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COKE, WENTWORTH, AND THE DRAFTING OF THE PETITION OF RIGHT

Thesis

for

Dr. J. R. Rilling

In Partial Fulfillment of the Requirements of the Degree

Bachelor of Arts

University of Richmond

Frances S. Taylor

April 20, 1978
The research is excellent.

Paper is put together mostly for
printing forms — well used.

Paper reveals Warbrick's role as
most significant.

Writing in rough in places — writing

To Bibliography do not assign to date.

Between printing of second edition
for the second printing.

Mrs. Latte to Secretary

Mrs.
In 1628, members of the English Parliament confronted the problem of arbitrary rule by the king, Charles I. Wishing to prevent future royal violations of their fundamental liberties, both houses sought a remedy. Their efforts culminated in the Petition of Right, a statement of the rights of Englishmen under the common law. While many men could be named as contributors to the Petition's success, Sir Edward Coke and Sir Thomas Wentworth, members of the House of Commons, stand out as two of its major architects. Without their contributions, the Petition would have succumbed to outside pressures early in the session. Biographers and contemporary correspondents comment on the tremendous influence both Coke and Wentworth exerted in the 1628 Parliament's writing of the Petition. Yet, in scholarly treatments, little mention is made of Wentworth's contributions while Coke is labeled the father of the Petition of Right. Although this omission may stem from the air of contradiction the facts lend to a discussion of Wentworth's later life, it indicates a failure to include all the information in the history of an important document. Diaries and records of the proceedings of the Commons indicate that, while he served on fewer committees, made fewer speeches, and spoke fewer words than Coke, his participation deserves attention. The purpose of this paper is to discuss the drafting of the Petition of Right with a balanced view of the roles of both Wentworth and Coke.

Coke and Wentworth's influence derived from their reputations established prior to the Parliament of 1628 as opponents of the over-extension of royal authority. As chief justice of the King's Bench under James I,
Coke challenged James' right to interfere in judicial affairs. The Chief Justice asserted that the royal demand for judges' pre-trial opinions and the attempts to delay proceedings in the common law courts were powers not included in his royal prerogative. Coke's attempts to limit royal power conflicted with James' perception of the kingship and resulted in his dismissal from the Bench in 1616. Thomas Wentworth criticized royal policies during his first five years in Parliament; to prevent his disrupting his second Parliament, Charles appointed him sheriff of Yorkshire, a position which prevented his serving in the 1626 Parliament. As sheriff, Wentworth refused to comply with the loan of 1627 and, with Sir John Holton, Sir John Eliot, and Sir William Constable, was imprisoned by the Privy Council until January 1628.

Neither man's political career suffered from these royal power plays. Buckinghamshire elected Coke and Yorkshire returned Wentworth to the Parliament of 1628 reluctantly called by the king to secure funds for the war with Spain. The expense of the war strained the royal treasury which had to finance the purchases of lavish jewels for the queen and for foreign diplomats. To avoid calling a parliament in 1627, Charles followed key ministers' advice and ordered the Lords Lieutenants in each county to collect loans demanded by Privy Seals. Burdened with billeting rowdy, undisciplined soldiers and asked to pay loans not sanctioned by a parliament, people in the counties voiced objection to the conduct of the war and in many cases refused to pay the loan. Failure to comply with the orders of the Lords Lieutenants resulted in impressment for those of the lower sort and in appearances before the Privy Council and imprisonment until compliance for the wealthy. Five knights refused to pay, were imprisoned, obtained a
writ of habeas corpus to discover the cause of their commitment, and were informed that their imprisonment resulted from the king's command. The judges accepted this reason and denied the five bail. This decision suggested arbitrary rule, since with it the king or privy council could imprison without any reason other than the king's command. With the combination of the forced loan, impressment, billeting of soldiers, the pitiful was situation, and this decision, public sentiment was decidedly against the king. 6

It was in this climate that Charles called for parliamentary elections. The constituents in Coke's county expressed their confidence in his ability to devise some remedy. Undoubtedly most members of the Commons received petitions requesting relief from the billeting of soldiers in homes, impressment, and the loan. Yet the Commons opened its discussion of fundamental liberties with the question of arbitrary imprisonment. On March 21, four days after the opening of the session, Sir Edward Coke presented an act stipulating that no man, no matter what the cause or crime, could be imprisoned except by the sentence of a court. A person could not be detained untried for more than two months if he could find bail or three months if he could not. Any abuse of these tenets would result in the person's deliverance and pardon. If passed, this act would eliminate the lengthy and unjust imprisonments of the king's critics and adversaries without trial. While the Commons deferred discussion of the proposal to another day, this speech introduced the central issue on which the Lower House based the Petition of Right. The Commons believed that a man committed without cause should be bailed by the judges. Magna Carta confirmed the claim. The king reasoned that his sovereign power allowed him to arrest without
cause. To assert this signified that Charles believed himself to be above the law. In England, the common law alone was sovereign. The Commons assumed the task of resolving the conflict.

Recognizing that the forced loan weighed heavily on the people of England, Coke addressed this issue the following day. The barrister exhibited his grasp of English law by citing precedents which made Charles' issuing privy seals to obtain money without Parliament's approval illegal. The king's predecessors signed into law three bills which stipulated that forced loans without parliamentary consent were in violation of the common law. Those individuals who refused to pay the loans whether for reasons of poverty or principle acted according to law; the punishments given to them were unjust.

On the same day, Sir Thomas Wentworth blamed Charles' counsellors and not the king for the abuses enumerated by Coke. In Wentworth's cataloguing of remedies to the problems of the government, he laid out the rough foundations for the Petition of Right. The billeting of soldiers, the forced loan, arbitrary imprisonment, and martial law all appeared as problems for which he believed solutions were necessary. Within five days of the opening of this Parliament, the tone was set. The members of the Commons were committed to expressing their displeasure with the king in his violation of their fundamental liberties.

Fully aware that the king wanted them to grant him subsidies immediately, the members of the Commons chose to use his pressing financial needs to achieve their end. This House agreed not to act on subsidies until the king agreed to remove the causes of their grievances. They acted according to custom since the usual practice was for the king to consider grievances prior to his being granted the supply. Coke and Wentworth advised the Commons
to make exception and to consider the king's supply together with a statement of the subjects' liberties. The war situation was indeed critical and a further delay of the subsidy grant would only serve to aggravate conditions. Charles, they feared, might choose even more offensive tactics to secure funds if Parliament failed to grant him the subsidy. After a meeting of the Committee of the Whole, the Commons followed Coke and Wentworth's advice.

The Commons had yet to consider the complaints collectively and, before any action could be taken on the subsidy, the content of the statement of grievances had to be decided. Choosing to remain in the Committee of the Whole to permit freer discourse, the Lower House proceeded with a discussion of the liberty of the person. Coke repeated his sentiments expressed earlier in the session and stressed that not even the king could imprison without a just cause or impress men to go to the Continent to fight. Confinement of a man in a foreign country paralleled confinement in his own home. Clearly against the Magna Carta, these abuses should be included in the list of grievances as a statement that the liberty of the person could not be abused. With this clear statement against the use of the royal prerogative, Coke attempted to clarify the inconsistencies between his present sentiments and those expressed in cases in which he participated as Elizabeth I's Attorney General. Earlier in his career, he adhered to the argument for imprisonment without cause shown and applied these beliefs to his decisions that neither the king nor the Privy Council had to show their reasons for imprisoning subjects. Coke attributed his change of heart to the blatant abuses by Charles I.
plified by the imprisonment of the five knights. Studying the precedents, Coke decided that, if the king's power of commitment was reserved to matters of state which were clearly stated at the time of arrest, the king would be operating within the common law. Yet Charles committed first, and then manufactured reasons of state to satisfy the courts, thus violating the laws of the realm and threatening to create a state of arbitrary rule. The misuse of the royal prerogative frightened Coke and convinced him that its regulation demanded parliamentary action.  

On April 3, the Commons appointed Wentworth and Coke to serve on a select committee to discuss their opinions regarding the three royal irritants: loans without Parliament's approval, arbitrary imprisonment, and the billeting of soldiers in private homes. The select committee was requested to design a method of procedure and to report the results to the full House for approval. Coke emphasized the need to curb the royal prerogative, describing it as a river without which the English could not live but which, when flooded, endangered all. The problem arose when the king assumed his royal prerogative meant supremacy over the common law. In compliance with his own suggestion of grievances accompanying supply, Wentworth implored his colleagues to move slowly in their granting subsidies to the king. While in agreement with the committee's decision to grant the king five subsidies, he rejected arguments that this decision be voted on by the House. A firmer statement of the fundamental liberties of the English had to be prepared before the Commons could present a combination of subsidies with liberties.  

Acting according to instructions, the committee drew up a list of grievances, a remonstrance, which it proposed to present to the king. The list included comments and suggestions made by many members of the committee. The
four heads of the remonstrance were 1) a requirement for the statement of the reason for arrest at the time of arrest; 2) the right of habeas corpus; 3) deliverance or bail if no reason for commitment was stated; and 4) no unparliamentary loans or taxes. The members racked their legal brains to produce respected precedents. They selected the Magna Carta and six statutes from previous reigns. They chose to eliminate the billeting and impressment grievances from their remonstrance, suggesting that a petition concerning these items be drawn up by another committee. The committee recommended that, prior to presenting the list to the king, the Lords be consulted to see if they were interested in being a party to this action. While the Commons and the Lords were not always on the best of terms, the committee believed the Upper House would support their resolutions since the unexplained confinement of one of its members, the Earl of Arundel, and the demands of the forced loan contributed to a growing displeasure with Charles. If the Lords agreed to join the Commons in its remonstrance, the chances of receiving remedies improved, but their support was not essential to its survival as a remonstrance.

The Commons accepted the committee's work and selected Sir Edward Littleton, Sir John Selden, and Sir Edward Coke to represent the Commons at a conference requested by the Lords. Serving as spokesman for the House, Wentworth delivered their instructions. Their duty was to present the liberties and to convince the Lords that a statement of liberties with remedies could only improve the state of the nation. Each delegate received more specific instructions as to his own task. Littleton stressed the background of the common law, expanding upon the statutes the Commons had selected as precedents for its resolutions. Selden emphasized that the liberties discussed by Littleton had been abused and needed to be secured by legal remedies. He focused on the issue of imprisonment without stated cause, presenting speci-
fic cases which strengthened the Commons' argument. Perhaps in an attempt to save the best for last, the Commons chose to have Coke deliver the closing speech. Coke followed his instructions by listing nine reasons for the resolutions' not violating the common law. In fact, they actually attacked something which was in violation of the common law. He appealed to the Lords' anger over the Arundel case in his argument that no one was excluded from the king's misuse of the power of imprisonment. Realizing that all this legal talk might bore the Lords, the aged barrister spoke with what one contemporary called a degree of mirth. A fellow member of Parliament attributed the favorable reception of the resolutions to Coke's manner of presentation. 14

The Commons chose to wait for a response from the Lords before proceeding with the list of grievances. Meanwhile Wentworth directed the members to another matter of concern—the billeting of soldiers in private homes. Viewing this act as a violation of the subjects' right to propriety in their goods, he declared that a petition should be constructed and presented to the king. He voiced the concerns of his fellow Englishmen when he pointed to the increased chance of riots, the pillaging, and the impoverishing of worthy citizens which could and had resulted from the billeting. Coke suggested that the question of the legality of martial law be included in the petition. The king ordered commissions of martial law to punish not only soldiers but also civilians who disturbed the peace. Basing his argument on Magna Carta and numerous precedents, Coke stated that while civil courts remained open civilians were to be tried in them and not in courts established by martial law. To do otherwise would be to violate Magna Carta. A petition was drafted and presented to the king. 15
While the Commons had addressed numerous issues of importance, it had neglected to give adequate consideration to a grant of supply. The House had voted to grant the king the subsidies, but it had yet to set specific times for payment. The king, in a message delivered by Secretary John Coke, expressed his desire that the Commons not recess for Easter unless it agreed to be more definite. Coke exploded with a remark that the king could prorogue but not adjourn a meeting of the Commons.16

The king's threat was ill-timed, considering the climate of opinion, but it worked. On Good Friday, both Wentworth and Coke supported the granting of five subsidies and the naming of specific times for payment. Convincing the Commons that this move would not harm the chances for obtaining a statement of liberties proved difficult. Coke failed to persuade the members; Wentworth tried next. He reaffirmed the connection between grievances and supply and assured them that the action would not jeopardize the bond. Returning to his argument of two weeks earlier, he stressed that a royal affirmation of an agreement to the resolutions would be surer if the king received his money. The Commons accepted his argument and, in a unanimous vote, set a one year period in which the five subsidies had to be paid. Refusing to be more specific, the members stated that no specific times could be set until the House settled the matter of liberties. Thus Wentworth's victory was incomplete. The Commons was more eager to adhere to his arguments presented in the select committee than at the present meeting.17

In theory, the Commons complied with the wishes of the king by placing a one year time period on the payments. Yet the reluctance to set five
specific times left the king in an unstable condition. Charles delivered a message via Secretary Coke expressing his displeasure at the delay. Wentworth responded to what he considered royal interference in the affairs of the Commons. He headed a committee charged with composing an answer to include the reasons for their action. Emphasizing the parliamentary right to handle matters as it desired, the answer, authored by Wentworth, stressed that the Commons had acted contrary to custom in their March agreement to grant the subsidies. Usually grievances received consideration before supply but this Commons sensed the grave economic needs of the king and wished to alleviate his problem. His response was certainly ungrateful. Not to overlook Wentworth's grievance-supply formula, the response attempted to illustrate that the maintenance of fundamental rights benefited the king through allowing his subjects to be freer and stronger to serve the nation.18

The king received both the petition on the billeting of soldiers and the answer to his Saturday speech on Monday the 14th. Wishing to avoid too much conflict, Charles responded with a request that the Commons proceed with its business. He had every intention of upholding and protecting the liberties mentioned in Wentworth's reply.19

Even with this royal assurance, the Commons proceeded with its remon- strance. With the Lords' request for another conference with Coke, Selden, and Littleton, the Commons could truly proceed. Meeting on April 16 and 17, the conference consisted of two days of discussion between the three Commons representatives and Attorney General Heath. Heath, representing the king, made objections to the Commons' list of grievances presented the previous week. Each of the three responded to the objections in attempts to clarify the issues for the Lords. Heath's remarks concerning Coke's speech were numerous. Responding to the charge that the resolutions were incom-
patible with a monarch who must govern by rule of state, Coke stated that a king who governed without law could not possibly have a state over which he could rule since law breeds order without which no government is possible. Employing the dramatic flare which he used to his advantage in the previous joint conference, Coke spoke to each element of the Lords. The temporal lords asked to remember the amount of blood spent by their ancestors in defense of their liberties; the spiritual lords he implored to protect the Magna Carta as had their predecessors; the judges he reminded of oaths they had taken to give sentence according to law which included the Magna Carta and the six statutes on which the Commons' remonstrance based itself. Whether or not this discourse was required in light of the support for the remonstrance already expressed by the Lords' request for another conference is debatable. It illustrated, however, the degree to which this former royal official was committed to a clarification of the extent of royal power and his desire for the Lords to join the Commons in presenting the list to the king.20

Wentworth accompanied Coke to his next meeting with the Lords in which a committee of thirty-six members offered to clarify anything concerning the resolutions for the Lords. The Lords' only reservation came as no surprise. They feared the resolution concerning cause of commitment could threaten the security of the nation. Some royal prerogative was necessary in matters of state where treason and other crimes against the state were involved. While no record of their responses was available to the author, Coke and Wentworth probably reassured the Lords that the resolutions intended to control abuses of fundamental liberties and not to destroy any royal power which respected these liberties. Whatever the ex-
planation, it failed to satisfy the Lords who included a resolution on the use of the royal prerogative in the list they presented to the Commons on April 25. The Upper House's resolutions hinted at those of the Lower in that they stated the freedoms based on the Magna Carta and the six statutes but in vague and general tones. Their fifth resolution was quite specific, however, declaring that the king could imprison without cause for reasons of state and give a specific cause later. This last resolution all but nullified the Commons' resolution by sanctioning this arbitrary use of power.²¹

The Commons realized that, if it wanted the Lords' support in the resolutions, some compromise between the two proposed lists would have to be reached. Yet the members held the Lords' proposals in ridicule. Refusing to compromise, Coke claimed the reason of state clause lamed Magna Carta and wrote a death sentence for the remonstrance. Coke proposed to proceed without the Lords and present their resolutions to the king. Wentworth suggested that they ignore the fifth resolution and draft a bill which, if agreed to by Charles, would guarantee justice if liberties were abused. With this idea, he must have assumed that the Lords would eventually agree to drop the provision for the royal prerogative since a bill required both houses' consent. To ensure the Lords' support, Wentworth advocated another meeting with the Lords.²²

At Wentworth's suggestion, the Commons named a committee composed of all the House lawyers to draw up a bill encompassing all four of the resolutions as well as other liberties which they felt should be included. The committee turned to a discussion of how the liberties were to be enforced.
Remedies for abuses of the liberties had to be devised. A major problem arose when the committee began to suggest ways of enforcing the first resolution on arbitrary imprisonment. The prime offenders were the privy counsellors and the king himself. No matter what penalty the Commons came up with, the king could pardon the offender. This question of enforcement divided the once united Commons into two camps led by Coke and Wentworth. Coke desired to proceed as planned without regard to the problem of enforcement. Wentworth took the more realistic stance. He saw no reason for the committee to suggest a bill which could not be enforced. His solution was to modify the first head by shifting the emphasis to the time of deliverance of the writ of habeas corpus. A person would be bailed if habeas corpus was brought and no sufficient cause was shown. If the person was not bailed, the judges would be at fault. Their offenses would be within reach of the Commons' punitive powers. Wentworth sacrificed principle for political expediency. His proposals would have weakened the resolution against arbitrary imprisonment and thus the entire bill. In essence, his suggestion would do as much harm as the Lords' fifth resolution.

Coke, in his infinite wisdom, attempted to bridge the gap between the two camps. He suggested that the lawyers proceed with a declaratory law instead of the private bill. Enforcement was vital to the integrity of their liberties; the question was what would be the most effective method of enforcement. A private bill focused on the individual offenders, while a declaratory law was not put into operation against individuals but was recognized by judges as a judicial decision. This distinction was reason enough to convince Coke to support the
declaratory law. While some offenders might escape punishment, their offenses would be declared illegal and justice served. Wentworth finally agreed that this was indeed the surer method of enforcing their liberties. In a speech delivered to the full House later in the week, Wentworth illustrated that his commitment to the statement of cause at the time of commitment was a genuine one. This supports the conclusion that his sentiments expressed in the committee were merely to expedite matters at hand. 24

Proceeding with a discussion of the content of the bill, Coke requested the committee to include all the laws regarding the issue of liberty in support of goods, person, and the billeting of soldiers. The committee followed his suggestions and presented its draft of the bill to the Commons on April 29. Surprisingly, some members raised the question of the restraints placed upon the king by the cause of commitment clause under the heading of the liberty of person. Coke reacted to this with the same passion with which he greeted the Lords' fifth resolution. Stressing that any modification of the provision would encourage flagrant royal abuses, Coke asked the House to stand fast on this resolution. The Commons honored his request. 25

On May 1, the king sent a message to the Commons desiring to know if the House accepted his royal promises for upholding the liberties. Since the House had entangled the granting of subsidies with the assurance of liberties, the king encouraged a speedy completion of the deliberations. He had hoped that the promises would be sufficient. Pressing state matters forced him to suggest that the session would soon draw to a close. If
the Commons chose to proceed with a bill, he would consider it only if it contained no explanations. 26

Faced with choosing between a bill or the king's promises to assure the liberties, the Commons opted for the former. Coke and Wentworth worked to convince those members who listened attentively to Secretary Coke's opposite opinion that the bill offered the only assurance of retaining the liberties' integrity in subsequent generations. Always the legalist, Coke explained that, no matter how much they trusted the king, verbal responses and assurances were unacceptable under the law. Wentworth authored the Commons' response to Charles' inquiry. He expressed the Commons' appreciation for and trust in the king, yet, as members of Parliament, they were entrusted with ensuring the preservation of like goodness in later kings. The sole way of fulfilling their duty lay in the use of a bill. Any other form would endanger the balance existing between the king and the people. The Commons wished to preserve the integrity of both the liberties and the throne. 27

While the Commons recognized that the liberties had to be agreed to by the king in a parliamentary way, the members also realized that the king had thrown a curve into their proceeding with a bill. Their resolutions required explanation; the king had forbidden any bills with explanation, thus preventing them from obtaining the most powerful form. To revert back to a list of remonstrances would be to sacrifice vital explanation. Some way had to be found to retain the explanation without openly violating the king's command. Adopting a suggestion made by a fellow member of the Commons, Coke proposed a petition of right in lieu
of a bill. This idea sparked heated debate which the Speaker referred to
the Committee of the Whole.28

As expected by the conviction with which he had spoken earlier
concerning the merits of a bill over the king's promises, convincing Went-
worth to agree to a petition of right proved a difficult task. His
support was vital; without it the form would probably succeed yet the
absence of his backing would rob it of its impact as a petition from a
united Commons. Coke and his followers turned to Wentworth's own reasona
for wanting a bill and illustrated that with the king's restrictions on
what the bill could say the bill lost its effectiveness. The king pro-
hibited any bill which consisted of more that a bare confirmation of
the liberties. The Commons recognized that explanation of their resolu-
tions was of paramount importance if further abuses were to be curtailed.
If no explanation could be included, the chance of enforcement decreased.
With a petition all the explanation they wanted could be included and
because of the nature of the petition, the king had to give some type of
answer to a meeting of the full House. Coke pointed out as the legal
spokesman that in presenting a petition of right the Commons was en-
titled to succeed if they could present a sound legal claim. Coke could
think of no better claim than that the Magna Carta and six statutes of
the realm had been violated. In response to Wentworth's assertion that
a petition was a weak form, Coke commented that to proceed with a bill
would be an even weaker way since the king had emasculated it with
his stipulations. A petition of right would have the same force as a
bill since it, like a private bill, would become a statute and be en-
forced if the king consented to it. Coke's efforts were rewarded with
Wentworth's finally agreeing to abandon a bill and proceed with the
drafting of a petition of right. He supported Coke's suggestion that
the Lords be asked to join with the Commons in its formulation and presenting it to the king. The Lords' approval would strengthen the
petition if for some reason the king denied to grant them their wishes.
Coke produced a precedent that whatever the two houses agreed upon
no judge would violate.29

With both Coke and Wentworth behind the petition, work proceeded on securing the Lords' approval. The Commons remained adamantly
against allowing the royal prerogative for matters of state to be included. The petition which the Lower House presented to the Upper on
May 8 included the resolutions on the freedom of persons, the propriety
of goods, and the billeting of soldiers as well as a statement against
martial law. The possibility of this addition had been discussed
earlier in the session but usually at times when Coke and Wentworth were
in session with select subcommittees or in conference with the Lords.
They expressed their opinions at other times; Coke spoke for them both
when he stated that though the king had the right to declare martial law
he could only do so under severe circumstances. Since he had ordered
martial law to be enforced by special commissions in various areas and
the justification was weak, it was apparent to Coke that abuses jeop-
ardizing civilians could occur. With this in mind, Coke supported the
addition of this resolution to the petition. Wentworth wished to include
a statement that the king's officers and ministers must serve according to
the laws and statutes of the realm. With this Wentworth attempted to add meat to what he considered an unusual way of securing liberties.

As expected the meeting with the Lords produced the problem of a solution to the question of the cause of commitment. Having been approached by the king with a statement that he could not afford to relinquish the royal prerogative, the Lords were reluctant to join with the Commons in anything which limited it. This, Coke argued, could be the decisive factor in whether or not they succeeded with their petition. Wentworth stood firm against the inclusion of any such provision. Although the Commons chose to ignore the king's letter since it was addressed to the Lords, Wentworth agreed to a statement in which they assured the king that they were not usurping his right to use his legal powers in just ways. The Lords considered the king's wishes; on May 17, they met with a committee of the Commons of which Wentworth and Coke were members. The Upper House indicated their support for the draft of the petition presented by the Commons and chose not to alter the narrative or the conclusion. They only desired to have these words added: "We present this our humble petition unto your majesty not only with great care to preserve our own liberties, but with regard to leave entire that sovereign power wherein your majesty is trusted for the protection, safety, and happiness of your people."

While the Commons welcomed the Lords' support on the rest of the petition, they could never accept these words assuring the king that his sovereign power would remain intact. A committee took charge of attempting to settle the differences. With people such as Coke and Wentworth on the committee, compromise over this issue seemed impossible.
To include an assurance that sovereign power would remain intact defeated the purpose of the petition. Coke commented that, after many hours of studying the laws, he found that no such thing as sovereign power was protected or, for that matter, existed in the common law. As Englishmen, they must abide by the law. To protect an unlawful power in their petition would be a contradiction and would destroy its purpose. Some members of the Commons suggested that they proceed without the Lords. Both Coke and Wentworth rejected this idea since the petition required the support of both houses to have any real strength. In a conciliatory speech to the Upper House, Wentworth petitioned them to reconsider and agree to the Commons' petition. Their support gave it its life, being, and season. With a declaration from both houses, the king would have to weigh it heavily, but from one house, he would be in a better position of reject it. Wentworth assured the Lords that the Commons advocated changing nothing; they only wished to preserve their liberties. In rejecting the Lords' statement of sovereign power, the Commons was not supporting the destruction of the monarchy. They were merely supporting the supremacy of the common law. On this issue, they refused to compromise. Any evidence that the Commons was willing to compromise on this issue would jeopardize the petition's credibility. Wentworth's role in this discussion was crucial to the success of the petition. While remaining firm and indicating that the Commons would rather proceed without the Lords than agree to the Lords' clause on sovereign power, Wentworth obtained the results for which he had hoped.
On May 25, the Lords met with the Commons' committee and agreed to drop their proposed addition. In a unanimous vote, they voted to join the Commons in a petition composed of the four heads suggested by the Commons. The next decision to be made concerned the manner in which the petition should be delivered to the king and the form in which he should give answer. Since the use of petitions for this purpose was uncommon, the conference searched for precedents. Coke found that no prescribed form of assent existed for a public petition of right; therefore he suggested that the Parliament present the petition as a private one for which a regular form of assent existed. Since Edward I's day, the king had to address private petitions and give his answer before the Parliament. Wentworth suggested that perhaps this was not the way to go about it at all. He advocated a return to the bill if the petition could not achieve the force of law that was vital to the petition's success as a statement and enforcer of freedoms. With a petition, he argued, the initiative lay with the crown. The king would promise to re­dress the grievances but he was bound by no more than his conscience.

By this time, Coke was probably rather tired of Wentworth's reservations. Yet he realized the impact the Wentworth's thoughts had on many in the Commons so he worked to win Wentworth's support once again. Coke reminded Wentworth that the king had forbidden them to draft a bill that was anything more than a confirmation of liberties. Anyway, to proceed with a bill would mean that the answer could not come until the end of the session. If the king failed to give a sufficient answer, no retaliation could be taken until the next session. This last argument convinced
Wentworth who joined the Commons in a unanimous vote for the petition to go to the Lords for final approval. On May 26, Secretary Coke delivered the petition of right to Charles. No preface accompanied the petition other than the statement that the petition was conferred upon the king by the command of the Lords and Commons and that a response according to custom was requested. The traditional response to a private petition, "Soit droit fait comme il est désiré" signified that the king consented to a redress of the grievances from his courts. In order to abide by these instructions, the King had to deliver his answer not from his palace at Whitehall but before a full session of Parliament.

The members of both houses anticipated a speedy and favorable answer since they had, in setting times for the payment of the subsidies, stipulated that the payments were conditional upon the granting of the petition. With the war situation in a more serious state than before, the Parliament felt reasonably certain that the king would act favorably toward their petition. Following a royal message that the king desired to receive both houses, the Parliament met with the king on June 2 and received what was to be the first of two answers to the petition. His answer, delivered following the reading of the petition, surprised the members. The king gave a vague answer, not the traditional one, which failed even to mention the petition. The answer was little better than the one he had sent the Commons in April in which he promised to protect their liberties. He asked for their trust and called the meeting to a close.
The Commons was enraged. The king knew quite well that the granting of subsidies depended on his responding in a positive manner to the petition, yet he refused to do so. This blatant disregard for the subjects' liberties was the final straw. Coke pointed out that the king had not worn his robes to the session with Parliament and therefore had failed to comply with one of the stipulations of a petition, that the answer had to be delivered in a parliamentary way. Thus, on a technicality, the Parliament could request that the king deliver his response again in the proper manner. To encourage a more satisfactory answer the second time around, the Commons agreed to grant the subsidies with five specific times of payment. The Lower House also appointed a committee to follow Sir John Eliot's suggestion that a remonstrance against the Duke of Buckingham, Charles' major advisor, be composed. While Frances Relf argues that this remonstrance would have been called for despite the unsatisfactory answer by the king, it served as a marvelous weapon against the man whom the Commons blamed for the king's response. Embarking on this course indicated desperation on the Commons' part. The king had strictly forbidden this Parliament from taking any action or speaking against any of his ministers during the session. If such action was taken, the session would be ended. For the Commons to proceed with a condemnation of Buckingham signifies that the members felt that by this point they had little to lose.

Coke endorsed Eliot's suggestion, adding that it was only right that, in this time of peril and threats from the Spanish, the Commons should seek
refuge and solace in the king and request that Buckingham be removed on the charge of government mismanagement. The discussion concerning the remonstrance illustrates that this was probably what the members had wanted to do since the opening day. To them Buckingham resembled all that was evil in the problems of the monarchy and was the driving force behind the numerous abuses which had occurred. If they had not been forbidden to discuss the ministers, they would have probably chosen to use attacks on them as a means of gaining assurances of liberties. Now, since the weapon they had selected, the withholding of subsidies, had apparently failed, the members struck at what they considered to be the real problem. 39

The anticipated response from the king came quickly. On June 3, he informed the Commons that he would end the session in a week. His answer of the 2nd had been sufficient and he had no intention of altering it. Requesting that no new business be conducted, he assured them that additional grievances, i.e. the ministers' actions, would be considered at the next session. The king intended for the message to stop the remonstrance but the scheme failed. A second message was delivered the next day, indicated sheer rage on Charles' part. He warned them not to do anything to bring scandal to the state or to any of his ministers. While Charles' intention was to stop the remonstrance, he overestimated his influence over the proceedings. Both Coke and Wentworth joined the Commons in expressing outrage at the royal threat. His message could be interpreted as just another in a long list of absolutist tendencies. Coke illustrated to the Commons that the king violated freedom of speech
in Parliament by preventing discussion of matters which the Commons chose
to discuss. The king realized his mistake and sent a supplementary
message declaring that his intention had not been to stifle the
House's freedoms but to prevent scandal during a time of national peril.

No record of the Lords' responses to these messages were available
to the author yet it can be assumed that they were also upset with
the June 2 response. They requested the Commons to join with them in
petitioning the king for another answer to the petition. After some dis-
cussion as to whether or not the king would give a more satisfactory
answer, the Commons voted to join the Lords in a request for another
meeting with the king in which he would deliver a second response to their
petition. This time the deliverance would have to be conducted in a
parliamentary way.

Whether the king feared for Buckingham's neck or for his own finan-
cial wellbeing is debatable, but whatever the reason Charles decided to
deliver a second response to the petition on June 7. As before the
petition was read. His remarks were brief. Stating that he believed
he had already given sufficient answer to the petition but was willing
to comply with the Parliament's request for a second answer, he read
the traditional response, "Soit droit fait comme il est désiré."
The meeting was adjourned, Coke expressed extreme delight, and the
city of London rejoiced.

The Petition of Right was ordered enrolled in all the courts of
justice and henceforth stood as a statute of the realm. While Coke and
Wentworth remained involved in the re-naming of the Petition and its
enrollment on the parliamentary rolls, they had already made their major contributions to the 1628 Parliament. Now that the list of grievances which they had formulated in March was a statute of the realm, the chances of their constituents and subsequent generations' being assured their fundamental liberties were infinitely better than when the session opened. 43

After examining the proceedings of the House of Commons during the period in which the Petition of Right was conceived and reached maturity, the author understands how Sir Edward Coke came to be so closely associated with the document. His membership on numerous conference committees which met with the Lords, his finding precedents to legitimize claims, and the zeal with which he worked to obtain a lawful response indicate that his participation in the drafting was essential to the Petition. What is more difficult to understand is the lack of attention placed on the contributions of Sir Thomas Wentworth. If importance is to be measured in the number of speeches delivered, in the number of personal suggestions which made it into the final document, and in never having any doubts as to the correct way of proceeding, then Wentworth would failed to be recognized as an important figure in the drafting of the Petition of Right. His contributions are of a somewhat different nature. Sometimes he preferred to remain on familiar ground and not embark on a novel venture which could prove to be disastrous to the Commons' goals. This tendency indicates that he wanted to ensure the acceptance of statements of liberties whose protection would be guaranteed. His first consideration was always whether or not the issue at hand would allow for the success-
ful attainment of a royal guarantee.

A full appreciation for the amount of work which went into the Petition of Right can only be obtained through a study of the roles of both Wentworth and Coke. To consider the steps taken by one without looking at those taken by the other ignores vital stages in the drafting of one of the greatest affirmations of liberties in law.
ENDNOTES


6 Catherine Bowen, The Lion and the Throne: The Life and Times of Sir

7 Calendar, 2: 132, 24 October 1627; Johnson, Commons Debates, 2: 17 March - 19 April 1628, pp. 45, 47, 49; to J. Mead, 21 March 1627/28, in Birch, Court and Times, p. 332; Frances H. Relf, The Petition of Right (Minneapolis: University of Michigan, 1917), p. 11.

8 Johnson, Commons Debates, 2: 64.


10 Johnson, Commons Debates, 2: 84, 97.


14 Johnson, Commons Debates, 2: 327, 328, 343, 356; Sir Francis
Nethersole to Elizabeth, Queen of Bohemia, 14 April 1628, Harleian MSS, transcript located at the Yale Center for Parliamentary History, henceforth YCPH.


16 Ibid., p. 277.

17 Johnson, Commons Debates, 2: 413, 415; Cobbett, Parliamentary History, 2: 278; Nethersole to Elizabeth, 14 April 1628, Harleian MSS; Mead to Stuteville, 12 April 1628, in Birch, Court and Times, p. 337.

18 Christopher Lewkenor to the Earl of Northumberland, 23 April 1628, Duke of Northumberland MSS, transcript located at YCPH; Cobbett, Parliamentary History, 2: 279, 280; Johnson, Commons Debates, 2: 413, 415, 437.

19 Ibid., p. 437; _____ to Mead, 18 April 1628, in Birch, Court and Times, p. 342.

20 Johnson, Commons Debates, 2: 479, 490, 532, 534; Lewkenor to Northumberland, 23 April 1628, Duke of Northumberland MSS; _____ to Mead, 18 April 1628, in Birch, Court and Times, p. 342.

21 Johnson, Commons Debates, 3: 21 April - 27 May 1628, pp. 43, 45, 47.
22 Ibid., pp. 74, 94, 95, 96; Relf, *Petition of Right*, pp. 27, 28.


24 Relf, *Petition of Right*, pp. 33, 34.


29 Ibid.

30 Ibid., p. 24; Mead to Stuteville, 17 May 1628, in Birch, *Court and Times*, p. 354.

31 Mead to Stuteville, 27 May 1628, in Birch, *Court and Times*, pp. 357, 358.

32 *Diary of Public Events*, part 2: 29 April-23 June, transcript located at YCPH.

33 Johnson, *Commons Debates*, 3: 475, 535, 547; Mead to Stuteville,
27 May 1628, in Birch, Court and Times, p. 358; Wentworth to _______,

34 Mead to Stuteville, 31 May 1628, in Birch, Court and Times, p. 358; Holdsworth, English Law, 9: 22,23; Tanner, Constitutional Conflicts, pp. 63, 64, 71; Relf, Petition of Right, p. 42.

35 Johnson, Commons Debates, 3: 628.


38 Cole, Commons Debates, 4: 67; Calendar, 3: 152; Bowen, The Lion, p. 497; Relf, Petition of Right, chp. 4.

39 Cole, Commons Debates, 4: 70,90,129,130, 138; Relf, Petition of Right, chp. 4.

40 Ibid., 177, 181; Mead to Stuteville, 15 June 1628, in Birch, Court and Times, p. 361; Relf, Petition of Right, p. 54.
42 Cole, 4: 182.

43 Ibid., 280, 390.
LIST OF WORKS CONSULTED

I. PRIMARY SOURCES

Diary of Public Events. Part 2: 29 April-23 June. Transcript located at the Yale Center for Parliamentary History (to be cited henceforth as YCPH).

New Haven, Conn. YCPH. Diary of Henry Sherfield, Proceedings in the House of Commons, 1628. Transcript located at the YCPH.

The author discussed the events in legal terms. This, combined with the fact that so many of the words were "illegible", made the work of little use to this author.

______. Duke of Northumberland MSS. Transcript located at the YCPH.

This collection contained the Lewkenor Newsletter which provided valuable insights into the reactions to the events in the Parliament.

______. Harleian MSS. Transcript located at the YCPH.

This collection contained the letters of Sir Francis Nethersole to Elizabeth, Queen of Bohemia and King Charles' sister. Nethersole, a member of the Commons, wrote detailed accounts of each week's transactions and made personal comments about many of the men involved in the drafting of the Petition.

______. Henry Elsynges Collection of Notes on the Petition of Right. Transcript located at YCPH.

This document is of a too legal nature to be of any service to this author.

______. Notes by John Selden on the Drafting of the Petition of
Right. Transcript located at the YCPH.

This document was too legal to be of any use to this author.

Sir Thomas Puckering to J. Beaulieu Letters, 1628. Transcript located at the YCPH.

II. SECONDARY SOURCES


A discussion of Charles I's request for supply. Helpful if only for its illustrating that Charles' financial needs were acute prior to the forced loan.


The Mead-Stuteville letters proved to be the most valuable in obtaining insight into outsiders' views of the proceedings.


Extremely pro-Coke with an excellent bibliography.


Relates story of Coke v. Francis Bacon. Interesting story but of no use to the paper.


Gives summary of history of petitions of right during the thirteenth, fourteenth, and fifteenth centuries.


Provided valuable information on the use of privy seals.


Gives a detailed but biased account of Sir Coke's life.


Provided an excellent background for deeper study of the Petition.


Points out what a fine man Coke was but contributed nothing to this paper.

*** See page 39.
Great Britain. Public Record Office. Calendar of State Papers, Domestic, of the Reign of Charles I, vols 1, 2, 3 (1625-1628).


Comments based on a study of several of the diaries in the YCPH collection. Excellent bibliographical source.


Invaluable source. Contains the Journal of the House of Commons, 1628; Proceedings and Debates in the House of Commons, 17 March-27 May 1628; the Harleian MSS; the Narrative Account of Proceedings in the House of Commons, 1628; Notes of Sir Edward Nicholas for 1628; the Parliamentary Diary of Sir Richard Grosvenor, Proceedings in the House of Commons, 18 April-27 May 1628; the Parliamentary Diary of


With no footnotes and no bibliography, this work was of little use.


Coke's role in the development of the courts and Parliament.


Only minor references providing very little insight.


Thorough examination of the document with detailed accounts of the different stages of its development.


This volume was made available to the author by the YCPH staff. It begins where the third volume stopped and contains the completion of the diaries and notes cited in the earlier reference. It also includes the Parliamentary Diary of Sir John Lowther, Proceedings in the House of Commons, 4-26 June 1628 and Parliamentary Notes of Sir Nathaniel Rich Touching the Proceedings in the House of Commons, 6-11 June 1628.