charges or prises be made without the assent of parliament” (*Rotuli parliamentorum* 2:227). Though in no doubt about the extent of the abuses or the unpopularity of these levies, Edward never conceded the right of parliament to authorise them. But by 1350 he was ready to welcome a means of removing a contentious issue from the political arena. In the second half of the century widespread purveyance by sheriffs to supply royal armies declined as the practice of contracting for supplies from merchants, perhaps first applied at Calais, became more widespread (Burley 1958:49–57). It was from London merchants whose patents specifically permitted them to make profit from such transactions that the Black Prince’s army in Gascony and the royal army of 1360 were supplied.

Complaint against unaccustomed military service was roughly coterminous with that against purveyances, was pressed in the same terms, and produced similar claims (Powicke 1962). For his campaigns in Flanders and Scotland Edward had begun to extend the obligation to military service. At the lower end

of the social scale he invoked the Statute of Winchester to array men for long periods of service on or beyond the borders of the realm as part of the royal army. These demands were made more acceptable by the offer of pay, usually from the point of leaving the county boundary. But service on the Scottish border remained unpopular and the high rate of desertion and heavy cost had led Edward I to abandon large scale levies by the end of his reign. To continue the war Edward II had to resort to compulsory unpaid service on the plea of necessity or secure quotas of soldiers from the shires and towns by some form of assent locally or in parliament. This provoked the Commons' first attempt to define military obligation at the beginning of Edward III's reign. In answer to their petition the king asserted his right to compulsory service on the borders of the realm, leaving unspecified whether this should be at his wages, but disclaimed any right to compulsory service overseas (*Rotuli parliamentorum* 2:8, 11; *Statutes of the realm* 1:255-7; Prince 1940:300-2). By virtue of his prerogative and on the plea of necessity, the king could usually command service when he paid wages; it was when support costs were borne by local communities or charged on a national scale that the demand for common assent in parliament to such levies became vocal. In France local communities often preferred to grant soldiers rather than money, as giving them greater control over local defence. The readier acceptance in England of the obligation for national defence, and the established tradition of parliamentary taxation for this, effectively prevented such a development. On the eve of the French war attempts to secure quotas of troops from cities and boroughs in 1335-6 were commuted to money grants when parliament met. Parliament's only initiative in

organising military defence on its own authority occurred in 1340 when, during Edward's absence abroad, it drew up an extensive scheme of military service for the defence of northern England, levying quotas of troops from each county and providing payment from the lay subsidy reserved for northern defence.

This experience must have emboldened the Commons to protest against the large scale arrays of men at arms, hobelars, and archers for the expeditions of 1344 and 1346-8. Yet the Commons' reiterated demands that commissions which were in any manner a charge on the community should not be issued without assent of parliament were not aimed at securing parliamentary control of arrays but were a means of denoting their illegality as a form of taxation. The statute of 1344 produced a further definition of the limits of obligation. It provided that for service overseas wages should be paid by the king from leaving the county boundary, while for service on the borders there was by now a well established tradition that wages were paid from the point of muster (*Statutes of the realm* 1:300-1). By 1360 therefore the king exercised his prerogative to require communal military service for defence of the realm free from any form of parliamentary assent; as a corollary he respected the inviolability of his subjects' property in laying no charge on the community beyond that defined in statute.

The other attempt to enlarge the scope of military obligation centred on the class of non-feudal middling landowners. In the years 1295-7 Edward I made determined efforts to enlist the service of those holding £20-£40 annual value of land on the basis of their common fealty and allegiance. For the Flanders expedition of 1294 the writs emphasised that service was to be in the king's presence

and was for the safety and welfare of the realm, but no wages were promised and a heavy financial burden was thus imposed on the plea of 'necessity'. So strong were the protests in 1297 that Edward I never repeated his demand, and even the sole attempt in his son's reign to require service at their own expense from all holding fifty librates of land, in August 1318, met determined opposition although it had been endorsed by the magnates. Not until 1334–5 was there a further attempt to compel service from those with lands and rents up to £40 per annum. None of these incidents had produced a definition of the subject's obligation. As a means of raising troops for an unpopular campaign and one which could clearly be represented as in defence of the realm, the enforcement of service on this section of the landholding class still had some value, but for the French war contract proved more reliable and more popular.

When late in 1344 Edward revived the idea of an assessment for military service proportionate to landed income on a scale between 100 shillings and £1,000, it was as a form of taxation. In the summer of 1346, individuals and towns were induced to commute their assessed obligation for fines. In reply to the Commons' protests in the parliament of September 1346 the king justified the levy by the general assent given by the Commons to the war and their promise to support his quarrel with their goods and bodies, and by the specific assent of the Lords on account of the great necessity of providing for the defence of the realm. This answer revealed the essential flaw in the king's case. He had acknowledged that the levy was a form of taxation which needed assent of some kind, but by analogy with taxation this could not be derived from the initial assent to the war; it

had to relate to this particular levy. When the Commons returned to the charge in 1348 they stipulated in making their grant that no form of taxation (*imposition, taillage, ne charge d'apprest*) should be levied by the *Prive Conseil* without their grant and assent in parliament (*Rotuli parliamentorum* 2:160, 166, 170, 201). Four years later, when the urgent military demands of 1345–7 had passed and the social repercussions of the plague were beginning to draw king and gentry together, Edward accepted without dissent a petition that no man should be compelled to find soldiers unless by assent and grant in parliament (*Rotuli parliamentorum* 2:239; *Statutes of the realm* 1:321). National prises and novel forms of military service thus evoked a similar response. Both were extensions of customary royal rights justified as necessary to meet the demands of national war; both were opposed by the Commons as a charge or burden on the subject which deprived him of his property and could impoverish him. In both cases the Commons defined their illegality by reference to the principle that burdens imposed on them for the common profit needed common assent by parliament which alone represented the realm. In general the king refused to accede to the principle of parliamentary authorisation of either prises or arrays, preferring – as did parliament – to resolve the dispute in terms of guarantees of payment. Eventually such issues ceased to be contentious as the Crown came to prefer contract to compulsion in both cases.

Edward III exploited the Crown's rights as a means of taxation in two other spheres. Firstly he used judicial enquiries as fiscal levies. At the beginning of the French war in October 1337 Edward had authorised enquiries into the liabilities of communities for the escapes of felons and their chattels, with

the avowed purpose of raising fines for his expedition, and on his return in December 1340 he launched the notorious trailbaston commissions which provoked widespread condemnation in the parliament of April 1341 (Hughes 1915:167–8). Since the legality of both of these was unchallengeable, their withdrawal had either to be purchased by the grant of taxation (as in 1340) or secured by concerted political action (as in 1341). But the king did not surrender his right to the trailbaston which was again vigorously pressed by Chief Justice Shareshull between 1344 and 1348 and again intermittently from 1351 to 1358. The Commons' complaints in the parliaments of 1344, 1348 and 1354 listed these among their burdens: they were "to the destruction of the people and little for the keeping of law and the peace" (*Rotuli parliamentorum* 2:148; Putnam 1950:64–8, 72–3, 209–11). Although the Commons made some attempts to ensure that the commissions were submitted to parliament before they were issued, they chiefly resorted to buying their remission by grants of taxation, even making this one of the conditions of their grants in 1348. This had the defect of being an inherently recurrent remedy. In 1357 – only a year after they had broken the sequence of lay subsidies by granting the *maltoll* – they were induced to grant a whole subsidy to secure release from amercements under future eyes and the remission of fines due from felons' escapes and chattels. In the following decades they were repeatedly induced to repurchase such release. Yet the king's willingness to commute judicial penalties for parliamentary grants also signified the Crown's reluctance to penalise the knights who were emerging as allies in the judicial government of the shires, enforcing labour laws and keeping the peace.

Edward also exploited his prerogative right

to feudal aid. The Commons had purchased release from this among other burdens with the grant of the ninth in 1340, but in 1346 the king knighted his eldest son on landing at La Hougue and at the end of the September parliament the Lords authorised the collection of an aid of 40 shillings from each knight's fee to be levied not only on tenants-in-chief but on mesne lords and demesne tenants. There was opposition to its collection, and in the parliament of March 1348 the Commons alleged that the levy was contrary to the release given in 1340 and that its rate and incidence were contrary to the Statute of Westminster I. Edward seems to have interpreted the concession of 1340 as a remission of his rights solely on that occasion and not as a renunciation of his prerogative. Although the Statute of Westminster had fixed the aid at 20 shillings on each fee, in 1290 the magnates on behalf of the realm had sanctioned it at 40 shilling and had done likewise in 1306 when the aid was commuted for a tax. There is no doubt that in 1346 they were consciously following these precedents and supported the king in holding that he was entitled to the aid and that their assent was sufficient to increase its rate. Yet the Commons clearly felt that its incidence was sufficiently broad to require their assent, while they may also have been aggrieved at the lack of opportunity in the September 1346 parliament to negotiate or protest about it, the aid having been authorised by the Lords after the Commons had voted their subsidy and perhaps after they had gone home. Despite the substantial objections which the Commons could raise, most of the aid had been collected by the time parliament met again in March 1348 and it was not until 1352 that, in response to a petition, the king agreed to observe the statutory limitations with the implication that any demand

beyond these would require their assent (*Rotuli parliamentorum* 2:201, 240).

Any assessment of the effects of these political conflicts must start from the realisation that war enormously enlarged the fiscal resources of the English Crown, strengthened its authority through the introduction of regular taxation, forced it to develop new techniques of persuasion and administration, and thus extended the political basis of its support. With its emphasis on common need and common profit war also brought to fruition a traditional sense of geographical unity and common identity to form the concept of the realm as a community, and this received institutional expression in the Crown in parliament. Parliament became the instrument through which the Crown governed for the common profit.

Taxation did much to focus and bring these developments to fruition. For while 'necessity of state' brought a new dimension to the authority of the medieval monarchy, making the Crown the symbol of the political identity of the nation and the guarantor of its safety, in England the case of necessity was habitually submitted to and accepted by parliament. It was never left to the sole discretion of the monarch. The Crown became dependent on parliament for taxation, but this was because of the dependability of parliament when called on to meet the Crown's legitimate demands. Because the Crown was assured of receiving taxation for a necessity of the realm by grant of parliament it did not, as in France, seek to obtain taxation by other means. Thus Philippe de Commines could later remark on the strength which this brought to the English Crown, for although taxation was restricted to war, for expeditions against the enemies of the realm parliament granted money very willingly and liberally (Calmette 1925:8;

Jones 1972:225).

Parliamentary assent was no real barrier to continuous taxation in time of war, but it did force the Crown into a dialogue with its subjects over their respective political obligations. Although broadly they shared a common purpose and outlook, their interests were at times inevitably in conflict. In their differences over taxation the room for manoeuvre was limited and the rules largely favoured the Crown. The case of 'necessity', if proved, imposed an inescapable obligation; in the business of parliament, taxation preceded the Commons' complaints, remedy for which was at the king's grace, while his prerogative rights could not be challenged; the tax once granted became the king's property for which he could not be called to account. Against such bastions of royal authority frontal assault by the Commons was pointless, nor could they conduct a war of attrition by withholding supplies. They could defend their interests only by establishing the legal limits of their obligations. They might parry the king's demands by distinguishing between open war and truce, emphasise the restriction of the grant to the purpose for which it had been demanded, define illegalities by the need for consent, petition and negotiate for redress of grievances, purchase release from burdens. In substance they had achieved little by 1350. By 1360 their gains were greater: some cessation of continuous taxation in time of truce; the recognition of parliamentary assent to the *maltoll*; strict statutory control of purveyors and a decline of war purveyances; statutory payment for arrays and the proscription of assessments of the wealthy to military service; the beginning of a tradition of purchasing exemption from the penalties of the eyre, and a right of assent to extensions of feudal aids. Even so these were all

essentially defensive achievements. The Commons had not eroded any of the Crown's prerogative rights nor had they been able to resist or limit its legitimate financial demands as had their contemporaries in France.

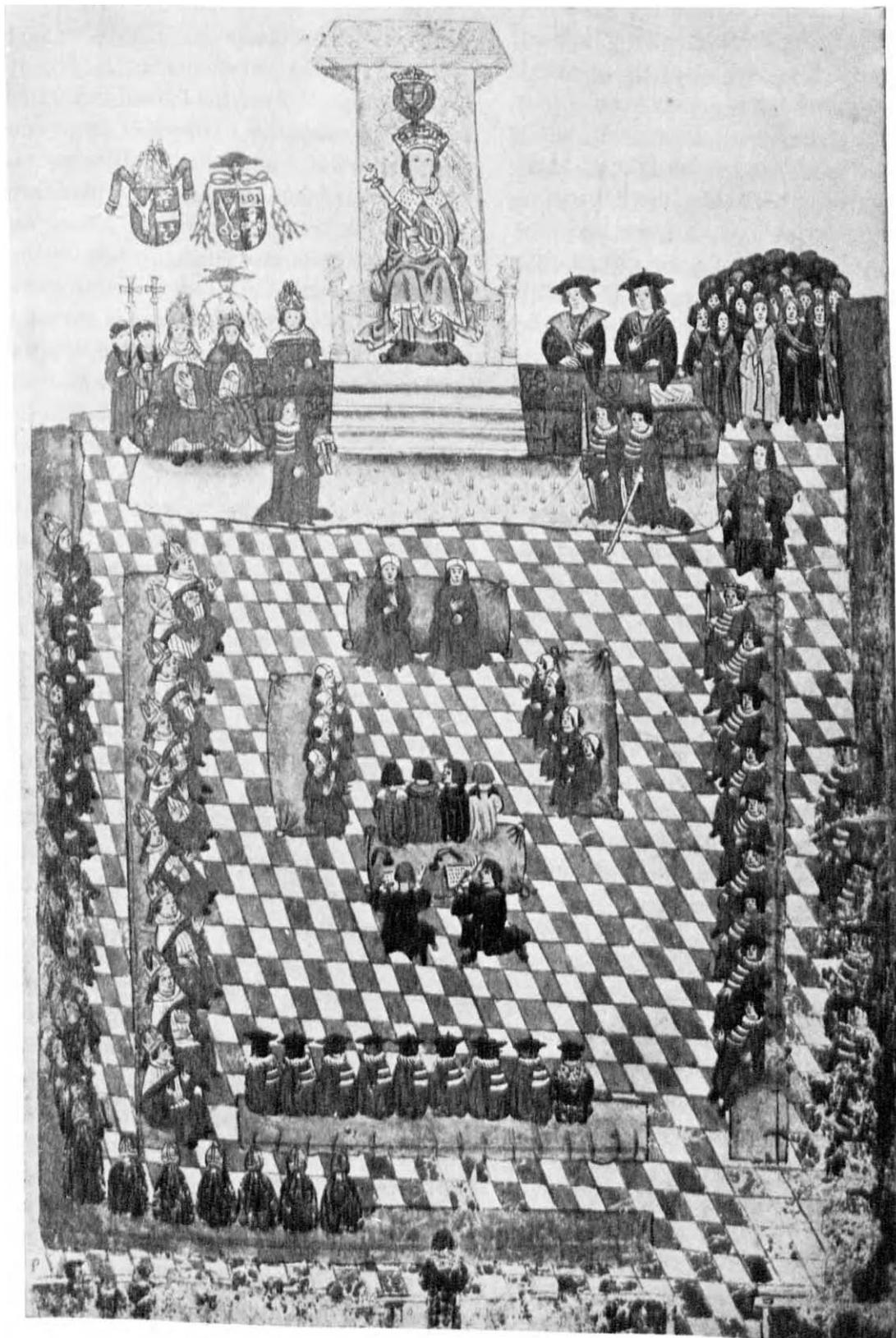
The very rigours of the Commons' predicament proved fruitful in educating them in the language and practice of politics, and thus preparing their incorporation into the political community. In their debates with the Crown they were forced to evolve parliamentary techniques, to achieve a degree of political maturity, and to develop a corporate political identity. Moreover because parliament adjudicated the common profit of the realm not merely in terms of the common peril which it was obliged to meet, but of the common welfare of subjects which the king was obliged to promote, the dialogue over taxation gradually extended to a critical concern with many other aspects of government. The power of the Commons to grant taxation from their communities for the needs of the realm came to be paralleled by their duty to present the ills of their constituents and of the realm at large. The Crown became the symbol of the realm but parliament became the most authentic voice for its common concerns.

But to fully understand the political development of the Commons in this period we must remove our gaze from the parliamentary scene and briefly take note of three external forces which contributed to this. First there is what we may conveniently call the Lancastrian critique of royal government, particularly during the period from the Remonstrances to the Ordinances. However opportunist the purposes of the magnates were, their appeal to the burdens and grievances of the realm to attest royal misrule and justify the imposition of baronial restraints on royal power was a powerful stimulus to the political

awareness of the Commons. They were made partners and heirs of the tradition of constitutional opposition to the Crown in its more radical manifestation. The effect was visible in the Commons' petitions of 1340 where the programme of the Ordinances provided them with their own remedies for royal abuses. But we should also not forget that it was because Edward III succeeded in dissolving this tradition of baronial appeal to popular grievance that the Commons were themselves encouraged to emerge as its political representatives.

Secondly we must take account of the relations of the parliamentary classes with both the king and the magnates in war itself. As companions in arms, respected for their proved abilities to lead and fight in the contract companies, the shire gentry were more readily embraced by their political and social superiors in the work of parliament.

Although during the half century after 1297 both these factors were slowly modifying the relations between the traditional leaders of society and the shire gentry, in the sphere of parliament they were largely held in check by the demands of war. Feudal war was aristocratic in purpose and outlook, and even while it was acquiring a national dimension king and Lords were intent on exploiting the Commons for their military ambitions. The Commons in turn still saw parliament as the instrument of the Crown and magnates, in which their role was to protect the community of the shire, including the poor, from misgovernment and impoverishment by royal officials. But from the middle of the fourteenth century the relationship between the Crown and the parliamentary Commons subtly changed. The 1350s saw a marked lessening of the Crown's demands, a greater readiness to concede legal safeguards against abuses and to acknowledge the need for parliamentary



The first representation of the English parliament (1523) showing the Commons and their speaker at the House. Wriothesley MS., Windsor Royal Library, Quire P.

assent. This was due partly to the victories of 1346–7, partly to the declining involvement of Edward himself in the war. More immediately it reflected the third of these external factors, the change wrought in society by the Black Death.

The sudden opportunity given to the poorer classes to secure higher wages and personal and tenurial freedom rallied all ranks of landlords to a policy of legislative suppression. Almost overnight the Commons became the allies of the Crown and the Lords and their necessary agents for the enforcement of this policy in the shires. Recruited into the political government of the shires, and increasingly identified with the aims and assumptions of royal government, they began to adopt the proprietary attitude to parliament of the king and the Lords, to see themselves as rulers as well as ruled. Correspondingly, from being protectors of the shire poor against royal demands they became exponents of forms of taxation which would tap the new found prosperity of the lower classes. The first signs of this change of emphasis were the rebate of taxation from the fines under the Statute of Labourers and the concession of fines from felons and fugitives in 1357 “on account of the various adversities which the king knows the middling men of the realm to have long undergone” (Putnam 1908:98–149; 149; *Calendar of fine rolls* 1356–88:44). It bore fruit, as E. B. Fryde has pointed out, in the revolt of 1381 (1970:77–9).

In all these ways the parliamentary Commons and the classes from which they were drawn were becoming part of the ‘establishment’ within the shires and within the nation as a whole. By the second half of the fourteenth century there had formed a political society whose community of interest and common assumptions were to ensure the stability of

English political life until the seventeenth century. Parliament, which served to ritualise the conflicts and attest the unity of this society, had acquired its character and role under the pressure of national war and the consequent disputes over financial obligation.

## Notes

<sup>1</sup> This paper was read at a conference of English and French historians at Bristol in 1973 and draws on the arguments in my book (Harriss 1975).

<sup>2</sup> The effects of these on the peasantry during this period have recently been explored by J. R. Maddicott (1975).

<sup>3</sup> E. B. Fryde (1969:259) assigns this petition to 1337 but I have preferred the dating by Richardson and Sayles.

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