

THE BEST OF THE OLL #42

Sir Edward Coke, “Petition of Right” (1628)
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*“And by other laws of this realm it is provided that ...
your subjects have inherited this freedom, and they
should not be compelled to contribute any tax, tallage,
or aid, or other like charge not set by common
consent in parliament.”*



Sir Edward Coke (1552-1634)

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Editor's Introduction

Sir Edward Coke (pronounced cook) (1552-1634) was a lawyer, Member of Parliament, solicitor general, Speaker of the House of Commons, Attorney General and Chief Justice of the Court of Common Pleas and of the King's Bench. He is considered one of the premier champions of the common law, which he defended against the attempted encroachments of the courts of equity and the royal prerogative of the Stuarts (James I (r. 1603-1625) in particular). Coke is best known for his collection of court cases, known simply as "The Reports", which he published from 1600 onwards, and his analysis of the law in *The Institutes* (1628-34), which helped define the nature of the English common law system. As a member of Parliament he was instrumental in defending liberty of speech, freedom from arrest and harassment by the Crown, and the Petition of Right (1628) which famously limited the power of the Crown to tax without the consent of Parliament.

The Petition of Right (1628) was an act passed by Parliament under Coke's guidance in order to prevent King Charles I from using forced loans to fund his foreign wars. According to Frohnen, "Parliament refuse(d) to grant him increased tax monies and Charles had responded by forcing wealthy subjects to lend money to his government, quartering his troops in private homes, and arbitrarily arresting and imprisoning important figures who publicly opposed his policies. In response, Parliament, led by the famous lawyer Sir Edward Coke, drafted and sent to the king the Petition of Right. In this document, Parliament sets forth its view that long-standing law and custom established its right to consent to all taxes, and the right of the people to be free from arbitrary imprisonment, the forced quartering of soldiers, and martial law during time of peace. In return for Charles's assent to this Petition, Parliament granted him increased subsidies."

The Petition of Right thus became one of the foundation documents of English liberty and became a model for similar legal limits placed on the power of the Crown later in the 17th century and in 18th century America.

“They do therefore most humbly pray your most excellent Majesty that none hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament. And that none be called to make answer, or to take such oath, or to give attendance, or to be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof. And that no free man, in any such manner as is before mentioned, be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come. And that the aforesaid commissions for proceeding by martial law may be revoked and annulled.”

Petition of Right (May 9, 1628)¹

IN CONFERENCE WITH THE LORDS ON MAY
8, 1628. [199]

[Ed.: Presenting the Commons' view to promote
the Petition of Right.]

I pray your Lordships to excuse us, for we have been this day till one of the clock about the great business, and (blessed be God) we have dispatched it in some measure; and before this time we were not able to attend your Lordships, but I hope that this meeting will prove to be a great blessing to us. My Lords, I am commanded from the House of Commons to express the singular care and affection they have of concurrence with your Lordships in these urgent affairs and proceedings in this parliament, both for the good of the commonwealth and principally for his Majesty. And this I must say in this particular: if we had hundreds of tongues we were not able to express that desire which we have of that concurrence with your Lordships; but I will leave that without any further expression.

My Lords, it is evident what necessity there is, both in respect of ourselves and our posterities, to have good success of this business. We have acquainted your Lordships with the reasons and the grounds, and after we had some conference we received from your Lordships five propositions, and it behooves me to give your Lordships some reasons why you have not heard from us before now. For in the meantime, as we were consulting of this weighty business, we have received divers messages from our great sovereign the King, and they consisted of five parts:

First, that his Majesty would maintain all his subjects in the just freedom both of their persons and estates.

Secondly, that he will govern us according to the laws and statutes.

Thirdly, that we shall find much confidence in his royal word, (I pray observe it).

Fourthly, that we shall enjoy all our rights and liberties with as much freedom as ever any subjects have done in former times.

Fifthly, that whether we shall think it fit, either by way of bill or otherwise, to go on in this great business, his Majesty would be pleased to give way to it.

“That we shall enjoy all our rights and liberties with as much freedom as ever any subjects have done in former times.”

These gracious messages did so work upon our affections that we have taken them into deep consideration. My Lords, when we had those messages (I deal plainly, for so I am commanded by the House of Commons), we did consider in what way we might go for our most secure way (nay, yours). We did think it the safest way to go in a parliamentary course, for we have a maxim in our House of Commons, and written on the walls of our House, that old ways are the safest and surest ways.

And at last we fell upon that which we did think (if that your Lordships did consent with us) is the most ancient way of all, and this is, my Lords, via fausta [through love], both to his Majesty, to your Lordships, and to ourselves; for, my Lords, this is the greatest bond that any subject can have in any parliament: verbum regis [word of the King]. This is an high point of honor, but this shall be done by the Lords and Commons assented unto by the King in parliament. This is the greatest obligation of all, and this is for the King's honor and our safety.

Therefore (my Lords), we have drawn a form of a petition, desiring your Lordships to concur with us therein. For we do come with an unanimous consent of all this House of Commons, for there is great reason your Lordships should do so, for your Lordships be involved in the same. Commune periculum requires commune auxilium [Mutual danger (requires) mutual assistance]. And so I have done with the first part. And now I shall be bold to read that which we have so agreed on. I shall desire your Lordships that I may read it, which he did, and is as follows.

¹ *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard (Indianapolis: Liberty Fund, 2003). Vol. 3. Chapter: D. 1628 Petition of Right. <<http://oll.libertyfund.org/title/913/62278>>.

[Ed.: Coke's language following is the Petition of Right, as considered by the Lords and as adopted, modified only by two lines added at the Lords' behest on May 11 and 20. The final petition was adopted on June 2.]

To the King's most excellent Majesty:

Humbly show unto our Sovereign Lord the King, the Lords spiritual and temporal, and Commons in this present parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward the first, commonly called Statutum de Tallagio Non Concedendo, that no tallage or aid should be laid or levied by the King or his heirs in this realm without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the free men of the commonalty of this realm, and by an authority of parliament held in the XXVth year of the reign of King Edward the Third, it is declared and enacted that from thenceforth no person should be compelled to make any loans to the King against his will, because such loans were against reason and the franchises of the land. And by other laws of this realm it is provided that none shall be charged by any charge or imposition called a benevolence, or by such like charge; by which the statutes beforementioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, and they should not be compelled to contribute any tax, tallage, or aid, or other like charge not set by common consent in parliament. Yet, nevertheless, of late divers commissions directed to several commissioners in several counties, with instructions, have issued; by pretext whereof your people have been in divers places assembled and required to lend certain sums of money to your Majesty. And many of them, upon their refusal so to do, have had an unlawful oath administered unto them, and have been constrained to become bound to make appearance and to give attendance before your Privy Council, and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace, and others by command and direction from your Majesty,

or your Privy Council, against the laws and free customs of the realm.

And where also by the statute called the Great Charter of the Liberties of England, it is declared and enacted that no free man may be taken or imprisoned, or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land; and in the 28th year of the reign of King Edward the Third it was declared and enacted by authority of parliament that no man, of what state or condition that he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited, nor put to death without being brought to answer by due process of law.

“no free man may be taken or imprisoned, or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land”

Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of the realm to that end provided, divers of your subjects have been of late imprisoned without any cause shown, and when for their deliverance they were brought before your justices by your Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons without being charged with anything to which they might make answer according to the law.

And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people; and whereas also by

authority of parliament, in the 25th year of the reign of King Edward the Third, it is declared and enacted that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the said realm, or by acts of parliament; and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless, of late time divers commissions under your Majesty's Great Seal have issued forth by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners or other dissolute persons joining with them as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to, have been judged and executed.

And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the said laws and statutes upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

They do therefore most humbly pray your most excellent Majesty that none hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament. And that none be called to make answer, or to take such oath, or to give attendance, or to be

confined, or otherwise molested or disquieted concerning the same, or for refusal thereof. And that no free man, in any such manner as is before mentioned, be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come. And that the aforesaid commissions for proceeding by martial law may be revoked and annulled. And that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed, as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land.

“They do therefore most humbly pray your most excellent Majesty that none hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament.”

All which they most humbly pray of your most excellent Majesty as their rights and liberties according to the laws and statutes of this realm. And that your Majesty would also vouchsafe to declare that the awards, doings, and proceedings to the prejudice of your people in any of the premises shall not be drawn hereafter in consequence or example. And that your Majesty will be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty and the prosperity of this kingdom.

Notes

[199] Ed.: Proceedings and Debates, ff. 116v-118v, in CD, 1628, III, 338–41.

Further Information

SOURCE

The edition used for this extract: *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard (Indianapolis: Liberty Fund, 2003). Vol. 3. Chapter: D. 1628 Petition of Right. <oll.libertyfund.org/title/913/62278>.

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FURTHER READING

Other works by Sir Edward Coke (pronounced cook) (1552-1634): <oll.libertyfund.org/person/3894>.

Subject Area: Law <oll.libertyfund.org/collection/50>.

See also: *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002). Chapter: Petition of Right 1628. <oll.libertyfund.org/title/669/206109>.

“The distinctive principle of Western social philosophy is individualism. It aims at the creation of a sphere in which the individual is free to think, to choose, and to act without being restrained by the interference of the social apparatus of coercion and oppression, the State.”
[Ludwig von Mises, “Liberty and Property” (1958)]



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