The House of Lords and the Godolphin Ministry 1702-1710

by

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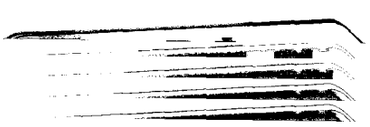
Abstract of The House of Lords and the Godolphin Ministry 1702-1710, a thesis submitted for the degree of D.Phil. by Shin Matsuzono. September 1990.

This study considers the procedures of the House of Lords in the early eighteenth century (Part One). It also elucidates how Lord Treasurer Godolphin managed the upper House (Part Two).

Chapter one deals with ceremonial business and the proceedings of political significance which were neither legislative nor judicial. Above all it analyses how Godolphin co-operated with the leading politicians and wrote the Queen's speeches. He also tried to control the process through which the address to the Queen was made. However because of party strife he could not achieve his desired end. This chapter also surveys divisions, proxies and the Lords' protests. Party leaders thought much of these matters, especially protests which were often used by the High Tories as a means to criticise government policies.

Chapter two treats the legislative business of the House. Leading peers, especially the Junto lords, fully made use of the procedures to turn proceedings to their advantage. Select committees also became arenas of party politics.



Chapter three discusses 'political' trials. An analysis is made of how the High Tories used these cases to attack the government.

Chapter four discusses relations between the Lords and the Commons. Above all it deals with the controversial matter of the superiority of the Commons over money bills, and makes it clear that disputes over this did not come to an end in the first parliament of Queen Anne, but continued until the end of the 1706/7 session.

Chapter five investigates the proposition that patronage was the most important resource for the Lord Treasurer to control the behaviour of the peers in the House. When he distributed patronage, Godolphin constantly adopted a divide et impera policy.

Chapter six considers how skilfully the Lord Treasurer managed debates in the Lords. It makes clear that he was expert in avoiding divisions and remodelling motions to his advantage.

Chapter seven deals with the first two elections of the Scottish representative peers. It considers the political struggle between the Lord Treasurer, who hoped to fill the sixteen with the Court candidates, and the Junto lords and the Squadrone Volante.

The conclusion assesses Godolphin's achievement in managing the upper House. Until the final session of his ministry, he generally succeeded in keeping control of it.

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Preface

It was more than sixty years ago that Professor A.S.Turberville made an analysis of the procedures and politics of the eighteenth-century House of Lords.[1] He allotted chapter I to the "Procedure, Rights, and Privileges" of the House, and in chapter II and III, he described the politics of the upper House from 1702 to 1710, and in chapter V, he considered the Scottish representative peers who attended the Lords after the Union in 1707.

Turberville's pioneering study still has some value. But it has been often pointed out that he "worked in a period when access to the essential records was difficult."[2] When he studied the House of Lords in the early eighteenth century, the MS. sources which he consulted were no more than some Additional MSS. in the British Museum. This unsatisfactory situation has been remedied since the World War II. The House of Lords Record Office, which was established in 1946, keeps the Main Papers of the Lords, the MS. minutes of the House and committees, proxy books and some precedent books, which are extensively used in Part One of this thesis. Private papers of the peers, which have been deposited in

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1. A.S.Turberville, The House of Lords in the XVIIIth Century, (Oxford, 1927).

2. C.Jones and D.L.Jones ed. Peers, Politics and Power: The House of Lords, 1603-1911, (1986), xiii.

local record offices, are no less important. For example, the Finch MSS. in the Leicestershire Record Office and the Finch-Hatton MSS. in the Northamptonshire Record Office contain many drafts of addresses, speeches and protestations made by the Earl of Nottingham, and these papers show how the High Tory lords understood the procedures of the House and turned the proceedings to their advantage. Through the public and private records, this thesis will elucidate the procedures of the upper House in the years of the Godolphin ministry (1702-1710).

Such modern historians as Geoffrey Holmes, Clyve Jones and J.C.Sainty have shed light upon some aspects of the Earl of Godolphin's management of the House of Lords. However, we still know little about how skilfully Lord Treasurer Godolphin utilised patronage so that he could control the behaviour of the peers, and what kind of tactics he used in the debates of the House. We will consider these matters in Part Two. The years of the Godolphin ministry are also characterised by the first two elections of the Scottish representative peers. In the past twenty years, a great amount of papers of the Scottish peers have been deposited in the National Library of Scotland and the Scottish Record Office, and now we can consider how the Lord Treasurer managed these elections in the last chapter.

To complete this thesis, I am very much indebted to the following libraries, record offices, and owners of

the private papers for allowing me to consult MS. sources in their custody or possession: The Duke of Devonshire (Finch MSS.), the Duke of Northumberland (Alnwick Castle MSS.), the Marquess of Bath (Portland MSS.), the Marquess of Cholmondeley (Walpole papers in Cambridge University Library), the Marquess of Downshire (Trumbull MSS. in Berkshire R.O.), Lady Anne Bentinck (Portland MSS. in the British Library and Nottingham University Library), Sir John Clerk of Penicuik Bt. (Clerk of Penicuik MSS. in Scottish Record Office), Sir David Ogilvy of Inverquharity Bt. (Ogilvy of Inverquharity MSS. in Scottish Record Office), Berkshire R.O., Bodleian Library, Borthwick Institute of Historical Research, York, British Library, Cambridge University Library, Christ Church, Oxford, Greater London R.O., Hertfordshire R.O., House of Lords Record Office, Leeds Archives Office, Leicestershire R.O., National Library of Scotland, Northamptonshire R.O., Nottingham University Library, Public Record Office, Scottish Record Office, and Staffordshire R.O.

Professor G.S.Holmes kindly lent me photocopies of the MS. account of the trial of Dr Henry Sacheverell. I am thankful for his kindness. Dr J.C.R.Childs and Mr Clyve Jones read the draft of this thesis and gave valuable comments. I make a grateful acknowledgement for their help. Finally since I came from Japan three years

ago, my supervisor, Professor Speck has always encouraged me. For his advice , kindnesses and patience I am extremely grateful.

Abbreviations

Add. MSS.	Additional Manuscripts
Bodl.	Bodleian Library, Oxford
BL	British Library
Burnet's History	Bishop Burnet's History of His Own Time, (Oxford, 1833).
CJ	Journals of the House of Commons
Cobbett	Cobbett's Parliamentary History of England, (1806-20).
Cowper's Diary	The Private Diary of William First Earl Cowper, 1705-1714, ed. by E.C.Hawtrey, (Eton, 1833).
CUL	Cambridge University Library
HMC	Historical Manuscripts Commission
HLRO	House of Lords Record Office
Jerviswood Corr.	Correspondence of George Baillie of Jerviswood, (Edinburgh, 1842).
LJ	Journals of the House of Lords
Luttrell	N.Luttrell, A Brief Historical Relation of State Affairs, (Oxford, 1857).
M-G Corr.	The Marlborough-Godolphin Correspondence, ed. by H.L.Snyder, (Oxford, 1975).
Nicolson Diary	The London Diaries of William Nicolson Bishop of Carlisle 1702-1718, (Oxford, 1985), ed. by C.Jones and G.Holmes.

NLS	National Library of Scotland
PRO	Public Record Office
RO	Record Office
S.O.	Standing Order(s) of the House of Lords (HMC, Lords MSS. 1712-1714, 1-27).
SRO	Scottish Record Office
Vernon Corr.	Letters Illustrative of the Reign of William III...addressed to the Duke of Shrewsbury by James Vernon, ed. by G.P.R.James, (1841).

Notes on dates

All dates are given in the Old Style, though assuming the year to begin on 1 January, not on 25 March.

All printed works should be assumed to have been published in London unless otherwise stated.

Part One

The House of Lords

CHAPTER ONE

The Procedures in the House of Lords

This chapter will analyse how the Lords expedited proceedings and how the peers (especially the party leaders) made use of the procedures to their advantage. However, chapter two will consider the procedural matters in relation to the legislative process in the upper House, and chapter three will deal with the judicial proceedings. Consequently, this chapter surveys such procedures in the Lords as the Queen's speech or Lord Chancellor (or Lord Keeper)'s work, which were neither legislative nor judicial functions of the Lords.

First day's work and introducing new lords

Unless an accident prevented the Queen from going to the parliament, when she commissioned some great officers to open the parliament, the Queen herself attended the Lords House on the first day of the session. She was seated on the throne with the royal robes, the crown and the sword of state.[1] The Lord Chancellor (or Lord Keeper) stood "behind the Cloth of Estate" or sat "on the first wool-sack".[2] All the temporal peers wore their robes and sat according to their rank, while the bishops kept their

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1. G.Miege, The New State of England under our present sovereign Queen Anne, (1702), pt.3, 7.

2. E.Chamberlayne, Angliae Notitia: or the Present State of England, (1702), 155.

ordinary "episcopal habit". Judges, Queen's Counsels and the masters of chancery also attended and stood up when the Queen was present. After the Queen permitted them to take their seats, they sat on the woolsacks except for the first one which was reserved for the Speaker of the House. These lawyers had to be uncovered during the ceremony. On the lowest woolsack, the clerk of the crown and the clerk of the parliament took their seats. The former dealt with the writs and pardons, and the latter kept records. The clerk of the parliament had two clerks under him, and they were "kneeling behind the wool-sack" to write the proceedings. The usher of the black rod as a messenger of the House sat without the Bar.[1] In the Lords the Commoners, who attended the upper House to receive the Queen's instruction to choose their Speaker and to acquaint her with their choice, "sit promiscuously, only the Speaker hath a Chair placed in the middle...They never had any robes (as the Lords ever had) but wear every one what he fansieth most, which to strangers seems very unbecoming"[2] to the authority of the parliament.

John Relf, a reading clerk in the Lords gives a description of the first day's work in the early eighteenth century. He recorded that

The first work either at the beginning of a Parliam-

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1. Miege, New State of England, pt.3, 8.

2. E.Chamberlayne, Angliae Notitia, 156.

[en]t or a Session, after the King hath made a Speech to both Houses is to take the Oaths and subscribe the Oath of Abjuracon and Declaracon ag[ain]st Transubstantiacon...[1]

S.O.70 provided that the Lords were to be sworn at the first sitting of the House.[2] To take the oaths seems to have been a matter of form for most of the peers. However, every parliamentary session, the oaths to the crown prevented several Catholic or nonjuring peers from attending the House. Taking the oaths was indispensable not only for sitting in the parliament, but also for enjoying the peer's privileges. Such privileges as refusing the arrest warrant were not allowed to nonjuring lords. This problem happened at the time of the abortive invasion of Scotland by the Jacobite-French fleet in 1708. At that time Lord Langdale, a Jacobite was arrested. He appealed to the Lords for his release. In a letter to Bishop Wake of Lincoln, John Hough, the Bishop of Lichfield and Coventry reported the proceedings of this appeal. Hough told Wake that "Ye last debates in ye house of Lords was occasion'd by a letter from ye L[or]d

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1. HLRO, Parliament Office papers, John Relf (a clerk in the Parliament Office, 1660-1711), MS. Book of Orders, (1710), 45. See also S.O.8-10.

2. However, S.O.70 was not always obeyed by the Lords. In the 1706/7 session, Lord Rochester's select committee for privileges deliberated some 'irregularities in the House'. On 31 March 1707, in the committee report, he told the Lords that they should observe this order. HMC, Lords MSS, 1706-1708, 83; LJ., XVIII, 306.

Langdale complaining of his being taken into custody. 'twas written to ye Duke of Bucks & severall Lords thought his peerage should have protected him, but the majority were of another opinion."[1]

Taking the oaths was followed by the choice of the Speaker by the Commons and the Queen's speech. Relf recorded as follows: "Tho[ugh] the King be present and doth declare the cause of calling the Parliament, yet frequently he refers some thing to be spoken by the L[ord] Chancellor or L[ord] Keeper, who by his Officio is Speaker of the House; he also declares the King's Pleasure that the Commons should resort to their House and choose a Speaker and appoint a time for presenting him to the King."[2] After the Queen's speech and the choice of the Speaker of the Commons, the Queen left the House, and the proceedings of the Lords started. But most of the first day's work was formal. On the opening day of the 1705/6 session, William Nicolson, the Bishop of Carlisle wrote that "her Majesty withdrew; and the Session began with Reading a Bill for the better Maintenance of the Poor, the same (pro formâ) wherewith several former Parliaments

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1. Christ Church, Oxford, Wake MSS. XVII, f.189: Bishop Hough of Lichfield & Coventry to [Bishop Wake of Lincoln], 10 Apr.[1708]; HLRO, Historical Collection, 222 an anonymous precedent book (started in 1709? continued until 1729), 17: privileged persons prosecuted for recusancy; HMC, Lords MSS. 1706-1708, 594; Luttrell, VI, 285-86.

2. HLRO, Relf, Book of Orders, 39.

have been opened. After this, Lord Sommers moved that Committees (as usual) might be appointed for Privileges, Inspection of the Journals, &c. and particularly, that the ancient Custome of nameing Tryers of Petitions might be revived. All which was assented to." After that, the Lords appointed the committee to draft the Address to offer thanks for her Majesty's speech, and the House was adjourned.[1]

As the political significances of creating peers will be considered in chapter five,[2] in the following analysis, only the ceremonial aspects of the introduction of newly created peers (or the promotion of the peers to higher ranks) are dealt with. This ceremony was no less solemn than the opening of the parliament. Usually one of the early days of the session was chosen for it. John Relf gave a precedent:

> A B esq being by Letters Patent dated 2d June last created Earle of C was in his Robes introduced between D Earle of E and F Earle of G also in their Robes. and pr[e]ceded by the Gent[leman] Usher of the Black Rod, Garter King at Arms, the L[or]d Great Chamberlaine of Engl[an]d and the E[arl] Marshal of Engl[an]d in their Robes, his Lo[rdshi]pp presented his Patent to the Speaker on his knee at the Woolsack who delivered it

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1. Nicolson Diary, 294. See also Cowper's Diary, 7.

2. See chapter five 209-12.

> to the Clerk, and being read at the Table, as also his Writt of Sum[m]ons, his Lo[rdshi]pp took the oaths... pursuant to the Statutes and was accordingly placed on the Earle's Bench.[1]

On 17 December 1702, Bishop Nicolson observed the introduction of Marlborough, who had been promoted to a duke. This procedure was in agreement with Relf's account: "the Duke of Marlborough was introduced in his Robes, 'twixt the Dukes of Somerset and Ormond. The procession - The Black Rod, Garter King, Lord Marshall [the Earl of Carlisle], Lord high Chamberlayn [the Earl of Lindsey] ...The new Duke kneeling to the Lord Keeper gave him his patent; which was read by Mr Relf...The patent read, the Duke was conducted to his Seat at the lower End of the Duke's Bench."[2]

The conduct of business in the Lords

The Lord Chancellor (or Lord Keeper) was ex officio the Speaker of the upper House.[3] When the Speaker was a Commoner, he was always Lord Keeper. However, a Lord Keeper did not automatically become the Lord Chancellor,

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1. HLRO, Relf, Book of Orders, 37.

2. Nicolson Diary, 147-48.

3. A peer strictly distinguished Lord Chancellor's role from Lord Keeper's, and regarded the latter as an 'assistant in the House' who was "not to interpose in debates unless asked". CUL, MS. Dd. xiv, 19, "Lex parliamentaria in Domo Superiori" (an anonymous precedent book in a fair hand. This book was supplemented by a peer active c.1704-8.), p.73.

even though he was promoted to a peerage. For example, William Cowper was appointed Lord Keeper in October 1705. At this appointment, he had a promise "of a peerage next promotion" from the Lord Treasurer Godolphin.[1] He fulfilled this promise, and Cowper was given the Letter Patent and the writ of summons in December 1706. Nevertheless, he was still Lord Keeper during the 1706/7 session. Even after the prorogation of the parliament in April 1707, his promotion to Lord Chancellor was not decided.[2] It was not until the 1707/8 session that Cowper presided over the upper House as the Lord Chancellor. Except for the committees (both the committees of the whole House and the select committees), the Lord Chancellor (or Lord Keeper) expedited the proceedings of the Lords. If he found some 'irregularities', he was empowered to stop the debates.[3] When the Speaker had an accident and could not attend the House, S.O.58 provided that "the Lords may then chuse their owne Speaker during that Vacancy". John Relf gives a little more detailed explanation. "In case of disability of the L[ord] Chancellor or L[ord] Keeper

1. Cowper's Diary, 1.

2. Some Scots hoped that the judicature of Great Britain would be divided into two parts, and that the Earl of Seafield would be the chief justice of the supreme court of Scotland. But this plan was not adopted by the English ministry. HMC, Mar and Kellie MSS., I, 392: H.Maule to Mar, 13 May 1707.

3. In the 1706/7 session, Lord Rochester told the House that "at hearing of Causes, if any Lord be not on one of the benches, the Lord Keeper shall stop proceedings." His proposal was accepted by the House. HMC, Lords MSS. 1706-1708, 82; LJ., XVIII, 314.

dureing the Parliam[en]t the King usually directs a Com[m]ission to a Lord or one of the cheife Judges dureing Pleasure to supply the office of Speaker in the House and to doe in all things as the L[ord] Chancellor ought to doe if he were present."[1]

John Le Neve, a contemporary biographer pointed out that the Lord Chancellor had four places in the upper House. According to his study of the peerage, Lord Chancellor's "grandeur is such, that he hath four places in the Lords House, One behind the King of Scot's Chair, the other next to the dukes of the blood, the third on the first woolsack, fourthly at the Table."[2] S.O.4 shows that "if my Lord Chauncellor will speake to any thing particularly, hee is to goe to his owne place as a Peere." This order means that the Speaker had to go back and forth, whenever he spoke in the House. It seemed to have been inconvenient. In a 'Note' of his precedent book, John Relf wrote that the Speaker "does not usually goe to his place but commonly steps a litle aside from the midle of the Cross Woolsack, where he sitts as Speaker."[3]

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1. HLRO, Relf, Book of Orders, 39.

2. [J.Le Neve], The Laws of Honour, or a Compendious Account of the Ancient Derivation of All Titles, Dignities, Offices &c, (1714), 314.

3. HLRO, Relf, Book of Orders, 39; HLRO, Historical Collection, item 222, 21.

The Standing Orders restricted the discretion of the Speaker. S.O.2 and 3 provided that he "is not to adiourne the House or doe any thing els, as mouth of the House, without the consent of the Lords first had, excepting the ordinarie things about Bills, which are of course, wherein, the Lords may likewise overrule, as for preferring one Bill before another." Unlike the formal orders, in practice, the Speaker had considerable power over the procedural matters. He was empowered to play the leading role in the examination of witnesses. It was Lord Keeper who questioned Dr Drake when the Lords accused him of his controversial work History of the Late Parliament in May 1702.[1]

The Speaker could make the proceedings favourable to his party. On 16 March 1710, Lord Chancellor Cowper warned the Bishop of London (Henry Compton) that the Bishop should vote against Dr Sacheverell, once he had spoken ill of the doctor.[2] On the following day, when Gilbert Burnet, the Bishop of Salisbury referred to "an ugly and scurrilous epithet" [apparently one of the nicknames of Godolphin: Volpone] in the Lords House, some Tory peers hooted Burnet and said "Name him! Name him!" Then Cowper "interposed, declaring that no peer was obliged to say but what he thought fit" and defended

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1. Cobbett, VI, 19-20.

2. See chapter three 135.

the Lord Treasurer and Burnet against the Tory lords.[1]

In the years of the Godolphin ministry, until October 1705, Sir Nathan Wright was Lord Keeper, and he was succeeded by William Cowper, who was successively the Lord Chancellor from May 1707 to September 1710. The Duchess of Marlborough's remark on Wright might be too whig-biassed. The Duchess prevailed upon the Queen "to take the Great Seal from Sir Nathan Wright, a Man despised by all Parties, of no Use to the Crown, and whose weak and wretched Conduct in the Court of Chancery, had almost brought his very Office into Contempt".[2] Though the Duchess exaggerated his defects, Wright was a minor political figure, comparing him with Lord Cowper. Cowper deeply committed himself to Godolphin's management in the Lords House, which will be considered later.

It appears that the office of the Speaker of the House was noted for its lucrativeness. Cowper knew that Wright had received £ 4,000 per annum as his salary and equipage.[3] John Evelyn enviously wrote that the Court promised Cowper to give £2,000 a year even after he resigned the office of Lord Keeper.[4] Cowper's future was

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1. Cobbett, VI, 879.

2. Authentik Memoirs of the Life and Conduct of her Grace Sarah, Late Dutchess of Marlborough, (1744), 140-41.

3. Cowper's Diary, 1.

4. The Diary of John Evelyn, ed. by E.S.de Beer, V, (Oxford, 1955), 611.

very promising. Pressed by the Junto lords Lord Treasurer Godolphin guaranteed that Cowper would have the same amount of income as Wright, and that he would be promoted to a baronage in the near future.[1] However, even after he became the Lord Chancellor, his pay does not seem to have been increased. In August 1710 Robert Harley knew that Cowper had received £4,000 per annum from the revenue of the Post Office.[2]

The number of attendants in the House depended upon the proceedings on that day. When it was expected that a matter of political importance would be debated, the party leaders whipped in the rank-and-file comrades. Geoffrey Holmes and Clyve Jones have pointed out that in 1703 there were 161 peers (excluding females, exiled peers, Catholics and minors), and that ninety-one were present at the division of the 'Church in Danger' and in March 1710, 121 lords voted for or against Dr Sacheverell.[3] These numbers were, of course, exceptional. Such occasions as when the Queen was present in the House (especially incognito) might have been some motivation for the Lords to come to the House. However, some crucial matters for the parties attracted the peers more than the Queen's

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1. Cowper's Diary, 1.

2. BL, Loan 29/45A: "A List of Pencons and Annuitys", 21 Aug.1710.

3. Nicolson Diary, 83.

attendance. Eighty-eight members were present at the division on the third occasional conformity bill on 15 December 1704. The Queen was in the House incognito on 29 November, 6 and 19 December. But the numbers of the attendants were sixty-six, seventy-seven and seventy-two.[1]

The House made efforts to increase the number of attendants. Every session the Speaker sent letters to the absent lords and asked them to give reasons why they could not be present. Apart from this method, the Lords had two ways to promote the attendance when they discussed some important matters. As Thomas Erskine May rightly observed, one was 'the lords summoned' and the other was 'the call of the House'.[2] The former had no penalty against the absent lords, and was used more frequently. 'The call of the House' was a stronger measure to increase the attendance. The absentees without sending any adequate excuse to the House were regarded as defaulters. In the 1703/4 session, the House decided to summon the Lords, facing the protestation of the Commons against the upper House over the examination of the 'Scotch plotters'. On 11 January, Edmund Gibson reported to Arthur Charlett that "Here seemed to be a storm brewing between the 2 Houses of Parliam[en]t; the Lords having directed ye Lord Keeper to send Letters to all

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1. LJ., XVII, 586, 591, 599, 600, 604.

2. T.E.May, A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament, (1844), 148.

yeir [their] Members out o[f] town that yey [they] attend on Thursday se'night; and, by a special summons to those in town, de[si]r'd yeir [their] attendance at ye House to morrow...it [the House] is to debate concerning the Rights and Privileges of ye House."[1]

The form of the letters to summon the Lords was as follows. "My Lord, I am commanded, by the House of Peers, to acquaint you with the enclosed resolution; and that your Lordship's attendance is absolutely required in this House on Wednesday the twelfth day of this instant January, at eleven a Clock in the forenoon [in the name of Lord Keeper]."[2] Lord Haversham, a converted Tory, who had become an advocate of the Tory cause since the 1704/5 session, made use of the procedure of 'the lords summoned' and 'the call of the House' so that more lords could hear his harangue. On 10 November 1704, he "desired that all the Lords might be summoned against Munday; he haveing several matters then to move, wherein the Honour and Security of the Nation and Religion were much concerned." The House realised the importance of his speech, so they did not 'summon' the Lords but 'call' them.[3] In the following sessions, his annual speech against the ministry followed his request to summon the

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1. Bodl, Ballard MSS. VI, f.89: E.Gibson to A.Charlett, 11 Jan.1704. See also BL, Loan 29/359: a newsletter on 6 Jan.1704.

2. LJ., XVII, 360.

3. Nicolson Diary, 223; Cobbett, VI, 369.

absent lords. Thus, Arthur Mainwaring wondered that in the 1709/10 session, Haversham moved to make a speech, but he did not appoint a day to summon the Lords. Mainwaring regarded this change as an instance of the low spirits of the Tory lords. He reported to the Duchess of Marlborough that

> My L[or]d Haversham desired he might have leave to make a motion, which Being granted, he began in his usual strain, tho[ugh] with less warmth, That there was one thing which he shou[l]d allways think full as necessary as giving supplies...& therefore he mov'd that a day might be appointed to consider of the State of the Nation & he humbly propos'd it might be the next day after the Recess. After a short silence my L[or]d Rochester stood up, & onely seconded that motion in a very few words; I thought he looked very dejected...It was observ'd that my L[or]d Haversham did not chose his speech right, for that he shou[l]d have named a Certain Day: & whole tenour of his discourse did not seem to forebode anything very terrible.[1]

The House usually started the proceedings at 11 o'clock, and immediately one of the bishops, who was (normally) lately consecrated, said grace. This procedure

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1. BL, Add. MSS. 61460, ff.128-29: [A.Mainwaring] to [Duchess of Marlborough], "Thursday Evening" [15 Dec.1709].

was not always obeyed. On 24 November 1702, the House ordered that the prayer should be said exactly at eleven. Nevertheless, on the following day Bishop Nicolson found only three lords in the House, when he came to the House to give a prayer at eleven.[1] As considered in chapter three, the increasing judicial business occupied considerable time of the proceedings in the Lords. Consequently in 1703/4 session, Lord Guilford's committee, which dealt with 'the irregularities in the House', proposed that the judicial causes should be treated from ten o'clock, and "no business intervene".[2] However, this proposal was not usually adopted by the House, and the Lords opened their proceedings at eleven as before. In some exceptional cases, the Lords opened the debate earlier. When the House deliberated the misconduct of the Earl of Peterborough in Spain in the 1707/8 session, the House decided to start the business at 10 o'clock.[3] The time to adjourn the House depended on the importance of the matter under discussion. When the House debated the first article of Dr Sacheverell's impeachment on 16 March 1710, they finished the proceedings at 11 p.m. The debate on 16 January 1703 over the first occasional conformity bill was no less long. Narcissus Luttrell recorded that

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1. Nicolson Diary, 132-33.

2. HLRO, committee minutes, VI, 345.

3. Vernon Corr., III, 308: J.Vernon to Shrewsbury, 15 Jan.1708.

the House had been adjourned at 11 p.m., while Sir Alexander Bruce, later Earl of Kincardine reported to the Marquess of Tweedale that the Lords had finished their business at 12 p.m.[1]

After the Lords entered the House, every peer "is to give and receive salutations from the rest, and not to sitt downe in his place, unless hee hath made an obeysance to the Cloath of estate" (S.O.19). After the Lords had dealt with the judicial cases, if any, they proceeded to a matter of political significance. When the Lords discussed a matter of great importance, they appointed a day to deal with this problem. On that day, 'the order of the day' was read. This order had to be strictly followed, unless the Lords agreed to change it by a question.[2] During the debate, "when any member speaks, he addresseth his speech to the Lords in general and not particularly to the Speaker. He who speaks stands up uncovered, Nor is he in his speech to name any Member of the House but by some reference, as the Lord that spoak last, or last but one &c, or by some other note of his speech".[3] S.O.12 provided that no peer could speak twice to a bill

1. Luttrell, V, 258; NLS, MS. 7021 (Yester MSS.), f.64: [A.Bruce] to [Tweedale], 18 Jan.1703; Nicolson Diary, 90.

2. On 16 December 1708, the Earls of Loudoun and Mar tried to change 'the order of the day'. But their motion was rejected by the House. SRO, GD 124 (Mar and Kellie MSS.)/15/754/38: [Mar] to [Lord Grange], 16 Dec. 1708.

3. HLRO, Relf, Book of Orders, 53. See also S.O.12 and 32.

at one stage of its reading, unless he explained the reason for the second speech and the House allowed him to do so. It appears that this order was not always obeyed. In March 1707, Lord Rochester's committee for privileges warned the Lords that this rule had been ignored.[1] S.O.12 was not applied to the debates in the committees. Consequently, the committees became the place to discuss the bill in detail. Thus, it was not surprising that the debate was chiefly managed by Lord Treasurer Godolphin and the Earl of Nottingham for four hours about the address to the Queen in the 1705/6 session, or that Godolphin spoke five times about the abrogation of the Scottish Privy Council in February 1708.[2]

Except for a few cases, the parliamentary clerks never recorded the debates in the Lords during the Queen's reign. Consequently, when the debates are considered, the main historical sources are some unofficial printing of the debates and manuscripts. It seems that the bishops, who infrequently joined in the debates, often prepared detailed drafts. As long as the House discussed a secular matter, the bishops were usually reluctant to speak in the House, and the temporal peers did not expect the bishops' bench to play an

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1. HMC, Lords MSS. 1706-1708, 82. On 5 April, 1707, the House ordered that S.O.12 should be obeyed. LJ., XVIII, 314.

2. Nicolson Diary, 308 and 435.

important part in debate. Soon after Bishop Nicolson took a seat in the House in the 1702/3 session, Bishop Moore of Norwich, "honestly advised" Nicolson "never to give a forward Voice for or against an Adjournment" because "the Temporal Lords ...do not love to see a Bishop offer to interpose in that matter."[1] However, the bishops took great interest in such religious affairs as the occasional conformity bills, the 'Church in Danger' motion, and the Sacheverell trial. Among the printed sources, there are many well-arranged speeches made by bishops which cannot be regarded as quick-witted ones.[2] It is very interesting that not only the bishops but also such leading Tory politicians as Lord Nottingham often made detailed drafts of speeches.[3] In many important debates in the Lords, he prepared long drafts. The Earl of Rochester also often harangued in the House. However, contemporaries did not praise his eloquence. John Macky described Rochester's speech: "He is easily wound up to a passion, which is the reason why he often loses

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1. Nicolson Diary, 163.

2. In the 1706/7 session, Bishop Talbot of Oxford made a long and well-arranged speech for the Union, which was printed. See Cobbett, VI, 571-76. On 16 March 1710, the Lords deliberated the first article of the impeachment of Dr Sacheverell. White Kennett recorded that not only Bishops Burnet and Talbot, who made speeches, but also Bishops Trimnell and Wake "prepared to have spoken to this first article if there had been room and time for it." BL, Lansdowne MSS. 1024 (Kennett's Journal), f.207.

3. Leicestershire R.O. Finch MSS. parliamentary and political papers, passim.

himself in the debates of the House of Peers; and the opposing party knew so well how to attack him, as to make his great stock of knowledge fail him."[1]

The speeches of Nottingham and Rochester make a contrast with those made by the Junto lords. Lord Dartmouth admitted that Lords Halifax and Wharton introduced a new style of speech into the Lords, though Dartmouth himself disliked their speeches. These two Whig lords "brought up a familiar style with them from the house of commons, that has been too much practised in the house of lords ever since, where every thing formerly was managed with great decency and good manners". Lord Wharton's eloquence was especially praised. Abel Boyer, who heard many debates in the Lords, described Wharton's speech. "The Earl of Wharton excelled all others in readiness of wit, and quickness of penetration...He did not affect formal speeches, but having a prompt and ready eloquence joined with an uncommon share of courage."[2]

When the House was sitting, the Lords were not allowed to whisper (S.O.62). But sometimes private discourse in the House might have influenced the debate. In his note to Bishop Burnet's History, Lord Dartmouth gives an interesting example. When the Lords warmly

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1. "Characters of the Court of Great Britain", 30, in Memoirs of the Secret Services of John Macky, (1733), 30.

2. Burnet's History, V, 234, Dartmouth's note; [A. Boyer], Memoirs of Queen Anne: being a complete supplement to the history of her reign, (1729), 50.

discussed the 'Church in Danger' motion in the 1705/6 session, Dartmouth whispered to Godolphin that "a scene between Hothead and Testimony would be very diverting." Godolphin liked this joke, because he knew that

> nothing damps a debate more than turning it into ridicule; and it had such an effect that every body was ready to laugh, when either of them [Lords Rochester and Halifax] spoke.[1]

S.O.56 provided that any lord who "shall conceive himself to have received any affront or Iniurie from any other member of the house" should appeal to the House for his reparation, and that if he had made a quarrel with any other lord, it would have declined "the Justice of the howse" and this delinquent would "undergoe the severe censure of the Howse of Parlyament." Notwithstanding this provision, it was inevitable that some hot-headed peers had quarrels in the age of the 'rage of party'. A parliamentary clerk recorded four quarrels which happened in the years of the Godolphin ministry.[2] The quarrel was often caused by the animosities between families. The dispute between Charles Montagu, Lord Halifax and Pere-

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1. Burnet's History, V, 242, Dartmouth' note.

2. HLRO, Historical Collection, item 222, 59. Lord Osborne vs Lord Halifax (10 Dec.1702), the Duke of Bolton vs the Marquess of Normanby (20 Jan.1703), the Earl of Winchilsea vs Lord Wharton (24 March 1704), the Duke of Buckingham vs the Earl of Wharton (1 Apr. 1710).

grine Osborne, the Marquess of Carmarthen was a good example. In the debates on the first occasional conformity bill, the Duke of Leeds, Carmarthen's father "told Lord Halifax publickly in the House that his family was raised by rebellion but his own suffered by it. Upon which at the rising of the House a challenge was given, but being overheard, the House have put a stop to further mischief by confining Lord Halifax to his own house under custody of the Black Rod, and by obliging both him and Lord Carmarthen upon honour and under penalty of the utmost displeasure of the House not to admit or receive any message but what the House is to be acquainted with."[1] In the 1705/6 session, a quarrel arose between Carmarthen and Halifax, and this quarrel led them to a duel in Hyde Park on 9 December 1705, but the Captain of the Guards prevented it.[2] Another challenge happened between Lord Wharton a Junto lord and the Earl of Winchilsea, Lord Nottingham's kinsman. On 24 March 1704, party animosities were at their zenith. The Junto accused Nottingham, a secretary of state of being unwilling to examine the 'Scotch plotters', while the Tory lords attacked Lord Orford, another Junto member, because of the mismanagement of the navy. A quarrel happened on this occasion

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1. HMC, Beaufort MSS. 96: Lord Coventry to [his wife], 10 Dec. 1702; Letters of eminent Men addressed to Ralph Thoresby F.R.S., I, (1832), 426-27: Bishop Nicolson to Thoresby, 10 Dec.1702. John Evelyn's Diary, V, 523.

2. About the dispute between Carmarthen and Halifax, see below 117-121.

between Wharton and Winchilsea. The challenge was prevented by the House. However, in the following session, they were in discord again after the defeat of the third occasional conformity bill on 15 December 1704.[1] It was obvious that party animosities increased the disputes between individuals and sometimes resulted in a quarrel.

S.O.18 provided "Noe privat person to staye in the house". Apparently this rule was made so that the proceedings of the House might not be reported. After the Revolution, the House carefully protected the secrecy of debate. In February 1699, the House ordered that "it is a Breach of the Priviledge of this House for any person whatsoever to print or publish in print any thing relating to the proceedings of this House without the leave of this House" (S.O.92). On 14 February 1704, the Lords decided that the doorkeepers should not enter the House, when they sat (S.O.100). On the other hand, some peers thought that they should not refuse all the strangers, and that it was necessary for the House to regulate strangers' hearing the debate. On 7 and 8 November 1704, the House debated whether the Lords should build galleries or not. Godolphin supported this plan. Although Lords Bradford and Poulet were against it, because the galleries would turn "the House into a Sight," they

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1. LJ., XVII, 524; Nicolson Diary, 254.

were answered by the Duke of Devonshire and Lord Somers, and the House decided to make the galleries. On 21 December, some lords made a complaint that the galleries darkened the House, and they insisted on pulling them down. But this motion was rejected by 13 votes against 22. On 12 March 1705, some lords once again tried to pull down the galleries. But the previous question for this motion was rejected by 31 (23 votes and 8 proxies) against 30 (22 votes 8 proxies).[1]

After the galleries were made, the Lords continued to regulate the admission of strangers into the House. The House allowed the peers' eldest sons to sit and hear the debates in the House (S.O.109 ordered on 5 April 1707). Based on the report from Lord Rochester's committee for privileges, the House ordered that the lobby and the committee room should be cleared of the strangers.[2] Apparently the Lords admitted to the galleries only those who had close relation with peers. Although Edmund Gibson was a friend of William Wake, the Bishop of Lincoln, he found difficulty in hearing the debate in April 1709.[3] On the other hand, the Lords normally

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1. Nicolson Diary, 221 and 257. For these divisions, see J.C.Sainty and and D.Dewar, Divisions in the House of An analytical list 1685 to 1857, (1976).

2. HMC, Lords MSS. 1706-1708, 83; LJ., XVIII, 314.

3. Christ Church, Oxford, Wake MSS. XVII, f.204: E.Gibson to [W.Wake], 14 Apr.1709.

connived at Abel Boyer's publishing the proceedings, though the House understood that to publish the debates was a breach of the standing orders. We will consider the publishing of the proceedings and debates in the following chapter.

The Queen formally visited the Lords House, when she opened and prorogued the parliament, and made a speech to the members. She also paid a formal visit, when she gave the royal assent to the bills which had passed both Houses. Contemporaries took great interest in the fact she restored an old custom: her incognito presence in the House. The first case was on 29 November 1704. Lord Coningsby MP clearly understood the reason why the Queen *made* an incognito visit to the upper House. He realised that the Queen tried to prevent the alliance of the Whigs and the Tories who would accuse the ministry of their having given the royal assent to the Act of Security of Scotland. Coningsby reported to the Duke of Ormond that

> Yesterday [29 November] it was warmly endeavoured by some of the same side in the House of Lords to bring on the Scotch business, but to no purpose likewise, the Whigs, contrary to their usual custom acting twin together [sic] the prudent part, the Queen as King Charles used to do sitting by the fire in the Lords' House all the debate, and when our bill of [occasion-

> al] conformity comes up to the Lords to be flung out ...it will most certainly be, her Majesty it's said is resolved also to be present.[1]

The Court obviously expected that the Queen's presence would calm the hot debate. When the Lords discussed the fiasco in Spain on 19 December 1707, the Queen was present incognito. Sir John Percival observed that her attendance would prevent the Lords from "breaking out into too much warmth".[2] However, her presence did not always get the expected result. Indeed the Queen was in the House when the Tory lords moved to invite the Princess Sophia of Hanover to England, but they did not hesitate to make this proposal. The Earl of Rochester, the Queen's uncle, was not a little perplexed to see her in the House, when he made a speech that the Church was in danger on 6 December 1705, but the Tory lords did put this motion to the vote.[3] The Junto lords were glad to see the recklessness of the Tories, because they understood that the Queen would be obliged to rely on the Whigs, although the Junto lords were obnoxious to her. The Earl

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1. HMC, Ormonde MSS. N.S. VIII, 122: Coningsby to Ormond, 30 Nov.1704; Jerviswood Corr., 13: Earl of Roxburghe to G.Baillie, 2 Dec.1704; Folger Shakespeare Library, Newdigate newsletters (micro in Bodl.), 30 Nov.1704

2. BL, Add. MSS. 47025, f.82: Sir J.Percival to Rev Dr Percival, 27 Dec.1707.

3. C.Jones, "Debates in the House of Lords on 'the Church in Danger', and on Dr Sacheverell's Impeachment 1710", Historical Journal, XIX, (1976), 764-5.

of Sunderland realised that "about L[or]d Rochester & L[or]d Haversham as for what they will do in any thing, it's pretty hard to iudge of them, because they don't act upon any steady principle but I believe they nor any other Party don't much value Mrs Morley [the Queen]'s never forgiving them."[1]

Concerning the Queen's incognito presence in the House, it was noted that she took a keen interest in ecclesiastical matters. She heard the debates on the third occasional conformity bill, the writ of error of Thomas Watson (the deprived Bishop of St David's), the "Church in Danger" motion and the trial of Dr Sacheverell.

The Queen's speech, the Lords' address and the Queen's answer

In a study of the Queen's speeches from 1710-14, J.A.Downie and David Woolley have pointed out that "The drafting of Queen's speeches in the reign of Queen Anne reflected accurately the balance of power within the ministry at the opening of each parliamentary session."[2] Their view fits in with the Queen's speeches in the years of the Godolphin ministry. Normally her Majesty's speech for opening the parliament consisted of two parts. One was

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1. BL, Add. MSS. 61443, f.21: Sunderland to [Duchess of Marlborough], 9 Aug.1708.

2. J.A.Downie and D.Woolley, "Swift, Oxford, and the Composition of Queen's Speeches, 1710-1714", The British Library Journal, VIII, (1982), 122.

for both the upper and lower House which was addressed to 'My Lords and Gentlemen'. In this part, the Queen showed the general policies of the government. The other part was only addressed to the Commons in which the Queen asked them to pass the money bills. Howèver, it appears that most of the speeches were drafted by one author. Indeed some peers or Commoners might have partly participated in the drafting, but they only suggested corrections and nothing more.

About the first speech of the Queen on 11 March 1702, some historians have already shed much light upon it. It is well-known that she said that "as I know my own heart to be entirely English, I can very sincerely assure you, there is not any thing you can expect, or desire from me, which I shall not be ready to do for the happiness and prosperity of England." When the draft of this speech was delivered to the Cabinet Council, the above paragraph became 'the subject of acrimonious debate'. Lords Carlisle, Devonshire, Marlborough and Somerset were against this passage, because it tacitly disparaged the late King William III. However, the High Tory members insisted upon including this part, and their opinion was adopted.[1]

The prorogation speech, which was made on 25 May, was no less interesting. Exceptionally, there are two

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1. H.Horwitz, Revolution Politicks, The Career of Daniel Finch Second Earl of Nottingham, (Cambridge, 1968), 181-82. E.Gregg. Queen Anne, (1980), 152.

full drafts of the speech (one all in Nottingham's hand, and the other all in Godolphin's hand), and a considerable part of it (all in the hand of a secretary of state, Charles Hedges)[1] and a fragment (in Nottingham's hand).[2] The first draft was written by Nottingham another secretary of state, which was followed by Godolphin, and secretary Hedges partly corrected Godolphin's draft. It is significant that in this speech, Godolphin relied upon Nottingham to write the first full draft, while he took the initiative in making the other speeches in the first parliament of Queen Anne 1702-1705. Edward Gregg shows that from the Queen's accession, 'Godolphin had acted as one of the queen's chief advisors, despite the fact that he did not yet hold governmental office'.[3] However, his status at Court does not seem to have been dominant, even after his appointment as the Lord Treasurer on 4 May. The prorogation speech on 25 May was a product of compromise between Godolphin and Nottingham. The difference between Nottingham's draft and Godolphin's was clear, as the draft in Nottingham's hand shows. (The parts in boldface were deleted by Godolphin. The parts in ordinary typeface were preserved or slightly altered by Godolphin.)

For my part I have nothing in my view but ye honour &

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1. Northamptonshire R.O. Finch-Hatton MSS. 2559.

2. Leicestershire R.O. Finch MSS. parliamentary and political papers, 118.

3. E.Gregg, Queen Anne, 157.

prosperity of ye nacon [nation], in this surely all good Englishmen will concurre w[i]th me; tis their Interest & their duty, & all such will have a iust [just] claim not onely to my protection but my favour. my principles will alwaies keep me entirely firm to the religion & interest of the Church of England as it is by law establisht. **But I must also in charity have a due regard to those who differ from it.** And therefore as the laws shall alwaies be ye steady rule of my Governm[en]t, I shall make it my particular care to preserve & maintain the Act of Toleracon [Toleration] & sett the minds yt no gôod subiect may suffer or be restrained of that liberty establisht, w[hi]ch is indulged him.

But there is one thing in w[hi]ch all do agree who sincerely professe any religion & that is iust [just] abhorrence of profanesse & immorality. The making of good laws for suppression of vice has bin [been] often recommended from ye throne but no new law can be so effectual as a due execucon of those we already have and therefore I require of you all in y[ou]r several stations to perform this necessary part of ye magistrates duty.

In the first paragraph, apparently Nottingham intended to follow the first speech of the Queen, and emphasise her nationality, but Godolphin was opposed to such a passage, because it would increase the xenophobia

and animosity against the late King, to which the Whigs would never agree. The second and third paragraphs are more interesting. Godolphin preserved Nottingham's draft in which he stressed the Queen's affection for the Church of England, and the Lord Treasurer also preserved the passages where Nottingham hoped to remind the people of the importance of the Act of Toleration (1689), but Godolphin remarkably omitted the part in which Nottingham emphasised the needlessness of new persecutive laws against the nonconformists. It is very ironical that Nottingham became one of the advocates of the occasional conformity bill only seven months after this speech was made, and Godolphin was against this persecutive bill. If Godolphin's draft is considered, obviously he adopted a 'peace-at-any-price' principle. The contents of his draft were hackneyed. He only thanked the Commons for their passing the money bills, and drew public attention to national unity so that England could wage the war. The length of his draft was half that of Nottingham's. Nottingham, who hoped to re-establish the Church and State in the Revolution settlement, had every reason to be dissatisfied with the Lord Treasurer.

While Nottingham gradually became hostile to Godolphin, Robert Harley became more and more friendly with the Lord Treasurer. Among the Harley papers in the British Library, there are the drafts of the Queen's speeches which were made on 21 October 1702 (opening

speech of the 1702/3 session), 9 November 1703 (opening speech of the 1703/4 session) and 3 April 1704 (prorogation speech of the 1703/4 session).[1] A month before the 1702/3 session started, Godolphin reported to Harley that "I have prepared [the draft] for her Majesty's speech to the approaching Parliament being uncertain how long before the time of their meeting I may have the good fortune to see you, and being also extremely desirous of your thoughts and amendments upon it before it be exposed to any body else. I have drawn a line under such expressions where I am doubtful either of the expressions themselves, or that they are not proper in the paragraph where at present they are inserted." Eleven days later, the Treasurer thanked Harley for his reply and told him that "I will observe the hints you are so kind as to give me relating to the Queen's speech."[2]

The Duke of Marlborough, the Lord Treasurer's close associate, might have found difficulty in participating in the drafting, because normally he was overseas before the session started. However, more than a month before the 1702 session began, Marlborough sent the Lord Treasurer some advice about the Queen's opening speech. On 8 October 1702, Marlborough thought that the failure of the Cadiz expedition, which was conducted by Tories' heroes

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1. BL, Loan 29/64/1.

2. HMC, Portland MSS. IV, 47: [Godolphin] to [Harley], 16 Sep.1702; Ibid., IV, 48: [Godolphin] to [Harley], 27 Sep.1702.

the Duke of Ormond and Sir George Rooke, should be referred to in the Queen's speech. Marlborough told Godolphin that "Whatever the news be from Cadiz, I should think there should be soe much wait [weight] put upon that expedition, as to say something of it in the speach." Godolphin followed Marlborough's advice. In her speech, the Queen told the parliament that "I cannot, without much trouble, take notice to you of the disappointment we have had at Cadiz...I have had such a representation of disorders and abuses committed at Port St Marie's, as hath obliged me to give directions for the strictest examination of that matter."[1] Thus the Earl of Rochester, who "was as forward as anybody in adjusting" the speech, was so displeased with the draft that he was absent from the meeting of the Cabinet Council when they discussed the draft of the Queen's speech.[2]

Godolphin's draft was corrected not only by Harley but also Nottingham and the Marquess of Normanby (created the Duke of Buckingham in 1703). A fragment of the draft for the Queen's opening speech of the 1703/4 session shows that these Tory lords participated in making the speech.[3] Although Nottingham was censured by the Whigs peers because of his reluctance to examine the

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1. M-G Corr., I, 116 and 123: Marlborough to Godolphin, 14 Sep. and 8 Oct. 1702. LJ., XVII, 156.

2. M-G Corr., I, 137: Godolphin to Countess of Marlborough, 21 Oct.1702.

3. BL, Egerton MSS. 3276, f.3.

'Scotch plotters' in the 1703/4 session and his resignation was rumoured, his power was maintained in the ministry enough for him to join in the drafting of the Queen's prorogation speech which was made on 3 April. However, unlike the prorogation speech in May 1702, Godolphin kept the initiative in the drafting from the 1702/3 session, although Harley and Nottingham made some contribution to Godolphin's draft.[1] Normanby and secretary Hedges occasionally participated in the making of a speech, but they do not seem to have been regular participants. In a letter to Nottingham, Normanby admitted that he had been excluded from the consultation on the Queen's speech.[2]

The draft was delivered to the Cabinet Council. Among the members of the Cabinet Council during the first parliament of the Queen (1702-05), there were three Whig lords: the Dukes of Devonshire and Somerset and Thomas Tenison, Archbishop of Canterbury. Among them, at least Somerset made some contribution to the Queen's speech. In a letter to the Duchess of Marlborough, the Queen said

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1. Godolphin's draft is seen in BL, Loan 29/64/1. Nottingham slightly altered a draft in a fair hand. Northamptonshire R.O. Finch-Hatton MSS. 2915.

2. BL, Add. MSS. 29588, f.361: Normanby to Nottingham, "Sunday morning".

that it was Somerset who had made her speak for the Union in her first speech.[1] The Cabinet Council was the formal place to discuss the Queen's speech, and the draft was to be delivered. But it appears that Godolphin did not think much of this Council, when he drafted a speech. Apparently the Lord Treasurer privately consulted some confidants and made a consensus, before the Council debated the speech. Robert Harley was not a member of the Council until he was appointed a secretary of state in May 1704, and among the Spencer papers in the British Library, there is no evidence that Lord Sunderland actively participated in drafting the speech, although he was a secretary of state from 1706 to 1710.

The general election of 1705 changed the political situation. The Whigs in the Commons regained their power, and the Tories and the Whigs were almost equally balanced. The Junto lords pressed the dismissal of Lord Keeper Wright and the appointment of William Cowper upon the Queen. His appointment was delayed because of the Queen's opposition. However, in October 1705 Cowper at last received the Great Seal. Lord Keeper (Lord Chancellor from 1707) Cowper played a great part in making the Queen's speech. In the 1705/6 session, secretary

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1. The Letters and Diplomatic Instructions of Queen Anne ed. by B.C.Brown, (1935), 228: the Queen to Duchess of Marlborough, n.d. In her first speech to the parliament, the Queen said "I cannot but think it very necessary, upon this occasion, to desire you to consider of proper methods towards attaining of an Union between England and Scotland," LJ., XVII, 68.

Harley's influence was still considerable. On 24 November 1705, the Lord Treasurer asked Harley to come to his house so that they could talk about the Queen's speech relating to Spain which would be made on 27 November.[1] On 10 March 1706, Godolphin hoped that the secretary would correct his draft for the prorogation speech. The Lord Treasurer told Harley that "I had a mind to have shewn you a draught of a speech for the Queen to make at the close of the session, which I shall now leave in the Duke of Marlborough's hands for your correction." After Godolphin saw the secretary's corrections, he wrote to Harley that "Your amendments in the draft of the speech are very just; I am only sorry to observe you have not amended the conclusion, which I doubt wants it".[2]

However, it seems that the Lord Treasurer kept away from Harley in the 1706/7 session, when he drafted the Queen's speeches. As considered in chapter four, at the end of this session Godolphin had a serious conflict with the secretary concerning the frauds involving trade from Scotland to England. Thus it is conceivable that Godolphin asked Lord Keeper Cowper to put in a necessary correction of the Queen's speech for a short prorogation. On 11 April 1707, the Treasurer asked Cowper to consider

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1. BL, Loan 29/64/3: [Godolphin] to [Harley], "Sat. night at 11"[24 Nov.1705].

2. HMC, Portland MSS. IV, 289: [Godolphin] to [Harley], 10 March 1706, Ibid., IV, 290: [Godolphin] to Harley, 14 March.

the Queen's speech, before the Cabinet Council met on 13 April.[1]

In the 1707/8 session, Harley was still consulted about the Queen's speech on 18 December 1707 to thank the Commons for having passed the money bills,[2] although he had a fierce power struggle with the Lord Treasurer. However, it appears that the Lord Treasurer did not co-operate with Harley but Lord Chancellor Cowper when he drafted the opening speech for this session.[3] This draft is interesting on two points. One is that it was Cowper who made a full draft, and the other point is that Godolphin's correction was considerable, but mainly it was related to the expression or style. The political influence of Cowper (and of the Whigs) over the Godolphin ministry had obviously increased. For the prorogation speech of the 1708/9 session, Cowper wrote the speech.[4] This time he wrote the drafts three times. He made them twice all in his hand, and finally he made some corrections to a fair copy. As long as his drafts are considered, Godolphin's participation is not found. However, it seems that the Lord Treasurer took the

1. Hertfordshire R.O. Panshanger MSS. D/EP, F54, f.126: Godolphin to [Cowper], 11 Apr.[1707].

2. HMC, Bath MSS. I, 188: [Harley] to [Godolphin], 17 Dec.1707.

3. Hertfordshire R.O. Panshanger MSS. D/EP F135, ff.3-5: a draft of the Queen's opening speech on 6 Nov.1707. This draft was made by Cowper, and corrected by Godolphin.

4. Hertfordshire R.O. Panshanger MSS. D/EP F135, ff.9-14.

initiative in drafting the Queen's opening speech on 15 November 1709 for the 1709/10 session which was the last session in the years of the Godolphin ministry. In early November, Godolphin wrote to the Lord Chancellor that "the enclosed draught is humbly submitted to y[ou]r L[ordshi]ps Consideration & Correction, when soever you have Leisure enough to look upon it, after w[hi]ch y[ou]r L[ordshi]p will please to return it with your observation".[1]

In the 1709/10 session, when the Queen's confidence in the Lord Treasurer declined, it appears that Lord Chancellor Cowper directly gave the Queen advice about the contents of the Queen's speech, when he was granted an audience. In late March, the Lords passed a sentence of light punishment upon Dr Sacheverell, and this decision caused great sensation among the lower clergymen, and the 'Sacheverell riot'. Cowper told the Queen that "she should Comand her Bishops to reccomend to their Clergy, the Preaching against Vice, and not to meddle in Politicks" and that these contents should be adopted in her speech.[2] The Queen seems to have taken his advice. In her prorogation speech on 5 April, she told the parliament that "The suppressing Immorality, and

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1. Hertfordshire R.O. Panshanger MSS. D/EP F54, f.142: Godolphin to [Cowper], "monday morning", endorsed by Cowper Nov. 1709.

2. The Diary of Sir David Hamilton 1709-1714, ed. by P. Roberts, (Oxford, 1975), 7.

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prophane and other wicked and malicious libels, is what I have always earnestly recommended...I could heartily wish, that men would study to be quiet, and do their own business; rather than busy themselves in reviving questions and disputes of a very high nature."[1]

The 'Humble Address of the Lords' was one of the ways to express their opinion to the Queen and the ministry.[2] Thus, the address was followed by 'Her Majesty's gracious answer'. After the House completed the address, the Queen, in her message to the House, showed her pleasure to receive this address and appointed the time to give her answer. The delivery of her message was to be done by a great officer. In December 1704, the Duke of Buckingham gave the ministry a rebuke, because the Earl of Bradford (Treasurer of the Household) delivered her message. Buckingham insisted that the Earl of Kent (Lord Chamberlain) should have done it.[3] While the upper House was normally very careful in printing and publishing their proceedings and divisions, it is remarkable that the Lords willingly made the address and its answer public. Lord Cowper recorded that printing the address

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1. LJ., XIX, 145.

2. A peer distinguished the "address" from the "representation" to the Queen. He thought that the Queen's answer was necessary, when the House addressed, while they did not expect her answer, when they submitted their representation. CUL, MS. Dd. xiv, 19, p.76.

3. Nicolson Diary, 257-58.

was at the discretion of the Speaker of the House.[1] The Lords House had the power to decide whether something should be expressed to the Queen in the form of an address. When a lord thought it necessary to make an address, he told the 'heads' of it. When the Lords debated the 'Scotch plot' in the 1703/4 session, it was said that Halifax showed some 'heads' in the following speech. "...Finally, my Lords, it is of the highest Import to make this Representation...An humble Address from this House, concluded with our firm Promises that no Dangers no Reproaches, nor any Artifices whatsoever shall deter, or detain us from using our utmost Endeavours, from time to time, in discovering and opposing all Contrivances and Attempts against her Majesty's Person and Government and the Protestant Succession by Law establish'd, cannot but well taken by her Majesty. 'Tis therefore my humble Opinion, that an Address be drawn up, and presented to her Majesty, in pursuance of the particulars I have taken the Freedom to lay before your Lordships, as a Member of this House."[2]

The purposes of the Lords' address are classified into two categories. One is that in their address, the

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1. Cowper's Diary, 8.

2. "Memoirs of the Life of Charles Montagu, Late Earl of Halifax", 107, in The Works and Life of the Right Honourable Charles Late Earl of Halifax, (1715).

House required that some administrative action should be taken by the government. Prima facie, the House seems to have had superior authority over the government. But it was not always the case. The address would enable the ministry to exercise extensive discretionary power. Thus, the House was sometimes reluctant to make this kind of address, and preferred to make a law. In the 1704/5 session, the House decided to embargo Scottish cattle and sheep on condition that the Scottish parliament would not repeal the Act of Security. At that time, it was observed that the House might make an address and entrust the government with this action. However, the Lords chose to make an act of parliament for this purpose.[1]

The other category is no less important. The Lords' address often asked the ministry to submit the government papers which were indispensable to the debate especially their inquiring work. As Maurice Bond has pointed out, the Lords had already acquired three methods to require the necessary information: 'Returns', 'Command Papers' and 'Act Papers'.[2] Although the secretiveness of the ministry sometimes prevented the supply of the administrative information, the Lords thought much of these papers, and classified them as the 'Main Papers' which

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1. Jerviswood Corr., 22: J.Johnstone to G.Baillie, 12 Dec.1704.

2. M.F.Bond, Guide to the Records of Parliament, (1971), 127-29.

were to be carefully preserved.

There were several kinds of procedures to make the Lords' address. One was that the whole House itself drafted the address. This process was quite exceptional. In the 1708/9 session, the upper House discussed the abortive invasion of Scotland by the Jacobite-French fleet in March 1708. On 12 January 1709, it was "proposed to desire several things - 1. What time the Queen had notice of the invasion? 2. What orders were sent thereupon? 3. What condition the garrisons there were then found in? 4. What has been done since to prevent the like for the future?"[1] Based on these 'heads', an address was made by the House. The second way was more ordinary. The House appointed a special committee which would draft the address. This process was often used to draft the address to thank for the Queen's opening speech. The activity of this committee will be analysed in chapter two. The third procedure was common. After something was referred to a select committee, this committee submitted a committee report. If this report was of great importance, it was placed before the Queen in the form of an address. The process to draft an address in a committee is not clear, since the printed Lords' Journal totally omitted the proceedings of the committees, and the MS. minutes and the MS. committee minutes do not give much information about this process. It appears that the drafts were not

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1. HMC, Lords MSS. 1708-1710, 33; LJ., XVIII, 603.

classified as the parliamentary papers but as the private ones, except for a few cases. Peers normally took their drafts home. Thus, it is noteworthy that there are a few drafts of the address among the Main Papers of the House of Lords, and they shed some light upon the address-making process.

In the 1703/4 session, the House felt deeply concerned about the miscarriage of the navy, and blamed Admirals Graydon and Shovel. Lord Rochester's committee was appointed to investigate the naval affairs. His committee vigorously summoned and examined the two admirals and other navy officers. The most important matter of this inquiry was whether the Admiralty was responsible for the misconduct of the navy. As Prince George was only the nominal head of the Admiralty, George Churchill, who was the Duke of Marlborough's brother and virtually led Prince's Council, was to be censured.[1] Lord Rochester's committee started the proceedings in late February 1704, and he had submitted his final draft of the committee report in late March. On 25 March, the committee discussed this draft. A part of it, which insinuated the responsibility of the Admiralty, went to the vote, and it was carried.[2] Thus, the committee report had

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1. Marlborough himself criticised George Churchill's conduct. M-G Corr., I, 240: Marlborough to Duchess, 29 Aug.1703.

2. HLRO, committee minutes, VI, 449; HMC, Lords MSS. 1702-1704, 462-69.

already been prepared on that day. But the committee did not submit the whole report to the House; it only brought up two short resolutions, which severely rebuked the negligence of the navy leaders.[1] On 28 March, the House agreed to these resolutions.[2] After the committee realised that the Lords supported their investigation, Rochester read the whole committee report on 29 March, and this report was placed before the Queen as an address.[3] Like the above address-making process, the 'resolution' of the House played an important part, when the House made an address. A famous case was the Lords' resolution "No Peace without Spain" on 19 December 1707. On that day, Lord Somers made a motion for the said resolution, and the House agreed to it and made it an address to the Queen.[4]

In his pioneering work, J.C.Sainty pointed out the political importance of the Lords' address after the

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1. A draft of the resolution of the committee, to which the House agreed, is seen in HLRO, Main Papers 1985 annex (b)(d) (two sheets of paper). This draft includes the most controversial point of the committee report. On a sheet of paper, three passages were marked with 'A', 'C', 'D' respectively and the other paper was marked with 'B', which was to be inserted after 'A'. These passages must have been rearranged by the committee or the House so that these passages could be a part of the address.

2. LJ., XVII, 537.

3. Ibid., XVII, 550-53.

4. The Letters of Joseph Addison, ed. by W.Graham, (Oxford, 1941), 85: Addison to Earl of Manchester, 23 Dec. 1707.

Revolution. He said "The evidence suggests that an important factor in this process [appearance of the 'leader' in the House of Lords] may have been the development of the procedural device of the address in reply to the king's speech" which was made on 24 February 1696. Sainty wrote that "During Anne's reign the address in reply became a regular feature of the proceedings in both Houses...However, careful and detailed planning was necessary in order to ensure that the proceedings turned out to the advantage of the government. Ultimately this came to include private meetings of members of both Houses on the eve of the session to hear the speech read prior to its delivery from the throne on the following day as well as the selection and briefing of movers and seconders of the address in advance of the debate".[1] If such a system had been realised, the proceedings of the House would have been expedited according to the schedule which had been made by the ministry, and the predictability of the proceedings would have been increased. The question in this section is how far the Lord Treasurer Godolphin developed this system.

In the early days of his ministry, Godolphin co-operated with the Marquess of Normanby, Lord Keeper Wright, and the Earls of Nottingham and Pembroke when he made the Queen's answer to the address. On 18 November 1702,

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1. J.C.Sainty, "The Origin of the Leadership of the House of Lords," in C.Jones and D.L.Jones ed. Peers Politics and Power, 208-09.

the Commons heard a High Tory Sir John Pakington's complaint against William Lloyd, the Bishop of Worcester about his election irregularities in Worcestershire. In the address, the Commons asked the Queen to sack Bishop Lloyd from the Lord Almonership. On the following day, the Lords made an address that Lloyd should continue to be Lord Almoner, until his alleged offence was proved. Having received these addresses, the Lord Treasurer told Nottingham that "I think it might bee proper that your Lordship w[oul]d take the Queens Commands before she rises from Council to cause my Lord Keeper, Lord President [Pembroke], Lord Privy Seal [Normanby], your Lordship & my self to wait upon her in her lodgings ...to consider of an answer to each House."[1] It is not surprising that this Tory-dominated conference made a decision to dismiss Lloyd. Nottingham accepted the decision, but such a High Tory lord as Normanby was far from being satisfied with it. At the beginning of her answer to the Lords, she showed some consideration for the Whig lords, although she agreed to the dismissal of Lloyd. She said "every peer and lord of parliament, and indeed every other person, ought to have an opportunity of being heard, to any matters objected against him, before he be punished."[2] Normanby did not like this

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1. BL, Add. MSS. 29588, f.352: [Godolphin] to [Nottingham], endorsed 19 Nov.1702.

2. LJ., XVII, 169.

passage. He wrote to Nottingham that "I am always sorry when I differ w[i]th your Lordship but since you command my opinion of it, I must own I think it better as we left it last night & seems more her own words: That preamble is a little too formal & rather arguing the matter, which in my own i[j]udgement is below her Ma[jes]ty".[1] From the start of the Godolphin ministry, it was very difficult for the Lord Treasurer to achieve a consensus among the Tory lords.

In the first half of the Godolphin ministry, there were two other remarkable things about the Queen's address and its answer. One was that Harley participated in not only drafting the Commons' addresses and their answers but also the Lords'.[2] The other thing was that there is evidence that the Queen granted a private audience to some peers so that she could communicate her policy to them, when she formally gave them her answer. On 21 October 1702, the Queen made an opening speech for the 1702/3 session. On the following day the Lords made an address of thanks for her speech, and asked the Queen about the time when the Lords would present their address. At that time, the Queen had already decided to give Marlborough a dukedom and a pension, and probably

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1. BL, Add. MSS. 29588, f.356: Normanby to [Nottingham], 20 Nov.1702. (copy in Nottingham's hand).

2. BL, Loan 29/64/1: a draft of the Queen's answer to the address of the Lords on 31 Jan.1704 and a draft of the meesage to the House of Lords on 18 February 1704 (in Godolphin and Nottingham's hands).

she did not intend to give him this pension from her bounty, but to award it to him and his descendants, for which an act of parliament would be necessary. The Queen fully expected that this favour would cause the opposition of some Tory lords, so she hoped to talk about this matter, when the Lords presented the address. The Queen told the Countess of Marlborough that "the address from the house of Lords w[hi]ch is to be given me tomorrow & that gives me an opportunity of mentioning a Thing to them that I did not intend to do yet; It is very uneasy to your poor unfortunate faithfull Morley [the Queen] to think she has soe very Litle in her power to shew how sensible I am of all my Lord Marlborough's Kindness."[1]

After the Whigs retrieved their power in the 1705 election, and Cowper was appointed Lord Keeper, the Whig lords managed the addresses which the Lords occasionally made so that they could ask the ministry to carry out some policies. The Whig peers flatly turned down a proposal of the address from the Tory side. On 22 November 1705, in the committee of the whole House, the Earl of Nottingham moved to draft an address, in which the Tory lords censured the government about the miscarriage on the Moselle. Bishop Nicolson recorded the Lords had "4 hours Disputes" and that they were "chiefly 'twixt His

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1. BL, Add. MSS. 61416, f.14: [the Queen] to [Countess of Marlborough], 22 Oct.[1702].

Lordship [Nottingham] and the Lord Treasurer".[1] MS. minutes of the House exceptionally explained the opinion of a Tory peer. "If this be ye case that these matters [miscarriage on the Moselle] are not duly represented to the Queene this is throwing away our unity[?] & our Blood ...I hope all will joyne in advicing her Ma[jes]ty."[2] A draft of the address in Nottingham's hand is extant.[3] This draft was endorsed as follows. "Question proposed & rejected"

> yt an humble addresse be presented to her ma[jes]ty praying her ma[jes]ty to order an acc[oun]t to be laid before this House of ye occasions of our disappointments after our march to ye moselle & after our passing ye enemies lines & also in Portugal both in ye year 1704 & this last campaigne and at the Overische & not prosecuting ye success on forcing enemies lines.

The Whig lords thought that this draft "tended only to make Breaches in the Confederacy, & to renew Resentments which were well over". Lord Wharton moved an address of a different nature, which expected that the Queen would ask the allied powers to prosecute the war vigorously. The

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1. Nicolson Diary, 308.
2. HLRO, MS. minutes, XLI, on 22 Nov.1705 (unfoliated).
3. Leicestershire R.O. Finch MSS. parliamentary and political papers, 125.

Whigs and the Court successfully negatived Nottingham's motion by 20 votes by 53, and Wharton's proposal was carried without division.[1]

Even after the Lord Treasurer was alienated from the High Tories, and sought assistance from the Whigs, it seems that he did not control the address and its answer so well. At the opening of the 1707/8 session, it was obvious that the ministry could not make the Lords' address turn to its advantage.

> It was expected, according to custom, that the Lords would have begun with an Address of Thanks to the queen; but when her majesty's speech came first to be considered, the earl of Wharton made an elaborate harangue, wherein among other thing, he took notice of the great decay of trade and scarcity of money. He was seconded by the lord Somers, who likewise enlarged upon the ill condition and late mismanagements of the Navy: So that when the earl of Stamford moved for an Address to her majesty, to return her Thanks for her most gracious speech, he was opposed by the duke of Buckingham, the earl of Rochester, and the lord Guernsey.[2]

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1. Cowper's Diary, 17; Nicolson Diary, 308; Cobbett, VI, 475-76.

2. Cobbett, VI, 597; Leeds Archives Office, Temple Newsam MSS. X, W.Thompson to Lord Irwin, 16 Dec.1707 quoted in W.A.Speck, The House of Commons 1702-1714 A Study in Political Organisation, (unpublished D.Phil. thesis University of Oxford, 1965), 160.

In the session 1709/10, it was impossible for the Lord Treasurer to prevail with the Queen to accept his draft. On 18 February 1710, both Houses presented an address that the Duke of Marlborough should be sent to Holland to negotiate the peace treaty. In his draft, Godolphin praised the Duke's great contribution to the nation. However, the Queen refused this draft. In her answer to both Houses, she insinuated that the Duke had been reluctant to go to the Continent in spite of her instruction.[1] Facing the Queen's coldness to his grace and the Lord Treasurer, from January to February 1710 Marlborough had an abortive plan to place an address which desired the Queen to remove Mrs Masham from the Court, because she plotted with Harley against the ministry. It is often said that this well-known address was planned by such Commoners as Arthur Mainwaring, although the Duke and the Duchess of Marlborough had him on a string.[2] Nevertheless, this matter would not have made a great sensation, unless it had involved some lords. On 19 February, in a letter to the Earl of Marchmont, George Baillie gave a good account that some peers also tried to make a similar address in their House. He wrote that "the Whigs and our country men in the house of Lords, who met all into the address, may lose the Queen by the part they

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1. E.Gregg, Queen Anne, 304-05.

2. "Earl Coningsbie's History of Parties; presented to King George the First", Archaeologia, XXXVIII, (1860), 10.

have acted, for I hear she takes it very ill." Baillie admitted there was a difference of opinion among the Junto lords about this address. He reported that "L[or]d Sommers and others of the Whigs (Wharton and Sunderland were more Marl[borough's] interest) did gain in a personal interest with the Queen and so did most of our Country men".[1]

Then, what was the attitude of the Tory lords to this address? Another contemporary account tells that

> [The address against Mrs Masham] was to have been moved in both houses on Monday [23 January]...[i]ts s[ai]d She [the Queen] sent for several persons of both Houses in her service, declared with great spirit and courage ag[ains]t it & that she shou[l]d take it as an indignity to her self: among these S[i]r J. Holland & Mainwaring to whom she spoke very plain & hereupon very great numbers of Lords & others have daily attended her Ma[jes]ty to assure her of their detesting any such proceeding. The Scotch to a man, & D[uke] of Leeds Ormond - Beaufort - Rochester &c. & ye Queen took it extremely kind... L[or]d President [Somers] L[or]d Chancellor [Cowper] & many others did ye like. So that observers say they

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1. SRO, GD 158 (Marchmont MSS.)/1117/5, [G.Baillie] to [Marchmont], 19 Feb.1710.

never saw such a turn in their lives.[1]

Nevertheless, Marlborough did not give up hope that long-time dissatisfaction of the Tory lords with the Queen would enable them to agree to this address. But it was not successful. Consequently Marlborough and Godolphin finally depended upon the Whig peers. Baillie remarked that "Marl[borough] did make advance to the Tories but was coldly received for they thought of making court to the Queen...Marl[borough] and Treas[urer] have put themselves intirely into their [Whigs'] hands."[2] From the first to the end of his ministry, it appears that Godolphin did not manage the address and its answer very well. Especially in the 1709/10 session, he lost control of these proceedings. Since her accession, the Queen entrusted the drafting her speech and answer to the House with her chief ministers. However, she apparently preserved a right to disagree to the draft. Because of the party politics and the Queen's influence, it was impossible for the ministry to have a complete control of this procedure. After 1710, Harley might have managed it more skilfully than his predecessor, but it was not until the Hanoverian era that a 'leader' of the Lords was able to systematise this procedure to his advantage.

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1. Leicestershire R.O. Finch MSS. box 4950, bundle 23, anonymous letter on 28 Jan.1710.

2. SRO, GD 158/1117/5, [G.Baillie] to [Marchmont], 19 Feb.1710

Divisions, proxies and Lords' protests

When a motion was made and it was seconded, the Speaker of the House was to take a vote on this motion. (But it was not an established rule. This problem will be discussed in chapter six.) The House usually used the method which was called the 'collective voice'. When the question went to a vote, the peers said "aye" or "no", and the Speaker (or the chairman of the committee) decided whether this question was carried or not according to the volume of the voice. If the result of the 'collective voice' was not clear, a peer could ask for a division, and the chairman put this question to a division.[1] On 15 February 1707, in the committee of the whole House, the Lords debated the first article of the Union. The Tories insisted on postponing this article, and this question went to a vote. Bishop Burnet, in the chair, obviously adopted the 'collective voice' at first, and he thought that the opposers of this question had had a majority. However, Lord Stawell, a Tory, "demanded a division". His demand upset the Tory leaders, because they were afraid of "showing the Thinnesse of their Party." Nevertheless, Lord Wharton, who wanted to show the weakness of the Tories in the upper House, told the Lords that he would join in the division, once a peer

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1. J.C.Sainty and D.Dewar, Divisions in the House of Lords; D.Hayton and C.Jones ed. A Register of Parliamentary Lists 1660-1761, (Leicester, 1979), 7-10.

required it. Burnet accepted his opinion, and took a division.[1]

Based on the MS. minutes of the House, the Lords started the systematic record of divisions in 1685. Some modern historians have shed light upon this procedure. The most formal and traditional way of the division was the 'individual voice'. Each peer stood up and said 'content' or 'not content' from the peers of lower rank to the higher ones.[2] In the early eighteenth century, this method had become old-fashioned. It is known that there were only two cases in the years of the Godolphin ministry. One was the general pardon on 20 April 1709, which the Queen communicated to the Lords and asked for their acceptance.[3] The other case was the verdict of the impeachment of Dr Sacheverell on 20 March 1710.[4]

The ordinary procedure of the division was given by S.O.77 ("Contents to goe below the Barr".) in November 1691. It provided that "for the future when there shall be a Division in the House upon any Question The Contents

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1. Nicolson Diary, 394.

2. See the previous page note 1.

3. Christ Church, Oxford, Wake MSS. XVII, f.205: Bishop Nicolson to [Bishop Wake], 21 Apr.1709. Nicolson wrote that "the Lord Chanc[ello]r put the Question for its passing; and every single Lord (in his Order) rose up from his seat, bowed towards the Throne, and said Contents. "

4. The Tryal of Dr Henry Sacheverell before the House of Peers for High Crimes and Misdemeanours; upon an Impeachment, (1710), 450-52.

shall goe below the Barr and the Not Contents stay within the Barr." John Relf's Book of Orders shows a little more detailed description.

> if ther[e] is a doubt [about the result of the 'collective voice'] it is determined by Poleing, The Contents ever goeing below the Barr; Then two Lords of different Opinion on the Question and of the same quality are named by the L[ord] Chancellor to count the Numbers, which when they have done, and at the end of his Lo[rdshi]ps Woolsack acquainted him therwith, he declares the same, And if Proxies are called for, then the s[ai]d two Lords at the Clerks Table take account of them, And haveing as before acquainted the L[or]d Chancellor therwith, he declares the Numbers to the House.[1]

When a peer did not want to join in the division, he could abstain from it. However, he had some restrictions. S.O.64 (ordered in 1671) provided that "after a question is putt and the House hath voted thereupon noe Lord is to departe out of his place untill the House have either entered on some other busines or upon consideration of adjourning the House". In the early eighteenth century, John Relf added another restriction. He wrote that "If a Lord come at the latter end of (or after) a debate, he

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1. HLRO, Relf, Book of Orders, 683.

may with leave withdraw before the Question is putt".[1] A peer could abstain, on condition that he did not hear the whole debate about which a question was put.

Relating to the proxies, there were detailed provisions in the standing orders. No lord could keep more than two proxies (S.O.45). When a lord, who had given his proxy, appeared in the House, his proxy automatically became void (S.O.46). After a peer, who had made a proxy, vacated it by his appearance in the House, he could not make a new one without leave of the House (S.O.47). Proxies could not be used for the judicial cases (S.O.75). A peer, who held a proxy, had to exercise it, when proxies were called for at the division (S.O. 81). Proxies could not be used for any judicial cases, although they had the form of a bill (S.O.88). When a proxy was entered after the prayer, it could not be valid on that day (S.O.98). The political significance of the proxies has been analysed by Geoffrey Holmes.[2] The sender and recipient of the proxy often had personal friendship and normally had similar political views. If it had not existed, their relations would have been complicated. Before the 1706/7 session started, the Duke of Shrewsbury entrusted the Duke of Marlborough with his proxy. However, it seems that Marlborough was not sure that he

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1. HLRO, Relf, Book of Orders, 683.

2. G.Holmes, British Politics in the Age of Anne, (revised ed. 1987), 307-09.

could exercise this proxy to Shrewsbury's satisfaction. At that time, Marlborough began to seek assistance from the Junto lords, while the Whigs had regarded Shrewsbury as a deserter from the their cause. On 26 December 1706, Marlborough wrote to Shrewsbury that "if any thing should happen wherein [about the proxy] I may have the least thought that we might differ in opinion, you may be sure I shall not make use of it without your Grace's advice and direction."[1]

After the Lords took a vote, the defeated peers had the privilege to make a protest, and (if they wanted) show the reasons of their dissent in the Lords' Journal, although a majority of the House preserved a right to expunge the reasons. About the Lords' protest, S.O.57 ("Protestation or Dissent")[2] gave a simple provision. "such Lords as shall make protestation or enter their dissents to any Votes...shall make their said

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1. Letters and Dispatches of John Churchill, First Duke of Marlborough, ed. by G.Murray, III, (1845), 266: Marlborough to Shrewsbury, 26 Dec.1706.

2. A peer distinguished the 'protestation' from the 'dissent'. (CUL, MS. Dd. xiv, 19, p.45)

   1. A protestation is the greater, & a Dissent the less.

   2. A Dissent may be enter[e]d without the leave of the House, & is the privilege of every peer. But a protestation must have leave.

   3. A Dissent may be without assigning reasons, but a protestation is suppos[e]d to require them.

protestation, or give direction to have their dissents entered into the Clerks Book, the next sitting day of this Howse, or els[e] the said Protestation or dissent, to bee voide & of none effect". This procedure has two meanings. One is that peers, who wanted to protest, were given at least one day to consider whether they would give their protest with reasons or without reasons, and to draft the protest when they decided to submit it with the reasons. The other thing is that the dissidents could prevail with the lords, who were absent at the division, to join in the protest.

In June 1712, Ralph Bridges ridiculed the meaninglessness of the Lords' protest. He told William Trumbull that he regarded it as "a tedious redundant piece of false eloquence."[1] However, it was not always the case. At least, some peers thought much of the protestation. In the years of the Godolphin ministry, it was a good way for the High Tory lords to express their opposition against the Court. The Earl of Nottingham often drafted long protestations on such important occasions as the debate over the 'Scotch plot', the bill for the security of the Church of England in the 1706/7 session, the ratification of the Union and the impeachment of Dr Sacheverell. Some consideration of these drafts sheds

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1. Berkshire R.O. Trumbull (Additional) MSS. 136/3: R. Bridges to W.Trumbull, 20 June 1712.

light on the process of the making of Lords' protests. After some lords were defeated at a division, one of the losers showed the House their intention to protest. It was possible that some of the dissidents hoped to protest with reasons, but the others preferred to dissent without reasons. On 25 March 1704, Nottingham, who faced the Whigs' condemnation, wrote the reasons of the protestation, when the Whig lords passed the censure motion against the ministry's reluctance to prosecute the 'Scotch plotters'. It seems that Nottingham hoped to counter-attack the Whig lords through the protest. However, his scheme failed. Obviously some dissidents were unwilling to support his reasons, although they were against the censure and signed the protestation.[1]

In the 1706/7 session, the Lords deliberated the bill for the security of the Church of England. This bill, which had been drafted by the Whig bishops and lay lords, was passed on 4 February 1707. At the second reading on the previous day, Archbishop Sharp of York and Nottingham moved that the Test Act should be entrenched in this bill so that the Church of England could be defended against the Kirk. This motion was, however, defeated. Nottingham made a long draft for the reasons of

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1. This undelivered protest is seen in BL, Add. MSS. 29587, f.130.

the protestation.[1] The first paragraph of his draft, which plainly emphasised the importance of the Test Act, is the same as printed in Lords' Protests. But the other three paragraphs had been cut off in the printed protest. In the second and fourth part, he pointed out the advantages of the Union for the presbyterian Church, and the disadvantages for the Anglican Church. In his third paragraph, he wrote that

> 3rd because if the union takes effect as it secures ye Kirk of Scotland so ye addition of 16 peers & 45 Commoners - may endanger our church at least as much as ye popish lords - since ye principles & covenant of ye Kirk of Scotland lead them to endeavour destruction of our Church.

For Nottingham, the ecclesiastical matter was not isolatable from the secular politics. He was apprehensive that the Scottish representatives, most of whom would be presbyterians, might weaken the power of the Tories in the future British parliament. Although some peers feared that the Church of England would be encroached on by the Kirk after the Union, they obviously did not want to connect this matter with the lay politics. A similar case

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1. Leicestershire R.O. parliamentary and political papers 127. For the printed protest, see J.E.T.Rogers ed. A Complete Collection of the Protests of the Lords, (Oxford, 1875), I, 179-80.

can be seen in the debate on the Union. In February 1707, the House discussed the Union bill article by article. From Nottingham's drafts of speeches and printed debates, it is conceivable that he was against almost all the articles.[1] At the same time, he might have had political sense enough to understand that the opposers to the Union were isolated in the House, and they had no hope to prevent the ratification. From his drafts of the protestation, it is easy to realise his tactics. He wrote two kinds of drafts. One was a dissent against the Union in general. It appears that he knew that this general opposition would not appeal to many lords. Thus, he made another draft, in which he chose the first, fourth, seventh and ninth articles, and he gave the reason of the protest against each article.[2] Although some peers were unwilling to be against the whole Union bill, it was possible for them to be opposed to some articles. This tactic seems to have been successful. On 27 February 1707, the dissident lords submitted three protestations with reasons, in which they were opposed to the ninth, fifteenth and twenty-second articles. Five days later, a protest against the whole Union bill was also given.

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1. Nottingham's draft of speech against the Union is in Leicestershire R.O. Finch MSS. parliamentary and political papers 128. For his printed speeches, see Cobbett, VI, 562, 566-69.

2. Both protestations are in Leicestershire R.O. Finch MSS. parliamentary and political papers 128.

Then, did these protestations really mean Nottingham's tactical success? It is remarkable that he drafted the protests against the first, fourth, seventh and ninth articles, while the dissidents did protest against the ninth, fifteenth and twenty-second article. About the ninth article, it is interesting to compare Nottingham's draft with the protest in the printed Lords' Protests.

[Nottingham's draft]

The Quota of 48000 £ is very short of the proportion of the Scotch members in Parl[iamen]t & much too little in itself; And yet if in all respects this were i[j]ust proportion now, Tis not reasonable to establish this proportion for a perpetual rule, for Engl[an]d may & probably will decrease in wealth, whereas Scotland may & probably will encrease in riches by ye Com[m]unica[ti]on of our trade as ye Scotch ym[them] selves expressly acknowledge in ye 15th art[icle].

[printed protest]

We humbly conceive, that the sum of forty-eight thousand pounds to be charged on the kingdom of Scotland, as the quota of Scotland, for a land-tax, is not proportionable to the four shillings aid granted by the Parliament of England: but if, by reason of the present circumstances of that kingdom, it might have been thought it was not able to bear a greater

> proportion at this time, yet we cannot but think it unequal to this Kingdom, that it should be agreed, that when the four shillings aid shall be enacted by the Parliament of Great Britain to be raised on land in England, that the forty-eight thousand pounds now raised in Scotland shall never be increased in no time to come, though the trade of that kingdom should be extremely improved, and consequently the value of their land proportionably raised, which in all probability it must do, when this union shall have taken effect.[1]

Both the Nottingham's draft and the printed protest complained about the fact that the land tax burden of Scotland was too light in the Union treaty. However, Nottingham connected the problem of the tax burden with the number of representatives in the Parliament of Great Britain. Apparently he considered the Union from a political viewpoint rather than an economic one. On the other hand, the printed protest was against this article only because of economic disadvantage of England. Naturally, Nottingham did not sign this protestation.

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1. J.E.T.Rogers, Lords' Protests, I, 180-81.

CHAPTER TWO

The House of Lords as a Legislature

This chapter mainly analyses the function of the House of Lords as a legislature. However, it will concentrate on the enactment process of political significance, and such private bills as those relating to divorce, estate and naturalization are not considered, unless they have some meanings about the procedures of the House. The activity of the lawyers in the House and the problem of printing the proceedings are also discussed in this chapter.

The lawmaking process in the Lords

Every lord had a right to introduce a bill. Although the bishops were inferior to the lay peers on some points, the spiritual lords enjoyed the same right as the temporal peers about presenting a bill to the House. It was possible that through an address to the Queen, the Scottish and Irish parliament required that an enactment should be done by the English parliament.[1] It was common that judges, Queen's counsels and government officials participated in the lawmaking process. Civilians could present a petition to the House, and they submitted a draft of the bill, when the Lords asked them to do so.

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1. In the 1703/4 session, through an address to the Queen, the Irish parliament asked the English parliament for an act to promote "the linen manufactures of Ireland". HMC, Lords MSS. 1702-1704, 343.

When a lord proposed a bill, he had to tell the House the gist of the bill. In his Book of Orders, John Relf recorded that "The Lord that offer[e]d the Bill acquaints the House very shortly with the nature thereof before it is read."[1] This is what was called the 'heads' of the bill. The Lords especially the Whig lords had established this lawmaking process through which a lord told the House the 'heads' and the House made them a bill with the lawyers' assistance. In November 1702, Bishop Nicolson observed that Lord Halifax, an expert on trade and finance, complained of the smuggling, and showed the 'heads' of the bill to prevent it. These heads were agreed to by the House, and a "Committee appointed, on all these Heads, to sit to morrow-morning in the Prince's Chamber".[2] For the Regency bill, it was Lord Wharton who told the House the 'heads' of this bill on 19 November 1705. Very exceptionally, in the MS. minutes book, a parliamentary clerk recorded a part of his speech in which he showed the House the 'heads'.

> The next thing is to secure ye succession. I am afraid there are some de[fe]cts in the Law --- To prevent correspondence w[i]th ye late king James the law do[e]s not make penall to correspond w[i]th K[ing]

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1. HLRO, Relf, Book of Orders, 99.

2. Nicolson Diary, 131-32.

> James the third --- that the laws be look[e]d into & amended. An Act to make penall to speake ag[ains]t the late king --- persons goe about to sett aside the Tytle of the Queene...The Administracon of Government dureing the Inter[v]all is lodged somewhere there must be something to sett it a worke. --- An Act to naturalise all that are in the succession of ye Crowne.[1]

It appears that the Junto lords and their adherents had mastery over this procedure. When they proposed the 'Alien bill' and some related bills to the House in December 1704, obviously the Junto lords had concerted the 'heads' in advance. Bishop Nicolson recorded that Lord Wharton at first moved a bill to appoint new commissioners for the treaty of the Union. After the opposition of Nottingham, it was Halifax who proposed the 'Alien bill' as a retaliatory measure against the 'Act of Security' because the Scottish parliament had been against appointing the commissioners of the Union and settling the Protestant succession. After Lords Ferrers and Torrington made some proposals, Lord Mohun, a Junto follower moved to lay an embargo on the Scottish wool.[2] A

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1. HLRO, MS. minutes, XLI (unfoliated); Nicolson Diary, 305-06.

2. Nicolson Diary, 249-50; Jerviswood Corr., 22: J.Johnstone to G.Baillie, 12 Dec.1704.

clerk of the MS. minutes wrote the proceedings as follows, and they show that the Whig peers proposed the 'heads' of the retaliatory bills against Scotland in quick succession.

[1] [the heads to the bill to appoint the commissioners for the Union] The House was adj[ourned] dureing pleasure and put into com[mitte]e to consider of ye state of the nation in reference to Scotland to consider of proper heads for a bill or bills...

proposed to direct that a bill be brought in to impower her Ma[jes]ty to appoint Com[missione]rs to treate for a firme and perfect union w[i]th Scotland. --- & that ye power of this Act be not executed untill they have named Com[missione]rs in Scotland.

proposed & agreed...That one proper head for a Bill or Bills to prevent the ill effects of the Acts of Parliam[en]t lately passed in Scotland is to impower her Ma[jes]ty to nominate & appoint Com[m]issioners on the part of England to treate of a perfect and entire union w[i]th Scotland... such power be not executed till an Act of Parliam[en]t for that purpose be first passed in Scotland...

[2] [the heads of the 'Alien bill']

[3] [the heads of the bill to embargo the Scottish

cattle and sheep]

[4] [the heads of the bill to regard the Scottish traders with France as the enemy]

[5] [the heads of the bill to embargo the Scottish wool][1]

When a bill was introduced to the Lords at first, the original bill was written on paper. This paper was classified as one of the 'Main Papers' of the House of Lords, and it was often regarded as a principal paper among those which were produced in the lawmaking process. It was possible that the original bill had some blanks. The Lords often made blanks which was related to the commencement date of the act or the amount of penalty.[2] In the above 'Alien bill', the blanks for the date of the commencement of the law had a crucial meaning. The Whig peers did not submit this bill to damage the Scottish economy, but to force the Scots to agree to either settle the Protestant succession or appoint the commissioners for the Union. The Whig peers at first kept the commencement date open, and later they chose 25 December 1705, when they would know the decision of the Scottish parliament.[3]

1. HLRO, MS. minutes XL on 11 Dec.1704; Nicolson Diary, 249-50.

2. For example, in an amended draft of the 'Navy (Registry of Seamen) bill' (HLRO, Main Papers, 1986), there are blanks in the columns of the amount of penalty.

3. Jerviswood Corr., 47: J.Johnstone to G.Baillie, 15 Feb.1705.

When a bill was brought to the Commons at first and sent to the Lords, the House received a bill on parchment engrossed by the Commons.

After a bill was submitted to the House, it was read for the first time. In the early eighteenth century, the first reading had become a formal event except for reading the breviates, although it was said the Lords still possessed a right to refuse an immediate first reading.[1] The lord, who had proposed the bill, had to submit a breviate of the bill. John Relf wrote that "All Bills are Presented in Paper with Breviates of them for the Speaker for his more duly opening them to the House after the first reading thereof."[2] Unlike the original bills, it seems that the breviates were not always regarded as the 'Main Papers'. Most of the breviates for the bills of political importance were not extant.[3] But the form of the breviates seems to have been similar to the bill according to some breviates for the private bills. Like the original bill, the breviates were allowed to have some blanks in the columns of the commencement

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1. M.F.Bond, Guide to the Records of Parliament, 60; A.J. Rees, The Practice and Procedure of the House of Lords 1714-1784, (unpublished Ph.D. thesis, University of Wales Aberystwyth, 1987), 82.

2. HLRO, Relf, Book of Orders, 99; HLRO, Historical Collection, item 222, 93.

3. One of the extant breviates is HLRO, Main Papers 1778 Keightley's relief (forfeited estates in Ireland) bill, annex (a).

date and the amount of penalty.[1]

The Lords started to debate the bill, after they read it for the first time. The majority of the House might pass the second reading, although they were opposed to the bill. However, they would reject it, if they thought that any amendments would not cause a compromise with the supporters of the bill. It is well-known that the Lords refused to read the second and third occasional conformity bill for the second time so that they could show their veto on this bill.

If the bill did not have much importance, and the Lords agreed, the bill was read for the second time, and immediately engrossed without committing. However, a bill of significance was normally committed after the second reading. The select committees will be analysed later, so this section deals with the committees of the whole House.

In the whole House committee, the Lords enjoyed more freedom to discuss a bill, because they could speak as often as they liked, while they could speak only once at one reading stage in the House. However, the House had a device with which the committee could not have excessive discretion. The House could give an 'instruction' to the committee, before a bill was committed. The committee

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1. One of the example is HLRO, Main Papers 2076 "Poor relief etc." bill, annex (a).

could not work beyond the boundary of the 'instruction'.[1]

While a bill was deliberated in the whole House committee, the House was adjourned and the Speaker of the House gave place to the chairman of the committee. The most important role of the committee was to amend the bill. Although the amendments in the committee had to be accepted by the House later, the committee was enabled to lay the original bill (the engrossed bill in case that the bill had been sent from the Commons) on the Table of the House, and make amendments. At this stage, the original bill became the 'amended bill'. The amendments in the whole House committee had been entered on the amended bill. However, this custom had been gradually changed since the seventeenth century.[2] If the amendments were very extensive, or some provisoes were added to the original bill, another paper was prepared. There were two kinds of the forms to write amendments on another paper. When the committee made some change in the phraseology, the form was usually "for ('A') read ('B')", or "add ('C')", or "delete ('D')". When the amendment was longer,

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1. For example, the House gave an instruction to the the whole House committee over the first occasional conformity bill. HMC, Lords MSS. 1702-1704, 157; Nicolson Diary, 137.

2. M.F.Bond, Guide to the Records of Parliament, 60.

the whole clauses or paragraphs were written.[1]

When the whole House committee amended the engrossed bill from the Commons, their amendments were usually entered on other amendment papers.[2]

Amendments were made not only by the Lords themselves but also by judges, counsels, government officials and others. They also played important roles in providing the committee with information, so that the committee could make amendments.[3] However, it was thought that the House should resume while the Lords communicated with non-members.[4] It seems that this matter sometimes caused inconvenience, because the chairman of the committee gave place to the Speaker, whenever the House was supplied with the papers at the Bar. Thus, the Speaker did not have to return to his seat but he was allowed to sit at the Table of the House, when the House resumed.[5]

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1. For instance, HLRO, Main Papers 2184 Princess Sophia naturalisation bill. Annex (a) is an amendment paper, which was made in the whole House committee on 4 Dec. 1705. This paper is "for ('A') read ('B')" form. However, annex (b), draft proviso consists of one paragraph (13 lines).

2. See chapter four 182.

3. For example, HLRO, Main Papers 2070 Wool Exportation to Scotland prohibition bill. A draft of this bill (principal paper) was delivered by the judges on 16 Dec.1704.

4. On 4 Apr.1707, the whole House committee debated the "Bankrupt Act amendment bill", but "the House was resumed and the clauses offered at the Bar." HMC, Lords MSS. 1706-1708, 78.

5. HMC, Lords MSS. 1708-1710, 285.

After the committee finished the debate, the chairman reported to the House. When the committee amended the bill, the amendment had to be communicated to the House. Since the accession of the Queen it had been a custom to read the amendments twice in the House.[1] S.O.110 (ordered in April 1707) provided that "the Lord that makes the Report do Explain to the House the Effect and Coherence of each Amendment, And that on the Clerks second Reading of the same Amendments, the Lord on the Woolsack do the same." John Relf also described the committee report. "When Amendments are Reported from a Com[m]ittee they are twice read, vizt One entirely and afterwards severally".[2] After this report, the Speaker asked the Lords whether they would agree to it. When the House accepted the amendments of the amended bill, it was transcribed on parchment, which was called the 'engrossed bill'. The engrossed bills from the Commons were kept with the amendment papers made by the Lords. If the House did not agree to the committee report, the bill was re-committed.

After the Lords read the bill for the second time, and the 'amended bill' was engrossed on parchment, a peer (sometimes judges) could ask the House to amend the bill. This amendment is what was called the 'rider'. When

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1. HMC, Lords MSS. 1702-1704, 1 .

2. HLRO, Relf, Book of Orders, 127.

it was proposed, it was written on the amended bill or another paper. At the same time the rider was also written on the engrossed bill. The debate and vote of the rider were done prior to the third reading of the bill. After the rider was read three times, it became a part of the engrossed bill.

The Lords did not regard the rider as an ordinary way to amend the bill. Many of the 'riders' were expressed in the form of provisoes, and did not affect the essence of the bill. But Tory peers moved a rider which would result in a fundamental change of the bill. Obviously they made use of the rider to delay passing such important bills as the Regency bill and the Union bill. Before the third reading of the Regency bill on 3 December 1705, Nottingham proposed a rider which would enlarge the power of the Lords Justices. Somers was against this rider, because such a change should not be made by the rider but "by an Amendment at the Table".[1]

When a bill was introduced to the upper House at first, the bill was sent to the Commons. If the lower House agreed to the bill without amendments, it would become law after the royal assent. In case that the Commons passed the bill with amendments, the Lords had four choices. The first was to reject the Commons' engrossed bill, and the bill was dropped. The second was

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1. Nicolson Diary, 317; Cobbett, VI, 477-78.

to accept the amendments, and the bill was passed. The third was to make additional amendment to the Commons' engrossed bill, and send it to the lower House again. The fourth choice was to have a conference with the Commons. When a bill was brought into the Commons at first, the procedure was similar to the above process. Sending bills to another House and the conference will be considered in chapter four.

When the Queen acceded to the throne, the royal assent had become a formal event, although she was the last monarch who exercised her veto on a bill (in March 1708, against the Militia of Scotland bill). However, one thing is remarkable in relation to the royal assent. When the Queen gave her assent, she followed the tradition to use French. Considering that England was at war with France, in the 1706/7 session the Lords proposed the 'French tongue abolition bill' so that English might be used for the royal assent instead of French. Obviously Godolphin supported the bill, but the Commons (especially Robert Harley) were opposed to it, and this bill was dropped.[1]

John Relf recorded a long description of the royal

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1. On 7 April 1707, the Duke of Shrewsbury told James Vernon that "The opposition Mr H[arley] made to the Bill for abolishing the use of the Fr[ench] tongue shews he is not satisfyd with the Party brought it in." Shrewsbury thought that there was some possibility that Harley would be demoted to the Master of the Rolls. BL, Add. MSS. 40776, f.55: Shrewsbury to J. Vernon. HMC, Lords MSS. 1706-1708, 70-71.

assent.

When Bills are passed both Houses upon three several Readings in each House, they are Presented to the King for his Assent, which is sometimes deferr'd to the last day of the session, tho[ugh] it may be (and often is) given at any time in the Session when the King pleaseth. The Royal Assent is either given by Commission according to the Statute of 35 Hen[ry] 8...or else in person, in which case the King being come to the Lords House and sitting on his Throne w[i]th his Royal Robes attended with his Officers of State, the Lords being in their Robes also, and the Commons sent for by the King being come to the Barr, Their Speaker bringing with him the Bills for money, w[hi]ch the Clerk of the Parliaments [sic] usually sends down to him, while the King is robeing in the Prince[']s Lodgings (all other Bills remaining in the Clerk of the Parliaments hands) and Presenting the same at the Barr with a Speech, The Clerk of the Parliaments receives it from him, and delivering it at the Table to the Clerk of the Crown, who reads its Title in the first place and then the Title of the other Bills in such order as they are in consequence. After the Title of each Bill is read the Clerke of the Parliaments pronounceth the Royal Assent according to such Instructions as he hath in that behalfe received from the King. The Clerk of the Parl[iamen]ts standing at

one end of the Table and the Clerk of the Crown at the other, and each of them bowing low towards the King. The One before and after he reads the Title of a Bill, the other before and after he hath pronounced the Royal Assent therto, They turn towards the Commons when they read or speak but never bow to them.

If a Publique Bill be assented unto the Answer is

Le Roy le veult

If a Private Bill be allowed by the King the Answer is

Soit fait come il est desire[1]

The lawyers in the House

In the House of Lords, such lawyers as judges, Queen's counsels, attorney general and solicitor general were consulted not only for the judicial affairs but also for the legislative and inquiring work. The judges of the Courts of the Queen's Bench, the Common Pleas and the Exchequer were summoned so often, that they occupied some place on the Woolsacks. By the standing orders and the customs in the House, the status of the judges were provided as follows. They had to carry the writs issued by the Lords so that they could be called by the House. When they attended the House, they sat on the Woolsacks and they were uncovered, until the Lords (normally the Speaker) gave them leave to be covered. They could not deliver their opinion until the majority of the House agreed to

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1. HLRO, Relf, Book of Orders, 205-06.

hear the judges.[1] It is obvious that the procedures of the House were cautious of the judge's intervention in the proceedings of the Lords.

While the House was careful about the judges' interference with the Lords, the judges did not want to be involved in party politics. They were often reluctant to state their opinion about political matters, and sometimes refused to answer the question. On 11 January 1703, when the Lords asked the judges whether the Act of Settlement (1701) would invalidate the titles of the foreign-born peers at the Hanoverian succession, the judges were "loath to give their Opinions in a Question wholly relateing to the Priviledges of Peers, upon any request whatever; and hoped their Lordships would excuse them from doeing it: But, if the Lords would lay their Commands upon them, they were ready to give them". Although Bishop Nicolson expected that the Lords would not command the judges, the Lords forced them to state their opinions three days later.[2] The judges were unwilling to assist the Lords, when the House gave them a noncommittal instruction. In the 1705/6 session, the upper House asked

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1. S.O.5, 6 and 7. HLRO, Relf, Book of Orders, 80.

2. Nicolson Diary, 167, 170-72. According to HLRO, MS. minutes, XXXVIII, on 11 Jan.1703, "L[ord] Ch[ief] Justice Com[m]on Pleas [Thomas Trevor] in behalfe of all ye Judges desires that they may be excused giving their opinions & says it is on the Right of Peerage & of Lords Sitting in Parliam[en]t."

the judges to draft the Regency bill according to the 'heads' of the bill. However, Lord Chief Justice Holt thought that the contents of the 'heads' were evasive, because the 'heads' provided that the power of Lords Justices should be dominant during the time between the Queen's demise and the Hanoverian accession, but at the same time they would not be allowed to pass the laws which were destructive to the Church and State. Lord Keeper Cowper recorded that

> The Judges rec[eiv]ed Directions from the Com[m]ittee, touching heads of Bill last mention'd: one was that the Lords Justices sho[ul]d be confined, so as to have no power to consent to Stat[utes] for the Alteration of the Government in Ch[urch] or State. The Chief Just[ice Holt] profess'd his Inability to distinguish that Matter, so as to limit their power as was designed, if they had power to pass any Laws.[1]

In spite of their reluctance to commit themselves to politics, it is unquestionable that the judges sometimes greatly influenced the Lords about political issues. John Oldmixon recollected that the judges' favourable opinion for the Union had contributed to the passing of the treaty in 1707.[2] Contemporary evidence

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1. Cowper's Diary, 17.

2. J.Oldmixon, The History of England during the Reigns of King William and Queen Mary Queen Anne King George I, (1735), 386.

endorses his view. For example, on 15 February, when the whole House committee debated and passed the first five articles of the Union treaty, the judges were of the opinion that the Union bill would never violate the English law. MS. minutes of the House shows that Lord Chief Justice of the Common Pleas (Thomas Trevor) said "If I had thought this Union had or could destroy the laws of England, I would have proposed a remedy. The laws are local; the Scots come into the Parliament of England. Nothing can be stronger to imply the Parliament of England does continue. I do not apprehend there is any danger of altering the laws."[1] In the age of the 'rage of party', both Tory and Whig lords tried to make the judges' opinions turn to their advantage. In the debate on the "Church in Danger" on 6 December 1705, Archbishop Sharp moved that "the judges might be consulted what Laws were in Force against the Dissenters Seminaries, and by what means they might be suppresst." He apparently rebuked the ministry, because it overlooked the schools managed by dissenters. To counterattack this motion, "The Lord Wharton made another Motion, That the judges might be consulted about the means of suppressing Schools and Seminaries held by Non-Jurors".[2] It seems that for Lord

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1. HMC, Lords MSS. 1706-1708, 19; Nicolson Diary, 419-20.

2. [R.Steele], Memoirs of the Life of the most noble Thomas late Marquess of Wharton, (1715), 48-49; Cobbett, VI, 492-94; Nicolson Diary, 322-24.

Wharton such lawyers as Thomas Parker (serjeant-at-law and Queen's serjeant) and Nicholas Lechmere were very useful in the Lords House so that the opinions of the Whig peers could be defended by these law experts. On 8 December 1705, Bishop Nicolson wondered that Wharton moved to adjourn the House at 2 p.m. But it did not take long until Nicolson understood that Wharton had to send Parker and Lechmere to the Commons who were to discuss the "Church in danger" motion on that day, and the Whig peers could not expect their assistance in the Lords.[1]

However, it appears that the lawyers' assistance was more necessary for the Tory peers. In the first parliament of the Queen (1702-05), the Tory lords, who were a minority in their House, made use of the lawyers' opinion, and let them defend the Tories. In the 1702/3 session, the Tory peers insisted that the judges should be heard, so that they could justify that the foreign-born peers would lose the right to sit in the House after the Act of Settlement was in force.[2] In the 1703/4 session, Lord Chief Justice Thomas Trevor sided with the Tories when the Lords debated on the Ashby vs White case. It was said that in the House of Lords Trevor "insisted much on the authority that the house of commons had, to judge" all the election disputes.[3] The Whig peers

1. Nicolson Diary, 325-26.

2. HLRO, MS. minutes, XXXVIII on 11 Jan.1703; Nicolson Diary, 165.

3. Burnet's History, V, 115.

fully understood the Tories' tactic. On 5 February 1703, Lord Keeper Wright proposed that Edward Northey (attorney general 1701-07, 1710-18) should be heard, when the House discussed the mismanagement of Lord Halifax as the auditor of the Exchequer. This proposal was seconded by Nottingham. However, the Whig peers knew that the Commons had accused Halifax and urged the attorney to prosecute him. Thus "Lord Wharton fired" at hearing the attorney, and the Whig lords succeeded in passing the resolution which cleared Halifax of the suspicion.[1]

Although the Tories sometimes tried to exploit him, and he himself was a Tory, Edward Northey's activity in the Lords was not always favourable to the Tory peers. Geoffrey Holmes points out his impartiality, because he was "a professional lawyer and civil servant first and foremost, with his ultra-mild Toryism coming a very poor second in his priorities."[2] It is obvious that he did not want to be involved in party politics. However, regardless of his intention, even this impartial lawyer had to commit himself to the political disputes. On 29 January

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1. Nicolson Diary, 198. A peer recorded the proceedings on 5 Feb.1703. "My L[or]d Keeper said that Mr Attorney [general] had somewhat to offer...[A Whig peer answered that] the motion was made out of its place; for as much as ye L[or]d Keeper the Attorney &c were only Assistants in the House, but not to interpose in debates unless asked...if the Attorney had anything to offer it was to be at a committee in the princes Lodgings." (CUL, MS. Dd, xiv, 19, p.73).

2. G.Holmes, British Politics, 257.

1704, the Whig lords were indignant with the ministry which was averse to prosecuting James Boucher, one of the 'Scotch plotters'. Northey answered the Whigs. He said that "I had orders to prosecute Boucher. I acquainted E[arl] Nottingham that the papers did not make out evidence and gave a full account of the nature of the Case." His answer was enough for the Whig lords to suspect that Nottingham, the secretary of state, was reluctant to supply the attorney general with the government papers to accuse Boucher. Although Nottingham agreed to submit more papers in relation to the 'Scotch plot', the Whig peers were so infuriated at the secretary that they "handled my L[or]d N[ottingham] very roughly, sealed up the Papers & sent back to Her Majesty in a manner desiring all or none".[1]

On 14 February 1704, the House again heard the attorney general. The Lords asked him the reason why one Keith, another suspected plotter, had been bailed. Northey told the Lords that he had discharged Keith, based on the Habeas Corpus, although the attorney himself was convinced that "Keith is capable to do mischief and dexterous and ingenious. In the whole proceedings there does not seem

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1. HMC, Lords MSS. 1702-1704, 301; BL, Lansdowne MSS. 773 f.6: C.Davenant to H.Davenant, 1 Feb.1704.

anyone to be more charged than he is".[1] Indeed, Northey might have been neutral to any political view, but it was obvious that his answers about the 'Scotch plot' in the Lords made an important contribution to the censure against Nottingham, and his dismissal.

The publication of the proceedings of the Lords

The late years of William III's reign and the age of Queen Anne were significant for the printing of the proceedings of the upper House. In the 1701 session, when four Whig lords (the Earls of Orford and Portland, and Lords Halifax and Somers) were impeached, the Lords for the first time printed and published their proceedings of the impeachment by their order.[2] While the House still prohibited unauthorised publication, the Lords had started to give publicity to their proceedings.

This change undoubtedly resulted from their fierce dispute with the Commons. Eight days after the Commons made a decision to issue their records of the impeachment of four Whig peers on 24 June 1701, the Lords ordered the publication of their own account. After both Houses despaired of compromise about the first occasional conformity bill, the Lords at first made a decision to publish An Account of the Proceedings...in relation to

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1. HMC, Lords MSS. 1702-1704, 301.

2. The several proceedings and resolutions of the House of Peers, in relation to the lords impeached or charged, (1701).

the Bill intituled, An Act for preventing Occasional Conformity (Lords' printing order 24 February 1703). Three days later the Commons arranged to issue their report about this bill. Other official reports of the proceedings of the Lords also reflected the conflict between the two Houses. On 5 February 1703 the upper House determined to publish their deliberation of the report of the commissioners of the public accounts so that the Lords could justify their jurisdiction of the financial affairs. On 29 March 1704 the Lords undertook to issue the records of the examination of the 'Scotch plotters'.[1] This report apparently intended to deny the assertion of the Commons who insisted that the Lords should not have power to prosecute these plotters.

It is remarkable that the Tory Lords were strongly opposed to the publishing. After the Whig peers made sure the first occasional conformity bill had been dropped, they moved that the Lords should publish the proceedings about this bill. The Tory lords were against this motion and protested.

> Because the printing of Bills, and the proceedings on Bills, was never done; and therefore is unparliamentary. It is an appealing to the people, and giving them a pretence of right to examine and judge of the Parliament; which otherwise would be unlawful: and

1. D.L.Jones, Debates and Proceedings of the British Parliaments a guide to printed sources, (1986), 44-47.

> this practice may be of pernicious consequence to the peace of the kingdom, and highly derogatory to the honour and dignity of the House of Lords.[1]

There is no doubt that the Whig lords promoted the publication of the records of the House. On such occasions as the 'Scotch plot' or the Ashby vs White case they appealed to the public and claimed that it was the upper House who truly represented the vox populi. Their willingness to publicize the Lords' proceedings implied their 'populist' attitudes, and at the same it is unquestionable that in the years of the Godolphin ministry the Whig peers mainly created such new procedures as publishing Lords' records and made use of these procedures so that they could advantageously expedite the proceedings in the Lords. Throughout this thesis, many instances are analysed.

Although the Whig peers had 'populist' attitudes, the Lords still cautiously kept the secrecy of the debates and divisions in the House. On 9 December 1702, when the Lords realised that some of the Tory Commoners were trying to 'tack' the first occasional conformity bill to a money bill, the Lords decided to make a resolution to be against the 'tack', and it was exalted to the status of a standing order (S.O.97). The Whig lords moved that the supporters of this resolution should sign, and this

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1. LJ., XVII, 314.

motion was carried. However, some peers, who were opposed to the 'tack', were reluctant to sign the resolution.[1] Obviously they understood that the list of the peers, who signed the resolution, would be circulated, and they would be regarded as the opposers of the occasional conformity bill and criticised by the Tory Commoners and the High Churchmen.

Similar opposition to printing the list of the peers happened after the impeachment of Dr Sacheverell. In early June 1710, Bishop Wake of Lincoln was apprehensive that the proceedings of the impeachment would be published soon, because they would include the Lords' verdict on 20 March which showed the names of the peers who had been for or against the doctor's impeachment. Wake understood that at the verdict the question was put whether Sacheverell was guilty or not based on all the four articles of the impeachment. Wake feared that all the peers, who had voted against the doctor, would be blamed by the High Tories, even though they might have supported some of the articles, and been opposed to the others. Wake wrote to Lord Chancellor Cowper that "I am confident it will be generally thought yt every Lord who pronounced him guilty, must be thereby understood to have

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1. There is an erased entry in the MS. minutes. "Proposed to print this Resolution and not to sign it." However, this motion was dropped, and sixty-three peers signed this resolution. HMC, Lords MSS. 1702-1704, 158.

charged him as guilty of every Article of the Impeachment, & indeed of every branch of every Article, if some such care be not taken to set it right."[1]

After the 1705 general election, the Lords did not have so much zeal for publishing their proceedings as they had had in the first parliament of the Queen (1702-05). The election made the Tories and the Whigs almost equal in the lower House so that the controversy between two Houses was not as hot as before. It was not necessary for the Lords to publish their records so that they could defend their own ancient right.[2] While the official publication of the Lords' proceedings became infrequent, the private printing of the debates in the upper House was increased. Contemporary sources show that the strangers found much difficulty in hearing the Lords' debates in the 1702/3 session. However, in the second volume of his History of the Reign of Queen Anne digested into Annals, Abel Boyer had included Bishop Burnet's speech about the second occasional conformity bill.[3] In the 1703/4 session Lord Haversham privately published his long speech.

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1. Hertfordshire R.O. Panshanger MSS. D/EP F62, f.7: W.Wake to [Cowper], 3 June 1710. Official record of the Sacheverell trial was published on 15 June 1710. W.A.Speck ed. F.F.Madan: A Critical Bibliography of Dr. Henry Sacheverell, (Lawrence, Kansas, 1978), 137.

2. From the 1705/6 session to the 1709/10 session, the Lords published their proceedings only once (the trial of Dr Sacheverell).

3. A.Boyer, History of the Reign of Queen Anne digested into Annals, (1702-13), II, 175-85.

It was made against the second occasional conformity bill.[1] When he published it, it appears that he feared that the publication of his speech would be a breach of the standing orders. James Vernon reported to the Duke of Shrewsbury that Haversham denied "having any hand in" the publication. However, Vernon knew that the printed speech "agrees exactly with what he spoke".[2] Since he published this speech, it became a custom that Haversham annually made a speech against the ministry and the speech was published soon after the parliamentary session started. His speech was regarded as the points of issues in each session.[3]

Even after the Lords built the galleries for the strangers, the freedom for the journalists to hear the speeches was restricted. Although Boyer's Annals occasionally give us detailed debates, he could not report such important political events as the Treason bill in the 1708/9 session, and the case of James Greenshields in the 1709/10 session. However, the writers of the news-

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1. Speech of a noble peer upon the reading of the Bill for the preventing Occasional Conformity, (1704); Cobbett, VI, 165-68.

2. Vernon Corr., III, 245: J.Vernon to Shrewsbury, 15 Jan.1704.

3. BL, Add. MSS. 34521, f.42: Somers to Princess Sophia of Hanover (copy), 1706. Haversham's first printed speech against the ministry entitled Speech in the House of Peers, November 23, 1704, was published in the 1704/5 session. Cobbett, VI, 368-71.

papers, periodicals and newsletters could get the outlines of the proceedings in the Lords, and immediately sent them to the readers, although their parliamentary reports were often biassed and based on the indirect information. For instance, John Dyer's newsletters communicated the Lords' proceedings. However, his information was far from impartial. It was even demagogic. On 3 February, 1707, the Whig peers and bishops were opposed to the amendments of the 'Church Security Bill', in which the Tory lords insisted that the Test Act should be included in the laws to be defended against the Kirk. It seems that Dyer reported that the Whig bishops acted against the interests of the Church of England. After Maurice Wheeler read Dyer's letter, he wrote to Bishop Wake that

> Last Thursday's [6 February] post rais'd an out-cry among some sort of people here, as if the Archb[isho]p Cant[erbury] by pretending to secure the Church had brought in a Bill to overthrow it. I could not forbear to see ye news upon this occasion, where Dyer told us, ye sacramentall Test was laid aside, & that ye B[isho]ps divided, 11 for & 6 against the Bill. What other Securities were appointed in lieu of yt test, the news reported not, nor anything so particularly, whereby any one here wo[u]ld judge of the Bill. So all (I could do) was, to perswade [th]em to think the better of it for the 11 Bishops sake...It would be

better we had no Parliam[en]t news, than such scraps of it.[1]

In early April 1709, a newletter made an opposite effect upon Wheeler. He was glad to read a report, which communicated that the general naturalization bill for the foreign refugees had been carried in the parliament and that Bishop Wake played an active part. Wheeler told Wake that

> The Bill for generall naturalization of Protestants has occasion'd the frequent mention of the name of the B[isho]p of Lincoln with much respect...y[ou]r Lord[shi]p has had a fortune to be publickly extoll'd in the news-houses.[2]

The Select Committee

In his Books of Orders John Relf gives a simple definition of the committee. "Committees are usually appointed for Bills to the end ther[e] may be more freedom of debate, as likewise upon other occasions, as the drawing Addresses &c to prepare the same for the House. The Committees are either particular Lords named for that purpose or the whole turned into a Committee."[3]

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1. Christ Church, Oxford, Wake MSS. XXIII, f.167: M. Wheeler to W.Wake, 10 Fev.1707.

2. Christ Church, Oxford, Wake MSS. XXIII, f.193: M. Wheeler to W.Wake, 9 Apr.1709.

3. HLRO, Relf, Book of Orders, 109.

It is unquestionable that the committee of the whole House was of more political importance than the select committee. Almost all public bills of great political significance were discussed in the whole House, while most of the numerous private bills (especially concerning estates, naturalization and divorce) were dealt with in the select committee. The select committee, however, had some special functions which the whole House could not share. For instance, the select committee was indispensable to some inquiring work, which needed special knowledge. In November 1704, the Earl of Rochester preferred a select committee to a committee of the whole House, when he hoped to investigate the scarcity of coins. He told the Lords that the whole House committee "was so like the House" that it "would do no business."[1] The whole committees having been considered in relation to the proceedings of the public bills, some light will be shed on the role of select committees in the following analysis.

The select committee can be divided into two categories. One is the 'standing committees' which were appointed at the opening of the session. They dealt with the titles and privileges of the lords and inspecting of the Lords' Journal.[2] With a few exceptions, routine

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1. Nicolson Diary, 234.

2. S.O.8,9 and 73.

works occupied their activities. The committees for privileges, however, could become the arena for party politics, because they were empowered to examine the peer whose qualification was questionable. When a peer died without any direct descendants, the committee, based on the peerage claim which the petitioner made, reported to the House that the peerage should be extinct or it might be succeeded.[1] In another sense, the privilege committee was of some significance. If the House had a procedural problem, it consulted this committee. The privilege committee examined whether the proceedings in the House were in conformity with the standing orders, and then the committee made a report to the House. After the House deliberated the committee report, it made an 'order' or a 'resolution'. The committee report, if necessary, could be a new clause of the standing orders.[2]

The other category is the ordinary select committee. The more the Lords had parliamentary business for which specialised knowledge was necessary, the more the select committee increased its importance. In every session, the Lords had a surprising amount of inquiry work relating

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1. In 1709/10 session, the title of fifth Viscount Saye and Seale, a Tory was discussed by the committee, because his title was "somewhat dubious". However, he was admitted to the Lords. Luttrell, VI, 545. HMC, Lords MSS. 1708-1710, 361.

2. For example, Lord Rochester's committee for privileges in the 1706/7 session, HMC, Lords MSS. 1706-1708, 82-83.

to the army, the navy and public accounts. As a modern historian has pointed out, it is true that "by 1700 it seems to have been generally accepted that the members [of the committee] had the power to choose their own chairman without regard to seniority."[1] The House of Lords (especially Whig peers) was not deficient in men of talent for specialised inquiring business. It was natural that Halifax (public finance), Somers (law), Haversham and Orford (admiralty), Bishop Burnet (Scotland) should have chaired many select committees of significance. In the early years of Queen Anne's reign, the disputes between the two Houses made many select committees indispensable. The committees were busy in preparing for the addresses or representations to the Queen to vindicate their privileges. Such veteran lords as the Duke of Devonshire in the chair must have been invaluable in the select committee for finding out the precedents which were favourable to the House.[2]

When the House appointed a select committee, the time and the venue of the committee, which were normally

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1. J.C.Sainty, The Origin of the Office of Chairman of Committees in the House of Lords, (1974), 3.

2. In the 1702/3 session, the Duke of Devonshire's committee was appointed to find the precedents which denied the Commons' superiority over money bills. Bishop Burnet observed that this committee made "a very exact search...into all the rolls that lay in the clerk of the parliament's office, from the middle of king Henry the seventh's reign." Burnet's History, V, 52. HLRO, committee minutes, VI, 247, 254.

set out in the printed Lords' Journal, were given by the House, but later the committee could alter the time and place. In the age of Queen Anne, it opened at 10 a.m. The House started at 11 o'clock, so the committee was expected to rise before eleven. Some of the committees of great importance, however, were not adjourned even after the House sat. Bishop Nicolson, who attended the select committee which summoned Sir George Rooke to inquire into the abortive Cadiz expedition, had to go back and forth between the House and the committee several times.[1] If a select committee discussed a topic in which all the lords took an interest,[2] the House was adjourned. The committee could be open outside the Palace of Westminster. In the 1703/4 session, the Whig 'seven lords committee' examined the suspected persons of the 'Scotch plot' in Northumberland house, where they made a voluminous report to the House.[3]

Official committee minutes do not give us much about the proceedings of the committee, and almost nothing about the debates, and besides the strangers, except for peer's eldest sons, judges, counsels and witnesses whom the standing orders allowed to attend,

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1. Nicolson Diary, 186.

2. "At the House, Commodore Ker pressed hard in the Committee; and other matters adjourned in the House." Nicolson Diary, 444.

3. The proceedings of the Whig 'seven lords committee' in the 1703/4 session are seen in BL, Add. MSS. 61628 (Sunderland Papers) and HMC, Townshend MSS. 154-56.

were prohibited from entering the committee.[1] This rule seems to have been more strictly observed in the committee than in the House, so the following description is mainly based on the MS minutes of the committee and the printed Lords' Journal, though of limited value, and private records of the committee.

When the committee was appointed in the House, scores of committee lords were set out in the Lords' Journal and if the House thought it fit, other lords could be added to the list. The selection of the committee members was not based on their party affiliation or abilities, but the House seemed to have randomly chosen some peers who were present at the selection. The real attendants must have been much less than the list in the Lords' Journal, which is endorsed by both the division records in the committee and some private records of the attendants of the committee.[2]

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1. S.O.30. This order was confirmed by S.O.55.

2. On 17 and 18 March 1704, Lord Rochester's committee took three votes (24:5, 12:2, 12:3). HMC, Lords MSS. 1702-1704, 467. The same committee was divided twice on 25 March (10:2, 8:0). HLRO, committee minutes, VI, 449. On 22 Feb.1705, the Duke of Somerset's committee, which discussed the Justices of Peace, was divided (18:1). HMC, Lords MSS. 1704-1706, 287.

   On 4 Feb.1703, Bishop Nicolson found that four members attended the committee which investigated the Cadiz expedition. On 13 Nov.1705, eight lords attended Lord Nottingham's committee which drafted an address. Nicolson Diary, 196, 302.

S.O.12 did not allow the lords to speak twice about the same matter on one reading stage in the House, but they could do it in the committee. Consequently, the lords could speak more freely in the committee. Any other lord "though not of the Committee, is not excluded from coming in, and speaking, but hee must not vote, as also hee shall give place to all that are of the Committee though of lower degree, and shall sitt behind them."[1] This rule was, however, not always observed. In November 1707, the committee of the whole House was, based on the merchants petition, appointed a select committee for the general inquiry upon the malpractice in the navy. This select committee, however, concentrated their criticism on a Scottish commodore, William Kerr, and all the Scottish lords were concerned about him. Accordingly, on 26 January 1708, the House ordered that "all the Lords, who shall at any Time come to the Committees of Lords appointed to consider of the Merchants Petition, in Behalf of themselves and others, Traders of the City of London, and the Papers to them referred, as also the Matters relating to Commodore Kerr, shall have Votes at the said Committees."[2] So the MS. minutes on 28 January recorded an exceptionally large number of peers who voted for or against Kerr (for him 17, against him 28), and at least fourteen lords voted for Kerr among the Scottish

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1. S.O.28.

2. LJ., XVIII, 436.

representative peers.[1]

Every select committee had a special purpose for which it was appointed, while the committee worked with considerable discretion. It was empowered to summon government officials, judges, counsels, witnesses and (with the assent of the lower House) MPs.[2] The committee could amend or (if they hoped) make a report in which the committee advised the House to reject the bill even though the House was favourable to the bill. Thus the select committee was the best place where a minority party's leaders whipped in their followers so that they could overturn the decision of the House. The dispute over the Scottish representative peers election in the 1708/9 session gives a good example.[3] In the election of these peers in June 1708, Lord Treasurer Godolphin, with the assistance of such Scottish Court lords as the Duke of Queensberry and the Earls of Mar and Seafield, planned to control this election. But the Earl of Sunderland, discontented with the moderate government policy, co-operated with the Squadrone Volante and even with the Duke of Hamilton, a probable Jacobite. In the 1708/9 session, the Tory lords temporally made an 'unholy'

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1. HMC, Lords MSS. 1706-1708, 105; Nicolson Diary, 446.

2. A select committee, which deliberated the 'Buttons of cloth bill', summoned a Portuguese envoy. HMC, Lords MSS. 1704-1706, 387.

3. For this dispute , see chapter seven.

alliance with the Junto and the Squadrone Volante only to distress the Court. In the Lords, the alliance rebuked the corruption in the election by the Scottish Court peers, and insisted on the invalidity of the vote by the Duke of Queensberry, who had been created the Duke of Dover (a peerage of Great Britain). On 21 January 1709, the question that Queensberry's vote was void was passed by a majority of 57:50, and the alliance succeeded in defeating the Court. The alliance still made great efforts to elect the Marquess of Annandale instead of the Marquess of Lothian, a Court candidate. The day before the select committee finally settled this election dispute, Sunderland feared the Court would plot against the alliance. He wrote to Lord Dartmouth that

> [After Queensberry's vote became void] I don't see very well how they can do it, but I am Confident they have some such design & therefore I beg you would gett L[or]d Guernsey & them to summon their friends early to the Committee to morrow morning & we will do the same on our side, perhaps if they are so very unreasonable, as this would be, they may give us a fair opportunity to have a fling at the Patent [of the Duke of Dover].[1]

The Court was indeed 'unreasonable' enough to challenge

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1. Staffordshire R.O. Dartmouth MSS. D(w)1778, I, ii, 97: Sunderland to [Dartmouth], 31 Jan.1709. not fully printed in HMC, Dartmouth MSS. I, 295.

the Whig-Tory alliance. Sunderland and Dartmouth never failed to whip in rank-and-file lords, and they once again triumphed over the Court and elected Annandale instead of Lothian.

A similar plot must have been projected in the select committee concerning the navy management during the 1707/8 session. At the opening of this session, the Whig Junto, with the assistance of the Tory lords, accused the Court of the defeat in Spain and the mismanagement of the navy. The Spanish affairs were discussed in the whole House, while the navy was dealt with in the select committee, and it was to censure the Godolphin ministry. The temporary Whig-Tory alliance overwhelmed the Court interest, and controlled the committee. The Duke of Bolton, the Junto's associate, chaired the committee, and the Duke and his allies indefatigably investigated the navy officers to find out and censure the negligence of the Admiralty. On 16 December, Bolton "laid before the Committee the collection his Grace had made of what was most material in the depositions taken at the several meetings of the Committee", and his 'collection' was to be the Lords' report to the Admiralty in which Prince George (Lord High Admiral) and the Godolphin ministry would be severely rebuked.[1] Nevertheless a shrewd political observer did not ignore the halfhearted attitude of Bolton's committee.

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1. HMC, Lords MSS. 1706-1708, 102.

> It was expected the Lords would have had the report yesterday from the Committee that sat on the Adm[iral]ty affairs. But instead thereof they have onely proposed new enquirys and more papers to be brought. This looks as if the secret spring were still at work & the conclusions are to be higher or lower according to their motions.[1]

The committee obviously realised that there was a struggle for power between Godolphin and Harley at Court, and there does not seem to have been decisive action until the struggle came to an end. The committee was not so hard as before upon the Godolphin ministry after the Junto decided to side with the Lord Treasurer. Although the House sent the committee's report to the Admiralty and the Junto lords were angered at the self-justification of Prince George, the following, however, more infuriated them. Bishop Burnet recorded that "The paper [Prince's answer to the Lords] ended with some severe reflections on the last reign, in which great sums were given for the building of ships, and yet the fleet was at that time much diminished, and four thousand merchant ships had been taken during the war: this was believed to have been suggested by Mr.Harley, on design

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1. Northamptonshire R.O. Montagu (Boughton) MSS. XLVIII, Shrewsbury Papers, f.171: [J.Vernon] to [Shrewsbury], 13 Dec.1707. not printed in Vernon Corr.

to mortify king William's ministry."[1] The Junto lost interest in the censure of the ministry after Harley resigned from the secretary of state on 11 February. Bolton's second committee report became an address to the Queen. On 25 February the House ordered that the address should "be presented by the whole House". However, when the Lords placed the address before the Queen on 1 March, Jame Vernon found that "it was but slenderly attended."[2]

The above-mentioned two committees, however, cannot be regarded as the ordinary condition of the select committees. We rarely see the opposition of the committee against the whole House (and the ministry). The House had some measures to control the committee. When the House or the committee of the whole House appointed a select committee of political importance, it could give some 'instructions' within which the committee work should be limited. As long as the committee observed the instruction, their report was to reflect the opinion of the majority of the House. Problems could happen between the select committee and the House only when the committee ignored the instruction, and it was opposed to the majority of the House or the Court. This challenge was

1. Burnet's History, V, 345. Burnet must have been enraged by the following passage of Prince George's answer. "in the last war [King William's war], the trading part of the nation had the misfortunes to lose near 4,000 ships; whereas in this war, themselves [Bolton's committee] have given an account but of 1146." Cobbett, VI, 646.
2. Nicolson Diary, 456; Vernon Corr., III, 360: Vernon to Shrewsbury, 2 March 1708.

made by the Whig lords against the Tory peers in the early years of Queen Anne's reign when the High Tories still held considerable interest at Court. In the session 1702/3, the Whig lords succeeded in appointing the Duke of Bolton to the chair of the committee to investigate the failure of the Cadiz expedition. Bolton and his colleagues in the committee did not let down the Whig leaders. On 11 February 1703 the committee report revealed the miscarriages of the fleet by Sir George Rooke. The High Tory lords, however, regarded this report as a deviation from the instruction from the House to the select committee. "The Earl of Nottingham and others took Notice that the Committee gave their own Opinion; which the Order of the House did not impower them to do: Their Instructions being only to Inspect the said [Rooke's] Journals, and haveing Considered them, to make their Report." After warm debate, the committee report was not accepted by the House "and the whole Form of the Report" was "ordered to be changed."[1]

Three years later, however, the Whigs retaliated against Nottingham, when such High Tory peers as Lords Rochester, Nottingham and Jersey had already resigned their offices. To Nottingham's delight, he succeeded to chair the select committee for making the Lords' address to the Queen, and besides the Tory lords almost mono-

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1. Nicolson Diary, 202; Bishop Burnet recorded that Bolton's committee report came to the vote in the House and it was rejected. Burnet's History, V, 60.

polised the seats in the committee. Nevertheless, when Nottingham delivered a draft of the address to the House on 13 November 1705, the Lords considered it to be "too disrespectful". The House ordered that the draft should be amended immediately.[1] The Whig lords had been more careful to draft the address or representation in the committee. Facing the controversy between the two Houses relating to the 'Scotch plot' in the 1703/4 session, the Lords made several addresses to vindicate their power to investigate this plot. These drafts were drawn by Lord Somers, but they "were read over and considered and corrected very critically by a few lords", and the House agreed to these drafts.[2]

In the select committee, judges and counsels were no less important than in the whole House, because the committee was often appointed to deliberate a political problem in detail. For that purpose, the assistance of law specialists was indispensable. It was also necessary for the select committee to summon (civil and military) government officers and civilians as witnesses. Before the important inquiries, the committees seem to have

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1. Nottingham's draft of the address is in Leicestershire R.O. Finch MSS. parliamentary and political papers 123 (all in Nottingham's hand). Nicolson Diary, 302-03.

2. Burnet's History, V, 136.

prepared for the questions. The lords spent an hour "in finding out and modelling the Questions" before their inquisition against George Rooke for the mismanagement of the fleet, and then the committee members rained questions on him.[1] If the committee was dissatisfied with the witness's answer, the chairman, in the name of the committee, could give him warning. In the 1703/4 session a committee examined Admiral Graydon for his miscarriage of the fleet. The Earl of Rochester in the chair told Graydon that Rochester "could not but observe that what he [Graydon] had said...was offensive to their Lordships; that he had not behaved himself with the respect that was due;...[Rochester] hoped it would be a caution to him to behave himself better for the future".[2] If the witness's answer was very vicious or the committee thought that he would make escape, (with the assent of the House) the committee could arrest the witness and keep him in their custody. In February 1707, the Lords complained of the Tory papers spread in the coffee houses which alleged that the Lords would repeal the Test Act after the Union was concluded. The select committee arrested four 'news-mongers', because "the Practices of that kind have been, and still are, soe very malicious and villainous, that ...their Lordships will make Examples of the present

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1. Nicolson Diary, 185.

2. HMC, Lords MSS. 1702-1704, 466.

Offenders, and effectually provide ag[ain]st all such misrepresentation for ye future."[1]

After a bill was read a second time and sent to a select committee, it was a normal procedure that the committee discussed the bill, article by article, with the aid of judges and counsels. In case that they found some defects, they submitted amended clauses to the committee. While most of the chairman's personal reports to the committee do not survive, many proposals made by the judges were treated as the 'Main Papers' of the House, and judges' opinion could also influence the proceedings in the whole House. Judges and counsels, however, had another way to participate in the legislative process in the select committee. Some of the select committees were appointed only for an inquiry about some particular problems, but it was possible that they also considered the measures to settle the problems. Accordingly, the House allowed the committee to deliver a draft of the bill. This process might have been welcomed by the House, because it was expected that a consensus would be made during the deliberation in the committee, and this agreement would enable the House to expedite the proceed-

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1. Bodl. Ballard MSS. VI, f.105: E.Gibson to [A.Charlett], 8 Feb.1707; HMC, Lords MSS. 1706-1708, 50-52; LJ., XVIII, 233-34.

ings smoothly.[1] This 'preliminary discussion' can be seen in several committees during Queen Anne's reign, and judges and counsels often played an important part at this stage.

As we have already seen, since the 1704/5 session, the Queen had attended the upper House incognito on important occasions. She undoubtedly intended to make the debate favourable to the Court. The Queen had not been present at the select committee, but she might have had some means to convey her intention to the committee. When a select committee discussed the petition for the reconstruction of Humberstone church in March 1707, the Queen, who was noted for her affection to the Church of England, apparently influenced the proceedings in the committee. On 14 March, John Moore, the Bishop of Norwich informed "the Committee that he (pursuant to the desire of the Committee at the last meeting) acquainted her Majesty with the contents of the Bill and her Majesty consents that the Bill may pass into a law."[2]

Free discussion in the select committee enabled many people to participate in the legislative proceed-

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1. For instance, in the 1705/6 session Lord Somers chaired a select committee which considered some defects of law. The House adopted a proposal of this committee, and made "An act for the Amendment of the Law and for the better advancement of Justice". HMC, Lords MSS. 1704-1706, 355; Burnet's History, V, 249.

2. HMC, Lords MSS. 1706-1708, 45.

ings. Government officers were frequently summoned to the committee, and unquestionably they often had influence upon the deliberation in the committee. In the 1704/5 session, the Lords discussed the bill to prohibit exportation to Scotland. This bill was a retaliation of the English parliament against the Scottish parliament which passed the Act of Security. Five days after the bill passed the first reading, the select committee called the commissioners of the customs, and the commissioners "were informed of the substance of the bill" and they were, if it was necessary, ordered to amend the bill.[1] In November 1707, Lord Halifax's select committee was appointed for trade, especially promoting the privateers in the West Indies. Many merchants naturally took great interest in this committee, while the committee urged the merchants to attend. They were ordered to deliver their 'scheme' to the committee. The committee followed merchants' advice, and Halifax in the chair drafted a committee report. About the activities of Halifax's committee, Joseph Addison told the Earl of Manchester that "[about the bill for encouraging privateers in the West Indies] Halifax is look'd upon as the chief promoter of it. His Lordship and his friends form'd it with the advice and assistance of most of the Admirals and chief Citizens of

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1. HMC, Lords MSS. 1704-1706, 235.

London".[1]

A recent study has made it clear that the 'man-of-business' lords chaired most of the committees unless any peers took objection.[2] Many committees in the years of the Godolphin ministry were managed by such senior peers as the Earl of Stamford and Bishop Burnet who were familiar with the procedure. There is no record of the election of the chairman. It seems that the chairman was nominated by other members. In May 1702, Bishop Burnet accepted the chairmanship of the committee for the privateers encouragement bill as usual, but later he "excused himself, it being a military concern."[3] The leading peers were, however, never indifferent to the appointment of the chairman of the committee of political importance. We cannot expect any impartiality from the chairman of a committee of political significance. It is surprising that Lord Halifax chaired the committee concerning the commissioners of public accounts in November 1702, when the commissioners and the Tories in the Commons were about to accuse him.[4] Throughout the years of the Godolphin ministry, the Whig lords, who normally maintained a

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1. HMC, Lords MSS. 1706-1708, 226-30; Addison's Letters, 93: Addison to Earl of Manchester, 20 Feb.1708.

2. J.C.Sainty, The Origin of Chairman of Committee.

3. HMC, Lords MSS. 1702-1704, 42.

4. HMC, Lords MSS. 1702-1704, 63.

majority in the House, naturally enjoyed most of the chairs of the select committee of political interest.

The chairman of the committee played almost the same part as the Lord Chancellor (or Lord Keeper) in the House. The Lord Chancellor, of course, could attend the committee as a peer, but he could not enjoy any privileges as the Speaker of the House. Lord Keeper, a Commoner, was not regarded as a regular member in the committee. Even though he was summoned to the committee, his status was at best one of the judges who were expected to assist the proceedings of the committee.[1] As we have already considered, the chairman played the leading part in examining the witnesses. He was even empowered to call the witness to his house, and examine him. The chairman's most important work was, however, to draft a committee report. Unpublished minutes of the select committee relating to the Cadiz expedition in the 1702/3 session shed light on the role of the chairman.

In January 1703, the committee vigorously investigated this abortive expedition, and called some navy officers. The committee decided to summon two Tory naval commanders: the Duke of Ormond and Sir George Rooke. It appears that the committee interrogated Ormond with scrupulous attention. On 11 January, the committee

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1. HMC, Lords MSS, 1704-1706, 355-56. A peer explained the status of Lord Keeper in the House of Lords. See above p.82, note 1.

discussed the contents of the questions. They had "some questions taken in a Pap[er] for the Lord in ye chair to aske the D[uke] of Ormonde."[1] On the 13th, the chairman, the Duke of Bolton, was allowed to take some additional notes on this paper.[2] After George Rooke was summoned and investigated by the committee on the 23rd and 25th, Bolton made questions to Ormond on the 28th. After the examination of Rooke and Ormond, the chair in the committee was able to keep some important evidences (Rooke's answers and the correspondence between him and Ormond) in his custody.[3] On 6 February Bolton was allowed to take home the journals of Ormond and Rooke so that his grace could make a draft of the report to the House.[4] On the 15th, he submitted his draft, to which the committee agreed with some amendments.[5]

The two Whig 'seven lords committees' are distinguishable from the numerous select committees which were appointed during the years of the Godolphin minis-

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1. HLRO, committee minutes, VI, 259.

2. HLRO, committee minutes, VI, 262.

3. HLRO, committee minutes, VI, 287, 291.

4. HLRO, committee minutes, VI, 310.

5. HLRO, committee minutes, VI, 325. On that day Bishop Nicolson recorded that the committee room "was very full". Bolton's draft was considerably altered by Tory lords. They unmistakably "favoured the Admiral [Rooke] and dashed his prosecutors." Nicolson Diary, 205; Burnet's History, V, 59-60.

try. In the last section about the select committees, we will consider these two committees. One was made for the examination of the suspects over the 'Scotch plot' in the 1703/4 session, and the other was appointed in the 1707/8 session for the investigation of William Gregg &c. for their treasonable correspondence with France. To choose the committee lords, the House adopted ballots. In both cases, leading Whig lords obviously whipped in the rank-and-file peers. On the previous day of the ballot for the committee over the 'Scotch plot', Lord Ossulston recorded in his diary that "I was att Parliament I din'd att the Duke of Boltons with Lord Essex, Coll. Maul, Duke of Richmond, Duke of St Albans, Mr Morgan, Lord Halifax, Lord Kingston from thence I went to Lord Sunderlands where was Duke of Devonshire, Duke of Sommersett, Lord Wharton, Lord Mohun, Lord Gray, Lord Cornwallis, Lord Halifax, Lord Townshend, Lord Howard of Effingham, Lord Hervey, Lord Torrington, Duke of Newcastle, Lord Peterborough & some others". Naturally, the Whigs monopolised the seats at the 'seven lords committee', and four years later the Whig lords once again overwhelmed the Tories on the appointment of the committee relating to Gregg &c.

About the 'seven lords committee' concerning the 'Scotch plot', the Duke of Somerset, who was a chairman

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1. PRO, C104/116: Lord Ossulston's diary on 17 Dec.1703. (unfoliated)

of this committee, gave a good description of it. His grace wrote that "the House of Lordes did take under their consideration the examination of the Scottish conspiracy; and after having read and consider'd these papers relating to it, they found that they were very imperfect and obscure; on which they resolv'd to apoynt a comittee of seven Lordes...This comittee continued sitting for three weekes together, and met every morning at ten o'clock and satt till as latte at night at my house".[1] These two committees had some similarities. Both committees did not reveal the result of the examination, until they submitted their report to the House, so even the official MS. committee minutes give us only a few simple records of the proceedings of the committees, and nothing about the examination itself. Secrecy was kept throughout the deliberation of these committees. The two committees, however, have some striking difference. The criticism to the secrecy of the committee was much severer over the 'Scotch plot' than Gregg's investigation. Even one of the Court Whigs objected that the 'seven lords committee' over the 'Scotch plot' did not open the treasonable letters to the other peers. He recorded that "there was a report from a committee of

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1. Epistolary Curiosities, series the second, and the last consisting of unpublished Letters of the Eighteenth Century illustrative of the Herbert Family, ed. by R.Warner, (Bath, 1818), 206-07: Somerset to G. Stepney, 4 Apr.1704.

seven L[or]ds yt there was a man who would decypher yt gybridg [gibberish] letters & a debate thereupon arose. I was against yt mans decyphering only to yt L[or]ds & not to ye whole house."[1] The Tory lords were infuriated at the seven lords all the more because the Tories did not doubt that the Whig peers in the Cabinet Council (the Dukes of Devonshire and Somerset) had informed the 'seven lords committee' of the government information about the 'Scotch plot'. In his draft of the speech, Nottingham wrote that "It may probably be found upon Enquiry yt this discovery made by Keith has bin publisht before it was communicated to ye Lords, w[hi]ch could not be but by a member of ye Cabinet Council".[2]

When the lords examined William Gregg &c in the 1707/8 session, the political situation had been changed. After the 1705 general election, the controversy between the two Houses had not been so serious as before. In the investigation, the Whig lords aimed only at revealing that Robert Harley committed himself to the treason, and forced him to quit. Accordingly, the Whig 'seven lords

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1. PRO, C104/116: Lord Ossulston's diary on 3 March 1704.

2. BL, Add. MSS. 29587, f.133. Some Court peers were apprehensive that the activity of this committee would develop into a witch-hunt. Lord Carnarvon, a Tory was concerned for Lord Ferrers, because the Lords received a letter which insinuated Ferrers's commitment to the 'Scotch plot', and the committee started to investigate him. HMC, Cowper MSS. III, 32: E.Coke to T.Coke, [Dec.1703-March 1704].

committee' had lost the zeal for persecuting the conspirators after secretary Harley resigned his office. Although the chairman (the Duke of Somerset) read the committee report, and it took over three hours, this report did not cause much sensation, although some Whig lords "were very much beholden to" his grace's efforts.[1] An observer wrote that Somerset "before he read the long report told some lords in the House that he thought it was not worth anybody's hearing, and for his own part if he was not obliged to read it he should not stay to hear it."![2]

Over the 'Scotch plot', the Whig peers kept their secret committee to the end of the session, while for the investigation of Gregg, the Lords appointed another select committee the scale of which was much larger than the 'seven lords committee'. On 2 March 1708, the Lords ordered the larger committee to "reduce into Method so much of the said Examinations, Letters, and Papers...and have Power to send for and examine such Persons thereupon...and report to the House".[3] The difference in the political situation caused the difference of the procedures in the House.

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1. HMC, Portland MSS. IV, 479: "K.O." to [E.Harley], 4 March 1708; Luttrell, VI, 274.

2. HMC, Portland MSS. IV, 482: W.T[homas] to [E.Harley], 18 March 1708.

3. LJ., XVIII, 491.

CHAPTER THREE

The House of Lords as a Judicature

The House of Lords has long been the supreme court of Great Britain. After the Restoration, the upper House, which had been abolished from 1649 to 1660, regained its supremacy over judicial affairs. Since the Restoration, its jurisdiction was even increased, because the House started to treat the cases which had been dealt with by the Star Chamber before the Civil War. So far from declining, it seemed that the Lords were reinforced in the reign of Queen Anne. There were several reasons for it. But it is certain that the strength of the Lords was partly due to their judicial position. In such political trials as the Ashby vs White case and the impeachment of Dr Sacheverell, the upper House insisted on their jurisdiction, although the Commons entered a claim for it.

However, the increase of the judicial function was not always welcomed by the Lords. The Lords had to spend much time on legal cases of no political significance. This business must have been a burden for the Lords. In the 1703/4 session, the House appointed a select committee to solve the 'irregularities in the House' (Lord Guilford in the chair). Guilford's committee made several proposals to reform the judicial business.[1]

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1. HLRO, committee minutes, VI, 345.

At first, on the day when the House treated a cause, it was heard "privately at ten o'clock and no business interfere." Secondly, the committee considered a device to promote the attendance of the peers for legal matters. "Before the cause is called, L[or]d Keeper do command the clerk to read the names of the Lords yt were present at the calling of the Cause." Thirdly to shorten the time to hear the cause, the committee proposed that "Before the cause start, L[or]d Keeper signify to the counsel keep close to the matter. second counsel not to repeat the first."[1] In the House, Guilford's committee report was deliberated, and they made some orders, but it seems that the Lords were unwilling to make a fundamental change in the judicial function of the upper House. In the following sections, several aspects of the Lords as a judicature are analysed. Special attention is paid to two political cases: the impeachment of Dr Henry Sacheverell and James Greenshields' appeal, because these two lawsuits made crucial contributions to politics in the Lords in the years of the Godolphin ministry.

Lord Halifax vs. the Marquess of Carmarthen case

Legally the Lords dealt with the cases to which the lower courts had given sentences. However, in the 'first age of party', the upper House had an interesting relation with other courts. The trial of Lord Halifax gives

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1. HLRO, committee minutes, VI, 345. The House adopted the first and third proposals. LJ., XVII, 341.

us a good example. On 9 June the Marquess of Carmarthen's petition was read at the Treasury. In this petition, he claimed that he had a patent, which had been issued in the reign of Charles II, to appoint him as the Auditor of Exchequer, and that Lord Halifax should be dismissed from this office.[1] On 3 July Lord Treasurer Godolphin heard the assertions of these lords, and entrusted this case to the judges.[2] On 26 June James Vernon reported this lawsuit to the Duke of Shrewsbury.

> My Lord Halifax hears of a prosecution beginning against him in the Exchequer Court at My Lord Carmarthen's suit. It is not thought a very regular place for deciding of Titles, but it may give an occasion for appealing to the House of Lords.[3]

As Vernon anticipated, this problem was brought to the Lords in the 1702/3 session. However, this lawsuit was not a legal matter any longer. The House of Commons did not argue the validity of Carmarthen's patent, but they appointed the commissioners of the public accounts,

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1. Calendar of Treasury Books, XVII, 44; Luttrell, V, 185.

2. Calendar of Treasury Books, XVII, 51-54. Luttrell, V, 190-91.

3. Northamptonshire R.O. Montagu (Boughton) MSS. XLVIII, Shrewsbury Papers, f. 147: [J.Vernon] to [Shrewsbury], 26 June 1702. not printed in Vernon Corr.

and let them investigate the malpractice of Halifax as the Auditor of the Exchequer to dismiss him from his office. It is well-known that the Whig lords cleared Halifax of a suspicion of his misconduct. Remarkably the Whig peers did not use the ordinary judicial procedure to clear Halifax, but alleged his innocence by the 'resolution' of the House. For the Whig peers, this case was nothing but a political matter, and a good opportunity to justify their jurisdiction over the financial affairs.[1]

The Tories in the Commons fully understood that the Lords would never pass a sentence in favour of Carmarthen and the Tories, as long as the Whigs held a majority in the upper House. The Tories adopted a new tactic. The Commons commanded the attorney general (Edward Northey) to prosecute Halifax at the Exchequer court. On 24 April 1703 Carmarthen accused Halifax of his illegal perquisites, and exhibited his claim again. On 1 June the attorney general "entered an information against the lord Halifax, auditor of the exchequer, pursuant to a vote of the house of commons for a forfeiture of his office." However, the barons of the Exchequer could not reach a conclusion, and this case was put off until the following year.[2]

In the 1703/4 session, the Commons still urged the

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1. See chapter four 186-87.

2. Luttrell, V, 290, 303, 308.

attorney general to accuse Halifax. On 20 December, the lower House ordered the attorney to submit an account about the prosecution of Halifax.[1] After the prorogation, this cause was dealt with at the Exchequer court again. It appears that the Lords (especially Whig peers) took great interest in this cause. A newsletter on 24 June 1704 explained it.

> Yesterday [23 June] at the Exchequer Bar Came on the Tryall of the Lord Halifax Auditor of the Exchequer, upon the information of the Attorney Generall (the Dukes of Somerset, Leeds, Bolton, the Earls of Sunderland, Kingston, Mountague Lord Somers and others of the nobility being present) after a long hearing of the Councell the information was Quasht for severall faults therein.[2]

The trial ended in a triumph of the Whigs. However, Francis Atterbury expected that Carmarthen and the Tories would enter a lawsuit again in the following year.[3] The result came up to his expectation. In the 1704/5 session, Carmarthen did not appeal to the Lords, but relied on the Commons' criticism against Halifax. On 18 November 1704,

1. CJ., XIV, 256; Luttrell, V, 371; Vernon Corr., III, 242 and 244: J.Vernon to Shrewsbury, 24 Dec.1703 and 15 Jan.1704.

2. Folger Shakespeare Library, Newdigate newsletters, (micro. in Bodl.) 24 June 1704; Luttrell, V, 438-39.

3. Epistolary Correspondence...of Francis Atterbury, III, (1784), 211-12: Atterbury to Bishop Trelawney, 24 June 1704.

the Tories in the Commons tried to make an address in which they asked for "a second tryal of the lord Halifax". However, this address was dropped.[1]

A political change brought this troublesome lawsuit to an end. In the 1705 election, the Whigs retrieved their power in the Commons, and the Court and the Whigs normally kept a working majority in the lower House. Thus it was impossible for the High Tories to urge the attorney general to prosecute Halifax at the Exchequer court. However, in the 1705/6 session, the personal animosities between Carmarthen and Halifax reached a climax. In December 1705, they had a duel in Hyde Park, but it was stopped.[2] The Halifax vs Carmarthen case was an extraordinary lawsuit. This cause could become a political matter, only because both Houses used this case to develop their jurisdiction. At the same time this lawsuit tells us how the politicians in the reign of Queen Anne politically exploited the lower law courts to their advantage.

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1. Luttrell, V, 488; CJ., XIV, 426-28.

2. HMC, Verney MSS. 506: R.Palmer to Lord Fermanagh, 18 Dec.1705; M-G Corr., I, 513: Godolphin to Duchess of Marlborough, 10 Dec.1705; Luttrell, V, 622.

The case of the deprived Bishop of St David's (writ of error)

About the process, through which Thomas Watson, the deprived Bishop of St David's demanded a retrial to the House of Lords, a modern historian has given a detailed account.[1] Watson was appointed the Bishop of St David's in June 1687 by James II. He was a well-known Jacobite, and he was suspected of simony &c after the Revolution. His bishopric was suspended by John Tillotson then the Archbishop of Canterbury in August 1694. Subsequently, Watson was excommunicated for contumacy in May 1701. However, he alleged that he could enjoy temporalities, and take a seat in the House of Lords.

In December 1704, Watson brought in his writ of error to the Lords, after he was defeated at the court of the Exchequer. However, his writ was rejected because of procedural defects.[2] On 12 January 1705, he submitted a petition which asked the Lords to re-consider his writ.[3] On 22 January the House debated this petition, and it was rejected by a vote of 49 to 20.[4] It is noteworthy that the Tory lords protested against this decision, but their reasons for the protestation were expunged from the

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1. E.Carpenter, Thomas Tenison, Archbishop of Canterbury, (1948), chapter 10.

2. LJ., XVII, 609.

3. LJ., XVII, 613.

4. LJ., XVII, 628; HMC, Lords MSS. 1704-1706, 228; Luttrell, V, 511.

Lords' Journal.[1]

Although the Lords rejected Watson's writ for a technical reason, his appeal posed a constitutional problem. The Whig lords were of the opinion that only the Archbishop of Canterbury had a right to deprive a bishop of his bishopric, when he committed a serious crime. Furthermore the Whigs regarded this case as an ecclesiastical one, so they claimed that the upper House had no jurisdiction about this cause.[2]

The Tory lords were "earnest against the Archbishop of Canterbury's power of depriveing" Watson of his bishopric.[3] They insisted that "a Synodical Determination" by the Archbishop of Canterbury and bishops should have settled this case, and that Watson had every reason to appeal to the House of Lords.[4] It is remarkable that the Whig lords accepted the Archbishop's discretionary power over ecclesiastical matters, and limited the jurisdiction of the House of Lords, while the Tory lords thought the Lords could intervene in religious affairs. This problem happened again five years later in the case

1. This expunged protest is seen in J.E.T.Rogers, Lords' Protests, I, 172-73.

2. On 1 March 1711, Sir Joseph Jekyll told the Lords that they had no jurisdiction over this case. HMC, Lords MSS. 1708-1710, 357.

3. Nicolson Diary, 259 (Bishop Hooper of Bath & Wells's opinion). His view is also seen in BL, Lansdowne MSS. 1013, f.73: W.Kennett to S.Blackwell, 27 Jan.1705.

4. Lord Guernsey's view. Nicolson Diary, 275. See also Luttrell, V, 511.

of James Greenshields, which is considered in this chapter.

The trial of Dr Sacheverell

The judicial function of the Commons was (and is) strictly limited. Thus, impeachment was one of the few cases which enabled the lower House to participate in the Judicature. Ironically, the Commons seldom appealed to this measure in the eighteenth century in contrast with the previous century. The judicial proceedings of impeachment seemed to become "increasingly anachronistic as the criminal law gradually embraced a wider variety of financial misdeeds, and as the growth of ministerial responsibility provided a sufficient sanction against ministers whose political conduct gave offence".[1] We can find only three cases in the early eighteenth century. First, in 1701, against the four leading Whig peers: the Earls of Orford and Portland, Lords Halifax and Somers; secondly in 1710, Dr Henry Sacheverell; and thirdly in 1715, the Duke of Ormond, the Earl of Oxford and Viscount Bolingbroke, and this last case can be seen as the end of "the political impeachment".

Even these three trials were, however, far from satisfactory for the prosecutors: the Commons. In the first case, although the lower House, the majority of which were the Tories, accused the Whig lords of the

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1. Taswell-Langmead's English Constitutional History, (eleventh ed., 1960), 529.

mismanagement of the peace policy in 1701, the House of Lords refused to join in the impeachment, and at last acquitted these four lords. In the second trial of 1710, Henry Sacheverell was impeached by the Whigs because of his ultra-highflying sermons, but he was sentenced only to suspension from preaching for three years and his sermon was ordered to be burnt in the presence of the Lord Mayor and sheriffs. This light punishment meant a virtual acquittal. A Whig lamented that the High Church doctrine "is to be disavow'd and yet not sufferd to be punisht...Now I'm convinced 'tis the sanctuary of all villainy".[1] In the last case, after the Hanoverian succession, three Tory leaders were tried by the triumphant Whigs because of their misdeeds under the late Tory ministry, especially the Peace of Utrecht concluded in 1713 which was distasteful to the new King George I. The prosecution, however, virtually failed. Ormond and Bolingbroke had already fled to France and joined forces with the exiled Jacobites. Only the Earl of Oxford was tried and sent to the Tower, but he could take full advantage of the internal split within the Whigs, and finally in 1717 the Lords resolved that he was not guilty.

Geoffrey Holmes, G.V.Bennett and J.P.Kenyon have

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1. The Correspondence of Sir James Clavering, ed. by H. T.Dickinson, (Gateshead, 1967), 74: A.Clavering to J. Clavering, 23 March 1710.

already analysed Sacheverell's controversial sermon at St Paul's, which mainly caused his accusation, the ideological background of this sermon and his trial at Westminster Hall.[1] Thus in this chapter, it is considered what significance this impeachment had for the procedure of the Lords House, and how the Lords behaved themselves in this trial.

When the procedural problems are considered about the trial of Dr Sacheverell, there are two questions. The first one is why the Whigs had to impeach the doctor. As we have seen, the participation of the Commons in the impeachment was limited. At Westminster Hall, such Whig Commoners as Thomas Parker, Robert Walpole and James Stanhope accused the doctor. However, it was the Lords who could finally give a sentence to Sacheverell. The Court and the Whigs gained a working majority in the Commons after the 1708 election. Thus, it would have been difficult for the Tories to make this trial to their advantage if he had been tried in the lower House. On the other hand, in the Lords, the voting behaviour of some Court Whigs was unpredictable, so it would have not been desirable for the Whigs to entrust the trial with the

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1. G.Holmes, The Trial of Doctor Sacheverell, (1973); G.V.Bennett, The Tory Crisis in Church and State 1688-1730 The Career of Francis Atterbury, Bishop of Rochester, (Oxford, 1975), chapter VI; J.P.Kenyon, Revolution Principles: the Politics of Party 1689-1720, (Cambridge, 1977), chapter 8.

upper House. The Lords did let down the hopes of the Whigs in the Commons. A light punishment to the doctor implied all but his innocence. John Le Neve thought that

> In the trial of Dr Henry Sacheverell...the Lords debated in their own House, and agreed upon the judgement, a message was sent to the Commons, to acquaint them, that the Lords were ready to proceed therein, if they and their Speaker would come to demand it; which they did, and were present at the passing of judgement. But if the Commons only complain, and neither impeach the party in writing, nor by word of mouth in open House, nor demand tryal to be in their presence, it is in these cases, in the breast of the Lords, whether the Commons shall be present or no.[1]

The second question is why the doctor was not tried by an ordinary court but by the impeachment. The Tories claimed that Sacheverell should be prosecuted as an ordinary lawsuit. On 5 January 1710, Bishop Nicolson told Bishop Wake that "You will know what Opinion the good Lord Haversham has of the present State of this Nation. He has already, I am told, given Warning, that he intends

1. [J.Le Neve], Laws of Honour, 408. Sir William Robinson, a Whig MP was so disappointed in the Whig peers that he decided to live in retirement after the Lords gave a sentence to Sacheverell. Leeds Archives Office, Newby Hall MSS. NW 2913: Robinson's memorandum on 25 March 1710 (a copy written by his son Sir Tancred Robinson).

to say something to Dr Sacheverell's case; which (I agree) might more conveniently have been consider'd in some other Court than in that of Parliament."[1] A historian wrote Haversham's view over this trial:

> [Haversham said] "that it seems somewhat strange to see a Divine impeach'd, for preaching a Doctrine, for which he would, in former times, have been rewarded... However...since he is impeach'd, I hope a Day will come, for calling other Criminals to an Account."[2]

Peter Wentworth endorsed this view. On 3 January he wrote to Lord Raby that Haversham said "the impeachment of Sacheverell is a small matter, if they are for impeachments, he'll point them out great Men to impeach."[3] Apparently he insinuated the Duke of Marlborough. In chapter one, it has been considered that his grace asked the Queen to dismiss Mrs Masham from the Court, and besides he also requested to the Queen that she should give him the Captain Generalcy for his life.[4] It was not groundless that the High Tory peers regarded this request

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1. BL, Add. MSS. 6116: f.18: Bishop Nicolson to Bishop Wake (copy), 5 Jan.1710.

2. P.Chamberlen, An Impartial History of the Life and Reign of...Queen Anne, (1738), 332.

3. BL, Add. MSS. 31143, f.436: P.Wentworth to [Lord Raby], 3 Jan.1710.

4. H.Snyder, "The Duke of Marlborough's Request of his Captain-Generalcy for Life: A Re-Examination", Journal of the Society for Army Historical Research, XLV, (1967), 67-83.

as an infringement of the prerogative, and thought that it was not Sacheverell but Marlborough who should be impeached.

It was said that Godolphin was reluctant to impeach the doctor. However, it was impossible for him to neglect the intention of the Junto lords after the abortive address to remove Mrs Masham infuriated the Queen and alienated some moderate peers from the ministry. Auditor Harley remarked that the Junto peers "thought it was necessary to prevent his [Godolphin] retreat to the Church party, and therefore put him upon encouraging the impeachment of Dr Sacheverell...This raised such a ferment in the nation that the Treasurer used his endeavours to have it dropped; especially after the House of Commons had resolved that the trial should be public in Westminster Hall [14 December 1709], which was first intended to have been at the bar of the House of Lords; but the Lord Wharton and others were resolved not to let him go back".[1] It is obvious that among the Junto peers Lords Sunderland and Wharton promoted the trial. In January Wharton told Marlborough, who was still wavering over prosecuting the doctor, "Quash him damn him"![2] In late February, before the Lords discussed the sentence to the doctor, Sunderland complained against the Lord Treasurer. He wrote to Marlborough that

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1. HMC, Portland MSS. V, 649: Auditor Harley's memoir.

2. G.Holmes, Sacheverell Trial, 97.

> it is very unfortunate, for our home affairs, that you were oblig'd to go away so soon, for L[or]d Treasurer had a slowness & coldness about him, that is really terrible & therefore all that can be must be done to keep him up & to animate him...[1]

Unlike Wharton and Sunderland, Lord Somers was against the impeachment. He was opposed to the bellicosity of Wharton and Sunderland. In January, he did not support the plan to make an address to remove Mrs Masham. Somers "had no mind to be his grace [Marlborough]'s subject", and "acquainted the queen with...the danger she run."[2] Alexander Cunningham wrote that Somers said "in matters of judgment, we have always followed the example of the wisest judges; considering chiefly what is equity, and what the public good."[3] It is surprising that such a celebrated lawyer as Somers was not active in the trial. Undoubtedly, he knew that the Queen had been alienated from the Godolphin ministry, and that she did not want to punish the doctor severely. Thus both Marlborough and Godolphin understood Somers' support for this trial was not reliable. The Duchess of Marlborough observed that Somers' absence on the very day of the verdict (21 March)

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1. BL, Add. MSS. 61127, f.99: Sunderland to [Marlborough], 21 Feb.1710.

2. Burnet's History, V, 416, Dartmouth's note.

3. A.Cunningham, The History of Great Britain from the Revolution in 1688 to the Accession of George the First, II, (1787), 297.

had not been due to his mother's death.[1]

On 16 and 17 March 1710, the Lords debated four articles of the impeachment against Sacheverell, after the Commons accused him of high crimes and misdemeanours. While the Lords' debates on 16 March concerning the first article lasted about ten hours, and many MS. and printed records of the debates are extant, the proceedings in relation to the second, third and fourth articles on the following day were much less significant. Many lords took great interest in the first article, in which the Commons claimed that the doctor "doth suggest and maintain that the necessary means used to bring about the said happy Revolution were odious and unjustifiable; that his late Majesty, in his Declaration disclaimed the least imputation of Resistance; and that to impute Resistance to the said Revolution is to cast black and odious colours upon his late Majesty and the said Revolution." Most of the peers had experienced the Glorious Revolution, and twenty years after, the Lords reconsidered the legitimacy of this Revolution.

A shrewd observer noted about the proceedings in the Lords on 16 March "'Tis very remarkable in this Debate, that all the temporall L[o]rds against the Dr

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1. Private Correspondence of Sarah, Duchess of Marlborough, (1838), II, 152.

would not enter into the Doctrine of Passive Obedience but allow'd that should stand as it did, if the Dr was but punished."[1] It is doubtful that Whig lay peers allowed that the doctrine of passive obedience "should stand as it did". However, it is certain that most of them were reluctant to deny the non-resistance and passive obedience theory. They were even more cautious not to justify the Revolution in terms of the original contract. It has been often pointed out that this problem was a weak side of the Whigs at the trial. A contemporary writer admitted that

> I never met with it [Original Contract] in any of our Law-Books, nor never heard it urg'd in any Court before...our Law-Books being silent in it, I think it too tender a point for us...all Resistance except in the case of Revolution, is still Treason within that Act. Nor has this Doctrine been alter'd since the Revolution.[2]

Lord Wharton was, however, distinguished from other Whig lay peers who were equivocal about the lawfulness of the Revolution. He was bold enough to say that "If the Revolution is not lawful, many in that House, and vast

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1. Yale University, Osborne MSS. box 21, no. 22: "Account of the Trial of Dr Sacheverell". (unfoliated)

2. High-Church Display'd: Being a Compleat History of the Affair of Dr Sacheverell, (1711), 140-41.

numbers without, were guilty of blood, murder, rapine, and injustice: and the queen herself is no lawful queen, since the best title she had to the crown, was her parliamentary-title, founded on the Revolution."[1] His realism Might is right, was ironically shared by the Duke of Leeds, who had not regarded William III as the King at the beginning of the Revolution. He told the House that "he had a great share in the late Revolution, but said, he never thought, that things would have gone so far, as to settle the crown on the prince of Orange, whom he had often heard say, that he had no such thoughts himself. That they ought to distinguish between Resistance and Revolution; for Vacancy or Abdication was the thing they went upon, and therefore Resistance was to be forgot; for had it not succeeded, it had certainly been rebellion; since he knew of no other but hereditary right."[2]

Lord Chancellor Cowper was not fond of the speeches of peers who spent much time only in justifying their own behaviour at the Revolution. Cowper "took notice how wide some of [th]em spoke, told [th]em w[ha]t ye strict Q[uestio]n was and why he thought him guilty".[3] Some of the peers might have obeyed the instructions from the

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1. Cobbett, VI, 831.

2. Cobbett, VI, 847.

3. PRO 30/24/21/182 printed in C.Jones, "Debates in the House of Lords", Historical Journal, XIX, (1976), 771.

Speaker, and stated their view only to show that they supported the doctor's being guilty or not guilty. But it does not imply that they made a decision based on the close examination of the doctor's sermon. On the contrary, they were not passionate, but indifferent to such main notions as the passive obedience and non-resistance. Except for the Bishops of Sarum (Burnet) and Oxford (Talbot), and Wharton, Whig lords' speeches were hackneyed.

As for the Tory lords, Godolphin suspected that the Tories had gone mad, after he saw them still adhere to the non-resistance and passive obedience theory.[1] However, their speeches show that not only lay peers but also bishops were quite apathetic to the ideological or religious argument, although they alleged the doctor's innocence. It was, said the Duke of Buckingham, "declared very plainly that he was more desirous to know which was the stronger party, than which of them had the juster and better cause."[2] His printed speech endorses his indifference to the High Tory principles. His speech lacked the religious viewpoint. He only emphasised that the enthusiasm for this trial would prevent "agreement, unity and peace" which were indispensable when England was at war

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1. Burnet's History, V, 443, Dartmouth's note.

2. Cunningham, History, II, 296.

with France.[1] The Earl of Anglesey told the Lords that "he never knew Nonsense to be a Crime", and insisted on the doctor's innocence.[2] Not only such Tory peers, but also Tory bishops had little zeal to defend the doctor in terms of the traditional Anglican doctrines. Bishop Hooper of Bath & Wells did agree with the Whigs "about the necessity and legality of resistance in some extra-ordinary cases." He claimed that the resistance theory should be denied, only because "this ought to be kept from the knowledge of the people, who are naturally too apt to resist".[3] Bishop Compton's indifference to the principles in the Sacheverell sermon was more remarkable. He "complained much of Dr S[acheverel]l, said he was guilty of folly madness & ye greatest Extravagance in ye world, and could not find him guilty of high crimes & misdemeanours"! Cowper naturally thought Compton's argument was inconsistent. The Speaker "press'd ye B[isho]p of London for his vote against him who had said such hard things against him".[4]

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1. The Duke of Buck-g-m's Speech relating to the Sentence against Dr Henry Sacheverell, in the House of Lords, (1710).

2. A.Boyer, Annals, VIII, 317; A Compleat History of the Whole Proceedings of Parliament of Great Britain against Dr Henry Sacheverell with his Tryal before the House of Peers, (1710), 209.

3. Cobbett, VI, 846; A Compleat History, 209.

4. PRO 30/24/21/182; A.Boyer, Annals, VIII, 316-17.

Unlike the other Whig lords, Bishop Burnet and Bishop Talbot made well-arranged speeches. They drafted the speeches in advance, and read them on 16 March.[1] These two Whig bishops were not reluctant to justify the Revolution as a result of the resistance, but denied the non-resistance theory.[2] Burnet admitted that 'before' the Revolution the passive obedience and non-resistance theory might have been accepted by the Church and State, but he claimed that it was unquestionable that "Resistance was used in the Revolution, and that the late King invited all the Subjects to join with him." He accepted that after the Revolution "the Lawfulness of Revolution is so much controverted". However, in his opinion "condemning all Resistance in such crude and General Terms" as Sacheverell did was "certainly a Condemning the Revolution".[3]

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1. BL, Lansdowne MSS. 1024, f.207: W.Kennett's Journal.

2. Burnet and Talbot had to deny the non-resistance theory all the more because a Tory peer criticised the Whig bishops. White Kennett recorded that "Some of this Bench are necessarily called up by words w[hi]ch fell from the Noble Lord who spoke third in this debate, who was pleased to mention among other strange things Bishop voting contrary to their Doctrines." BL, Lansdowne MSS. 1024, f.207. "The Noble Lord" was probably Haversham. See Cobbett, VI, 837: "Lord Haversham having reflected on some bishops voting contrary to their doctrines."

3. "The Bishop of Salisbury's Speech", 12 and 16 in The Bishop of Salisbury's and the Bishop of Oxford's Speeches in the House of Lords, on the First Article of the Impeachment of Dr Sacheverell; also the Bishop of Lincoln's and Bishop of Norwich's Speeches in the Opening of the Second Article of the said Impeachment, (hereafter Four Bishops' Speeches, 1710).

Bishop Talbot's discourse is more interesting. He did not use the concept of the 'original contract' or the 'social contract'. But he implicitly accepted these notions. Talbot claimed that the people were absolved from their allegiance to the monarch, if he violated the natural law. After he told the Lords that a child could resist his parent in such an extraordinary case that his parent was about to kill him, Talbot said that

> And then why may not the same Law of Self-Preservation justify the Political Child, the Body of the People, in defending their political Life, i.e. their Constitution, against plain and avow'd Attempts of the political Parent utterly to destroy it?[1]

Talbot said that the prince was entrusted with the executive power. The prince was infallible, and he should not be responsible for the mismanagement of the government. Nevertheless, Talbot pointed out that the executive power was one of the pillars of the constitution: the prince, "Nobles" and "Commons". He emphasised that the law secured the prince's position, but at the same time it also secured the "Rights and Properties" of the people. It is possible that "the Prince shall change this Form of Government into an absolute Tyranny, set aside those Laws, and set up an Arbitrary Will in the room of

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1. "The Bishop of Oxford's Speech", 5-6, in Four Bishops' Speeches.

them". When it should happen, the Bishop thought, "then the Nobles and Commons join together in Defence of their Ancient Constitution, Government and Laws, I cannot call them Rebels".[1]

Talbot obviously regarded the English constitution as a 'mixed monarchy' which consisted of the monarch, the Lords and the Commons. He was of the opinion that although it was not lawful for the people to accuse the prince of his administration's misdeeds, they could lawfully resist the prince, once he tried to violate the fundamental frame of the constitution.

After the four Whig bishops made speeches in the Lords (Bishops Burnet and Talbot on 16 March: Wake, the Bishop of Lincoln and Trimnell, the Bishop of Norwich on the following day), Nottingham made a 21 page MS. treatise entitled Remarks on the Speeches of ye Four Modern Evangelists of the New Gospel of Resistance.[2] His discourse is valuable, because the Tory peers seldom appealed to the ideological argument, although they were for the doctor's innocence. It appears that Nottingham's view on the Revolution was similar to that of the Duke of Leeds. Nottingham wrote

That some L[o]rds and gent[leme]n took up arms & ioynd

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1. "The Bishop of Oxford's Speech", 7, in Four Bishops' Speeches.

2. Leicestershire R.O. Finch MSS. ecclesiastical papers 5.

> [joined] w[i]th ye Pr[ince] of Orange is not deny'd; but to w[ha]t intent & purpose? to assert their rights & liberties, not to dethrone K[in]g Ja[mes] & even this was publicly acknowledged by a Noble L[or]d [D:Leeds sidenote in Nottingham's hand] who was ye chief in yt insurrection to be no lesse yn downright rebellion: That this was all their designe is manifest by their declara[ti]ons.

Indeed, Nottingham and Leeds might have had a common ideological background, but Nottingham's political ideas in this discourse were clearly influenced by the transformation of Toryism after the Revolution. Bishop Burnet fully understood this change, and he pointed out that such revised Toryism as the de facto King theory was a fallacy. In his speech, Burnet said "the Notion of a King de facto" was "but a softer Word for an Usurper."[1] In his treatise, Nottingham did not think much of the de facto theory. His constitutional theory was surprisingly similar to what Bishop Talbot developed in his speech. Nottingham wrote that

> there is a third proposition in w[hi]ch ye B[isho]p [Talbot] I presume will agree w[i]th me. viz. yt ye laws of every constitu[ti]on in every country are ye rules & measures of ye subjects obedience to w[hi]ch ye laws of God do accordingly oblige ym &

1. "The Bishop of Salisbury's Speech", 14, in Four Bishops' Speeches.

> resistance is no further allowable to ye subjects than ye laws of his country permitt...in our own governm[en]t 'tis allowed to be unlawfull to resist Q[ueen] L[or]ds & Co[mm]ons <u>because absolute power is lodg[e]d in ym</u>.[1]

It is certain that both Talbot and Nottingham regarded the English constitution as a 'mixed monarchy'. Then what caused the difference of opinion about the attitude to the Revolution? Nottingham admitted that the resistance to the prince was justifiable on condition that the law allowed the people to do so. Nevertheless any English laws did not provide the lawfulness of the resistance. The difference between Talbot and Nottingham was that Talbot thought that self-preservation was a natural law, and it was acceptable by anybody, although it was not expressed in the written laws. But Nottingham restricted the concept of law only to the written law. Nottingham wrote in his treatise that

> in a limited monarchy where ye powers of each part of ye Constitu[tio]n are design[e]d & bounds are sett both to prerogative & liberty by expresse laws...'tis much more unreasonable & unna[tur]al to assert any implication of any other terms than w[ha]t are specify'd, because by ye frame of such a constitu[tio]n reciprocal care is taken of ye respective rights

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1. underlined by Nottingham

> as far as was iudged necessary & ye Prince can punish ye viola[ti]on of ye subjects duty to him no otherwise nor in a more coercive or severe manner than ye laws direct, so neither can ye people vindicate ymselves from the incroachm[en]ts of ye Prince by methods yt are not authoris[e]d & appointed by laws. And this is our Case...neither can ye people assert their own rights nor resists ye Prince for ye violation of ym further than they are warranted by law & much lesse can they depose & deprive him of his sovereignty.

It is undeniable that there was a great difference between Talbot and Nottingham in relation to the interpretation of the concept of 'law'. On the other hand, both lords obviously adopted the 'mixed monarchy' theory, when they described the English constitution. This fact is important because of the following two reasons.

The first point is that Talbot's speech and Nottingham's treatise give a good example that in the post-Revolution period Tory constitutional theory (except for that of the Jacobites) was gradually undistinguishable from its counterpart. It has been said that after the Revolution most of the Whigs ceased to rely on the Lockean social contract theory, when they justified the Revolution. To be sure the social contract theory might have been useful to overturn the despotism of James II, but it was not suitable to stabilise the political society. Thus 'mixed monarchy' theory must have been

welcomed by the Whigs, because it enabled them to return their constitutional theory to a traditional one. Bishop Talbot told the House that "Power is lodg'd in the Legislature; for which I have the Authority of a Great Politician and Statesman, Sir Thomas Smith, who was Secretary of State to two Princes, K[ing] Edw[ard] 6 and Q[ueen] Eliz[abeth]...he treats of our Parliaments, and the Authority thereof, lays down this Assertion, 'The most high and absolute Power of the Realm of England consisteth in the Parliament'".[1]

Secondly it should remind us of the fact that the 'mixed monarchy' theory was one of the key concepts during the Puritan Revolution. Quoting A Political Catechism (1643), Corinne Weston shows that the concept of the 'mixed monarchy' was widespread at that time. Although the author wrote this pamphlet to defend Charles I, his 'mixed monarchy' theory could become a weapon to impeach such great officers as William Laud and Lord Strafford who violated the ancient constitution, and tried to enlarge the royal power.[2] Thus it is not surprising that A Political Catechism was reprinted in March 1710, "as being appropriate to the times".[3] Unlike

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1. "The Bishop of Oxford's Speech", 6, in Four Bishops' Speeches.

2. C.C.Weston, English Constitutional Theory and the House of Lords 1556-1832, (1965), 38.

3. W.A.Speck ed. F.F.Madan: Critical Bibliography of Dr Sacheverell, 87.

the age of the Puritan Revolution, in the early eighteenth century the procedure of impeachment had become old-fashioned, and was to be replaced by an ordinary judicial process. Nevertheless the impeachment was still of some use, because it enabled the Lords and the Commons to censure those who tried to destroy the 'mixed constitution'.

His long treatise makes it clear that Nottingham took great interest in this impeachment. Indeed, he played a considerable part in the debates in the Lords, after the Commons finished accusing the doctor on 10 March. His tactics were simple. Based on his vast knowledge of the procedures, he started the attack by showering complicated procedural questions on the Whigs. On 10 March, at Westminster Hall, Lord Chancellor Cowper asked "whether the Commons had finished their Replication", and Sir Thomas Parker, MP and chief prosecutor of the doctor "demanded their Lordships' Judgement".[1] After Parker's speech, Nottingham told the Lords that he had a question, and he hoped that the question would be heard at Westminster Hall. The Duke of Devonshire proposed to adjourn immediately. The Lords agreed to his proposal, and went to the House of Lords. It is remarkable that the Lords ordered that Nottingham's question should be heard

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1. Yale University, Osborn MSS. box 21, no 22, "Account of the trial of Dr Sacheverell. (unfoliated); Luttrell, VI, 555.

at Westminster Hall, "though Ld Wharton &c opposed it." This had a great effect. Although the motion was related to a trivial procedural matter, the opposition did defeat the Court and the Whigs, and, besides, Nottingham's shocking question was heard by more audiences.[1]

At Westminster Hall, Nottingham asked Lord Chancellor Cowper "whether by the Law of England, and constant Practice in all Prosecutions, by Indictment or Information for Crimes and Misdemeanours by Writing or Speaking, the particular Words, supposed to be Criminal, must not be expressly specify'd in such Indictment or Information".[2] Obviously, he realized that the doctor's crime was not stated in these forms, and that similar procedures might be few, if any. He seems to have expected that the validity of this impeachment would be doubted, even if it was impossible that all the proceedings could be reversed to the start and the trial would be suspended. The Tory lords claimed that the judges should be heard about this question, and this motion was debated after the Lords returned to their House again. The Whig Commoners, who were left at Westminster

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1. Yale University, Osborne MSS. "Account of Sacheverell trial"; HMC, Portland MSS. IV, 537: [A.Harley] to E.Harley, 11 March 1710.

2. The Tryal of Dr. Henry Sacheverell before the House of Peers, for the High Crimes and Misdemeanours; upon an Impeachment, (1710), 448.

Hall, were still optimistic, because they believed that "Ld Wharton, & Sunderland &c would not lose two points together". Thus, the Whig MPs were astonished to see the Lords come back to Westminster Hall to hear the judges. Indeed "every Whig in the Hall look[e]d very black upon losing this Question."[1] The Whigs of course understood that Nottingham's "unexpected question" was "of no less Consequence, than to baffle and annul the whole Prosecution".[2] However, the Whig lords could not prevent this question. As the Tories expected, ten judges unanimously supported Nottingham's opinion.[3]

The debate on the following day was satisfactory for Nottingham. The Tory peers strenuously seconded Nottingham. An unpublished letter to the Duke of Hamilton endorses this.

> On this occasion today [11 March] there was a great Debate in ye House of Lords for now all is over in ye [Westminster] Hall till Judgement is to be given. My Lord Haversham opened ye Debate then Lord Guernsey spoke on ye same side endeavouring to make it appeare yt ye Lords in their Judicature could goe by no other Rule but ye knowne Laws of ye Land against which a man must expressly offend before he could be found

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1. Yale University, Osborne MSS. "Account of Sacheverell trial".
2. A.Boyer, Annals, VIII, 295.
3. The Tryal of Sacheverell, 448-49.

> Guilty as well as before any other Court of Judicature else a man might goe to bed innocent and rise guilty and arbitrary power would be lodged with them which was even of worse consequence than in ye Crowne. Lord Nottingham Duke Buckingham Lord Anglesey and severall others spoke on ye same side and were taken up on ye other by Lord Somers Lord Sunderland Lord Halifax and Lord Chancellor & Lord Treasurer.[1]

Finally the House ordered that they would "proceed to the Determination of the Impeachment of Doctor Henry Sacheverell, according to the Law of the Land, and the Law and Usage of Parliament" and a committee was appointed to search the Lords' Journal for the precedents.[2]

On 14 March, however, Nottingham's scheme resulted in a defeat, although the Tory lords gave a severe blow to the Whigs and the Court. The Tory peers claimed that such a trial where the crime was not expressed in the indictment was unprecedented so enthusiastically that a Whig observer remarked, "No bear garden was ever more noisy than the Lords have been upon their debates".[3] Nottingham told the Lords that "if they would allow him time, till next day, he would from his own Papers produce them

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1. SRO, GD 406 (Hamilton MSS.)/1/5573: [Lord A.Hamilton?] to [Hamilton], 11 March 1710.

2. The Tryal of Sacheverell, 449; Yale University, Osborne MSS. "Account of Sacheverell trial".

3. Clavering Letters, 70: A.Clavering to J.Clavering, 18 March, 1710.

Precedents enough" to justify his opinion.[1] The Court and Whigs were opposed to Nottingham's motion, and won over the Tories by a majority of only five (63 against 58).[2] But it was a Cadmean victory. Geoffrey Holmes is of the opinion that this close fight was due to the desertion of seven or eight Whig peers. This view is apparently based on an anonymous diary of this trial. The diarist wrote that

> This proceeding was look[e]d upon so violent & Arbitrary that D[uke] of Argyle & Somerset L[or]d Rivers & Ossulston & severall others of their Party left; & the one Godolphinite made half a speech against it, but was check'd, sat down & voted for it.[3]

However, Lord Yester gives us a different account. He thought that this close fight was mainly caused by some Scottish peers. In his letter to the Marquess of Tweedale, he reported that

> [The Court and Whigs] did carry two votes. They had hitherto shunned any division in this matter. But

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1. Yale University, Osborne MSS. "Account of Sacheverell trial"; The Earl of Not-gh-m's Opinion in the House of Lords on the Debates concerning Dr. Sacheverell's Impeachment, (1710).

2. J.C.Sainty and D.Dewar, Divisions in the House of Lords.

3. G.Holmes, Sacheverell Trial, 214; Yale University Library, Osborne MSS. "Account of Sacheverell trial".

finding yt ye Torys still delayed letting ye tryall come to a conclusion they were forced to try their strength because this affair makes a great noise both here and abroad. The first vote was proceed or adjourn to consider further off precedents which they carried by 5. D[uke] Hamilton Argyle Marr Northesk Weems [Wemys] & Ila [Ilay] were against them.[1]

It seems that the Queen, who was present incognito, saved the Court and Whigs from a fiasco. After the first division, Nottingham flattered himself that "he'd intertain the House for an hour and half", and he did begin to make a speech, but it proved to be fatal for him, because "when he'd spoke one half hour...the Queen riss [rise] and left him".[2] The Queen revealed her displeasure with him in public, and the Duke of Leeds and several Tory peers, who were disappointed about their defeat and tired from the long debate, also left the House. Scottish representatives, who had rebelled against the Court and the Whigs in the first division, realised the Queen's intention. Thus, the motion "particular words should be expressly specifyed in Impeachments" was rejected by a

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1. NLS, MS. 7021, f.209: Yester to Tweedale, 16 March 1710.

2. Clavering Letters, 71: A.Clavering to J.Clavering, 18 March 1710. Nottingham's long draft of speech is in Leicestershire R.O. Finch MSS. ecclesiastical papers 5.

majority of 18 (65 against 47).[1] Lord Yester reported that in this vote "Argyle, Weems & Ila joined" in the Court. After the House rose, it was said that Argyll excused himself about his having changed sides.[2]

The Lords argued and accepted the articles of impeachment on 16 and 17 March. However, the Earls of Nottingham and Rochester and Lord Guernsey once again tried to throw the Whigs into confusion, appealing to the same tactics: a procedural question. On 18 March, at the beginning of the proceedings, Lord Chancellor Cowper put a question: 'the Commons having made good their charge, Dr Henry Sacheverell is guilty of High Crimes and Misdemeanours'. At first Rochester moved to hear the judges, but it was not seconded.[3] Then Buckingham, Rochester, Nottingham,Guernsey and Ferrers proposed that the first phrase of the question the Commons having made good their charge should be deleted. Guernsey argued that this question would "preclude the peers from their right of giving their judgement". Wharton was opposed to him, but finally admitted to delete this part, so the motion of

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1. J.C.Sainty and D.Dewar, Divisions in the House of Lords.

2. NLS, MS. 7021, f.209: Yester to Tweedale, 16 March 1710; Northamptonshire R.O. Finch-Hatton MSS. 281, ff. 17-18: [Nottingham] to [Lady Nottingham] (copy), 14 March 1710; Yale University, Osborne MSS. "Account of Sacheverell trial".

3. A.Boyer, Annals, VIII, 321.

the Tory lords was unanimously passed.[1]

The Tories defeated the Whigs again about a procedural question. After that, Guernsey suggested that the Lords should put each article to a vote, and he was opposed to the blanket verdict, because some peers might judge that the doctor was guilty of one part and innocent of the other. Obviously, he intended that the separate voting would fragment the Whig interest and it would enable a light punishment to be voted. Nevertheless this motion was rejected by a majority of 12 (65:53).[2]

In the debates from 10 to 18 March, Nottingham made great efforts for Sacheverell. He and his party did gain some points about procedural matters. Even before the Lords started the proceedings about the trial, Nottingham had some hope that the doctor would be acquitted, because "there are many converts".[3] However, the desertions of some peers from the Court and Whigs were not motivated by the High Tory lords. It is impossible to find evidences that High Tory peers prevailed with some Courtiers or Whigs to vote for the doctor. It was Harley who contributed to a light punishment of the doctor.

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1. Yale University, Osborne MSS. "Account of Sacheverell trial"; Wharton's memoir, 71; Cobbett, VI, 880.

2. Cobbett, VI, 881-84; J.E.Rogers, Lords' Protests, I, 197; Yale University, Osborne MSS. "Account of Sacheverell trial"; J.C.Sainty, Divisions in the House of Lords.

3. Northamptonshire R.O. Finch-Hatton MSS. 281: f.18: [Nottingham] to [Lady Nottingham], (copy), [7 March 1710].

How did Harley behave himself during the impeachment? He succeeded in making his followers participate in the trial as defendants: Simon Harcourt and Francis Atterbury. Harcourt's eloquence was fully expressed in his defence for the doctor, which was admired even by a Whig, while the doctor's speech on 7 March was attributed to Atterbury. His pen and the doctor's fluent tongue made an enormous effect on the audience. Such "non-resisting ladys" as the Duchesses of Grafton and Shrewsbury and Lady Granville "wept so much that" they looked like widows.[1] However, Harley's great efforts were made outside Westminster. During the impeachment, he prevailed upon several Court Whigs and Scottish representative peers to vote for Sacheverell. It seems that Harley did not support the cause of Dr Sacheverell and feared that the doctor's victory would "raise the Tories to their old madness".[2] But, on the other hand, his keen political sense never neglected the fact that this trial was a good chance to unite the Tories who had been often divided in the party. Four years after this trial, Harley thought that

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1. Clavering Letters, 70; A.Clavering to J.Clavering, 18 March, 1710. Nottingham told his son, Lord Finch that Sacheverell "made the finest harangue I ever heard or read. I believe he had some help in composing it from some...whom you may guesse." Leicestershire R.O. Finch MSS. box 4950, bundle 23, 24 March 1710. See also Northamptonshire R.O. Finch-Hatton MSS. 281, f.18: [Nottingham] to [Lady Nottingham](copy), [7 March 1710].

2. HMC, Portland MSS. IV, 537: [A.Harley] to E.Harley, 11 March 1710.

although this impeachment had been "a foolish tryal", he admitted that this trial "united the church ag[ain]st ye ministry."[1]

In the trial, Harley understood that some moderate Whig peers were dissatisfied with the relentless prosecution by the Junto Whigs, and their secession was to break the Whig interest and topple the Godolphin ministry which totally depended on the Whigs in early 1710. Thus, Harley's negotiation with some dissident Whig peers can be regarded as one of the stages of his scheme to overturn the Godolphin ministry after his resignation of the secretaryship in February 1708. It is known that Harley approached these lords with success: the Dukes of Argyll, Newcastle, Shrewsbury and Somerset, and the Earls of Peterborough and Rivers. Except Newcastle and Peterborough, all of them voted for the doctor's light punishment on 21 March 1710. When we compare the Whigs with the Tories in the age of Anne, it is obvious that the Whigs were far better organised than the Tories, and the voting behaviour of the Whigs was more consistent with the party line. Then, why were these Whig lords so vulnerable to Harley's persuasion?

Generally speaking, the secession of these peers was not based on their principles, but their personality and feeling, and (except for Shrewsbury and Newcastle)

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1. BL, Loan 29/10/6: Harley's memoir on 4 July 1714.

their dissatisfaction with the treatment by the Godolphin ministry. For instance, Somerset was famous for his nickname of "the Sovereign" and "by far the proudest and most insufferably pompous man in England".[1] However, Godolphin thought much of him, in that the influence of the Duke and the Duchess of Somerset over the Queen was considerable. Furthermore the Duke had some followers in the upper House. Somerset became all the more valuable for the ministry because the friendship between the Queen and the Duchess of Marlborough was broken in 1709. But as early as September 1709, Harley wrote to Newcastle, "The Master of the Horse [Somerset] is the most sedulous attender at Windsor...Perhaps he begins to think he can stand on his own legs; it is certain he is not now favourite of the ministers or junto."[2]

At this stage, however, it is not certain that Harley prevailed upon Somerset to oppose himself to the government. He had to be accompanied by other moderate Whig peers. In this sense, Rivers proved to be an useful pawn for Harley. In August 1709, Godolphin had already

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1. G.Holmes, British Politics, 226. Lord Dartmouth remarked that Somerset "always acted more by humour than reason." Lord Hardwicke thought that his grace "was rather a ministry spoiler than a ministry maker". (Burnet's History, VI, 14-15.)

2. BL, Loan 29/238, f.296: Harley to Newcastle, 15 Sep. 1709; BL, Loan 29/153/1/7: [Poulet] to [Harley], 11 Oct.1709.

regarded Harley and Rivers as "birds of a feather", and Simon Harcourt endorsed their relationship in October.[1] Since then, Rivers troubled the ministry several times. Godolphin was amazed that Somerset had a design to grant a pension to Rivers in October, and again he shocked Marlborough when the Queen suddenly announced that she had already decided to give the Constableship of the Tower to Rivers in January 1710.[2] Shrewsbury might have felt sympathy for Harley, when he was dismissed from the secretaryship in February 1708, and as early as May 1708 wrote to Harley he was "ready to meet Sir S[imon] Har[court]", Harley's right arm.[3]

While Somerset's dissatisfaction was mainly caused by his idiosyncrasy, Shrewsbury's was due to government policy itself. *In particular*, the Duke was apprehensive that Marlborough, Godolphin and the Whig Junto had warlike inclinations and that a peace would be impossible under this ministry. Just before the opening of the parliament-

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1. M-G Corr., III, 1337: Godolphin to Marlborough, 9 Aug.1709; HMC, Portland MSS. IV, 528: Harcourt to Harley, 22 Oct.1709. In April Godolphin refused to give patronage to Rivers. BL, Add. MSS. 57861, f.104: Godolphin to Earl of Coningsby, 11 Apr.1709.

2. M-G Corr., III, 1402: Marlborough to Duchess, 21 Oct. 1709.

3. A month before his resignation, Harley had talks with Shrewsbury, and prevailed upon his grace to "engage in business." Northamptonshire R.O. Montagu (Boughton) MSS. XLVIII, Shrewsbury Papers, f.176: [J.Vernon] to [Shrewsbury], 13 Jan.1708 (not printed in Vernon Corr.). HMC, Bath MSS. I, 191: [Shrewsbury] to Harley, 6 May 1708.

ary session 1709-10, Shrewsbury wrote to Harley "I do not doubt but the generality of the nation long for a peace, and the majority of those who represent it, when discoursed singly in the country, agree in that opinion. But how they may change their minds when they come to London and submit to their leaders", and the Duke pointed out that "Some opportunities" of peace had been lost by the government.[1] The Whig Junto had already regarded the Duke as a deserter from the Whigs, when he went to the Continent in face of the impeachment of four Whig lords in 1701. The ministry, however, appreciated Shrewsbury's moderation. Although Marlborough admitted that "there may be civillity between him [Shrewsbury] and Harley", he thought Shrewsbury "has to[o] much experience to think Harley can do him any good at Court". Even after the impeachment of Dr Sacheverell, Marlborough remarked that "that which amazes me is that he could think it possible for the Tories to be strong enough to ruin the Whigs in conjunction with Godolphin and Marlborough".[2] But about five months later, the Tories proved that they were strong enough to topple the Whigs.

When Harley negotiated with some Scottish peers, he made use of different tactics. For such leading Scottish lords as the Dukes of Argyll, Hamilton and Queensberry,

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1. HMC, Bath MSS. I, 197: Shrewsbury to [Harley], 3 Nov. 1709.
2. M-G Corr., III, 1336, Marlborough to Duchess, 8 Aug. 1709; Ibid., III, 1445-46: Marlborough to Duchess, 24 March 1710.

one of the most important purposes was to promote the prestige of themselves and their family. In face of the debate in the House of Lords over the Sacheverell trial, Godolphin decided to award the Garter to Argyll, even though he thought that his grace did not deserve it. Godolphin realized that Argyll was "next to Somerset" at Court and "one of the greatest favourites" of the Queen.[1] But, naturally, Argyll's promotion caused great jealousies among the Scottish lords. For instance, Hamilton was "a good deal mortifyed with what was done lately for Argyll".[2] Argyll had been already created the Earl of Greenwich (in the English peerage), but he was infuriated at the news that Hamilton might be awarded a dukedom of Great Britain. Thus, Argyll told the Earl of Orrery that if the Queen had any thought of Hamilton's promotion, she should give this honour to Argyll first.[3] In these circumstances, Harley did not find much difficulty in prevailing on Argyll and Hamilton to vote for Sacheverell. All he had to do was to guarantee their

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1. M-G Corr., III, 1432: Godolphin to Marlborough, 10 March 1710. On 23 March 1710, two days after the final verdict on Dr Sacheverell, N.Luttrell recorded that Argyll was awarded a Garter. Luttrell, VI, 560. See also a letter from James Brydges to William Cadogan on 7 Apr 1710 in G.Davies, "The Seamy Side of Marlborough's War", Huntington Library Quarterly, XV, (1951-52), 43.

2. M-G Corr. III, 1467: Godolphin to Marlborough, 20 Apr.1710; Ibid., III, 1427: Godolphin to Marlborough, 3 March 1710.

3. HMC, Portland MSS. IV, 538: [Earl of Orrery] to [Harley], [15?] March 1710.

preferment on condition that they would join in his scheme.

We would, however, misunderstand the Scottish peers, above all the Scottish Episcopalian lords such as Hamilton, if we considered that their behaviour had been motivated only by profit or honour. Hamilton, a probable Jacobite, told George Lockhart that his inclinations naturally led him to vote for the doctor, though he was apprehensive that "the Ministry woud be displeas'd" and the Scottish Presbyterians would "never forgett it, nor forgive him".[1]

It is unquestionable that Harley contributed to a light punishment of the doctor. But at the same time the influence of the Queen over the Lords cannot be ignored. Edward Gregg made it clear that "in her struggles with the Duumvirs and the Junto throughout 1709, the queen had only indirect advice from Harley and that his secret visits to her were rare".[2] As late as March 1710, Mrs Masham wrote to Harley that the Queen "charged me not to say anything to you of what passed between us".[3] Thus, it is unlikely that Harley kept in touch with the Queen about the Sacheverell trial. However, the Queen had some

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1. The Lockhart Papers, ed. by A.Aufrere, I, (1817), 313-14.

2. E.Gregg, Queen Anne, 285.

3. HMC, Portland MSS. IV, 536: [A.Masham] to [Harley], 10 March 1710.

channels to communicate her view. At first she was reluctant to show her opinion, but later she hoped for a light punishment when such a Court Whig peer as the Marquess of Kent asked about her view.[1] Regardless of Harley's negotiations, it was impossible for the Courtiers to ighore the Queen's intention and commit themselves to factious conduct. Somerset was negotiating with Harley, while Somerset never failed to inquire of the Queen how to behave in the trial. Just three days before the verdict, Godolphin wrote to Marlborough "Somerset labours hard against us, and makes use of the Queen's name...I believe him entirely linked with the opposite party, upon the foot of knowing the Queen's inclinations".[2]

Harley's scheme to negotiate with some Court Whig peers and Scottish lords resulted in success. The Tories had great hopes of Harley, while they could not have thought much of their previous leader in the upper House: Nottingham. The whole proceedings of this trial made it clear that Harley's backdoor negotiations had much better results than Nottingham's various procedural questions in the House. Even in the eyes of the Tories, the High Tory peers lacked abilities to organise their party. After Harley gained power, a Harleyite peer, Earl Poulet

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1. The Wentworth Papers, ed. by J.J.Cartwright, (1883), 146: P.Wentworth to Lord Raby, [Sep.1710]; David Hamilton Diary, 6.

2. M-G Corr., III, 1437: Godolphin to Marlborough, 17 March 1710.

had every reason to pay such a compliment to Harley as "Nottingham has undone them [the Tories] once, and you have saved them; and if anything ever disturbs your government, it must be the taint of old courtiers".[1]

The case of James Greenshields

In the 1709/10 session, when parliament was busy with the case of Dr Sacheverell, the Lords had another important lawsuit: the case of James Greenshields. It is interesting that both Sacheverell and Greenshields were Anglican clergymen. Sacheverell was impeached because of his High Church sermon in London, while Greenshields was imprisoned because he held Episcopalian Holy Communion in Edinburgh. If Greenshields had claimed that the House of Lords would grant him limited liberty to read the Anglican liturgy and to perform Episcopalian services, this case would have not caused a sensation. However, the High Churchmen and High Tories in England regarded his appeal to the Lords as a chance to realise toleration in Scotland, and this case inevitably became a political matter. The Sacheverell trial has been considered by several modern historians, but Greenshields' case is unjustly neglected. The following sections will elucidate two points. First, what did the Lords think about religious toleration in Scotland? Secondly, how did the Lords deal with this case in the 1709/10 session?

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1. HMC, Portland MSS. IV, 684: Poulet to [Harley], 4 May 1711.

The problem of toleration in Scotland could not be separated from the Union negotiations. When England's commissioners started the conference with the Scots in the winter of 1702-3, some Tory lords did not hide their ambition to realise toleration in Scotland, after the Union was concluded. On 13 February 1703 secretary Johnstone heard "the Archbishop of York's discourse, in a meeting of the English about the Union; that now the time was for restoring Episcopacy in Scotland". The Earls of Nottingham and Rochester were, however, realistic enough to understand that this attempt would set back the Union negotiation. "Lord Rochester said, that he knew not when, if ever, it would be seasonable to restore Episcopacy in Scotland...he was sure this was not the season to speak of it...My Lord Nottingham trimmed."[1]

When the Scottish parliament debated the Union treaty in 1706-7, they fully realised that the English side would demand toleration in Scotland after the treaty was concluded. Their apprehension was not groundless. In October 1706, the Duke of Shrewsbury was of opinion that "the treaty of the Scotch Union; the obiections to it the most obvious to mee are the settling Presbitry there, especially if they will not allow of a Toleration to the Episcopal Party, as we in England do to the dissenters."[2]

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1. Jerviswood Corr., 11: J.Johnstone to G.Baillie, 13 Feb.1703.

2. BL, Add. MSS. 40776, f.9: [Shrewsbury] to [J.Vernon], 19 Oct.1706.

The Scottish parliament had every reason to carry the 'bill for securing the Protestant religion and presbyterian Church government' which was passed in November. This act, which regarded the Kirk as 'the true Protestant religion and purity of worship', was obnoxious even to some Low Churchmen, and they hoped limited toleration should be realised in Scotland. However, the Whig bishops accepted the supremacy of the Kirk in Scotland, on condition that an act would be made to defend the Anglican Church in England. In March 1707, Archbishop Tenison of Canterbury told the Lords "he thought the narrow notions of all churches had been their ruin; and that he believed the church of Scotland to be as true a protestant church as the church of England, though he could not say it was so perfect."[1]

It is obvious that the Tory peers and bishops still expected that the Episcopal church would be restored in Scotland. On 11 October 1707, twelve days before the first parliament of Great Britain started, White Kennett wrote to Bishop Wake that "I hope your Lordship will be here at the opening of the British Parliament. There is a great noise about a toleration in North Britain."[2] Since then, the Tory lords had made great efforts to

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1. State Papers and Letters addressed to William Carstares, (Edinburgh, 1774), 759-60: -?- to Carstares, 8 March 1707; Verney MSS. at Cloydon House (micro. in BL.) -?- to [Lord Fermanagh], 11 Feb.1707.

2. Christ Church, Oxford, Wake MSS. XVII, f.177: W. Kennett to [W.Wake], 11 Oct.1707.

restore Episcopacy in Scotland. However, it is impossible to take their claim at its face value, because it was thought that the Scottish Episcopacy had deep ties with the Catholics and the Jacobites. Thus Bishop Nicolson, who was relatively unbiassed both to the Kirk and the Episcopalians, had to waver in his judgement about toleration in Scotland. Indeed he might have heartily wished that the Scottish Episcopalians would read the Anglican liturgy, but at the same time he was apprehensive about the growth of popery and Jacobitism. In August 1708, Nicolson wrote to Bishop Wake that "The Truth is Popery has advanc'd by very long strides (of late Years) in this Country [Scotland]: And too many of our Magistrates love to have it so, at the very Time yt ye French were upon our Coast, and our People daily expected the News of their being Landed, the wealthiest of our Papists, instead of being seiz'd were cring'd to".[1]

In 1709, the High Tory lords were busy in establishing Episcopacy in Scotland. Above all, Archbishop Sharp was deeply engaged in this attempt. In early May, Sharp told the Duke of Queensberry that "I humbly beg leave to put your Gr[ace] in mind of the Scottish Episcopal Clergy most earnestly praying your Gr[ace] to use your best interest with the Queen for them, who I am sure is most ready to come into any methods that can be

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1. BL, Add. MSS. 6116, f.8: Nicolson to W.Wake (copy), 5 Aug.1708.

proposed for their ease & Relief."[1] It is not certain that Queensberry exercised his influence to realise toleration in Scotland, but some presbyterians understood that Episcopacy was growing in the Highlands. In August, Robert Wodrow was of opinion that "the English service is setting up very busily in the north, at Inverness, Elgin, Aberdeen, Montrose, and many other places, to the great grief of many of our brethren there."[2] It appears that the High Tories felt confident that Episcopacy would be established in Scotland, because many Scottish peers (tacitly or expressly) supported it. Among the papers of Lord North & Grey, a probable Jacobite, there is a very interesting MS. report entitled Remarks on some Affairs in Scotland since my going thither in October 1709. In this report, the writer explained the "Disposition of the Nobility towards Episcopacy" as follows.

> The Nobility and Gentry embrace or espouse the Episcopal Persuasion & Use of ye English Liturgy. Many of them Profess it openly; and some for Private Reasons, or those of state, are secret in their Respects towards it.
>
> Dukes: Hamilton, Queensberry, Roxburgh [MS. damaged]

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1. Gloucestershire R.O. Lloyd-Baker MSS. box 4, bundle R (micro.in Borthwick Institute, York), Archbishop Sharp to Queensberry, 1 May 1709.

2. The Correspondence of the Rev. Robert Wodrow, ed. by T.M'crie, I, (1842), 30: Wodrow to A.M'Cracken, 24 Aug.1709.

well inclined.

Marquess: [Anna]ndale

Earls: Arroll [Erroll], Marshall [Marischal], Glencairn, Eglinton, Findlator, Carnwath, Dysert, Panmure, North-Esk, Kincardin, Balcarras, Dundonald, Dumberton, Kintore, Braidalbin [Breadalbane], Aberdeen, Dunmore, March, Cromarty, Roseberry, Cassils Murray, Winton, Linlithgow, Hume, Wigton, Strathmore, Abercorn, Kelly, Dumfreis, South-Esk, Dalhousey, Airly, Portmore, Bute, Delorain Professed.
Marr, Selkirk, Kilmarnock, Orkney, Ruglen, Seafield, Stairs, Galloway, Laudedale, Kinnoul, Weems inclined.

Viscounts: Falkland, Stormont, Kenmure, Kilsyth, Arbuthnot, Irwing, Newhaven, Kingston, Strathhallan Professed.

Barons: Salton, Gray, Sinclair, Semple, Elphinston, Lovat, Lindors, Balmerino, Forrester, Pitsligo, Frazer, Bamff, Elibank, Hackorton, Duffus, Nairn, Dingwel, Ballanden Professed
Mordington, Blantyre, Oliphant, Belhaven inclined.

A Regard to the Church of England Liturgy does daily encrease; so that tho[ugh] before the Revolution very few had ye Common Prayers & None Received ye sacrament of ye Lords supper, Kneeling; yet now there be many thousands of ye Episcopalians that use ye former & almost all of them do ye latter.[1]

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1. Bodl. North MSS. a.3, f.106.

Although these Remarks exaggerated the strength of the Scottish Episcopalians, they became a serious menace to the presbyterians. In August the latter decided to suppress the Scottish Episcopal church. Bishop Nicolson at Carlisle received a hurried report from Edinburgh. In late August, he told Bishop Wake that "last from Edinburgh. The Revd. Committee (or Commission, as they call it) of their General Assembly have surprizeingly publish'd an Act against Innovations in the Worship of God:...[innovations] mean the Use of our English Liturgy in some Meeting-Houses, and more private Families... Yesterday-Sennight this Religious Act was (as it self requires) read from the pulpits of all the Churches in the City and suburbs of Edinburgh: And the Respective preachers, both in their prayers and sermons on that occasion, inveigh'd bitterly against our Set Forms, Rites and Ceremonies...Particularly, there's one Mr Greenshields; who has been a good while a Beneficed clergyman in Ireland, whence he brings good Testimonials (both from A[rch]B[ishop] of Armagh and others) of his hearty affection to Her Majesty's person and Government."[1]

After his accusation, it appears that Greenshields at first approached Archbishop Sharp and the Duke of Queensberry. In his letter on 12 October, he flattered himself that these two lords would support his cause. "I

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1. Christ Church, Oxford, Wake MSS. XVII, f.230: Nicolson to [W.Wake], 29 Aug.1709.

had upon Munday [10 October] a most kind letter sent me from the Archbishop of York, assuring me of the utmost of his endeavours with Her Majesty in my case & for Toleration, & upon Tuesday I had another from Dr Fall assuring me of his good offices with the Duke of Queensberry, whom he is going to visit, & it being our interest to make what friends we can (especially members of parliament)."[1] It seems that things were taking a favourable turn for Greenshields. On 20 October, Robert Wodrow admitted that "The Queen has of late writ down to her [Lord] Advocate, Sir David Dalrymple, her mind anent this affair. I had the honour to be with his L[ordship] ...he...read the Queen's letter...she had the intrusion of Mr. Greenshields laid before her, and commands the Advocate to call him, and discharge him to use that service at Edinburgh...she will allow no encroachments to be made upon the Established Church."[2]

Greenshields obviously kept in contact with several lords. In October, he sent a "long History of him under his own hand" to Bishop Nicolson. Nicolson was told that Greenshields presented his case, because it was "most fitting to be Consider'd by the English Bishops" so that the Scottish Episcopal clergymen would "likewise be able to procure for them an Act of Toleration in the very next

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1. SRO, GD 45 (Dalhousie MSS.)/14/349/1: J.Greenshields to H.Maule, 12 Oct.1709.

2. Wodrow Correspondence, I, 69: Wodrow to A.M'Cracken, 20 Oct.1709.

Sessions of Parliament".[1]

Having seen Greenshields make use of the influence of the High Church lords to restore toleration in Scotland, the presbyterians naturally sought assistance from the English Whigs. It appears that the Junto lords took a great interest in this matter. The Earl of Sunderland promised a presbyterian to defend the dominant status of the Kirk. On 25 October, Sunderland wrote to William Carstares that "I am also commanded to assure you of her Majesty's intentions not to suffer any thing to be done that might give any disquiet to those of the established religion in Scotland."[2] The Junto-presbyterian alliance did gain a point. On 23 November, eight days after the 1709/10 session started, Robert Wodrow delightedly wrote J.Guthrie that "You have no doubt heard of the missionaries the Episcopal clergy sent lately to Court with an address for a toleration, (as is said,) and the Duke of Queensberry's refusal to present it to the Queen."[3] Greenshields, with the assistance of the High Tory lords, finally appealed to the House of Lords to ask for his acquittal and the establishment of toleration in

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1. BL, Add. MSS. 6116, f.16: Nicolson to W.Wake (copy), 13 Oct.1709.

2. Carstares Correspondence, 776-77: Sunderland to W.Carstares, 25 Oct.1709.

3. Wodrow Correspondence, I, 77: Wodrow to J.Guthrie, 23 Nov.1709.

Scotland.

It has already been seen that Bishop Nicolson concerned himself in the case of Greenshields. Because of the geographical position of his diocese, he naturally took interest in this case. Nicolson stayed at Carlisle in the 1709/10 session, and recorded no proceedings about the appeal of Greenshields in the Lords. However, his several letters to Bishop Wake from December 1709 to April 1710 shed some light upon his changing attitude to Greenshields' cause, which was closely related to the changes in the political situation in the House of Lords.

On 15 December 1709, Nicolson hoped that toleration would be realised. His argument was not so politically biassed as that of the High Church zealots. He was of opinion that Scotland should grant the Episcopal priests the right to perform Anglican services, because in England the Toleration Act (1689) provided that the dissenters enjoyed limited freedom of religion. He wrote to Wake that

> How the Bench of Bishops ought to behave themselves, in case the Toleration of our English liturgy comes before them this session, is a Question much too weighty for me. I will frankly tell you what my Neighbours and I think of the Matter. We believe that the Presbyterian Discipline and Confession of Faith are those establish'd by Law and that the Treaty of Union has confirm'd both these. But we know of no Act

of Uniformity, which ratifies their peculiar way of Worship. On the contrary, we cannot see any sort of colourable pretence for them to deny Her Majesties subjects of our Communion the same privileges (in the service of God) which we allow to others of theirs. If the extemporary prayers of Presbyterians pass current on this side the Tweed, why should not the Episcopal set forms be likewise received on the other.[1]

In late February 1710, his argument became more emotional. Undoubtedly it resulted from the stiff attitude of the Kirk against the Episcopalians. Presbyterians claimed that the Lords had no jurisdiction over the religious affairs in Scotland. Nicolson thought that one of the principles of the Union: 'One Nation, Two Churches' would prove "a gross mistake" as long as the presbyterians insisted that they were superior to the Church of England, and that they could be independent of the temporal power. Nicolson warned Wake that "If no stop is put to these Confusions, we (in ye Northern Counties of England) shall quickly feel the smart of them".[2]

In late March, Nicolson was not satisfied with the Lord's decision on 25 March, which postponed this appeal till the following session. The Bishop was enraged at the

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1. BL, Add. MSS. 6116, f.17: Nicolson to Wake (copy), 15 Dec.1709.

2. BL, Add. MSS. 6116, f.20: Nicolson to Wake (copy), 25 Feb.1710.

Whig propaganda which identified Greenshields as a Jacobite.[1] However, it appears that a nation-wide enthusiasm for Dr Sacheverell after his verdict was more obnoxious to him. Nicolson thought that it was inevitable that the Lords postponed Greenshields' case so that this matter might not be involved in the party strife. On 3 April, Nicolson reported to Wake that "'tis not now Two pence matter what becomes of the Cause of Greenshields. All the noise that this made amongst us is drown'd with Huzzaes on Dr S[acheverell']s Triumph."[2] Nicolson's concern was not the presbyterians' suppression of the Scottish Episcopalians, but the growth of popery. On 25 April, Nicolson wrote that

> My Chaplain is lately return'd from making the Grand Tour in Scotland; where he found as warm doeing as we have in England. The greatest Numbers of the Episcopalians continue under the Direction & Influences of ye Exauctorate B[isho]p of Edinburgh; who is entirely in the Interest of the Pretender, and will allow none of his followers to pray for the Queen.[3]

At Westminster, Greenshields' appeal to the Lords

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1. Christ Church, Oxford, Wake MSS. XVII, f.244: Nicolson to [W.Wake], 23 March 1710

2. Christ Church, Oxford, Wake MSS. XVII, f.245: Nicolson to [W.Wake], 3 Apr.1710.

3. Christ Church, Oxford, Wake MSS. XVII, f.250: Nicolson, to [W.Wake], 25 Apr.1710.

was treated as nothing but a political matter. Contemporaries found many similarities between this case and the Sacheverell trial. Lord Marchmont told George Baillie that "I am sorry at what has intervened there by Dr Sacheverell's means, and here by that of Mr.Greenshields".[1] Baillie in London found that the Whigs felt great interest in this case. He reported to Marchmont that "The Whigs did act with great Vigour and concern in this matter for it was more a party business betwixt them and high Church than any I have seen".[2]

By contrast with the Sacheverell trial, the Scottish representative peers were co-operative with the Whig lords. Most of the Scottish peers were presbyterians, so they naturally supported the cause of the Kirk. On 8 December 1709, Ilay told William Carstares that "hearing that my Lord of York is come up to town, on purpose to make what clamour he can, some of our friends have proposed to have a meeting, in order to consider the proper measures to support the interest of our church."[3]

Although some High Tory lords made efforts to realise the toleration in Scotland, the Lords set aside

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1. A Selection from the Papers of the Earls of Marchmont, III, (1831), 365: Marchmont to G.Baillie, 27 March 1710.

2. SRO, GD 158/1117/5: [G.Baillie] to [Marchmont], 19 Feb.1710.

3. Carstares Correspondence, 779: Ilay to Carstares, 8 Dec.1709.

only two days to deliberate this case. However, MS. minutes show that Greenshields' case posed some constitutional problems as well as the Sacheverell trial did.[1] One of the most controversial points at this appeal was whether this cause should be regarded as an ecclesiastical case. If so, the second question was whether the Lords had jurisdiction over this matter. It has been already considered in this chapter that the Whig peers restricted the jurisdiction of the House of Lords concerning ecclesiastical affairs, when the upper House considered a writ of error of the deprived Bishop of St David's. The Court and the Whigs justified the Archbishop of Canterbury's discretionary power to deprive a bishop of his bishopric, when he committed a serious crime. Greenshields' appeal brought forward a similar problem to the Lords. Prima facie, the Whig lords and presbyterians had more reason to claim jurisdiction of the Kirk than the Archbishop of Canterbury had asserted in the 1704/5 session. The Lords were the supreme court not only in temporal but also in spiritual matters, since the English ecclesiastical courts were not well-equipped for trials of political significance. On the other hand, the Kirk still kept considerable judicial power. Thus, it is conceivable that the presbyterians claimed their own

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1. HMC, Lords MSS. 1708-1710, 356-57; The Case of Mr Greenshields, Fully Stated and Discus'd in a Letter from a Commoner of North Britain to an English Peer, (1711).

jurisdiction.

Nevertheless the arguments of the Whig lords were contradicted, as they had been in the trial of Dr Sacheverell. Greenshilds' personal motive in appealing to the Lords was to get a limited 'toleration' in Scotland, although the High Tory lords might have exploited his case for a political purpose. If the Whig lords denied his case, it implied that they were against toleration in Scotland, and at the same time they were for the limited toleration in England which had been expressed in the Toleration Act (1689). The Whig lords has shown that they could not rely on the 'Revolution Principles' which they had adopted in 1689, when they impeached Sacheverell who denied the lawfulness of the Revolution. In the Greenshields' case, the Whigs revealed a similar ideological contradiction.

On 13 February 1710, a petition of James Greenshields was delivered by Lord North & Grey. John Dyer wrote that North & Grey "Opened very finely in ye house of L[o]rds the case of Mr Greenshields an Episcopal".[1] This day the House only ordered that they would debate this appeal two days later.

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1. BL, Loan 29/321: Dyer's newsletter on 14 Feb.1710. It seems that Nottingham expected hot debate as soon as Lord North & Grey brought Greenshields' petition. "Yesterday [13 Feb] Greenshields petition of appeal or rather of complaint was presented to ye House of Lords here by my Lord North, but not so well received as to be read." Leicestershire R.O. Finch MSS. box 4950, bundle 23, Nottingham to Lord Finch, 14 Feb.1710.

On 16 February, the Lords discussed his appeal. In the debates, Nottingham and the Duke of Leeds supported Greenshields' cause. Dyer observed that "all the scotch Lords opposed" him.[1] However, it was obvious that the Whig lords were unwilling to stand face to face with the High Tories. The Tories put a question as follows:

> the said Greenshields be brought before this House; and the magistrates of Edinburgh, or some of them, be here, to attend at the same time.[2]

The Whig lords understood that a confrontation with the High Tories would be inevitable, if they should accept this question. The Whigs preferred to postpone the examination of this appeal until the following session, so the question was rejected by a vote of 49 to 38.[3]

Why were the Whig peers reluctant to expedite the proceedings, and reject the appeal? It has already been considered that the Whigs had an ideological dilemma. It was possible that some lords would desert the Court and the Whigs, if they adhered to rejecting Greenshields' appeal. On 20 February, in his letter to William Carstares, Sunderland told him that it had been a lot of trouble to postpone this case. Sunderland wrote that

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1. BL, Loan 29/321: Dyer's newsletter on 16 Feb.1710.
2. LJ., XIX, 68.
3. HMC, Lords MSS. 1708-1710, 356-57.

> I doubt not but you are fullie informed of what has past in the house of Peers in relation to Mr Greenshields, upon his appeal from the Lords of Sessions, and tho[ugh] probablie that matter may not again be talked this session of Parliament...the great difficulties wee mett with in putting off such proposals, as We had reason to judge would be verie unacceptable to your part of Britain.[1]

It is conceivable that the Kirk little expected that the Lords would put off this case. They knew that the Whigs held a majority in the House, and that the Scottish peers would unmistakably represent the interests of the Church of Scotland. It appears that presbyterians suspected some of the Scottish representatives had secretly acted against the Kirk. Their distrust of the Duke of Argyll and Lord Ilay was all the more increased because they were for a light punishment of Dr Sacheverell on 21 March. After the prorogation of the 1709/10 session, Ilay wrote to Carstares that "I have heard lately from Scotland, that there are some very busy in insinuating that my brother and I are taking measures against the interest of our church and revolution-establishment".[2]

What did the High Tory lords think about the

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1. BL, Add. MSS. 61632, f.90: [Sunderland] to [Carstares], 20 Feb.1710.

2. Carstares Correspondence, 786: Ilay to Carstares, 5 July 1710.

postponement of the appeal? Although the Court and the Whigs did not have an agreement how to treat this case, the High Tories failed to organise the opposition against the ministry and the Whigs. For example, the Earl of Pembroke, who voted for Sacheverell's innocence, did not support Greenshield's cause. A Highflier was dissatisfied with the Earl and wrote to the Duke of Shrewsbury that "I was so unhappy in ye business of Greenshields to differ with ye late Lord President [Pembroke], who had & deserved ye esteem of all ye world."[1]

The Archbishop of York was also dissatisfied with the postponement. However, he was sensible enough to persuade Greenshields to accept the decision of the Lords. On 4 April, his grace wrote to Greenshields that

> I doubt not but you have heard of success of y[ou]r affair in the House of Lords, but however at the desire of some of the Scotch Lords who are your friends I have undertaken to write to you about it. You know yt y[ou]r petition of appeall was after a long debate received by the House, & your cause is to be tryed there att the next session of parliament. But there is no order for your liberty (nor can regularly be) till ye cause was determined. This we all thought

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1. Bodl. North MSS. a.3, f.125: [Lord North & Grey?] to [Shrewsbury] (copy), [Apr.1710].

was very hard, but to alleviat the hardsh[i]p, it was declared publickly by some of the Scotch Lords (and more of them have said it to me in private) that if you would but so far compliment the Provost & Magistrates of Ed[inbu]r[gh] as to promote them upon y[ou]r word that you would not read prayers nor preach w[i]thin the precincts of the City of Ed[inbu]r[gh] during the time that this appeall is depending (in all other places you may do w[ha]t you please)[1]

When Greenshields received this letter, he showed it to some Scottish Episcopalians, but there was no agreement. Greenshields apparently wavered in his decision. On 13 April, he asked Harry Maule for his advice.[2] The leaders of the Scottish Episcopacy had a conference. It seems that they agreed with the proposal of Archbishop Sharp, although they did not trust the favour of the Scottish lords. Greenshields said to Maule that the Scottish Episcopal leaders "presumed the Archbishop of York could not but know upon what prospect the Scots Lords offered me my liberty, & yt if He or any other of my friends in England had apprehended any hazard yt my complying w[i]th the terms of it would have wronged

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1. SRO, GD 45/14/349/2: Archbishop Sharp to J.Greenshields (copy), 4 Apr.1710.

2. SRO, GD 45/14/349/3: J.Greenshields to H.Maule, 13 Apr.1710.

my cause they would have warned me of it."[1]

Greenshields accepted the advice of the Archbishop Sharp and his case was put off till the following session. It is not certain what ideas the Godolphin ministry had of this appeal. However, the whole proceedings of this case in the House of Lords were not welcomed by the Lord Treasurer. The Lords' debates on 16 February resulted in a messy compromise, and it was an ill omen for the Court and the Whig peers who intended to give a severe punishment to Dr Sacheverell.

The appeal of James Greenshields was brought to the Lords in the 1710/11 session. At that time, the political situation at Westminster had been dramatically changed. Godolphin had been dismissed, and all the Junto lords had left the Court. On 1 March 1711, the Tory lords successfully reversed the sentence of the magistrates of the city of Edinburgh and the decree of the Lords of Session.

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1. SRO, GD 45/14/349/4: J.Greenshields to H.Maule, 15 Apr.1710.

CHAPTER FOUR

The Lords and the Commons

Conflicts between the House of Lords and the Commons were undoubtedly characteristic of Queen Anne's reign. We have already analysed some aspects of these strifes. Thus, this chapter will concentrate on the following four points. First, what procedures did the House of Lords make use of when it communicated with the lower House in order to solve problems? Secondly, we will consider the essence of political conflicts between both Houses in the years of the Godolphin ministry. Thirdly, how did the Court and the opposition politically exploit the conferences between the two Houses? Finally, we will shed light upon the most controversial problem: the superiority of the Commons concerning matters relating to the revenue.

Communications between the Lords and the Commons

According to Thomas Erskine May's A Treatise, it is possible to summarize the cases in which the Lords and the Commons exchanged their views as follows: 1. One House made an address or resolution, and they asked the other chamber for their concurrence. 2. A problem arose concerning the privileges of parliament. 3. One House wanted to talk about the proceedings of the other House. 4. One chamber stated their opinion about a bill which the other House deliberated. 5. The problem was related

to the public peace or security. 6. One House amended a bill which the other chamber had sent.[1]

The usual way for the two Houses to talk over a matter was to send messages. In the age of Anne, there were established procedures about how to send messages. When the Lords wanted to communicate with the Commons, the upper House dispatched "either some of the learned Council Masters of the Chancery, Clerk of the Crown (who are there to attend) or in weighty Causes some of the Judges".[2] When the lower House sent messengers, members of their House had to be sent. S.O.24 gives us a detailed description of the procedure used to make contact with the messengers from the Commons. At first, the gentleman usher of the black rod took notice of the messengers from the lower House. When they entered the House, the Lords had to sit and to be covered. The messengers stood up at the lowest end of the House, and then the Speaker of the House "riseth, and goeth downe to the Middle of the Barr". The messengers also went to the Bar with three curtsies. After the chief delivered the message to the Speaker, he told the House the contents of it. If the message needed an answer, and the Lords could give it immediately, the House made an order or a resolution

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1. T.E.May, A Treatise, 252-53.

2. HLRO, Relf, Book of Orders, 147.

and the Speaker gave it to the messengers. If it was necessary for the House to spend some time to consider the answer, the Lords told the messengers that the House would send their own messengers to the Commons.

In addition to the procedures on how to send messages, John Relf described the precedents on how the bills and the amendments could be sent from one House to the other. When the Lords sent a bill to the Commons, it was "usually sent down by two Masters of the Chancery, or one Master sometimes accompanied w[i]th the Clerk of the Crown. Bills of greater moment are sometimes sent down by some of the Judges." In the Commons the messengers "come up close to the Table, where Clerke sitteth...acquainting the Speaker that the Lords have sent unto the House several Bills and haveing read the Titles deliver the Bills to the Speaker". When the bills were sent up to the Lords, they were "brought up by one Member of" the Commons, and he was "usually attended w[i]th several others." The messenger was at the Bar. He acquainted "the Lords that the Knights Citizens and Burgesses of the Com[m]ons House have sent unto their Lo[rdshi]ps certaine Bills". Then he read "the title of every Bill as it lyes in order", and delivered them to the Speaker, who received them at the Bar.[1]

The procedure to send the amendment to the other House was similar to the above method. A House passed a

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1. HLRO, Relf, Book of Orders, 196.

bill, and accordingly the engrossed bill on parchment was sent to the other House. If this House added an enacting clause or a proviso to the bill, they could write it on parchment. However, when this House made other amendments, they could not include the amendments in the engrossed bill on parchment, but had to write them on another paper. This paper expressed "in what line and between what words they desire the Amendments to be made." The messengers brought both the engrossed bill and amendment paper to the House which had first passed the bill.[1]

While sending messages was a formal way for the Lords to communicate with the Commons, the conference aimed at giving a solution to problems between the two Houses. S.O.24,26,27,28,29 and 30 and John Relf's Book of Orders[2] describe the procedures of the conferences. When one House hoped to hold a conference with the other House, they sent messengers to the other chamber. After the other House agreed to this proposal, the Commons and the Lords chose the 'managers' to represent each House. The Lords were able to decide the time and venue of the conference. The managers of the Commons at first went to the Painted Chamber where the conference was normally held. The Lords went there "in a whole body, and not some

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1. HLRO, Relf, Book of Orders, 185.

2. HLRO, Relf, Book of Orders, 147-48.

lords scattering before the rest." At the Painted Chamber, the Lords sat and were covered, while the Commons had to stand up and to be uncovered. However, the Commons were allowed to sit down "by conyvance in a Corner out of sight". The peers, who were not the managers, could attend the conference but neither speak nor vote, and had to give place to the managers. After the conference, one of the managers reported to the House. At that time all the managers had to stand up.

The opening time of the conference was not fixed. Usually the ordinary conference did not take a long time, because all that the managers had to do at the conference was to read the resolutions of their House. However, the managers spent a longer time at the free conference. Bishop Nicolson recorded that the free conference over the first occasional conformity bill on 16 January 1703 started at a quarter to three, and that it was finished at half past seven.[1] Unlike the selection of the select committee members, the Lords were careful in choosing the managers for the conference. When the House chose the managers for the conference over the first occasional conformity bill in December 1702, more than twenty (including five Junto lords) of the twenty-six managers were against the bill. At the free conference over the 'Aylesbury men' on 13 March 1705, almost all the managers from the Commons were Tories, while most of the managers

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1. Nicolson Diary, 174.

from the Lords were Whigs.[1]

Although the subject at the conference sometimes aroused great interest among both the Commons and the Lords, they thought much of the secrecy of the conference. At the free conference, every manager was allowed to speak freely, and the debates were often entered in the Commons' Journal. However, the Journal did not give the names of the managers who made speeches.[2]

The political conflicts between the two Houses

It has been suggested that the disputes between the Lords and the Commons reflected the state of party politics in the early period of the Queen's reign. The Whig lords in the upper House successfully restricted the power of the Tory-dominated House of Commons. The Lords insisted that they still held jurisdiction over revenue through the examination of the report of the commissioners of the public accounts. They alleged that the 'tack' of a bill onto a money bill was unparliamentary and trespassed on

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1. LJ., XVII, 192; Nicolson Diary, 146; E.Cruickshanks, "Ashby v. White: the case of the men of Aylesbury", in C.Jones ed. Party and Management in Parliament 1660-1784, (Leicester, 1984), 101.

2. However, in the 1702/3 session, Bishop Burnet's name was entered in the Commons' Journal with his speech at the conference (CJ., XIV, 182). A peer took notice of this novelty. "In printing what passes in either House at a Conference, persons are not to be named, but in general Terms...therefore it was looked upon as new that the B[isho]p of Sarum was named by the Com[mon]s in their printed account of the bill of occasional conformity." (CUL, MS. Dd, xiv, 19, p.75)

the ancient right of the House of Lords. In the cases of Ashby vs White (1703-04) and the 'Aylesbury men' (1704-05), the Lords tried to develop their jurisdiction over election disputes. They distinguished the privileges of the electorate from those of the candidates at the election, and the upper House claimed that the infringement of the rights of the electors could be triable in the Lords. Even a fairly impartial observer was apprehensive that "the Lords in their turn have made a fals[e] step...by which 'tis thought they have extended their jurisdiction further than is consistent with the liberties of England."[1]

Nevertheless there are some reservations about the conclusion that the upper House used disputes with the Commons to develop their jurisdiction.

First, the House of Lords did not want to increase its judicial business any more. As we have considered in the previous chapter, the Lords had been already overburdened with the appeals from the lower law courts since the Restoration. Although a Whig claimed that the "lords have in general preserved a purity in their judicial acts beyond what could be expected from so large a body", he had to admit that the Lords were "of such

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1. BL, Lansdowne MSS. 773, f.4: C.Davenant to H.Davenant, 29 Jan. 1704.

various persons, in age and otherwise, with so few of the science of law" among them.[1] Thus, even the Whig lords did not intend to increase law business, when they contested with the Commons for the jurisdiction. In the 1702/3 session, when the lower House accused the Lords of having cleared Lord Halifax of mismanagement as the auditor of the Exchequer, the Whig lords alleged that the Lords had a right to "take Cognizance originally of all Public Accompts; and to inquire into any Misapplication or Default in the Distribution of Public Monies".[2] However, the Lords remarkably denied that the vindication of Lord Halifax was not based on the judicial procedures in the Lords. On 25 February 1703, at the free conference with the Commons, the Whig lords retorted against the Tory Commoners.

> they [the Lords] were no Court of Enquiry, to form any Accusation: That their Proceedings in relation to that Lord [Halifax], was no Tryal, nor was their Resolution any Judgement, or Acquittal...but that,which gave Occasion to that Proceeding, was the Resolution of the House of Commons...and thereupon they [the Lords] thought fit to give their Opinion; which they did in their legislative Capacity.[3]

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1. Burnet's History, V, 196, Arthur Onslow's note.
2. LJ., XVII, 296.
3. CJ., XIV, 209.

For the Whig peers, the vindication of Halifax was nothing but a 'legislative', in other words, a purely political matter, and they flattered themselves that the Lords functioned as a legislature better than the lower House. Their confidence is related to the second point.

The Whig peers alleged the lawfulness of their jurisdiction to examine the qualification of the electorates in the Ashby vs White and 'Aylesbury men' cases. These two causes have been regarded as the Whig peers' (especially Lord Wharton's) attempt to weaken the interest of the Tory returning officers in the constituencies.[1] Nevertheless we must pay attention to the fact that the Whig lords contested for this jurisdiction not only with the Tory-dominated House of Commons but also with the crown. Such veteran Whigs as Lords Somers and Wharton never forgot that free election had been prevented by James II's interference with the constituencies. The Whig peers defended the jurisdiction of the 'Lords' against the Tory Commoners but at the same time they had to fight for the liberty of the 'parliament' against the interference by the crown, although their dispute with the crown was not so severe as in the pre-Revolution era. Wharton supported Matthew Ashby's cause so enthusiastically that Arthur Onslow had good reason to suspect

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1. Wharton's memoir, 44; Burnet's History, V, 195, Arthur Onslow's note.

that Wharton was inclined to republicanism.[1]

It has often been said that the Lords' attempt to develop their jurisdiction ended in failure. In 1714 John Le Neve wrote that about "certifying the elections and returns of the knights, citizens &c" the Commons "have now taken wholly into their own Jurisdiction".[2] As we will consider in detail, the Lords could not regain the power to amend money bills. It is interesting that in his almanac for 1710, John Chamberlayne used the same expressions as those of a previous volume which had been published by his father in 1702, when he described the superiority of the lower House over money bills.

> for levying of any money upon the subject, the bill begins in the Commons House, because from them doth arise the greater part of moneys; neither will they allow the Lords to make any alteration in a money-bill.[3]

However, we can consider the controversy over money bills from a different viewpoint. In the Hanoverian period, the

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1. Burnet's History, V, 118, Arthur Onslow's note. The Earl of Nottingham thought that the Whigs adopted the same policy as James II, and tried to pack the Commons. Leicestershire R.O. Finch MSS. parliamentary and political papers 119, "A short account of the bill entituled An Act for preventing Occasional Conformity".

2. [J.Le Neve], Laws of Honour, 404.

3. E.Chamberlayne, Angliae Notitia, (1702), 158; J.Chamberlayne, Magnae Britanniae Notitia, (1710), 98.

Lords did not have so much voice in money bills as before. Neither did the crown. In the years of the Godolphin ministry, the House of Lords did not seem to have been losing but rather increasing their power. However, their brief glory is regarded as a transitional stage from the period when the crown had been the source of power to the time when the Commons established a dominant status in the political world. In the following analysis we consider how the Lords (especially Lord Treasurer Godolphin) dealt with the disputes with the lower House.

In the years of the Godolphin ministry, the conference became an arena of party politics. As we have seen above, the Whig lords, who had a majority in the House, managed the conferences of political significance. Furthermore, the Whig peers had an expedient so that the managers could not deviate from the intention of the majority of the House. On 25 February 1703, before the Lords started the free conference with the Commons over the Lords' power to examine the report of the commissioners of public accounts, the Whig peers gave the managers such an instruction as "not to permit the Commons to dispute the Lords' jurisdiction in that matter".[1]

In the first parliament of the Queen's reign (1702-5), the Lords often had conferences with the Commons, but it was not very possible that the conference could break the deadlock and find a solution as long as the Whigs held a

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1. HMC, Lords MSS. 1702-1704, 194; LJ., XVII, 317.

majority in the Lords and the Tories dominated the Commons. Godolphin had every reason to be unwilling to resort to the conference, which might worsen the relation between the Lords and the Commons. Especially he had to prevent a conference when the Commons kept a money bill, because the Lord Treasurer knew that the Commons would make use of this bill for their bargaining with the Lords. On 19 December 1702, he told Harley that the ministry should "stave off" a free conference about the bill of occasional conformity, until the Lords passed the money bill.[1]

Both Tory Commoners and Whig peers exploited the conference as long as it was advantageous to their party. At the end of the 1702/3 session, the Commons desired the Lords to hold a conference about the legality of the Lords' examination of the public accounts. The Whig peers, who felt that the conferences over the first occasional conformity bill had ended without result, were reluctant to meet the Tory Commoners. Thus the Lords did not answer promptly on 16 February 1703, when the messengers from the lower House acquainted the Lords that the Commons hoped to have a conference.[2] Facing the unwillingness of the Whig peers to have a conference, the Tories in the Lords had to make efforts to induce the

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1. HMC, Portland MSS. IV, 54: [Godolphin] to [Harley], 19 Dec.1702.

2. LJ., XVII, 292; Nicolson Diary, 206.

Lords to agree to hold a conference. On the 17th the Earl of Rochester made the following committee report: "their Lordships doe not finde by the Precedents they have looked into any Reasons why the Conference should not be granted as is desired by the House of Commons".[1]

However, it was the Tory Commoners who were reluctant to have a conference in the 1703/4 session. The Whig lords insisted that a conference should be held so that the Lords could allege their power to examine the 'Scotch plotters'. But such Tory politicians of cool mind as Francis Annesley hoped to avoid the conference so that it might not give a bad influence over the money bills which were pending in the Commons. In late January 1704, when the two Houses warmly argued the Ashby vs White case and the 'Scotch plot', Annesley wrote to the Duke of Ormond that "our disputes with the Lords run high, but whilst we stick to a paper war and do not come to the close fight of conference, I hope we may avoid a breach till our business is done."[2]

By the 1704/5 session, parliament had already experienced many sterile conferences in the past two sessions. Both the Lords and the Commons did not expect much from the conference. Although conferences were held

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1. HLRO, committee minutes, VI, 331: 17 Feb.1703; LJ., XVII, 294.

2. HMC, Ormonde MSS. N.S. VIII, 57: F.Annesley to Ormond, 29 Jan.1704.

over the 'Aylesbury men", Erasmus Lewis realised that the conference got nowhere. He told Henry Davenant "Don't be alarm'd at the seeming warmth of both houses, and disagreement between [th]em. They have already pretty well vented their passions by angry votes, and all will end in fruitless conferences."[1] After the Whigs retrieved their power in the Commons at the 1705 election, the conference was not so fruitless as in the first parliament of the Queen. Both Houses met in conference on such occasions as the 'Church in Danger' resolution, the Regency bill in the 1705/6 session and the Treason bill in the 1708/9 session. At that time the Lords did not meet the Commoners to vindicate their jurisdiction, but to make the two Houses come to an understanding.

While Godolphin did not think much of the formal conferences between the Lords and the Commons, he often exploited the informal meetings of the Lords and the Commons. In the early years of his ministry, Godolphin expected that Harley and Nottingham, who had great influence over the Tories in the Commons, would organise the meetings. Especially in the 1702/3 session, Nottingham's efforts to make the High Tories co-operate with the Court were notable. At the beginning of this session, the Court faced the Tories' severe rebuke of William Lloyd, the Bishop of Worcester. Nottingham, with the assistance

1. BL, Add. MSS. 4743, f.30: E.Lewis to [H.Davenant], 27 Feb.1705.

of the Lord Treasurer, conferred with the Tory leaders in the Commons.[1] However, in the following session Godolphin could not rely on Nottingham to make the High Tories pledge allegiance to the ministry. This was partly because Nottingham himself had been alienated from the Lord Treasurer over the second occasional conformity bill and the 'Scotch plot' and partly because Nottingham did not enjoy so much the confidence of the Tory Commoners as before.[2] Undoubtedly Harley was the most important channel for the Lord Treasurer to communicate informally with the Commons. For example, in the 1705/6 session, when the Lords differed from the Commons on the Regency bill, Harley organised a meeting between some leading Commoners and peers.[3]

Leaders of the House of Commons naturally took great interest in the proceedings of the Lords, and they often adopted the same tactics as their party leaders in the upper House. On 6 December 1705, Archbishop Sharp seconded the "Church in Danger" motion, and told the House that "the Seminaries of Dissenters" endangered the Church. Two days later in the Commons, William Bromley "endeavoured to prove the church to be in danger by the

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1. BL, Add. MSS. 29588, f.354: Godolphin to Nottingham, [endorsed] 20 Nov.1702.

2. Atterbury Correspondence, III, 158-59: Atterbury to Bishop Trelawney, 30 Dec.1703.

3. BL, Loan 29/64/3: [Godolphin] to [Harley], "Fryday at 12" [15 Feb.1706].

same arguments, that had been insisted on in the House of Peers", and he criticised "the increase of presbyterian schools and seminaries." Bromley found that Whig lords arranged a meeting with Whig MPs. Bromley wrote to Dr Lancaster (vice-chancellor of Oxford University) that two Whig bishops had a talk with a Whig MP, and the bishops gave him advice on how to defend the nonconformists' schools if a Tory "should chance to speak against ye Fanatick Seminaries".[1]

Although the Tory lords had meetings with the Commoners, it appears that the Whig peers' conferences with the Commons were more frequent and better organised.[2] After the Union, the Scottish representatives also joined the Whig meetings when a Scottish affair was pending in the parliament. For example, in early April 1709, when the 'Treason bill' went back and forth between the Lords and Commons, Lord Ossulston "dined att the Duke of Sommersets where there was a great deal of company." Ossulston saw such English and Scottish peers as the Duke of Argyll, Lords Byron, Dorset and Seafield and such Whig MPs as Thomas Meredith and Lord Howe.[3]

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1. Remarks and Collections of Thomas Hearne, ed. by C.E. Doble, I, (Oxford, 1885), 132; Nicolson Diary, 322; Cobbett, VI, 492-93, 508.

2. For example Lord Ossulston, a Whig recorded many meetings before or after the important proceedings in the parliament. See PRO C104/113 and 116 his diary.

3. PRO, C104/113, Lord Ossulston's diary on 3 Apr.1709. (unfoliated)

Money bills (clauses), the Lords and the Commons

Since the accession of the Queen, money bills (or money clauses in a bill) were controversial matters between the two Houses. As early as late May 1702, a dispute occurred. The Lords added some amendment to the bill for encouraging privateers which the Commons had sent to the upper House. The Commons did not fail to notice that the Lords had amended some money clauses. The lower House "nemine contradicente" insisted that "'tis a money bill, and consequently the lords have no right of making amendments."[1] On 23 May, Christopher Hatton observed that

> The Parliament will not be prorogu'd till monday [25 May]. The privateers bill is likely to be lost because ye lords have made an amendment thereto w[hi]ch ye commons will not assent because moneyes mentioned therin in some cases to be pay'd to the privateers.[2]

Facing the Commons' stiff attitude, it appears that the Lords changed their tactics. They made an address to the Queen in which they asked the government to promote the privateers. The Lords tried to realise the purpose of the bill without enacting this bill.[3]

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1. Luttrell, V, 174.

2. BL, Add. MSS. 29576, f.107: C.Hatton to [Viscount Hatton], 23 May 1702.

3. Luttrell, V, 176; LJ., XVII, 147.

As the general election in July 1702 ended in a decisive victory for the Tories, the Commons claimed their superiority over money bills more than before, and this problem often annoyed the Godolphin ministry in the first parliament of the Queen. In the 1702/3 session, the Whig peers were infuriated at the claims of the lower House. They appealed to the precedents of parliament to justify their power to amend money bills. Such veteran peers as the Duke of Devonshire were busy in collecting the precedents "in the Parl[iament]t Office relating to Pecuniary Penalties in Bill begun in the House of Peers, or in Bills sent from the Com[m]ons that have been altered in that Particular by their Lordships." Their inexhaustible searching resulted in a 25 page list in the printed Lords' Journal which justified the jurisdiction of the Lords over money bills.[1] It is well-known that on 9 December 1702, the upper House made a resolution against the 'tack' of a money bill with an ordinary bill, and this resolution became S.O.97.[2]

As early as the 1702/3 session, the 'tack' was anything but a mere threat against the Lords. In December 1702 the Commons passed the 'Prince bill' which settled Prince George's revenue in case he survived the Queen. However, the Tory Commoners added a clause that the

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1. HLRO, committee minutes, VI, 254: 4 Jan.1703; LJ., XVII, 206-30.

2. LJ., XVII, 185.

Prince was exempted from a provision of the Act of Settlement (1701), and that the Prince would be enabled to keep his seat in the Lords after the Queen's demise. This addition unmistakably intended to exclude the foreign-born peers from the upper House. Godolphin was angered at the recklessness of the Tory MPs. He told Harley that this addition would "blow up the House of Lords into the thought that this is a tack against which they have lately declared themselves so positively; and above sixty have signed it."[1]

Apart from the 'tack', the Commons had another tactic to make the Lords submissive to the Commons: the 'stopping of the money bill'. In the 1702/3 session, the Commons made use of this tactic to force the upper House to accept the Commons' addition to the Prince bill.[2] In the following session, the lower House again exploited both the 'tack' and 'stopping the money bill' for bargaining with the Lords. From late December 1703 to January 1704, the Commons vaguely referred to the possibility of the 'tack' so that the Lords might give up examining the 'Scotch plotters'. On 6 January 1704, Francis Atterbury reported to Bishop Trelawney that "The Lords made no resolution against tacking on Tuesday

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1. HMC, Portland MSS. IV, 54: [Godolphin] to [Harley], 18 Dec.1702.

2. HMC, Portland MSS. IV, 57: [Godolphin] to [Harley], 14 Jan.1703; Nicolson Diary, 173.

[4 January], but extremely high and warm about the address of the Commons" concerning the 'Scotch plot'.[1] It might not have been an exaggeration of a newsletter writer that a peer declared against passing any money bills until the Tory-dominated ministry, who connived at hot-headed Tory Commoners, was altered.[2]

The Tories in the Commons used 'stopping of the money bill' so that the Lords might be obliged to pass the second occasional conformity bill. On 14 December 1703, Sir Alexander Bruce wrote to the Marquess of Tweedale that the second occasional conformity bill "was past their house [7 December]...and as the Customes Ordered to be carried up by Mr Bromley." However the Commons found that this bill was "ill stated" in the upper House. Thus, it "was delayed to be carried up, for Mr Bromley stay[e]d away, and either was or pretended to be ill on Wednesday [8 December]. When they mett upon Thursday they resolved (privately) yet to delay it longer."[3] The Tory Commoners had two reasons to postpone sending up this bill. One was that the Whig leaders in the Lords whipped in the rank-and-file peers so that the Lords could reject the bill immediately. Narcissus

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1. Atterbury Correspondence, III, 161: Atterbury to Bishop Trelawney, 6 Jan.1704; HMC, Bagot MSS. 337: Viscount Weymouth to J.Grahme, 5 Jan.1704.

2. BL, Loan 29/359: a newsletter on 22 Feb.1704.

3. NLS, MS. 7021, f.85: [A.Bruce] to [Tweedale], 14 Dec. 1703.

Luttrell was told that the upper House "had a full house, expecting the comeing up of the conformity bill".[1] Thus, Atterbury observed, "If it had gone up yesterday [8 December] morning, as was expected, it would have been debated immediately, and thrown out".[2] The other reason was that on 8 December the Commons engrossed a land tax bill valued at £ 1,860,000 and a malt tax bill valued at £600,000, and these bills waited for the third reading.[3] The Tories obviously kept both the occasional bill and the money bills at hand, and tried to bargain with the Lords.

The Lord Treasurer fully understood the danger of the "stopping of the money bill" well before the Commons appealed to this tactic. With the assistance of the Speaker Harley, he tried to have the land tax bill sent to the Lords before the occasional bill was brought to the upper House. However, on 8 December Godolphin told Harley, "I don't see how that is possible, and sometimes I think quite otherwise." Thus, the Lord Treasurer asked the Speaker to "enter upon the remainder of ways and means, and fix the funds in your house before Gentlemen are enraged by the obstruction" of the occasional bill in the

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1. Luttrell, V, 367.

2. Atterbury Correspondence, III, 146: Atterbury to Bishop Trelawney, 9 Dec.1703.

3. Luttrell, V, 367.

Lords.[1]

In the 1704/5 session, the Lords still disputed with the Commons. The Commons did try to 'tack' the third occasional conformity bill onto a money bill, but it ended in a fiasco in the lower House. It seems that the Lords defeated the Commons and maintained their jurisdiction over the revenue. But did the Lords really triumph over the lower House?

While the Lords were opposed to the sole jurisdiction of the Commons over the money bills, they did not have much zeal for the deliberation of the money bills as early as the 1702/3 session. On 23 December 1702, some Whig peers were busy collecting the precedents which could justify the Lords' power to examine the money bills. Nevertheless on the previous day Bishop Nicolson found that the Lords were indifferent to a money bill.

> The Money-Bill read a second time, and Committed to a Committee of the whole House; wherein 'twas read again (paragraph by paragraph) and piece-meal assented to. The Chairman (Lord Longvil [Longueville]) putting the Question and I onely answering; for no other Lord in the House regarded what was doeing, this being onely (pro forma) to preserve a seeming Right to dissent

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1. Bath (Longleat House) MSS. Portland miscellaneous volume (micro. in BL), ff.151-52: [Godolphin] to [Harley], Wednesday 8 Dec.[1703].

from, or amend, any part of a Money-Bill as well as others.[1]

In the 1704/5 session, the Lords dared to introduce 'the poor relief' bill which included money clauses. On 6 November 1704, Lord Chief Justice Holt warned the Lords that this bill would inevitably raise money and "inflict a pecuniary penalty for Non-Observance of the Law". In spite of his alarm, the House started the debate of the bill. However, the Lords soon hesitated to expedite the proceedings, because "it was doubted how far they could begin a Bill for the raiseing Money", although the Lords "had an unquestionable power of enforceing any Law by a pecuniary Penalty." Finally, the Lords suspended the debate, and they hoped that "something sent up (to the same effect) from the Commons".[2]

The Commons' superiority over money bills can be seen in a bill of more political significance. On 16 December 1704, the judges submitted the 'Union with Scotland bill' (commonly called 'Alien bill') based on the 'heads' made by the Lords. The bill had some penalty clauses. The Lords were careful in justifying these penalty clauses. They explained that the penalty was not newly created, but dated from a statute in the reign of

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1. Nicolson Diary, 149-50.

2. Nicolson Diary, 220; HMC, Lords MSS. 1704-1706, 245.

Richard II.[1] The upper House read this bill for the third time and sent it to the Commons on 20 December. However, the Earl of Roxburghe doubted that the Commons would accept the bill. On 26 December, he was apprehensive that "what will become of our affairs between the House of Lords and the House of Commons is very uncertain".[2] After the Christmas recess, the result confirmed his apprehension. On 16 January 1705 the Commons rejected the committal of this bill by a vote of 136 to 104, but at the same time "let this bill lie on the table and began a new one to the same purpose" so that the Commons could make an ostentatious display of their initiative over the money bills (or clauses).[3] The Lords were not opposed to the bill which was sent from the Commons. Apparently the Lords did not want to argue the jurisdiction over the money bills but gave priority to the passing of this bill so that they could start the Union negotiation. The upper House debated the bill at full speed. They started the proceedings on 1 February, and on the following day they passed the bill.[4]

The Whigs' revival in the Commons after the 1705

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1. HMC, Lords MSS. 1704-1706, 232.

2. Jerviswood Corr., 28: Roxburghe to G.Baillie, 26 Dec. 1704.

3. CJ., XIV, 482-83; Burnet's History, V, 184.

4. LJ., XVII, 641 and 645.

election changed the political situation at Westminster. The High Tories, especially the 'tackers', were reduced in number, though Harley still had a little apprehension that the desperate Tories would try a 'tack' in the 1705/6 session.[1] It was very ironical that in the 1706/7 session Harley denied the jurisdiction of the Lords over the money bills and led the Commons against the Junto lords (and indirectly the Lord Treasurer) who tried to amend a money clause in the upper House. This dispute differed from the controversy from 1702 to 1705 on two points. First, it was not the 'tackers' but Harley who led the opposition to the Lords. Thus, it is possible to regard his opposition as a first stage of his scheme to overturn the Godolphin ministry which gradually depended on the Whig peers. Secondly, for the first time some Scottish politicians participated in these disputes.

After the English parliament ratified the Union treaty, the Commons were informed that some Scottish merchants had imported some goods to Scotland with lower customs, and they would export these goods to England after the Union without paying customs. On 7 April 1707, the Commons passed a bill to prevent this fraud. However, the Whig peers, who understood that the Scots would regard this bill as an interference with their trade and an encroachment upon the Union treaty, were against the

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1. BL, Loan 29/378: Harley to [Marlborough], 14 Nov. 1705.

bill. At the same time the Whig lords knew that the Commons would be enraged by the Lords if this bill, which contained penalty clauses, was amended by the upper House. Thus, most of the lords "would not passe the bill, nor would they reject it, but hoped by a prorogation to give the Commons an opportunity to recant, and bring in another bill that might not infring[e] upon the Union".[1] Godolphin adopted this idea and on 8 April the parliament was prorogued till the 14th. A letter on 8 April from Dr J.Mandevile[1] to Bishop Wake of Lincoln clearly shows that the point at issue was the right of the Lords to amend money bills.

> This evening I am told ye Queen hath prorogu'd ye Parliament to ye 14th of this month. It was expected ye prorogation would have been to a much further time, but it seems ye Lords had made an Amendm[en]t to a Bill relating to ye Drawback of the Goods exported &c. and ye Com[m]ons esteeming that as amending a Money Bill, & refusing so much as to consider ye amendm[en]t, ye Queen took this Method to prevent ye Loss of that Bill, w[hi]ch is thought to be of some Moment.[2]

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1. Memoirs of the Life and Administration of Sir Robert Walpole, ed. by W.Coxe, II, (1798), 8: Robert Walpole to Horace Walpole, 19 May 1707.

2. Christ Church, Oxford, Wake MSS. XVII, f.166: J. Mandeville to [W.Wake], 8 Apr.1707; Luttrell, VI, 157.

However, the Earl of Sunderland did not like the prorogation which would only increase Harley's power in the Commons. On 11 April, he complained to the Duke of Marlborough:

> I believe you will be surpris'd at this short prorogation. It is entirely occasion'd by him who is the author of all the tricks play'd here...I will onely say no man in the service of a government ever did act such a part.[1]

On the same day Godolphin told the Duke of Marlborough that the Treasurer hoped that after the short prorogation the Commons would send the Lords a new bill "without prejudice to the Union", but he was afraid that "this experiment" would "have no other effect than to create a good deal of ferment and ill humour."[2]

To make the situation more complicated, on 16 April, "the duke of Queensberry, with many others of the Scotch nobility, arrived" in London to celebrate the ratification of the Union.[3] This mission naturally took great interest in this dispute. Queensberry's purpose was to drop the bill. After he arrived in London, he visited Lord Rochester, but this "visit was not very acceptable".

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1. BL, Add. MSS. 61126, f.38: Sunderland to [Marlborough], 11 Apr. 1707.

2. M-G Corr., II, 749-50: Godolphin to Marlborough, 11 Apr.1707.

3. Luttrell, VI, 160.

The mission was lobbied by many Scottish merchants who said "the bill that was passed in the house of commons might be drop't in the house of Lords, being what would inflame the people of Scotland & create jealousies in their minds".[1]

In this short recess, the Lord Treasurer negotiated with the leading Whig peers. On 11 April he asked Lord Keeper Cowper to draft the Queen's speech at the re-opening of the parliament. In this speech the Queen told the parliament that she would prorogue the parliament again soon, although she was not opposed to a bill to prevent the fraud of trade.[2] Obviously, she (and the Godolphin ministry) warned the Commons that the bill would be dropped if the bill was not agreeable to the Lords.

In spite of this warning, on 19 April, the Commons sent the same bill as that which had been passed before the prorogation. From the following day Queensberry's mission did their best to defeat the bill in the upper House. They paid Lord Cowper a visit. They found Cowper "was mightily civil" and showed "plainly that it was his design by all means possible to get the bill rejected." After the mission had a conference with the Lord Treasu-

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1. SRO, GD 18 (Clerk of Penicuik MSS.)/3134: [MS.] "Memoirs of the affairs of Scotland after the adjournment of the parliament anno 1707" written by John Clerk of Penicuik.

2. Hertfordshire R.O. Panshanger MSS. D/EP F54, f.126: Godolphin to [Cowper], 11 Apr.[1707].

had news that the parliament had been finally prorogued on 24 April. In his unpublished memoir, John Clerk of Penicuik, one of the mission, wrote about the conclusion of this disputes. The Queen decided to drop the bill "not thinking it fitt that the Lords should be put upon rejecting it because of ill blood between the two houses." At that time John Clerk found that Godolphin "had a mighty hand, for he was reported to be the contriver of the bill, & had canted secretary Harley bring it in, but reflecting that it was what might make a great noise in Scotland & endanger the fabrick of the Union."[1]

The controversy between the two Houses in the 1706/7 session meant that the High Tory Commoners' dispute with the Whig peers came to an end, but at the same time the conflict over the Scottish fraud implied that Harley had become a main part of the controversy between the Lords and the Commons.

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1. SRO, GD 18/3134, John Clerk's memoir.

Part Two

Godolphin and the House of Lords

CHAPTER FIVE

Godolphin and Patronage

In Part One, we considered the House of Lords from 1702 to 1710 mainly from procedural viewpoints. As the procedures in the Lords were closely related to politics, in the previous chapters we have dealt with some aspects of Lord Treasurer Godolphin's management of the upper House. Although there were some other resources to control the Lords in the early eighteenth century, patronage undoubtedly played a vital part, when the 'managers' tried to turn the proceedings of the House to their advantage. In a recent study, Clyve Jones described how skilfully Robert Harley, the Earl of Oxford, made use of patronage when he was the 'premier minister' from 1710 to 1714.[1] At the same time, it is remarkable that Clyve Jones proved that in the late years of his ministry, Oxford could not get the expected result from patronage, because such party issues as the Peace treaty and the Protestant succession made it impossible for the Court Whig peers to support the Tory government. Though there have been many studies concerning the Godolphin ministry, we do not have any systematic analysis of his patronage control. In this chapter it will be considered how Lord Treasurer Godol-

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1. C.Jones, "'The Scheme Lords, the Neccessitous Lords, and the Scots Lords': the Earl of Oxford's management and the 'Party of the Crown' in the House of Lords, 1711-14", in C.Jones ed. Party and Management, 123-167.

phin distributed patronage, and to what extent patronage obtained the desired effect of managing the House of Lords.

Classification of patronage

When we consider 'patronage', it is often associated with national or local offices, pensions, annuities, or gifts from the sovereign. However, the patronage in the early eighteenth is defined in different ways. For instance, the creation or promotion of peerages was one of the most important ways to control both MPs and peers. On her accession to the throne, it was expected that the Queen would create several lords. Eleven days after King William's death, J.Wotton told the Earl of Rutland that "The talke is Sir John Lewson [Gower] will suddenly be maid a Lord, and that there will be foure Dukes maid, the Lord Normondby, Lord Malborrow, Lord Rochester, and your Lordshipp."[1] As early as June 1702, it was rumoured that Seymour Conway, Edmund Dunch, Heneage Finch and Leveson Gower would be elevated to peerages.[2] These promotions, if they had been realised, would have been the Queen's reward to Tory Commoners except for Edmund Dunch. But it appears that the Queen and Godolphin hesitated to make a large creation at that time. In April 1702, Lady Russell wrote to Rutland, who was eager for

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1. HMC, Rutland MSS. II, 169: J.Wotton to Rutland, 19 March [1702].

2. Luttrell, V, 185.

promotion to a dukedom, that "the Queene is positively determined not to create or promote any one single person, there are soe very many that aske, and whoever is refused wil be angry."[1]

It was after the 1702/3 session that the Queen ennobled Conway, Finch, Gower, John Granville and John Hervey. It was not doubted that these creations were done so that they could balance the Whig-dominated House of Lords, except for Hervey who was a friend of the Marlboroughs.[2] Francis Atterbury found that the Godolphin ministry was pressed to award a barony to Conway by his father Edward Seymour, who had strong influence in the Commons.[3] The Whigs had reasons to regard these creations as Godolphin's concession to the Tories and an infringement of the prerogative. Bishop Burnet remarked that these creations were "an open declaration of a design to put every thing in the hands and power of" the Tories and "an encroachment on one of the tenderest points of the prerogative".[4] After these promotions, however, the Queen and Godolphin did not ennoble any Tory Commoners. English and (after the Union) British peerages were given to such

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1. HMC, Rutland MSS. II, 172: Lady Russell to [Rutland], 14 Apr.1702.

2. Authentick Memoirs of...Dutchess of Marlborough, 136.

3. Atterbury Correspondence, IV, 385: Atterbury to Bishop Trelawney, 4 March 1703; BL, Add. MSS. 22852, f.75: Captain E.Harrison to T.Pitt, 14 Feb.1703.

4. Burnet's History, V, 66.

Whigs as William Cowper (Lord Cowper), Henry Howard (the Earl of Bindon), and Thomas Pelham (Lord Pelham), except two Scottish dukes, the Duke of Argyll (created the Earl of Greenwich as an English peer) and the Duke of Queensberry (Duke of Dover as a British duke). For ten years, when Godolphin was the Lord Treasurer, the Queen was careful in the creation of peers. It makes a contrast with the Oxford ministry, which ennobled twenty persons over four years. The Queen and Godolphin were also unwilling to call peers' eldest sons to the Lords House by their fathers' baronies. In the early years of the Godolphin ministry, it was said that Rochester's and Weymouth's sons would have seats in the House.[1] But only Lord Dursley (a Whig, the Earl of Berkeley's son) was summoned, while the Queen called three sons to the Lords in the years of the Harley ministry. Thus, peers' creations did not play as big a part in Godolphin's patronage as Oxford's.

Although the award of peerages was one of the Queen's prerogatives, the parliament had a voice in the privileges of the Lords. As we considered in chapter one, the Lords were able to refuse to give privileges to peers who did not take oaths. When a lord died without any direct male heir , the Lords were able to examine the peerage claim, and they decided whether this peerage should be

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1. Luttrell, V, 276; Atterbury Correspondence, IV, 390: Atterbury to Bishop Trelawney, 6 March 1703.

succeeded by a peer who was a relative of the deceased lord . But the ministry could meddle with this matter. After the Earl of Feversham died without heirs in 1709, it was expected that Lord Rockingham, a Whig, would have Feversham's title and be promoted to an earl-dom. However, in May 1710, Peter Wentworth, who realised that Godolphin would not keep power very long, doubted Rockingham's succession. Wentworth thought that Rockingham would get an earldom on condition that "the present Ministry continues in power."[1] The collapse of the ministry in August shattered Rockingham's hopes, and it was not until the accession of George I that Rockingham was promoted to an earldom.

High offices of profit were the most important patronage. However, we must distinguish national and political offices from household offices. Soon after the Queen came to the throne, such Whig lords as the Earls of Carlisle and Manchester left their national offices. However, the Duke of Devonshire (Lord Steward), the Earl of Bradford (Treasurer of the Household) and the Earl of Montagu (Master of the Great Wardrobe) kept these household offices. B.C.Bucholz has pointed out that "The unity of experience and purpose between the new Queen and the Churchills (including Godolphin) is evident in their choice of whom to retain and whom to discard from

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1. BL, Add. MSS. 31143, f.486: P.Wentworth to [Lord Raby], 19 May 1710.

among William's old household servants".[1] Obviously Godolphin hoped that these Whig peers would remain at Court and support the government.

Although local offices were not very profitable and had less political importance than national offices, they were a part of Godolphin's patronage. Local patronage was important for two reasons. One was that such local offices as Lords Lieutenant could exercise considerable influence over elections. Thus Nottingham had some reasons to demand that Godolphin should dismiss the Earl of Carlisle from the Lord Lieutenancy of Cumberland and Westmorland, when Nottingham was dissatisfied with the government's policies and asked the Lord Treasurer to reshuffle the ministry in April 1704.[2] Though most of the Whig peers lost national offices soon after the Queen's accession, such Whig lords as the Dukes of Devonshire (Derbyshire) and Newcastle (East Riding and Nottinghamshire), the Earls of Manchester (Huntingdonshire), Peterborough (Northamptonshire), Rivers (Cheshire) and Viscount Townshend (Norfolk) were Lords Lieutenant after

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1. R.O.Bucholz, The Court in the Reign of Queen Anne, (unpublished D.Phil. thesis, University of Oxford, 1987), 86-87.

2. M-G Corr., I, 280: Godolphin to Duchess, 18 Apr.1704. The sources about appointing and removing the national and local offices are G.E.Cokayne, The Complete Peerage, (ed. by V.Gibbs, second ed. 1910 -59); E.Chamberlayne Angliae Notitia, (1702 and 1707); J.Chamberlayne, Magnae Britanniae Notitia, (1710) and Luttrell.

1702. After the Whigs entered the Cabinet Council in 1705, they demanded more local offices. In August 1706, Sunderland and Wharton pressed Godolphin for Wharton's appointment as the Lord Chief Justice in Eyre of royal forests and parks south of the Trent.[1] Although the Lord Treasurer knew that the Duke of Shrewsbury wanted this post, he awarded it to Wharton.[2] The Junto had every reason to demand this office, because at that time they were persuading the Queen to appoint Sunderland to the office of secretary of state, and Wharton's taking office as the Lord Chief Justice in Eyre was to make way for Sunderland's appointment. In 1710 the Whigs almost monopolised national offices. They also held most of the Lord Lieutenancies. However, such Tory peers as the Duke of Ormond (Somersetshire), Earl of Pembroke (Monmouthshire and South Wales) and Lord Craven (Berkshire) kept their posts.

Clyve Jones points out the importance of annuities, pensions and Queen's gifts for Harley's parliamentary management. Compared with Harley, Godolphin awarded this kind of patronage to fewer peers.[3] As we shall consider later, only the Duke of Marlborough and two blood royals (the Dukes of Grafton and St Albans)

1. BL, Add. MSS. 61443, ff.9-10: Earl of Sunderland to Duchess of Marlborough, "Saturday night" post mark 20 July [1706].
2. M-G Corr., II, 640: Marlborough to Duchess, 1 Aug. 1706.
3. The sources about the pensions and annuities are "Treasury warrants etc." in Calendar of Treasury Books, XVII-XXIV, unless otherwise stated.

received pensions throughout the years of the Godolphin ministry. In the early days of his administration, the Lord Treasurer gave pensions or annuities to such High Tory stalwarts as the Duke of Leeds, the Marquess of Carmarthen and the Earl of Rochester. However, after the 1702/3 session, Godolphin stopped the payments to these lords. At the same time the Lord Treasurer started to give a pension valued at £1,500 per annum to Rochester's brother, the Earl of Clarendon. Although many Tory peers were deprived of their patronage, Clarendon's pension was continued until his death in 1709. Godolphin unmistakably had the intention to detach Clarendon from Rochester's influence. Even after the Whigs entered the Cabinet in 1705, and they got many national and local offices, Godolphin was reluctant to give pensions to Whig lords. The Treasurer awarded pensions to such influential Scottish peers as the Duke of Queensberry and the Earls of Mar and Seafield, so that the Scottish representative peers could support the Court.

Apart from pensions and annuities, Godolphin had other means to give peers financial assistance. Many lords received money from the Queen for their 'secret service'.[1] Payment for the secret service differed from ordinary pensions or annuities in some respects. The

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1. "William Lowndes's Account of Secret Service Moneys during the Reign of Queen Anne from 8 March 1701/2 to 27 July 1714", in Calendar of Treasury Books, XXVIII, 399-504.

sources of the pensions and annuities were normally the revenues of the Civil List or the Excise Office or Post Office, while the payment for the secret service was virtually the Queen's gift, and a kind of royal bounty. The pensions and annuities were to be renewed every year, but the renewal of this payment depended upon the intention of the Queen and the ministry. In the early years of his administration, Godolphin awarded £200 to Lord Hunsdon, one of the "poor lords", but it was not renewed.[1] However, the Queen and Godolphin thought much of the Earl of Pembroke whose Toryism was mild. During the years of the Godolphin ministry, Pembroke successively filled such important posts as Lord High Admiral, Lord President of the Council and Lord Lieutenant of Ireland. Furthermore, Pembroke received £1,000 every year for his secret service.[2] Thus, Pembroke surprised Marlborough, when he deserted the Court over the verdict on Dr.Sacheverell.[3] The Queen was obstinately opposed to the appointment of Lord Somers as Lord President of the Council. But after Somers had this post, she started to pay for his secret service from April 1709, and this payment amounted to £2,000 in 1709, and £1,000 in 1710.[4] Thus, it is conceiv-

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1. Calendar of Treasury Books, XXVIII, 401 and 403.
2. Ibid., XXVIII, 416, 428, 435-36, 443, 453.
3. M-G Corr., III, 1445: Marlborough to Duchess, 24 March 1710.
4. Calendar of Treasury Books, XXVIII, 465, 469, 473.

able that Somers sided with the Queen and against Marlborough's Captain Generalcy for life and the address to remove Mrs Masham from the Court, and that the Queen thanked Somers for his "fidelity and integrity ever after."[1]

The last category of patronage was the government's support of private bills proposed by peers. Such a wealthy lord as the Duke of Shrewsbury was not eager for financial assistance. It is well-known that his grace declined the offer of the post of Master of the Horse, and preferred to live overseas in early 1702.[2] However, he was not ignorant of the matters which related to his estates. After he came back in 1706, he committed himself to his estate management. He was Recorder of Droitwich and a trustee and proprietor of this ancient salt spring. He prepared a bill for the proprietors of the spring at Droitwich. In the 1707/8 session, his grace entreated the Court and the Whigs to the promotion of the "Droitwich bill". However, the Godolphin ministry and the Whigs, who regarded the Duke as a deserter from the Whig cause, did not show much zeal for this bill, and it was dropped. In February 1708, Shrewsbury told the Duchess of Marlborough that "I will now speak nothing of my own business, being

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1. Burnet's History, V, 416. Dartmouth's note.

2. Private and Original Correspondence of Charles Talbot Duke of Shrewsbury, ed. by W.Coxe, (1821), 634: Godolphin to Shrewsbury, 5 Apr.1702; Ibid., 635: Shrewsbury to Godolphin, 1 July 1702.

upon the late troubles out of humour and conceit with the very name."[1] At that very time, Godolphin sided with the Junto, and Robert Harley was forced to resign as secretary of state. Thus Shrewsbury had every reason to cooperate with Harley to overturn the Godolphin ministry, which began to be controlled by the Whigs.

Godolphin's patronage management for the Tories

When we consider the Lord Treasurer's control of patronage, it is necessary to distinguish that for the civil offices from that for military and ecclesiastical posts. His correspondence clearly shows that Godolphin esteemed Marlborough's opinion about the patronage in the army. Concerning the ecclesiastical patronage, it is well-known that he consulted Harley and Archbishop Sharp of York. However, Godolphin obviously excelled in the management of patronage of the civil offices. A contemporary biographer remarked that "Alliances & Recommendation imposed upon him [Godolphin] in some Instances but his great concern was to employ Man of Capacity... this became ye more remarkable, because another great Man [Marlborough] was not so skilful and cautious."[2]

In the early years of his ministry, the Treasurer

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1. For the "Droitwich bill" and Shrewsbury's activity, see D.H.Somerville, The King of Hearts Charles Talbot Duke of Shrewsbury, (1962), 240-42 and 252.

2. BL, Add. MSS. 4222, f.62: Thomas Birch's biographical anecdotes.

distributed most of the civil offices to the Tories. Nevertheless, among them there were two groups of the Tory peers who did not want any patronage. One was the Jacobites and their sympathisers. At the beginning of the Queen's reign, such staunch Tories as the Duke of Beaufort and the Earl of Thanet did not like to enter the Court. Beaufort absented himself from the Court until Harley overturned the Godolphin ministry in August 1710. The Earl of Ailesbury, a Jacobite observed that Thanet had refused to take the Lord Chamberlainship, before the Earl of Jersey was appointed.[1] Godolphin did not give up the idea to offer an office to Thanet. In the spring of 1703, the Lord Treasurer told Thanet that the Lord Lieutenancy of Cumberland and Westmorland would be awarded to him, but he declined this offer.[2] Indeed, both Beaufort and Thanet might have been strongly opposed to Godolphin, but it is obvious that they were weary of opposition and wanted places, when Godolphin's influence declined in 1710. Two weeks after Godolphin's dismissal from the Lord Treasurership, Matthew Decker told Harley that Beaufort wished to contact him,[3] and his grace obtained the Lord Lieutenancy of Hampshire. Thanet entered the Privy

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1. Memoirs of Thomas, Earl of Ailesbury written by Himself, II, (1890), 532-33.

2. HMC, Portland MSS. IV, 59 and 62: Godolphin to R.Harley, 28 March and 8 May 1703.

3. BL, Loan 29/375: M.Decker to [R.Harley], 24 Aug.1710.

Council in 1711, and received the Lord Lieutenancy of Cumberland and Westmorland in 1712.

Another group, which refused any offers from Godolphin, comprised Lord Haversham and the Earl of Rochester. An anonymous memoir writer of Haversham remarked that he had been "out of temper" and "thence-forward He took all opportunities of opposing almost every thing that was advanc'd by the Court", after he was dismissed from being a Lord of the Admiralty and Lord Pembroke was appointed as Lord High Admiral in 1701.[1] Even after the Queen came to the throne, Haversham's inclination was not changed, and there was no room for Godolphin to negotiate with him. As a nonconformist, he was opposed to the three occasional conformity bills, but at the same time he was disgusted with the deceitful attitude of the Lord Treasurer who hoped to drop the bill, while he pretended to support it in the 1703/4 session. Thus, Haversham decided to be opposed to the ministry's "Exorbitance of Power in Parliament".[2] After the 1704/5 session, Godolphin lost contact with Haversham, and defended himself against Haversham's

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1. Memoirs of the Late Right Honourable John Lord Haversham, (1711), iii.

2. Ibid., xxii-xxiii; Miscellaneous State Papers from 1501 to 1726, ed. by P.Yorke, II, (1778), 464: Haversham to Somers, 19 Feb.1704.

annual speech which the Treasurer called "bomb".[1] The Earl of Rochester differed from Haversham in some respects. Rochester received £4,000 from the Court in June 1702. Furthermore, it is observable that he took part in the distribution of civil and ecclesiastical patronage. In June 1702, the Duke of Marlborough told Godolphin that his grace and Rochester had arranged the Duke of Ormond's promotion to be General of the Horse.[2] Francis Atterbury found that Rochester negotiated with Godolphin in early 1703 so that George Hooper, Dean of Canterbury could be promoted to an Irish primate.[3]

However, about the distribution of patronage, it appears that there was no room for a compromise between the Treasurer and Rochester. Rochester's ambition was not satisfied with the Lord Lieutenancy of Ireland. When the Queen came to the throne, he aimed at nothing less than the Lord Treasurership.[4] A contemporary biographer wrote that Rochester's "Principles of Religion and Loyalty had no Mixture from late Infusions; but were instill'd into him

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1. Bath (Longleat House), MSS. Portland miscellaneous volume, f.199: Godolphin to Harley, "Sunday 19 at 2" [19 Nov.1704]. "We have nothing now to fear but Lord Haversham's bomb."

2. M-G Corr., I, 77: Marlborough to Godolphin, 25 June 1702.

3. Atterbury Correspondence, IV, 387-88: Atterbury to Bishop Trelawney, 4 March 1703.

4. E.Gregg, Queen Anne, 157.

by his Illustrious Father, and other Noble Spirits, who had exposed their Lives and Fortunes for the Royal Martyr."[1] It is conceivable that Rochester could not accept the patronage policy of the Lord Treasurer who allowed several Whig peers to keep national offices. Rochester chose to resign the Lord Lieutenancy in February 1703, when the Queen and Godolphin requested that Rochester should go to Ireland. After 1703 neither Haversham nor Rochester could expect any patronage from Godolphin. However, like the Duke of Beaufort and the Earl of Thanet, Rochester and Haversham were obviously weary of opposition and wanted patronage in 1710. On 4 August 1710, four days before Godolphin's dismissal, Haversham wrote to Harley that "I ought not longer to defere paying my duty to her Maj[esty] & would be glad of waiting on you first." Harley's endorsement on this letter was "answered immediately."[2] Haversham died in November 1710, but Rochester was rewarded with the office of Lord President of the Council, and supported the Harley ministry.

Godolphin's attitude to other leading Tory peers

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1. [J.Le Neve], The Lives and Characters of the Most Illustrious Persons British and Foreign who died in the Year 1711, (1713), 169.

2. BL, Loan 29/308/: Haversham to [Harley], 4 Aug.1710. See also Loan 29/308: the same to [the same], 26 Oct.1710.

was different from that to Haversham and Rochester. To influence their behaviour, Godolphin skilfully carried out the policy divide et impera. As early as June 1702 Haversham told the Duke of Hamilton that "Lord Marlborough & Lord Godolphin doe all they can to gett my Lord Nottingham" who had depended upon Rochester.[1] As we have already seen, Godolphin let Nottingham join in the drafting of the Queen's speech in the 1702/3 session, when Rochester divided the ministry. Although it was expected that Lord Keeper Wright and Nottingham would quit their offices with Rochester, Godolphin was able to keep them in their posts.[2] The Lord Treasurer allowed Nottingham, who had an ambition to be the "supreme ecclesiastical minister", to have some voice in Church patronage.[3] Godolphin successfully appointed the Duke of Ormond, who was regarded as an associate of Rochester, as Lord Lieutenant of Ireland. When Nottingham sent an ultimatum to Godolphin in April 1704, Godolphin's divide et impera policy was obvious. In October 1703, Ormond asked Godolphin and Marlborough to allow him to raise a regiment. Marlborough was apparently against it, but Ormond was given leave to raise a regiment of horse on 11

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1. SRO, GD 406/1/4867: Haversham to Hamilton, 17 June 1702.

2. Atterbury Correspondence, IV, 362: Atterbury to Bishop Trelawney, 9 Feb.1703.

3. H.Horwitz, Revolution Politicks, 182; Atterbury Correspondence, III, 158-59: Atterbury to Bishop Trelawney, 30 Dec.1703.

October.[1] In Ireland Ormond once again begged of Godolphin to the patronage for his followers there. On 26 December, his grace asked for Marlborough's permission for Lords Ikerrin, Inchequin and Duncannon to raise regiments.[2] On 6 January 1703, when the Lords at Westminster had dropped the second occasional conformity bill and they were enthusiastically investigating the 'Scotch plot', Marlborough told Ormond that the Queen approved of this patronage.[3] Thus, Ormond was indifferent to the opposition of the Tories against the ministry, when the Duke wrote to Lord Coningsby in December 1703.

> I was not at all surpris'd to heare of a Scotch plott ...If the Ministers be firme on your side the water, do not doubt of me...I think the bringing in the Bill of Occasional Conformity very unserviceable at this time.[4]

With Nottingham, it was said that the Duke of

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1. M-G Corr., I, 254: note 4.

2. HMC, seventh report pt.II, Ormonde MSS., 768: Ormond to Marlborough, 26 Dec.1703.

3. Ibid., 768: Marlborough to Ormond, 6 Jan.1704.

4. Ibid., 768: Ormond to Coningsby, 26 Dec.1703. In the 1702/3 session Ormond voted for the first occasional conformity bill, and he was "very angry" when he knew that this bill would be dropped. NLS, 7021, f.64: [A.Bruce] to [Marquess of Tweedale], 18 Jan.1703.

Buckingham would also resign in early 1704. This rumour had some truth in it. As early as June 1703 Marlborough told the Duchess that it was possible for Buckingham to be dismissed.[1] However, it was not until April 1705 that his grace quitted being Lord Privy Seal. What kept him in this office? At first it seems that his grace made a temporary compromise with the Queen and the ministry. Soon after Nottingham's resignation, Charles Davenant wrote to Henry Davenant in Hanover that

> He [Buckingham] has given a very artfulle Turn to the Motion he really made in the House of Lords that the Prince should be put into the Intaile [entail] for Life after the Queen, but her Highnesse [Princess Sophia] is to look upon as a meer compliment intended to Her Majesty & which could never have any Effect.[2]

There was another reason why Godolphin delayed Buckingham's dismissal. It was believed that "notwithstanding his great interest at Court," his grace had "none in either House of Parliament."[3] Marlborough confirmed this view. In October 1704, he thought that Buckingham was "in

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1. M-G Corr., I, 202: Marlborough to Duchess, 10 June 1703; Ibid., I, 284: Godolphin to Duchess, 24 Apr. 1704.

2. BL, Lansdowne MSS. 773, f.34: C.Davenant to H.Davenant, 6 May 1704.

3. "Characters of the Court of Great Britain", in John Macky's Memoirs, 20.

measures with Nottingham and Rochester to give all the obstruction" in the coming session. At the same time, however, Marlborough was of the opinion that Buckingham did not have "any personale interest."[1] Moreover he was a onetime wooer of the Queen, and in the early days of Godolphin's ministry, Buckingham (then the Marquess of Normanby) received £1,000 as a "gift" from the Queen in addition to his salary.[2] However, it appears that the Queen herself was disgusted with Buckingham's behaviour. On 27 June 1704 his grace complained to Marlborough about her coldness to him:

> Yesterday I put the Queen in mind of my year's pension being in arrear...[the Queen told Buckingham that] I had less need of 1000 l. than herself. I dare not I need not, express more on this subiect, the thing speaks itself...the unkindness & the contempt is to me intolerable.[3]

Once Godolphin realised that Buckingham had lost the Queen's favour and he was a minor political figure, all that Godolphin had to do was to find a pretext to dismiss the Duke.

Though Buckingham's power at Court had become

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1. M-G Corr., I, 392: Marlborough to Godolphin, 23 Oct. 1704.

2. Calendar of Treasury Books, XXVIII, 416 (20 Aug.1703).

3. BL, Add. MSS. 61363, f.96: Buckingham to Marlborough, 27 June 1704.

inconsiderable, his dismissal in April 1705 shocked the Tories. In the Cabinet there were two Tory peers (the Duke of Ormond and the Earl of Pembroke). The duumvirs praised Pembroke's amenability to the ministry, so Ormond was the only High Tory lord in the Cabinet Council. His grace's isolation in the ministry was more conspicuous after Lord Keeper Nathan Wright was dismissed in October 1705. It seems that the isolated Ormond ran to an extreme. From Ireland Ormond asked Godolphin to help his grace to realise religious toleration in Ireland. The Lord Treasurer fully understood that toleration there would only result in the growth of the Jacobites. In January 1705, the Treasurer answered Ormond, and showed his reluctance to adopt this scheme.[1] Ormond's dismissal became only a question of time. For Ormond the most reliable ally at Court was the Queen, who agreed to keep his grace in his office because of her hostility to the Junto's entering the ministry rather than because of her favour to Ormond. In June 1706, Godolphin told Marlborough that Ormond was "in good measure" with the other High Tories, but the Queen was against his dismissal.[2] Ormond kept his Lord Lieutenancy until April 1707.

We have seen Godolphin's patronage policy to the High Tory leaders, and that he adopted the divide et

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1. HMC, seventh report pt.II, Ormonde MSS. 776: Godolphin to Ormond, 20 Jan.1705.

2. M-G Corr., I, 576: Godolphin to Marlborough, 5 June 1706.

impera principle when he dropped the Tories one by one from the ministry. Then what attitude did the Lord Treasurer take to the rank-and-file Tory peers? Within five months of the accession of the Queen, the Tories obtained not only national offices of political significance, but also some local posts and sinecures. In April 1702, Lord Lucas (Constable of the Tower valued at £1,000 per annum) was replaced by the Earl of Abingdon, and Leveson Gower (later Lord Gower) became Chancellor of the duchy of Lancaster in place of the Earl of Stamford. In May and June, the Marquess of Normanby, the Earl of Abingdon, Earl Poulet and Lord Craven got Lord Lieutenancies in the North Riding, Oxfordshire, Devonshire and Berkshire respectively. In June, Viscount Weymouth and Lord Dartmouth were appointed as Lords of Trade and Plantations (valued at £1,000 each). The Dukes of Leeds and Northumberland and the Marquess of Carmarthen received £3,500, £3,000 and £500 respectively in June or August. However, it is obvious that the Lord Treasurer was not willing to give patronage to these peers even in the early days of his ministry. As he made use of the divide et impera policy to control the Tory leaders, he used the same policy with the rank-and-file peers. Godolphin knew that there were some local animosities between the Tory magnates, and he turned this conflict to his advantage. For instance, Godolphin knew of a quarrel between the Granvilles and the Trelawneys. Lord Granville demand-

ed that Charles Trelawney should be dismissed from being the captain and governor of Plymouth. Godolphin took advantage of the animosity between these families. As the Lord Treasurer understood the strong electoral influence of Sir Jonathan Trelawney (Charles's brother) in the South-West, he kept Charles in this office, and refused Granville's demand.[1] This decision obliged Jonathan Trelawney, and he co-operated with the duumvirs even after Godolphin lost power in 1710.[2] On the other hand, Lord Granville continued to be against the Godolphin ministry until his death in 1707.

We have already seen that Godolphin succeeded in alienating the Earl of Rochester from the other Tory peers, when he resigned as Lord Lieutenant of Ireland in February 1703. Upon Nottingham's resignation in April 1704, Godolphin successfully isolated the Earl of Jersey, whose wife was an active Jacobite, from other Tory lords. It is obvious that most of the Tory peers were still amenable to the Godolphin ministry. Thus even Jersey did not understand the reason for his dismissal. On 24 April, Godolphin reported to the Duchess of Marlborough that "Mrs Morley [the Queen] is not at all uneasy about Nottingham, but Jersey had sayd so much to her, of his

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1. M-G Corr., I, 171-72: Marlborough to Duchess, 20 Apr. 1703.

2. G.Holmes, British Politics, 258.

inclinations for her Service."[1] Jersey himself confirmed Godolphin's view. On 5 May, he told Richard Hill that the Queen "thought it for her service to put the staff [of Lord Chamberlain] in some other hands; I immediately repair'd to my lord Treasurer to know my crime, but could get nothing laid to my charge but my herding and protecting some that took measures contrary to the Queen's service; how easie it was to refute this accusation", and Jersey flattered himself that he had "never voted but with" the Lord Treasurer, although Jersey "frequented the Earl of Nottingham and S[i]r E[dward] Seymour."[2] In early 1704, it seems that Godolphin optimistically expected that the rank-and-file Tory lords would not leave the Court. In March the Duchess of Marlborough was enraged by Lord Stawell who was a lord of the Bedchamber to Prince George, but against the ministry. However, Godolphin was confident that he could control Stawell's behaviour in the upper House by virtue of the patronage which he bestowed on Stawell. On 27 March, the Treasurer wrote to the Duchess that "my Lord Marlborough told mee this night of your uneasyness about Lord Stawell. I doe assure you upon my word, that I did not know in the least that he was any way related to Mr.[William] Bromley...I know only

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1. M-G Corr., I, 284: Godolphin to Duchess, 24 Apr.1704.

2. Greater London R.O. Jersey MSS. Acc.510/94: Jersey to [R.Hill], 5 May [1704].

that he was of a good old family that had lost a great estate for King Charles the first in the Civill Warr; and I still beleive, I can govern him in every vote."[1] Godolphin gave Stawell some time to change his mind, but he was still opposed to the Court. Finally he was dismissed from his office in June 1706.

It was in early 1705 that many of the the Tory peers were disillusioned with the Godolphin ministry, which helped the Whigs to drop the third occasional conformity bill and co-operate with the Junto peers to pass the 'Alien bill' in the Lords. Two weeks after the 1704/5 session was finished, a newsletter reported Lord Granville's resignation from his posts.[2] Neither Godolphin nor Marlborough had felt sympathy for Granville. On 19 April, Marlborough told the Duchess that "As to the complaint of Lord Granville, I am so ignorant that I did not know that he was out of his place."[3] The two offices (Lord Lieutenancy of Cornwall and Wardenship of the Stannaries), which Granville had had, were given to Godolphin and his son Francis Godolphin respectively. Before the 1705/6 session started, several Tory peers lost their national and local posts. The Earl of Abingdon was dismissed from the Constable of the Tower. The Duke of

1. M-G Corr., I, 271: Godolphin to Duchess, 27 March 1704.

2. Folger Shakespeare Library, Newdigate newsletters, on 27 March 1705.

3. M-G Corr., I, 423: Marlborough to Duchess, 19 Apr. 1705.

Buckingham, the Earl of Winchilsea and Lord Guilford lost this Lord Lieutenancies of North Riding, Kent and Essex respectively.

However, it is significant that the Lord Treasurer allowed several High Tory lords to continue to be in their posts until the 1705/6 session was prorogued. For example, Lord Gower still had the office of the Chancellor of the duchy of Lancaster. It seems that Godolphin and Marlborough tried to appease Gower, and to persuade him to support the ministry. But Gower was actively opposed to the government in the Lords. Thus, the duumvirs made a decision to dismiss Gower during the Christmas recess. Marlborough wrote to Gower that

> I have been some time without making any answer to the honour of Your Lord[shi]p letter, because I really don't know how to make any answer that is like to bee agreeable. Your Lord[shi]p can not but bee sensible that both my Lord Treasurer and myself have given sufficient proofs of our desire and inclination to serve You, and I beleive I may answer for him and for my self that wee were both very sorry when you and your friends thought fitt to putt itt out of power to continue doing so.[1]

Soon after the Parliament was prorogued in March

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1. Staffordshire R.O. Sutherland (Leveson-Gower) MSS. D868/7/6a: Marlborough to [Gower], [22 Dec.1705/] 2 Jan.1706.

1706, Harley and Lord Keeper Cowper agreed to Gower's dismissal.[1] Before the 1706/7 session began, the Earl of Denbigh was removed from the Lord Lieutenancy of Leicestershire, and Lord Stawell was dismissed from a Lordship of the Bedchamber to Prince George. Lord Hatton died in September, and his office as governor of Guernsey was given to Charles Churchill, the Duke of Marlborough's brother. Consequently only a few High Tory lords remained in any post of profit by the end of 1706. Among them, it is remarkable that Lord North & Grey had kept a regiment of Foot since 1703. The Duke of Marlborough thought much of North in the early years of the Godolphin ministry. Marlborough settled Lord North's marriage in April 1705.[2] Marlborough also promised North that he would be appointed as the Lieutenant of the Tower, when this post became vacant. North was so amenable to the ministry that he sent his proxy to Marlborough in the 1704/5 session.[3] However, North's behaviour in the 1705/6 session riled his grace. In October 1706, when North asked Marlborough to fulfil his promise, his grace

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1. Hertfordshire R.O. Panshanger MSS. D/EP F60, f.3: [Harley] to [Cowper], 20 May 1706; BL, Loan 29/132/4: Cowper to [Harley], 20 May 1706.

2. The sources for army patronage are C.Dalton, English Army Lists and Commission Registers, 1661-1714, V and VI, (1902 and 1904) and Complete Peerage, unless otherwise stated. M-G Corr., I, 427: Marlborough to Duchess, 23 Apr.1705.

3. HLRO, Proxy Books VII. (unfoliated)

admitted to the Lord Treasurer that he had "formerly promis to serve him [North] whenever this [vacancy] should happen." However, Marlborough told the Treasurer that he had withdrawn this offer.[1] North was naturally infuriated with Marlborough. In the following session, North offered strong opposition to the Union bill.[2] North had some reasons to think that Godolphin and Marlborough neglected the Tory peers in the army and gave priority to Whig peers. While North was allowed to keep one regiment throughout the years of the Godolphin ministry, the Earl of Essex gained the Constableship of the Tower in 1707 which Lord Abingdon had had. Most of the high offices in the army were occupied by Whigs. The Duke of Schomberg was the Commander-in-Chief of all the forces in Portugal from 1703 to 1704. The Earl of Peterborough was joint commander of expeditionary forces to Spain in 1705, and Earl Rivers commanded the expedition to Spain from 1706-1707. Thus, on the previous day to Godolphin's dismissal as Lord Treasurer, North & Grey expressed delight at Godolphin's downfall. North told Nottingham that "y[ou]r L[or]d[shi]p knows how I have been used in relation to poor imployment promis'd me, for obvious reasons."[3]

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1. M-G Corr., II, 703: Marlborough to Godolphin, 7 Oct. 1706.

2. Cobbett, VI, 565-66.

3. Leicestershire R.O. Finch MSS. Box 4950, bundle 23, North & Grey to [Nottingham], 7 Aug.1710.

After the Union treaty was ratified and the parliament was prorogued in April 1707, Godolphin swept away most of the High Tory lords from the Privy Council so that the Queen could summon some Scottish representative peers to this Council. The Duke of Buckingham, the Earls of Abingdon, Jersey, Northampton, Nottingham, Rochester and Thanet, Viscount Weymouth, and Lords Ferrers, Gower, Granville and Guernsey lost seats in the Privy Council.[1] Except for the Dukes of Leeds and Ormond who had the highest titles, three Tory peers, the Earl of Pembroke, Earl Poulet and Lord Dartmouth kept seats in this Council until the collapse of the Godolphin ministry. Dartmouth also had the profitable office of a Lord of Trade and Plantations. Some peers, who knew Dartmouth's opposition to the ministry, pressed Godolphin for his dismissal. Dartmouth himself recollected as follows: After the Union treaty was ratified, "A Scotch earl pressed lord Godolphin extremely for a place. He said there was none vacant. The other said, his lordship could make one so, if he pleased. Lord Godolphin asked him, if he expected to have any body killed to make room? He said, No; but lord Dartmouth commonly voted against the court, and every body wondered that he had not been turned out."[2] In spite of Dartmouth's opposition, the Lord

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1. M-G Corr., II, 788: Godolphin to Marlborough, 22 May 1707.

2. Burnet's History, V, 359, Dartmouth's note.

Treasurer let Dartmouth remain in his post. In the 1708/9 session, Dartmouth voted against the Court over the election disputes of the Scottish representative peers,[1] and it offended Godolphin. But the Lord Treasurer did not forsake him. Obviously, Godolphin did not want to break with all the Tory lords. Moreover, Dartmouth was regarded as "no zealous party man", and "the whigs would live very well with" him, as he flattered himself.[2] Lord Poulet was a Harleyite, which must have alienated him from the Lord Treasurer, after Harley resigned his post of secretary of state in February 1708. However, unlike the other Tory peers, Poulet had been Godolphin's informant as late as March 1709.[3] Godolphin fully understood that Poulet was plotting against the ministry.[4] However, it seems that the Treasurer regarded him as an inconsiderable figure. In June 1710, when it was rumoured that Poulet would be the secretary of state in place of Sunderland, Godolphin named Poulet a 'swallow' which could not make summer.[5] Ironically Dartmouth and Poulet,

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1. M-G Corr., III, 1233: Godolphin to Marlborough, 25 March 1709.

2. Burnet's History, VI, 9, Dartmouth's note.

3. M-G Corr., III, 1233: Godolphin to Marlborough, 25 March 1709.

4. Poulet's intrigue with Harley and Shrewsbury is seen in HMC, Downshire MSS. I, pt.II, 866: Poulet to W. Trumbull, 10 Dec.1708 and BL, Loan 29/153/1/7: [Poulet] to [Harley], 11 Oct.1709.

5. M-G Corr., III, 1512: Godolphin to Duchess, 1 June 1710.

who remained in their offices, played active parts in the Harley ministry. Dartmouth was appointed the secretary of state in June. Harley let him keep this post and Poulet was rewarded the first Lord of Treasury after Godolphin's dismissal.

Godolphin's patronage management for Marlborough, the Whig peers and Court peers

The Duke of Marlborough was doubtlessly the most important peer, when Godolphin considered the distribution of patronage. Favours to the Duke were all the more necessary for the Treasurer so that he could make an ostentatious display of the Queen's reliance on the duumvirs. In the 1702/3 session, the Queen and the Lord Treasurer did their best to award the pension valued at £5,000 per annum for the Duke and his descendants. The Tories broke this plan in the Parliament, and it made Godolphin and Marlborough weary of the factionalism of the Tories.[1] After the Marquess of Blandford, Marlborough's only surviving son died in 1703, the ministry planned an act of parliament to confer Marlborough's title and estate upon his heirs female. Before the 1706/7 session, Godolphin and Marlborough carefully concerted this bill with Lord Halifax. In early September 1706, the Duke told the Duchess that "As to what Halifax has said to you concerning the title, is what would be very agre-

1. A Character of John Sheffield Late Duke of Buckinghamshire, (1729), 14; HMC, Portland MSS. IV, 53-54: [Godolphin] to [Harley], 14 Dec.1702.

able."[1] After the victory at Ramillies in May 1706, it must have been an easy job for the ministry to pass "The Duke of Marlborough's Titles & Estate bill".[2] As soon as the session started on 3 December, the Commons made an address in which they praised the Duke's great contribution to the war. On 5 December, the Lords also thanked Marlborough.[3] Nevertheless the Court took precautions against the opposition of the Tories. The Queen herself was afraid that the High Tory peers would plot against the Duke. On 9 December, Archbishop Sharp recorded that the Queen "pressed me earnestly to be on her side in all matters that came before the Parliament relating to the prerogative...She desired I would not be governed by my friends (meaning my Lord Nottingham and that party) in my votes in Parliament."[4] It seems that the Queen and the ministry troubled themselves unnecessarily. On 18 December, the bill was brought to the Lords, and was read for the third time two days later, and sent to the Commons. The lower House did not make any amendments and passed the bill, and the Queen gave the royal assent on 21

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1. M-G Corr., II, 674: Marlborough to Duchess, 9 Sep. 1706.

2. BL, Add. MSS. 7074, ff.252-53: R.Warre to G.Stepney, 20 Dec.1706; HMC, Lords MSS. 1706-1708, 8-9.

3. CJ., XV, 202; LJ., XVIII, 177.

4. T.Sharp, The Life of John Sharp D.D. Lord Archbishop of York, ed. by T.Newcome, I, (1825), 300-01: Sharp's diary on 9 Dec.1706.

December.[1]

In the 1708/9 session, Godolphin and Marlborough again attempted to add some honours to the Duke. The ministry made use of the same tactics as in the 1706/7 session. They intended to propose to award some advantage to Marlborough, after both Houses made an address to thank his grace. However, the Godolphin ministry lost control of the address. As early as December 1708, Arthur Mainwaring warned the Duchess of Marlborough that additions to his grace's honour "would raise more envy & hatred in our Ancient Nobles."[2] Nevertheless, the ministry did not give up hope of turning the address to their advantage. But both Lords and Commons let down the ministry. The address on 23 December admired Marlborough's "consummate ability" and "great qualities". However, at the same time the address showed that his grace's victory was done "in conjunction with the renowned prince Eugene of Savoy".[3] According to Lord Guernsey, this addition of Prince Eugene was done by the Duke of Newcastle, who was displeased with the duumvirs' dependence on the Junto lords. Guernsey, who took great interest in this unusual scene in the House, wrote to his brother Nottingham that

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1. HMC, Lords MSS. 1706-1708, 9.

2. BL, Add. MSS. 61459, f.155: [A.Mainwaring] to [Duchess], 6 Dec.[1708].

3. LJ., XVIII, 596.

there hap[pe]ned an odde kind of debate, there was an addrese reported by my L[or]d Pr[ivy] Seale [Newcastle] to congratulate her Maj[es]ty success this campaigne in w[hi]ch consummate skill of his grace ye D[uke] of M[arlborough] was mention[e]d & yt he in conjunction w[i]th Pr[ince] Eugene had carryed his victorys...this was objected to by D[uke] of Som[erse]tt: yt Pr[ince] Eugene should not be mention[e]d because a forreigner & besides twas a diminution of ye D[uke] of M[arlborough].[1]

After this debate, Mainwaring told the Duchess that "Prince Eugene's being named in the Address was the whole subject of discourse yesterday at St James's & was treated with more warmth than such matters use to be."[2] But finally the Court had to own that their scheme was impossible to realise.

Marlborough's relatives were one of the mainstays of the Lord Treasurer's management of the House of Lords. It was remarkable that Marlborough married his daughters to Whig peers except for Henrietta Churchill who married Francis Godolphin, the Lord Treasurer's son. Anne

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1. Leicestershire R.O. Finch MSS. box 4950, bundle 23: Guernsey to [Nottingham], 27 Dec.1708. For Newcastle's animosity to the Junto, see HMC, Portland MSS. IV, 448: [Newcastle] to [R.Harley], 17 Sep.1707; See also Nottingham University Library, Portland (Holles) MSS. Pw2/95: [Harley] to "Ld Privy Seale" [Newcastle], 22 Oct.1708.

2. BL, Add. MSS. 61459, f.158: [A.Mainwaring] to [Duchess], "Monday morning" [27 Dec.1708].

Churchill married Charles Spencer (the third Earl of Sunderland after his father the second Earl's death in September 1702). Because of his relation to Marlborough, the Duke and the Treasurer expected that Sunderland would become their reliable ally. Thus it is understandable that the second Earl of Sunderland was given priority, when Godolphin considered the distribution of patronage. In the middle of 1702, Lord Blantyre observed that "Sunderland is now verie well with Godolphin."[1] Blantyre's observation was confirmed by Henry St.John. In July he reported to William Trumbull that "trimming goes on at a great rate" at Court and that Sunderland aimed at entering the ministry[2]. Sunderland's ambition was not realised. However, when the Junto lords pressed the Queen to give them a seat in the Cabinet Council, they recommended the third Earl of Sunderland as the secretary of state.[3] However, after his appointment as secretary, Sunderland became a troublemaker rather than an ally. As we consider in chapter seven, Sunderland rebelled against the the ministry at the election of the Scottish

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1. SRO, GD 406/1/4841: [Blantyre] to [Duke of Hamilton], [May-June 1702].

2. Berkshire R.O. Trumbull (Additional) MSS. 133/5: H. St John to [W.Trumbull], 3 July 1702.

3. BL, Add. MSS. 61443, f.13: [Sunderland] to Duchess of Marlborough, 17 Sep.1706.

representative peers in 1708, and in the 1708/9 session, he demanded that the Duke of Montrose should be awarded the secretary of state for the Scottish affairs.

After the Queen's accession, the Duke of Marlborough was careful in settling his daughters' marriages. His grace declined such influential peers' proposals as the Dukes of Atholl and Somerset, and both Elizabeth and Mary got married to Court Whigs of little political significance.[1] As to the Earl of Bridgewater (Elizabeth's husband), his Whiggism was so moderate that he voted for the second occasional conformity bill in 1703. Godolphin awarded him the office of Gentleman of the Bedchamber to Prince George in 1703. However, it seems that his mild Whiggism became troublesome for Godolphin and Marlborough, who gradually depended on the Whigs. Thus Bridgewater's further promotion was delayed. When the Earl of Jersey was dismissed as Lord Chamberlain in April 1704, Bridgewater wanted this post, but Godolphin did not grant his request.[2] It appears that Bridgewater decided to behave himself as an active Whig after the

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1. Atholl hoped to marry his son John Murray (styled the Earl of Tullibardine) to Mary Churchill. Somerset proposed that his son Algernon Seymour (styled the Earl of Hertford) would marry Mary. Chronicles of the Atholl and Tullibardine Families, ed. by seventh Duke of Atholl, II, (Edinburgh, 1908), 9: Atholl to Marlborough, 26 June 1703; M-G Corr. I, 131: Godolphin to Countess of Marlborough, 17 Oct. 1702; Ibid., I, 206: Marlborough to Duchess of Marlborough, 14 June 1703.

2. M-G Corr., I, 284: Godolphin to Duchess, 24 Apr.1704.

1704/5 session. In August 1705, he told Marlborough that "I have for a good while been under the Dutchess of Marlborough's displeasure...but her Grace having given me of late an opportunity of justifying myself. I hope there will be no further misunderstanding between us."[1] Bridgewater was promoted to the Mastership of the Horse to the Prince in July 1705, and the division lists show that he voted for the ministry until the dismissal of the Lord Treasurer.[2]

Marlborough's youngest daughter, Mary Churchill married John Montagu (courtesy title Viscount Monthermer) who was a son of the first Earl and Duke of Montagu, and who succeeded his father in 1709. For Godolphin's management of the House of Lords, the first Duke and his son were of more importance than the Earl of Bridgewater, because the first and second Dukes of Montagu were relatives of the Earl of Manchester (Charles Montagu) and Lord Halifax (Charles Montagu). The first Earl of Montagu was allowed to keep the Mastership of the Great Wardrobe valued at £2,000 and promoted to a dukedom in 1705. The Court promised Viscount Monthermer that he would have the Earl's post after his death, and this favour was

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1. BL, Add. MSS. 61364, f.70: Bridgewater to [Marlborough], 16 Aug.1705.

2. For example, see C.Jones, "Godolphin, the Whig Junto and the Scots: a new Lords' division list from 1709", Scottish Historical Review, LVIII, (1979), 173.

regarded as a 'part of Lady Mary Churchill's portion'.[1] Although the first Earl, who pressed the ministry for his son's patronage, sometimes perplexed Godolphin and Marlborough, he and his son were constant supporters of the ministry.[2] In 1714, Lord Cowper observed that it was the first Duke of Montagu who reconciled Godolphin and Marlborough to the Whig lords, after the Court faced obstinate opposition from the Tories in the early years of the Godolphin ministry. Cowper wrote to George I that "The two mentioned ministers [Godolphin and Marlborough] finding themselves under this difficulty [i.e. carrying the war], by the intervention of the late Duke of Montague, applied to some of the principal lords who had been in business under the late king, and were of the Whig party".[3]

Godolphin thought much of other Montagus. The Earl of Manchester kept the office of Lord Lieutenant of

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1. Second Duke of Montagu "He has a great estate, and is master of the grand wardrobe, part of my daughter's portion, which I got him for life." Private Correspondence of Sarah Duchess of Marlborough , II, 196: a memoir of the Duchess.

2. BL, Add. MSS. 61450, f.190: Duke of Montagu to [Duchess of Marlborough], [Aug.1707]; HMC, Buccleuch and Queensberry MSS. I, (Montagu Papers), 356: Duchess of Marlborough to [Duke of Montagu], "Wednesday" [20? Aug.1707]; Ibid., I, 356: Duke of Marlborough to [Duke of Montagu], 12 Feb.1707.

3. Lord Cowper, "An Impartial History of Parties", in Lord Campbell, The Lives of the Lord Chancellors and Keepers of the Great Seal of England, second series, IV, (Philadelphia, 1848), 349.

Huntingdonshire, though he was dismissed from the secretary-ship of state after the Queen's accession. He was the ambassador extraordinary to Venice from 1707-1708, and the ministry gave him £1,000 in August 1709. Lord Halifax was one of the Montagus. The Court well-treated him in the early years of the Godolphin ministry. Robert Harley revealed that the Earl of Stamford eagerly recommended himself for a mission to Hanover in 1706, but the Court chose Halifax.[1] However, after the Earl of Sunderland entered the Cabinet Council and the Junto lords held power at Court, it appears that Godolphin treated Halifax coldly and alienated him from other Junto members, which must have weakened their unity. Since 1707 Halifax had often asked Godolphin and Marlborough to allow him to take part in the peace conference at The Hague, but the duumvirs did not grant his request.[2] They appointed Viscount Townshend as a plenipotentiary to Halifax's chagrin. He naturally join Harley's schemes to overturn the Godolphin ministry. In July 1710, it was not Godolphin, but the Duke of Shrewsbury (and Robert Harley behind the scenes) who promoted Halifax's

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1. BL, Loan 29/237, f.130: Harley to Newcastle, 15 June 1706.

2. BL, Add. MSS. 61458, f.174: Halifax to [Duchess of Marlborough], 28 March 1707; M-G Corr., II, 741: Godolphin to Marlborough, 28 March 1707; BL, Add. MSS. 61134, f.193: Halifax to Marlborough, 24 Apr.[1709]. M-G Corr., III, 1249: Godolphin to Marlborough, 6 May 1709.

appoint-ment as a plenipotentiary.[1]

In the years of the Godolphin ministry, there were such blood royals in the House of Lords as the Dukes of Grafton, Northumberland, Southampton (and Cleveland from 1709), Richmond and St Albans. Except for Northumberland, they were Court Whigs. Godolphin controlled their behaviour in the House through patronage. Grafton and Southampton received pensions. Richmond was awarded the Queen's bounty valued at £1,000 in June 1704. St Albans, who was regarded as a 'poor lord', had the offices of Master Falconer and Captain of the Band of Pensioners.[2] In the 1702/3 and 1703/4 sessions, when the High Tories held a majority in the Cabinet and Godolphin's political attitude was ambiguous, these blood royals often voted for the Tories. But they had become amenable supporters of the ministry following the 1704/5 session. However, their importance for Godolphin obviously declined, as he depended upon the Whigs, especially Junto peers. The Duke of Richmond coveted the Treasurership of the Household in October 1708, but Godolphin promoted the Earl of Cholmondeley to it from the Comtrollership of the Household.[3] According to a document of the pensions and

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1. M-G Corr., III, 1553: Godolphin to Marlborough, 3 July, 1710.

2. C.Jones, "The Scheme Lords", in Party and Management, 128-29.

3. M-G Corr., II, 1124: note 6.

annuities among the Walpole papers, Grafton's pension amounted to £2,000 from August 1707 to August 1708. But the payment of his pension was stopped after August 1709.[1] The Duke of Northumberland, though a Tory, was trusted by the Lord Treasurer. He had had a royal regiment of horse guards since 1703. At the close of the Godolphin ministry, very few Tories could get patronage from him. However, Northumberland had a pension in 1710. It was obvious that Godolphin and Marlborough expected that Northumberland would support the Queen and ministry as a royal blood. Nevertheless his Toryism naturally made him vote for Dr Sacheverell's innocence at the verdict on 20 March 1710. Four days after this sentence, Marlborough told Godolphin that he could not understand how Northumberland was "influenced to be for Sacheverall."[2]

We have already seen that some Court Whig lords remained in their offices after the Queen's accession. However, most of the offices, which they kept, belonged to the household of the Queen and Prince George. Active Whig peers, who held national or local offices, were ready to resign. The Earl of Carlisle, an associate of the Junto, criticised the Queen's first speech in the

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1. CUL, Cholmondeley Houghton MSS. Paper 53, item 11: "the Committee of Secrecy, An Account of all Sums of Money paid for Pensions or Annuities by Grants or Warrants from the Crown from the 1st of August 1707 to the 1st of 1720". According to Calendar of Treasury Books, Grafton's pension was reduced but not stopped.

2. M-G Corr., III 1445: Marlborough to Duchess, 24 March 1710.

parliament, and quitted as first Lord of Treasury. The Earl of Stamford resigned the Chancellorship of the duchy of Lancaster, though the Queen persuaded him to change his mind.[1] However, Godolphin and Marlborough did not give up promoting some Court Whig peers, but in the early days of the Godolphin ministry, those who got patronage from the Court, were normally limited to the peers whose Whiggism was very mild. The Earl of Westmorland was a good example. He was unmistakably one of the 'poor lords'. In his autobiography, he explained his financial situation as follows: "the whole Money I received Whilst abroad from the King[William]s Orders from my lord Marlborough's & My Mother...did not exceed three hundred Pounds per Ann...the reasons [why I stayed overseas so long] from a hopes [sic] that not being assisted from home, the Court would do more for me, but it was sad Polliticks."[2] Godolphin and Marlborough fully understood that Westmorland's behaviour in the Lords could be controlled by patronage, after he came back to England. In July 1702, Marlborough told the Treasurer that Westmorland's pension had been in arrears, and he was "consequently soe much in dept [debt] att The Hague."[3] Godolphin renewed Westmorland's pension

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1. BL, Loan 29/358: a newsletter on 14 March 1702.

2. BL, Add. MSS. 34223, f.12: "Thomas Fane Earl of Westmorland's autobiography" This passage is not printed in HMC, Westmorland MSS.

3. M-G Corr., I, 82-83: Marlborough to Godolphin, 6 July 1702.

valued at £300 a year, and he was appointed as a gentleman of the Bedchamber to Prince George in April 1704, and as Lieutenant of Dover Castle and Deputy Warden of the Cinque Ports in 1705. Westmorland was an obedient follower of the Prince until the Prince died in 1708.[1]

After the 1702/3 session in April 1703, the Lord Treasurer made some alterations at Court. Godolphin was normally beneficent only to the Whig peers whose Whiggism was mild. The Earls of Bridgewater and Warrington were added to the gentlemen of the Bedchamber to the Prince. Bridgewater's moderation has already been considered. Warrington had a sensitive mind to the attitude of the Court.[2] He supported the first occasional conformity bill in the 1702/3 session, when Godolphin himself voted for the bill. But in the 1704/5 session, Earl Rivers was given Warrington's proxy, which was undoubtedly added to the Whig votes.[3]

However, active Whig peers could have little hope of being employed by the ministry until the end of the 1704/5 session. Some Court Whig peers regarded the fall

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1. HMC, Westmorland MSS. 49-50: Westmorland's autobiography.

2. For Warrington, see J.V.Beckett and C.Jones, "Financial Improvidence and Political Independence in the Early Eighteenth Century: George Booth, 2nd Earl of Warrington", Bulletin of the John Rylands Library, LXV, (1982), 8-35.

3. HLRO, Proxy Books, VII. (unfoliated)

of the High Tories in April 1704 as a chance to have places. Lord Herbert of Cherbury pressed the Lord Treasurer for patronage. On 15 April, Herbert asked the Treasurer to pay his arrears, but Godolphin did not grant his request. On 21 April, Herbert coveted the Comptrollership of the Household in the room of Sir Edward Seymour. On the following day, Godolphin promised that he would convey Herbert's hopes to the Queen, but this post was given to Sir Thomas Mansel, a Harleyite MP.[1] Apart from the Earls of Bridgewater and Westmorland, the Whig peers got little from the alteration at Court in April 1704. However, it is very remarkable that most of the Court Whig peers kept the unity of the Whigs. When the Earl of Dorset died in 1706, Sir Spencer Compton warned Dorset's son that "Your father has left such debts, legacys, and annuities, besides the joynture, that what remains will be much less, I believe, than what you imagine."[2] Lord Lucas lost the profitable office of the Constable of the Tower at the accession of the Queen, but he could keep a regiment from which he received only £200. But the Duke of Newcastle knew that Lucas's income from this regiment "was the best part of his Substance" and that he had to

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1. Herbert Correspondence, 24: Herbert to Godolphin, 15 Apr.1704; Ibid., 25: Godolphin to Herbert, "Easter Day" 1704; Ibid., 26: Herbert to Godolphin, 21 Apr. 1704; Ibid., 26-27: Godolphin to Herbert, 22 Apr. 1704.

2. HMC. Stopford-Sackville MSS. I, 33: S.Compton to Lionel 7th Earl of Dorset, 1 March 1706.

"be content to live upon it".[1] It was said that Lord Mohun's "wants very often led him into bad [sic]; so that he became one of the arrantest Rakes in Town."[2] However, Dorset, Lucas and Mohun did not detach themselves from the Whigs in the early years of the Godolphin ministry.

The 1704/5 session was a turning point in Godolphin's patronage management. In July 1705, Lord Halifax observed that "we are well used" and "expect all caresses and courtship" from the ministry.[3] The Earl of Abingdon was dismissed from the post of Constable of the Tower, and it was given to the Earl of Essex, a favourite army officer of the Marlboroughs. In May 1705, the Duchess of Marlborough told the Duke of Montagu that "My Lord Essex being my neighbour, and having very little to do ...[his uneasiness] would be something mended by being Governor of the Tower...my Lord Abingdon, who will never make a campaign but for Jacobit[e] Elections."[4] The Court Whig peers also obtained some local offices. The Court gave Earl Rivers and Lord Rockingham Lord Lieutenancies of Essex and Kent respectively. In 1706, more Whig peers

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1. [J.Le Neve], The Lives and Characters...in the Year 1711, 431.

2. "Characters of the Court of Great Britain" in John Macky's Memoirs, 93.

3. W.Coxe, Shrewsbury Correspondence, 652-53: Halifax to Shrewsbury, 24 July 1705.

4. HMC, Buccleuch and Queensberry MSS. I, (Montagu Papers), 354: Duchess of Marlborough to [Duke of Montagu], 21 May [1705].

enjoyed patronage. The Earl of Bindon was appointed as the Deputy Earl Marshal, and the Earl of Derby was given the Chancellorship of the duchy of Lancaster.

As more and more Whig peers obtained posts, an important problem for Godolphin was whom he should give priority to among the Whig lords and Courtiers. Godolphin and Marlborough naturally gave priority to those who were influential in the Lords House. The ministry promoted the Earl of Kent to a marquessate in 1706. Seeing the Marquess of Montrose and the Earl of Roxburghe had gained dukedoms, Kent desired to be a Duke. But the ministry delayed his promotion.[1] In August 1707, the duumvirs refused to award a Garter to Kent. Marlborough told the Duchess that "Kent pressing for the blew ribon, it would be scandelous to give it him, since he has no one quallity that deserves itt."[2] In November 1707, contemporaries thought that the Earl of Manchester would be appointed as the Captain of the Yeoman of the Guard, but Godolphin gave this post to Viscount Townshend.[3]

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1. Berkshire R.O. Trumbull (Additional) MSS. 136/2: R. Bridges to W.Trumbull, 30 May 1707. Bridges wrote that "They say there has been a falling out betwixt my L[or]d T[reasure]r & M[arquess] of Kent about ye two Scotch Dukes that were created before ye first of May, w[hi]ch was done contrary to a promise made by ye T[reasure]r."

2. M-G Corr. II, 895: Marlborough to Duchess, 28 Aug. 1707.

3. HMC, Townshend MSS. 333: Godolphin to Townshend, 6 Nov.1707; HMC, Manchester MSS. 92: E[rasmus] L[ewis] to [C.Cole?], endorsed 11 Nov.1707; M-G Corr., II, 887: Godolphin to Marlborough, 19 Aug.1707.

It was remarkable that the Duke of Somerset was the Treasurer's advisor about the patronage distribution. Geoffrey Holmes has pointed out that "although contemporaries perpetually ridiculed him [Somerset] in private, or even abused him as a 'nauseous creature' and 'a mean worthless wretch', they always found it difficult to ignore him". In considering patronage, the Lord Treasurer and Marlborough never ignored this "proud duke".[1] A letter from the Duke of Marlborough to the Duchess on 10 October 1709 shows the importance of Somerset for the Duumvirs' management of the House of Lords. Marlborough said that

> Somerset is very unreasonable in anything that concerns himself, but if Somers and Sunderland can have the power with him to make his mob as you call them, to act with their friends, it would very much help the carrying everything in the House of Lords.[2]

It is obvious that the Duke of Somerset's "mob" in the Lords implied the Court Whig peers who followed his grace. Some evidence confirms that Somerset had considerable influence over the Court Whigs, and that Somerset took part in Godolphin's patronage management. It is also possible to identify some of Somerset's allies, whose

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1. G.Holmes, British Politics, 226.

2. M-G Corr., III, 1396-97: Marlborough to Duchess, 10 Oct.1709.

roles might have been similar to the "Lord Treasurer's Whigs" in the Commons.

In the early period of his ministry, Godolphin had already thought much of Somerset. In October 1703, the Treasurer told the Duke that all the Court supporters "ought to meet with a suitable encouragement", and asked Somerset to recommend persons to be promoted.[1] Lord Ossulston's diary makes it clear that Somerset conferred with some Whig peers and MPs before or after important proceedings in parliament. On 5 February 1706, when the Lords and the Commons hotly discussed the "whimsical clause" in the Regency bill, Ossulston dined with Somerset. Three days later, Ossulston found that the Duke talked with the Earls of Essex and Rivers, the Marquess of Winchester (MP and heir of the Duke of Bolton) and John Guise, MP. On 12 February, Ossulston dined with Somerset, the Earls of Bridgewater, Essex and Rivers, Viscount Woodstock (MP and heir of the Earl of Portland) and John Guise.[2] Official and private records of the proxies show that Somerset kept one or two proxies from Court Whigs in almost all sessions. For instance, in the 1703/4 session, his grace had the proxies of the Earls of Coventry and Suffolk. In the following session, these two Earls entrusted their proxies with the Duke again. In

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1. Alnwick Castle MSS. XXI (micro. in BL), f.203: Godolphin to [Somerset], 21 Oct.1703.

2. PRO C104/116: Lord Ossulston's diary.

the 1705/6 session, the Earls of Berkeley and Coventry sent their proxies to Somerset. In the 1706/7 session, Somerset received the Earl of Bindon's proxy.[1]

Since 1706, Somerset's participation in the patronage distribution had been conspicuous. In July 1706, Godolphin wrote to Marlborough that "The Duke of Somersett has been extreamly pressing with the Queen to give my Lord Walden [courtesy title; created Earl of Bindon in 1706, and succeeded the Earl of Suffolk in 1709] leave to sell his place of Comissary Generall of the Musters."[2] On 10 October 1709, Marlborough told the Duchess that "It is very true that Somerset did write to me, to desire...that I would give Mr.Lumley [son and, from 1710, heir of the Earl of Scarborough] a troop of horse." However, Godolphin and Marlborough did not grant Somerset's request.[3] In the same month Arthur Mainwaring told the Duchess of Marlborough that "I had the honour to see L[or]d Treas[urer] today...he spoke to me of Somerset's design to gett Rivers a pension:...I thought it a most monstrous thing...when he [Godolphin] was ask'd why he made so extravagant a wish, he said, unless he were that, it was impossible for him to please every body."[4]

1. BL, Add. MSS. 61495, f.21: Lord Sunderland's proxy record for the 1703/4 session; HLRO, Proxy Books VII.

2. M-G Corr., II, 619: Godolphin to Marlborough, 9 July 1706.

3. Ibid., III, 1397: Marlborough to Duchess, 10 Oct.1709.

4. BL, Add. MSS. 61460, ff.83-84: [A.Mainwaring] to Duchess, "Thursday afternoon" [13? Oct.1709].

The "proud duke" was naturally offended with the Lord Treasurer. It might not have been accidental that Scarborough voted Dr Sacheverell not guilty on 20 March 1710, and Rivers supported the doctor's light sentence on the following day. Somerset himself chose to take the waters at Epsom on the 20th, and sided with the Tories on the 21st.[1] Alienation of Somerset from the ministry was fatal to Godolphin's management of the House of Lords.

Although the Duke of Somerset had some followers in the Lords, it does not imply that all the Court peers had patrons. For example, the Earl of Westmorland became an isolated figure at Court after Prince George died in 1708. As the Godolphin ministry gradually depended upon the Whigs, the political importance of the Court peers with no patrons obviously declined. In his autobiography, Westmorland recorded that after Prince George died, there were many candidates for the Wardenship of the Cinque Ports which the Prince had had, and

> at last the Earle of Dorsett just then allmost come from his travels was appointed & as I was afterwards informed by the recommendation of the dutchess of Marlborough...I would not do it [Deputy Warden of the Cinque Ports] under the Earle of Dorsett or anyone else, however, the Queen nominally continued our salliryes to all of us as servants to the Prince to

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1. G.Holmes, Sacheverell Trial, 226.

the time of her Death. I call it nominally because it was not pay'd to some of us particularly myself & such as would not vote in Parl[iamen]t.[1]

Lord Raby was also a Court peer who had no patrons. His independent position at Court was advantageous in the early years of the Godolphin ministry. Raby held a regiment of dragoons, and he was promoted to Brigadier-General in 1703, and Major-General in 1704. He was appointed as the envoy extraordinary to Berlin in 1703, and promoted to ambassador in 1705. However, Godolphin and Marlborough delayed Raby's further promotion, although he repeatedly coveted patronage. In the spring of 1707, Raby pressed the duumvirs for his promotion to an earldom, but Marlborough told the Treasurer that "Lord Raby the great desire he has of being an Earle. I wish for his own sake his estate were 4,000 pounds a yeare." The duumvirs did not grant Raby's request.[2] Rebuffed by the cold attitude of the Court to him, Raby seems to have started to contact Harley in 1708. In July 1708, Marlborough reported to the Duchess that "Raby is in friendship with Harley and all that cabal, so that I hope Godolphin will give him as little countenance as poss-

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1. BL, Add. MSS. 34223, f.19: Westmorland's autobiography. This passage is not printed in HMC, Westmorland MSS.

2. M-G Corr., II, 769-70: Marlborough to Godolphin, 4 May 1707.

ible."[1] Lord Raby also longed for a seat in the Privy Council. However, Godolphin and Marlborough had no intention to bestow any more patronage upon him. The Duke wrote to the Treasurer that "I am told that Raby presses to be sworn of the [Privy] Councell. I should think considering his temper, that reward would be more seasonable when he has finished his foraigne business, for he is of so craving a natur, that at his return he will be angry if something else be not done for him."[2]

Raby's correspondence with his brother, Peter Wentworth, in early 1709 depicts the 'office hunting' of the Court peers. When George Stepney died in September 1707, his office, a Lordship of Trade and Plantations, became vacant. Raby was anxious for this post.[3] However, to Raby's chagrin, the Treasurer gave it to Sir Charles Turner, a Whig MP. As Raby was overseas, Wentworth acted as Raby's agent in London, and looked out for his employment. In January 1709 Lord Herbert of Cherbury, another Lord of Trade and Plantation died. Many, including Raby, coveted this office. The Treasurer told Marlborough that "I could send you a list, I dare say of about 50 people that have asked for the vacancey in the Counsell of Trade

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1. M-G Corr., II, 1048-49: Marlborough to Duchess, 22 July 1708.

2. Ibid., II, 1017-18: Marlborough to Godolphin, 21 June 1708.

3. BL, Add. MSS. 31143, f.274: P.Wentworth to Godolphin (copy), Jan.1709.

by my Lord Herbert's death. But it is impossible to dispose of that till after the end of the session without disobliging 49 of that list."[1] Peter Wentworth fully realised that there were a lot of rivals. Wentworth reported that "Lord Delawar I know ask't for't, and my Lord [Howard of] Effingham trusted me with the secret that he intended to ask, and told me that last week he had spoke to Lord T[reasurer] in general to do something for him, who had promised him to take care of him." Although Wentworth was surprised at Howard's intimacy with Godolphin, Wentworth knew that his real rivals were not Court peers, but influential MPs. Thus, Wentworth was despondent at a rumour that John Dolben, one of the "Lord Treasurer's Whigs" would have this post.[2] However, Wentworth wrote to the Treasurer in early January: "I presume the early application I now make for him [Raby] may not be thought improper, since by the sudden Death of the Lord Herbert, my brother's request cou'd no other ways have been so timely renew'd to your Lordship. I know my Brother reckon's he has no Patrons at Court but your L[or]ds[hi]p & the Duke of Marlborough w[hi]ch makes him intirely in your Interests, and he's engaged with no

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1. M-G Corr. III, 1212: Godolphin to Marlborough, 30 Jan. 1709.

2. Wentworth Papers, 73: P.Wentworth to Raby, 25 Jan. 1709.

Party."[1] Of course, Wentworth was not optimistic about his brother's employment. At the end of January, Wentworth tried to talk with the Lord Treasurer. But the result was disappointing. On 28 January, Wentworth told Raby that the Treasurer was reluctant to talk, and that "I took for such an ill omen that I thought 'twas not worth while to press thro[ugh] the crowd to have a refusal from his mouth."[2] Finally, Godolphin gave the office of Lord of Trade and Plantations to George Baillie of Jerviswood, MP and a member of the Squadrone Volante so that Godolphin could appease the 'Squadrone' peers who had rebelled against the ministry.

Godolphin's patronage management of the bishops' bench

When the Queen came to the throne, and Godolphin took the helm of state affairs, the Treasurer was on good terms with the bishops. Although it was well-known that the Queen was pro-Tory, Bishop Moore of Norwich, a Whig, expected that the Queen and the ministry would promote the interests of the Church. In June 1702, the Bishop told Sir C.Calthorpe that "the Queen is truly zealous for the Church of England...it's hoped there are many great ministers in her interest that may in due time assist her in giveing ease to those that suffer for

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1. BL, Add. MSS. 31143, f.274: P.Wentworth to Godolphin (copy), Jan.1709.

2. Wentworth Papers, 74: P.Wentworth to Raby, 28 Jan. 1709.

conscience sake & for the true interest of the royal family and the rights of hereditary monarchy."[1] However, it did not take a long time before the Whig bishops started to be against the ministry. G.V.Bennett points out that the "Whig Latitudinarian" bishops had dissented from the Tory bishops since 1700, and the party strife worsened the animosity on the bishops' bench.[2] The Queen did not like the Low Churchmen who had been promoted by William III. As Godolphin knew that the Queen favoured the High Church clergy, the ministry naturally gave them priority about the Church patronage. As early as April 1702, Edmund Gibson was afraid that the Queen supported William Grahme's promotion to the Bishopric of Carlisle, because his brother James Grahme was a famous Tory in Westmorland.[3] The Queen remarkably told the Duchess of Marlborough that "As to my saying the Church was in some danger in the late reign, I cannot alter my opinion; for though there was no violent thing done, everybody that will speak impartially must own that everything was

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1. HMC, Le Strange MSS. 113: Bishop Moore to C.Calthorpe, 29 June 1702.

2. G.V.Bennett, "King William III and the Episcopate", in Essays in Modern English Church History in Memory of Norman Sykes, ed. by G.V.Bennett and J.D.Walsh, (1966), 130.

3. Bodl. Ballard MSS. VI, f.70: E.Gibson to A.Charlett 8 Apr.1702.

leaning towards the Whigs."[1] It is well-known that the Queen asked Archbishop Sharp of York, a Tory, "to make the bishops vote right",[2] and she entrusted Sharp, Godolphin and Robert Harley with the ecclesiastical patronage. It should be noted that Godolphin tried to minimize the influence of the Earls of Rochester and Nottingham over ecclesiastical patronage. At the same time, such a Whig as Archbishop Tenison of Canterbury had little power to appoint a bishop until early 1705.

The death of Bishop Jones of St Asaph in May 1703 caused the first confrontation between the High Tory lords and the Lord Treasurer. As Francis Atterbury feared, the Whigs possibly recommended Charles Trimnell, the Earl of Sunderland's former tutor.[3] However, the candidates whom Godolphin considered, were backed by the Tories. In a letter to the Duchess of Marlborough on 15 May, the Treasurer revealed that William Grahme, who was close to the Earl of Nottingham, recommended himself, and the Duke of Buckingham sent "a vehement application" for Knightly Chetwood, Archdeacon of York, whose appointment Marlborough also supported. However, Godolphin was not

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1. The Letters and Diplomatic Instructions of Queen Anne (1935), 99: the Queen to Duchess, 21 Nov.[1704].

2. The Life of Archbishop Sharp, I, 299.

3. Atterbury was afraid that "it is now again strongly reported that Dr Trimnell is the next man who is to sit on [the bishops' bench]", Atterbury Correspondence, IV, 357-58: to Bishop Trelawney, 4 Feb.1703.

for their promotion. He told the Duchess that "I think whoever had spoken to the Queen for either of these worthy persons would but have lost their labour, for though she did not positively say who should, she seemed very well resolved who should not have it."[1] The Queen and her three advisors about the ecclesiastical patronage were opposed to the promotion of the "Whig Latitudinarians". At the same time they did not prefer zealous High Churchmen who had caused disorder at the Convocation. Thus George Hooper, who had acted as a High Churchman, but changed sides and sided with the ministry to restore order at the Convocation, was a suitable candidate as the new bishop.[2] The Godolphin ministry welcomed this moderate bishop. Atterbury, who had been against Hooper, suspected that the Court had "a design to give him the chief hand in the administration of ecclesiastical affairs."[3] On the other hand, the High Tory peers' attitudes to Hooper varied. Buckingham recommended Chetwood, but it appears that Rochester approved of Hooper's promotion. In March, Rochester proposed that Hooper should be primate in Ireland. However, later Rochester withdrew his recommendation, because Hooper was "too

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1. M-G Corr., I, 184-85: Godolphin to Duchess, 15 May 1703.

2. For the appointment of Hooper, see G.V.Bennett, Tory Crisis, 67-71.

3. Atterbury Correspondence, III, 97: Atterbury to Bishop Trelawney, 1 June 1703.

useful a man to be parted with out of the kingdom, and his service would be absolutely requisite in our House of Lords."[1]

Consequently, Hooper did not break with the High Church interest , though he owed his appointment to the Godolphin ministry. After Bishop Kidder of Bath & Wells was killed in the storm of November 1703, the Court transferred Hooper to the wealthy see of Bath & Wells in December. Godolphin hoped to award this bishopric on condition that Hooper would support the ministry.[2] However, Hooper showed that he would not be an obedient supporter even before his translation to Bath & Wells. In late November Godolphin told Harley that he intended to have a talk with Hooper, but it would be difficult to reach an agreement about the ecclesiastical policies. The Lord Treasurer thought that if the Queen prevailed upon Hooper to side with the government, it would "have more force."[3] It is obvious that the Queen kept more influence over ecclesiastical than over civil or military patronage, and her preference for the High Church clergy often hindered Godolphin's plans to control the bishops' bench through patronage. Hooper owed his promotion to the Queen more than to the Lord Treasurer. Thus, the new Bishop of

1. Atterbury Correspondence, IV, 387-88: Atterbury to Bishop Trelawney, 4 March 1703.

2. W.Marshal, George Hooper 1640-1727, Bishop of Bath & Wells, (Sherborne, 1976), 143.

3. Bath (Longleat House) MSS. Portland miscellaneous volume, f.60: [Godolphin] to [Harley], 24 Nov.[1703].

Bath & Wells did not hesitate to vote for the second occasional conformity bill, as the Queen herself was of the opinion that "it will be better for ye service to have it [the second occasional conformity bill] pass ye House of Lords".[1]

Just as Godolphin began to award civil patronage to active Whig peers after the 1704/5 session, so this session also became a turning point in his Church patronage. In this session, the House of Lords approved of Archbishop Tenison's power to dismiss Bishop Watson of St David's. The Archbishop succeeded in appointing George Bull, a Whig as *the* new bishop. White Kennett reported to Samuel Blackwell that "By the interest of" Tenison, " her Majesty has nominated Dr Bull to the See of St Davids."[2] After the news of the death of Bishop Gardiner of Lincoln was reported in early March 1705, the appointment of a new bishop caused a serious collision between the Queen and her advisors, and the Whigs over ecclesiastical patronage. Archbishop Tenison's action was quick. In early March, the Treasurer told Harley that "the Queen does not yett seem to have anyone in her thoughts for it. The Archb[ishop] of Canterbury is very desirous to have the Dean of Lincoln [Richard Willis] & says the

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1. BL, Althorp (Spencer) MSS. Marlborough Papers, D13 (provisional classification): [the Queen] to [Duchess of Marlborough], "fryday morning" [10 Dec. 1703].

2. BL, Lansdowne MSS. 1013, f.75: W.Kennett to S. Blackwell, 3 Feb.1705.

diocese is so large & so dispersed that nobody but a young & a laboring man is capable of performing the duty of it."[1] It seems that Tenison soon changed his candidate from Willis to William Wake, and as early as 14 March the Archbishop wrote to Wake that "Yr Friends hope that you will lett them know by me w[it]h playnness & without loss of times, whether you would accept of ye Bishopric of Lincoln."[2] Ten days later, Edmund Gibson reported to Arthur Charlett that Wake's promotion was an established fact, and the problem was that Francis Atterbury, backed by Harley, pressed the ministry for the Dean of Exeter to be Wake's successor.[3] Contrary to the expectation of Tenison and Gibson, Wake's consecration was delayed. It was not until late July that the Lord Treasurer persuaded the Queen to sign Wake's congé d'élire. In this dispute, the Lord Treasurer apparently sided with the Whigs. Although Archbishop Sharp recommended Sir William Dawes, Godolphin was 'exceedingly firm' in the appointment of a Whig clergyman.[4]

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1. Bath (Longleat House) MSS. Portland miscellaneous volume, f.215: [Godolphin] to [Harley], "Thursday night at 11", [8? March 1705].

2. Christ Church, Oxford, Wake MSS. I, f.1: [Tenison] to [W.Wake], 14 March 1705.

3. Bodl. Ballard MSS. VI, ff.99-100: E.Gibson to A. Charlett, 24 March 1705.

4. N.Sykes, William Wake, Archbishop of Canterbury 1657-1737, (Cambridge, 1957), 158-59; E.Gregg, Queen Anne, 200.

The well-known "bishoprics crisis" from the end of 1706 to 1707 has been fully analysed by G.V.Bennett and Edward Gregg.[1] Thus we will only consider some points which are related to Godolphin's patronage management of the bishops. No sooner had Bishop Mews of Winchester died on 9 November 1706, than the Whigs solicited the Treasurer for this vacant see. On 9 November, Godolphin told the Duchess of Marlborough that "The Bishop of Winchester is dead. I have had a notice of it from the Archbishop of Canterbury, and the enclosed letter from the Bishop of Salisbury."[2] Lord Dartmouth confirmed that Bishop Burnet had longed for this post, but at the same time Dartmouth expected that Dr Henry Godolphin, the Lord Treasurer's brother would succeed.[3] However, Godolphin fully understood that Sir Jonathan Trelawney, Bishop of Exeter, who had co-operated with the ministry at the elections in the South-West, would "never forgive" the Treasurer, "if anybody has it but himself."[4] In December, Godolphin secretly let Trelawney have an audience with the Queen, and she promised him promotion. Trelawney's behaviour in the 1706/7 session was very amenable to the ministry. Bishop Evans of Bangor, a Whig, observed that the reasons why

1. G.V.Bennett, "Robert Harley, the Godolphin Ministry and the Bishoprics Crisis of 1707", English Historical Review, LXXXII, (1967), 726-46; E.Gregg, Queen Anne, 238-56.

2. M-G Corr., II, 733: Godolphin to Duchess, 9 Nov.1706.

3. Burnet's History, V, 337, Dartmouth's note.

4. M-G Corr., II, 733: Godolphin to Duchess, 9 Nov.1706.

"the knight from Exeter turned on our side, were assumed to be closely tied up with his hopes of translation to the wealthy see of Winchester."[1] But the Whigs, who heard of this secret audience, were enraged by Godolphin and Trelawney. The Whigs obliged Godolphin to make a promise that "for the future, preferments should be bestowed on men well principled with relation to the present constitution."[2] But it was obvious that the Whigs were not satisfied with this promise, and tried to withdraw the Queen's nomination of Trelawney. On 21 April 1707, Ralph Bridges told William Trumbull that "I hear ye Bishop of Exeter has preacht a sermon at Court lately, which has given offence to several great men. I hope he won't lose his Bishoprick of Winton by it."[3] However, the Lord Treasurer finally brought about Trelawney's transfer to Winchester.

In the "Bishoprics crisis" in 1706-1707, the results disappointed the Whigs. They were only able to appoint Charles Trimnell as the Bishop of Norwich, after Bishop Moore was removed to Ely. On the other hand, the Tories got the sees of Chester (William Dawes), Exeter

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1. Nicolson Diary, 393, note 24.

2. Burnet's History, V, 337.

3. Berkshire R.O. Trumbull (Additional) MSS. 136/2: R. Bridges to W.Trumbull, 21 Apr.1707. Atterbury wrote to Bishop Trelawney that "The Whigs say that some passages in your Lordship's Sermon, wherein you described the vices of the times, were aimed against the Duke of Marlborough." Atterbury Correspondence, III, 275: 7 Apr.1707.

(Offspring Blackall) and Winchester (Trelawney). This preference for the High Church clergymen has been regarded as a part of Harley's 'moderation scheme', in which Harley planned to promote the Tory interest and sweep away the followers of the Junto lords from the Court. It is also known that the Queen hindered the Lord Treasurer's policy about Church patronage which favoured the Whigs. In June 1707, Godolphin told Marlborough that "the Queen has indulged his [sic] own inclination in the choyce of some persons to succeed the Bishops and which give the greatest offence to the Whigs...the Queen has gone so farr in this matter (even against his [Godolphin's] warning) as really to bee no more able, than willing to retract this wrong stepp."[1] Then how did the Lord Treasurer save this difficult situation?

It has been commonly believed that the Whigs recommended Samuel Freeman as the new Bishop of Chester, and Charles Trimnell for Exeter, before they knew of the death of Bishop Patrick of Ely in late May. After another vacancy was created at Ely, the attitude of the moderate Whigs was not so stiff as before. They groped for the means to be reconciled with the ministry. At the end of June, White Kennett dined with Bishop Trelawney. The Bishop told Kennett that the Whigs were satisfied with a compromise plan that Sir William Dawes would be

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1. M-G Corr., II, 833-34: Godolphin to Marlborough, 27 June 1707.

the Bishop of Chester, and that George Stanhope (Dean of Canterbury, a Whig) would be the Bishop of Norwich after Bishop Moore's translation to the see of Ely.[1] On 29 August, Edmund Gibson told Bishop Wake that "Our opinion about ye Bishoprics, is that Exeter and Chester will goe to Dr Blackal[l] and S[i]r W[illia]m [Dawes] and Norwich to Dr Trimnel[l]: 'tis certain ye two first have been in the Closet; and contending how long that was made a secret."[2] Even Lord Halifax was of the opinion that considerable concessions to the Tories would be inevitable. On 17 July, he wrote to the Earl of Manchester that "Our friends are under some present discontent on the report of Dr Blackhall and Sir William Dawes being designed to be Bishops, but I pray that matter will be compounded, Blackhall will be made Bishop of Exeter, but Dawes will not be Bishop of Chester, and Dr Trimnell will be Bishop of Norwich."[3] It was obvious that the Junto peers did not have control to fulfil their demand about the ecclesiastical patronage. Edmund Gibson observed that "The Lords Sunderland, Halifax, and (I think) Orford have been lately at Althorp, to fix measures for ye approaching Parliament...but as for ye Whig-Commons, they are

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1. Bodl. Ballard MSS. VII, f.117: W.Kennett to A.Charlett 30 June 1707.

2. Christ Church, Oxford, Wake MSS. XVII, f.174: [E.Gibson] to [W.Wake], 29 Aug.1707.

3. The Duke of Manchester, Court and Society from Elizabeth to Anne, II, (1864), 232: Halifax to Manchester, 17 July 1707.

shy...they are out of humor, and will have noe dealings with ym [the Junto peers] till they have good assurances that the services shall be better remember'd, than they have been."[1] Some moderate Whig lords were also critical of the Junto's leadership and Godolphin's dependence upon them. In September, the Duke of Newcastle thought that the Lord Treasurer "was in love with almost all that society [the Junto] if not with every individual person of them."[2]

Seeing this disunity in the Whigs, Godolphin and Marlborough were able to separate some moderate Whig lords from others, and the duumvirs could negotiate with the former. Lord Chancellor Cowper was one of the most suitable peers with whom the duumvirs conferred about the Church patronage. As early as July, Cowper started to talk with Marlborough about the appointments to the vacant bishoprics. Cowper warned Marlborough that the promotions of the Tory clergymen would produce a bad effect not only on the House of Lords but also on the elections.[3] On 8 August, Marlborough told Cowper that "As to what you are pleased to mention of the ecclesiastical

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1. Christ Church, Oxford, Wake MSS. XVII, f.174: [E.Gibson] to [W.Wake], 29 Aug.1707.

2. HMC, Portland MSS. IV, 448: [Newcastle], to [Harley], 17 Sep.1707.

3. Hertfordshire R.O. Panshanger MSS. D/EP F63, f.19: [Cowper] to [Marlborough] (copy), July 1707.

preferments...I must own I am entirely of opinion with you, and am persuaded the Queen has so just a sense of your Lordship's zeal and integrity."[1] In early September, Godolphin had a series of talks. Although Cowper demanded that at least two Whig divines, Trimnell and Richard Willis, should be appointed, Lord Chancellor had no intention of breaking with the ministry. He understood that it was "The Queen's inclination" to the Tories which had prevented the promotions of the Whigs. But at the same time, Cowper was apprehensive that because of the refusal of preferment to the Whigs, criticism would "be laid on the Min[istry] not the Queen." Thus, the Treasurer and Cowper decided to consider the "heads for the Queen's speech" together so that these 'heads' could be "the best ground to speak to the Queen."[2] After Godolphin took the advice of such moderate peers as Lord Cowper, the Treasurer changed his attitude to the Queen about the bishops' promotions. Godolphin did not persuade her to appoint more Whig divines, but accepted her promise to the Tory clergymen. But at the same time he tried to ensure that the Queen, who was unquestionably backed by Harley, would not meddle with the ecclesiastical

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1. Marlborough Dispatches, III, 508: Marlborough to Cowper, 8 Aug.1707.

2. H.L.Snyder, "The Formulation of Foreign and Domestic Policy in the Reign of Queen Anne: Memoranda by Lord Chancellor Cowper of Conversation with Lord Treasurer Godolphin", Historical Journal, XI, (1968), 157-58 and 160.

patronage. On 7 October, the Treasurer told Marlborough that "The misfortune is that the Queen happens to bee intangled in a promise that is extreamly inconvenient, and upon which so much weight is layd."[1] On the other hand Godolphin successfully convinced such influential peers as the Dukes of Devonshire and Somerset that the Queen "was very sensible of the services the whigs did her; and though she had engaged herself so far with relation to those two bishoprics [Chester and Exeter], that she could not recall the promises she had made, yet for the future she was resolved to give them full content."[2]

After Bishop Williams of Chichester died on 24 April 1709, the appointment of the new bishop once again caused a collision between the Queen and the Whigs. In this dispute, the Queen did not have such an ally at Court as Harley. Thus, it should have been easy for the Treasurer to persuade her to promote a Whig clergyman. Nevertheless the appointment of the new bishop was delayed. It was on 13 November, two days before the opening of the parliament, that Thomas Manningham, a moderate Whig divine, was consecrated. On 7 May Edmund Gibson told Bishop Wake that the ministry delayed the decision, and "ye second part of Exeter and Chester is going on."[3]

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1. M-G Corr., II, 932: Godolphin to Marlborough, 7 Oct. 1707.

2. Burnet's History, V, 340.

3. Christ Church, Oxford, Wake MSS. XVII, f.209: E.Gibson to W.Wake, 7 May 1709.

The appointment of the Earl of Orford as the first Lord of Admiralty, which the Queen stubbornly refused, made the solution more difficult.[1]

There were some similarities between the "bishoprics crisis" in 1706 and 1707 and this dispute. In both cases, some moderate Whig peers played an important role. On 7 May, Gibson observed that "The Duke of Somerset, Lord Chancellor & others set up our Dean [of Canterbury, George Stanhope]". However, it is remarkable that the Whigs could not recommend one specific clergyman for the new bishop. After the Whigs pressed the ministry for Stanhope's promotion, they soon found that "he was a Criple & without hopes of remedy."[2] Then the Whigs nominated Richard Willis, the Dean of Lincoln. But the Queen flatly refused him, because she believed that "ye Dean of Lincoln was not to be a man" to be entrusted with the bishopric. Seeing the Whigs humiliating themselves, the Tories expected that the Queen and the ministry would appoint a High Church clergyman. On 17 May, Gibson warned Wake that the Tories "talk with great confidence of ye Golden Days coming on."[3] From the end of May to June, it

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1. H.L.Snyder, "Queen Anne versus the Junto: The Effort to Place Orford at the Head of the Admiralty in 1709" Huntington Library Quarterly, XXXV, (1971-72), 323-42.

2. Christ Church, Oxford, Wake MSS. XVII, f.209: E.Gibson to W.Wake, 7 May 1709.

3. Christ Church, Oxford, Wake MSS. XVII, f.211: E.Gibson to [W.Wake], 17 May 1709.

was more and more realistic that the ministry would promote a Tory to the new bishop. Gibson suspected that Philip Bisse, a Tory got a promise of his preferment from the Queen.[1] To encounter Bisse's promotion, the Whigs pressed the Godolphin ministry for the translation of Bishop Fleetwood of St Asaph, and in the middle of June, White Kennett told Arthur Charlett that "I take it for granted that the B[isho]p of St Asaph will be translated to Chichester"[2], but his removal was not realised.

It seems that Godolphin was in a fix between the Queen and the Tories, and the Whigs. In early July, Gibson found that the ministry proposed that John Robinson, who had stayed in Sweden for more than twenty years, should be appointed. Gibson was dissatisfied with this compromise plan, although he admitted that Robinson was a moderate clergyman. However, Gibson was more discontented with the lay Whigs than the Godolphin ministry. Gibson wondered that the Whigs found difficulty in procuring this bishopric for the Low Church divines, though the Whigs held a majority in the parliament. Thus, Gibson severely criticised the incompetence of the Whigs and he thought that the Godolphin ministry took advantage of the Junto's decisive failure of leadership.

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1. Christ Church, Oxford, Wake MSS. XVII, f.215: E. G[ibson] to [W.Wake], 31 May 1709.

2. Bodl. Ballard MSS. VII, f.126: W.Kennett to [A.Charlett], 16 June 1709.

> I think he [John Robinson] has been generally understood to favour ye right way both in ch[ur]ch and state, and soe ye nomination upon the whole is well; but yet one circumstance is plain enough in it, that whoever is made B[isho]p shall understand that he owes it to the Ministry and not to ye Junto; and I dare be bold to say that his Grace [Archbishop Tenison] and ye Whig Lords will set up their men toties quoties, without any effect but ye exposing of them as long as they give the Court as much cause to believe that nothing they doe in the church shall break squares, if they may be but gratified in the state.[1]

While the discontent of the rank-and-file Whigs with the party leaders was disadvantageous to the Junto lords, the division in the Whigs was useful to Godolphin when he persuaded the Junto peers to accept the patronage distributed by the Court. In August, when both the appointments of the Bishop of Chichester and the Earl of Orford were uncertain, Arthur Mainwaring, who was a mediator between the duumvirs and the Junto, had a talk with Lord Somers. On 20 August Mainwaring reported this conference to the Earl of Coningsby, one of the "Lord Treasurer's Whigs".

> My design of speaking to L[or]d Som[ers] has taken

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1. Christ Church, Oxford, Wake MSS. XVII, f.218: E.Gibson to [W.Wake], 1 July 1709.

> effect: he came to my lodgings with a frankness & good humour that I cou'd not expect: & I do really hope for some good from it. He has assured me that he will continue to talk to me very freely upon all subjects...I told him many thing that you know which he had never heard, & I think he went away convinced that their power is not so absolute as it is thought which y[ou]r Lords[hi]p has allways said must be the first step to any good understanding.[1]

Godolphin could take advantage of the disunity of the Whigs and he was able to keep the Church patronage in his hands. In the middle of August he proposed to the Whigs that the Court would not support Robinson's promotion, but nominate Thomas Manningham, a moderate Whig clergyman. The Whigs, who were afraid of Robinson's preferment, were obliged to accept this proposal. On 12 August, Gibson welcomed Manningham's appointment, although Gibson was disgusted with the ministry's reluctance to promote Whig clergy. On that day he reported to Wake that

> I had, indeed a hint given me, about 3 weeks since that a Treaty was afoot between Dr Robinson's friends and the Dean of Windsor [Manningham], but the Event was then uncertain: since that, if Dyer's Letter may be credited, it has taken effect, and Dr Manningham is

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1. BL, Add. MSS. 57861, f.121: A.Mainwaring to [Earl of Coningsby], 20 Aug.1709.

> to be our Bishop; noe doubt to the great honour and benefit of this Church and Diocese...As to our Court-friends, I wish them well, for the sake of the cause they are in, I think it is right in the main; but as to their persons, we have noe reasons to be concerned at their fall, whenever it comes, if the same cause can be tolerably carrie'd on without them; since they soe visibly drop and disown us.[1]

After Manningham's promotion, the ministry was still unwilling to appoint Whig bishops. In February 1710, Bishop Hall of Bristol died. Sunderland demanded that Marlborough should recommend Richard Bentley or John Mandeville[1], if his grace "will nay indeed must be the head of our party."[2] However, the Godolphin ministry could not dispose of this bishopric, and it was under the Harley ministry that John Robinson was consecrated. In March, Manningham, though a Whig, showed that he was also a moderate man. At the division on the verdict on 20 and 21 March 1710 over Dr Sacheverell's impeachment, the Bishop preferred to be absent.

Godolphin and the patronage for the Scottish peers after the Union

After the Union treaty was ratified in 1707, it

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1. Christ Church, Oxford, Wake MSS. XVII, f.228: E.Gibson to [W.Wake], 12 Aug.1709.

2. Add. MSS. 61443, f.40: [Sunderland] to [Duchess of Marlborough, "Tuesday morning" [Feb.1710].

became a very troublesome business for the Lord Treasurer to control the Scottish patronage. Although the unionists strongly supported the ratification, it was expected that they would be soon divided into some factions. In February 1707, the Earl of Cromartie, a Scottish Court peer, warned Godolphin that "there is none I deprecat[e] more then that the ghosts of our departing factions may yett appear; for as that propertie in our humor was both begott and nursed by our governments makeing places and pensiones - the prizes to be gained by turbulent or cabaling spirits."[1] The Lord Treasurer, of course, knew that the Scottish peers would start 'office hunting' in London. On 4 April, he told Marlborough that "The Scots are all expected next week. They will bring with them a great many pretensions, and create us a good deal of trouble."[2] When the Scottish peers appeared in London, there were two groups among them. One comprised such Scottish Court lords as the Duke of Queensberry and the Earls of Leven, Loudoun, Mar, Seafield and Stair. The other group was the Marquess of Montrose and the Earl of Roxburghe who belonged to the Squadrone Volante. These two groups contested the election of the Scottish representative peers in February. The Godolphin ministry sided

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1. The Earls of Cromartie, their kindred, country and correspondence, ed. by W.Fraser, II, (Edinburgh, 1876), 28: [Cromartie] to [Godolphin], 15 Feb.1707.

2. M-G Corr., II, 745: Godolphin to Marlborough, 4 Apr. 1707.

with the Scottish Court, and the Squadrone was offended with this undisguised interference by the English Court.

The animosities between the Scottish Court and the Squadrone Volante were brought to London. John Clerk, a follower of Queensberry, observed that after the adjournment of the Scottish Court,

> all those noblemen & gentlemen who had any project of preferment in the Government of Great Britain took journie for London with design...nobles of the squadrone, who had all along sett up for themselves, designing either to enhance all the offices to themselves that were to be disposed of, or at least to stand upon their own Legs without owing their preferments to the Duke of Queensberrie.[1]

As early as January 1707, the Squadrone Volante started to press the Godolphin ministry for their share of patronage after the Union. On 25 January, James Johnstone reported to George Baillie that "I shall speak as Roxburghe desires to the Lord Treasurer of his concerns, but my speaking will signifie little. I think Roxburghe and yourself should come hither as soon as conveniently you can; otherwise your concerns of all sorts will goe wrong...if nobody come, Queensberry &c. will get all that is to be given, and do what they please...The Court is positive that they

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1. SRO, GD 18/3134: John Clerk's MS. memoir.

will make a promotion, and that Roxburghe shall be one."[1] Roxburghe expected that he would get not only a Scottish dukedom but also an English or British title which would enable him to sit in the British parliament as a hereditary lord. Godolphin's patronage policy was clear. He awarded Scottish dukedoms to the leaders of the Squadrone Volante, Montrose and Roxburghe. But this promotion had little political significance. At the same time the Treasurer refused these dukes' demands to be English or British peers. Godolphin was apparently apprehensive that Montrose and Roxburghe would be opposed to the Scottish Court peers and the ministry in the British parliament as hereditary peers. On 25 February, Johnstone found that Marlborough had no intention to promote any Scottish peers to English or British peerage.[2] Godolphin's letter to Marlborough on 9 May shows that the Treasurer had the same view as the Duke. Godolphin told Marlborough that "the Queen has not upon the Union, made any promotions to the English [peerage], though much importuned to it."[3]

The cold treatment of the Squadrone Volante by the Godolphin ministry was continued. The relations between

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1. Jerviswood Corr., 183: J.Johnstone to G.Baillie, 25 Jan.1707.

2. Ibid., 189: J.Johnstone to G.Baillie, 25 Feb.1707.

3. M-G Corr., II, 774: Godolphin to Marlborough, 9 May 1707.

the English Court and the Squadrone, who led the opposition among the Scottish representative peers, worsened in the 1707/8 session, because the Scottish opposition sided with the Junto lords and passed the bill to abrogate the Scottish Privy Council. In the 1708/9 session, the Squadrone Volante made an 'unholy alliance' between them, the Whig Junto and the interests of the Duke of Hamilton, who newly took a seat in this session. This alliance unquestionably intended to obtain the patronage which the Squadrone could not get at the Union. After long resistance, Godolphin gave them such considerable concessions as the appointment of Montrose as Lord Privy Seal for Scottish affairs and Roxburghe's appointment as a Privy Councillor. However, the Treasurer adopted a divide et impera policy and he successfully alienated the Duke of Hamilton from Montrose and Roxburghe.[1]

In the 1709/10 session, the Whigs optimistically expected that Hamilton would join in the "Whig-Squadrone" alliance, though his grace was ignored by them and could not get any patronage from the Court in the previous session. Arthur Mainwaring observed that Hamilton was obliged to support this alliance. On 21 October 1709, he wrote to the Duchess of Marlborough that "what I thought He [Hamilton] & everybody shou'd do...was that they shou'd act upon the principle of the Whiggs; That D[uke] of Ham[ilton] had had obligations to them for bailing him

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1. See chapter seven.

when he was thought in the French interest: & that the onely way I know for him or his brother [Lord Orkney] to have those favour from the Government." Of course, the Whig peers had political sense enough to understand that some benefit should be given to Hamilton's faction to keep them in the Whigs' camp. Mainwaring knew that Lady Orkney said "the Whiggs were allways proposing unreasonable things." Thus, the Earl of Sunderland "told D[uke] Ham[ilton] that they [the Whigs] were for what they call a Rotation in Scotland, which is that all the Peers should have their turns of coming to Parliament".[1] In the storm over the Sacheverell trial, it was necessary for the Treasurer to persuade Hamilton to support the ministry. Thus, Godolphin offered the governorship of Jamaica to Lord Archibald Hamilton, the Duke of Hamilton's brother.[2] But this patronage was too late. His grace's dissatisfaction with the ministry and his Jacobitism made him desert the Court. Hamilton voted for the doctor's innocence. However, it is remarkable that even after this verdict, the Lord Treasurer wanted to be reconciled with Hamilton so that the ministry, the Whigs and Hamilton's interests could make a majority in the parliament. Thus, Godolphin hoped to promote Hamilton to a British dukedom. However, the Queen's veto on his creation made this scheme

1. BL, Add. MSS. 61460, ff.97-98: [A.Mainwaring] to [Duchess of Marlborough], "Friday morning" [21 Oct.1709].

2. M-G Corr., III, 1427: Godolphin to Marlborough, 3 March 1710.

impossible. On 25 April 1710, Godolphin reported to Marlborough that "I find notwithstanding all that has passed, that the Whigs take his [Hamilton's] part, and would bee glad [of Hamilton's British dukedom]...but I don't yett see any disposition in Mrs. Morley [the Queen] towards it."[1]

In contrast to the Squadrone Volante and the Duke of Hamilton, Scottish Court peers were well-treated by the Godolphin ministry. At the election of the Scottish representative peers, the Duke of Queensberry was entrusted with making the Court candidate list.[2] His grace was appointed as the secretary of state for Scottish affairs which was newly founded in 1709. However, the duumvirs never trusted his grace. In December 1708, Marlborough was afraid that Queensberry would betray the ministry. Marlborough warned the Duchess that "I never had a good opinion of Queensberry, so that I am sorry to hear of his being often with the Queen, expecially if Godolphin be not acquainted with the subject of their conversations. He is a very daingerous false man."[3] Although Godolphin and Marlborough distrusted Queensberry, it was difficult for the ministry to dismiss him, considering his grace's influence over the Scottish

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1. M-G Corr., III, 1473: Godolphin to Duchess, 25 Apr. 1710.

2. See chapter seven.

3. M-G Corr., II, 1177: Marlborough to Duchess, 16 Dec. 1708.

Court peers. Seeing Anne's alienation from Godolphin and Marlborough, Queensberry turned against the government. In January 1710, Godolphin reported to Marlborough that "by the workings of Queensberry, hee will endeavour to engage all the Scotts he can."[1] Although it was important for Queensberry to obtain patronage from the present ministry, it might have been more important for him to anticipate who would be in power in the near future, and "court a new minister." Alexander Cunningham asked himself,"Why the duke of Queensberry, who at that time, had the chief management of the affairs of Scotland, joined in opposition to government"? He answered that "the most penetrating" people were "unable to assign any other cause than the declining fortunes of the earl of Godolphin."[2]

The Earl of Mar was a typical Scottish Courtier. Mar, whose ancestor had lost estates in the Civil War, needed financial assistance.[3] Thus, he was a faithful follower of the Court policies, as long as the ministry gave him patronage. Godolphin and Marlborough knew his inclination. Godolphin desired that Mar would continue to be the secretary of state for Scottish affairs after

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1. Ibid., III, 1417: Godolphin to Marlborough, 21 Jan. 1710.

2. Cunningham, History, II, 281.

3. HMC, Mar and Kellie MSS. I, 390: Mar to Godolphin, 3 May 1707.

ratification of the Union. As late as August 1709, Marlborough told the Treasurer that Mar's "temper has always pleased mee."[1] However, Mar lost the secretaryship after Queensberry became the third secretary of state of Great Britain in January 1709. Mar was awarded a pension valued at £2,000 per annum in compensation for the loss of his office. However, Mar hoped that this pension should be continued "during life". But the Lord Treasurer, who controlled Mar's behaviour in the parliament through this pension, gave it "during pleasure".[2] Mar was disillusioned with this treatment, and went to the Continent. In September 1709, he told Marlborough that "I confess I'm very loath to think of returning to Britain this winter," and Marlborough approved of it.[3] But the Lord Treasurer asked Mar to come back and attend the 1709/10 session.[4] Mar let down Godolphin's expectation. In this session, Mar voted for Dr Sacheverell's 'not guilty'. After the alienation of Queensberry and Mar at the verdicts of the Sacheverell trial, Godolphin's influence over the Scottish represent-

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1. M-G Corr., III, 1347: Marlborough to Godolphin, 18 Aug.1709.

2. Analecta: or Materials for a History of Remarkable Providences mostly relating to Scotch Ministers and Christians, by R.Wodrow, I, (Edinburgh, 1842), 293.

3. BL, Add. MSS. 61118, f.113: Mar to Godolphin, 5 Sep. 1709.

4. M-G Corr, I, xxii; Ibid., III, 1386: Marlborough to Godolphin, 26 Sep.1709.

ative peers declined. But the Earl of Seafield was one of his allies. In June, the Lord Treasurer was against the dissolution of the parliament. But at the same time Godolphin prepared for the election of the Scottish representatives. On 27 June, Godolphin told Seafield that "I hope y[ou]r L[ordshi]p will doe your part in this matter [his election], I am sure I shall doe all that is in my power to strengthen your interest."[1]

Among the Scottish Court peers, the Duke of Argyll and his allies (the Marquess of Lothian and the Earl of Ilay) were rather independent figures. Godolphin well-treated his grace. Argyll had already been created an English peer (the Earl of Greenwich) in November 1705. When the Duke asked Godolphin for his creation as an English peer in May 1705, his grace fully understood that it was a reward for his grace to promote the Union in Scotland. Argyll told the Lord Treasurer that "I do hope your Lordship will do me the favour to intercede with the Queen that I may have the Peerage of England now which your Lordship knows was the only favour I presumed to ask of the Queen." Godolphin realised that Argyll's co-operation was indispensable "to defeat the duke of Hamilton's designs".[2] Thus, the Treasurer granted Argyll's

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1. SRO, GD 248 (Seafield MSS.)/559, 36a: Godolphin to Seafield, 27 June 1710. This passage is not printed in HMC, Seafield MSS. 209.

2. Intimate Society Letters of the Eighteenth Century, ed. by the Duke of Argyll, I, (1910), 20: Argyll to Godolphin, 26 May 1705. Cunningham, History, I, 420.

request as early as June. However, his grace pressed Godolphin for favours one after another for himself and his brother. In September 1706, before the English and Scottish parliament met for ratifying the Union, Argyll asked Godolphin and Marlborough to appoint him as Major-General, and his grace said that this appointment was necessary for his grace "to goe to the Parliament and serve the Queen in the affaire of the Union." As the Court agreed to his appointment, he was "in a very good humor."[1] John Dalrymple observed that Marlborough "seems resolved to do everything to satisfy the Duke of Argyle."[2] In October, Argyll was apprehensive that he would lose his right to choose the Scottish representative peers, since he had an English peerage. He again pressed Godolphin to promote his brother Archibald Campbell to a Scottish Earl.[3] The Treasurer knew that his grace's support of the Union was necessary, so Archibald was created the Earl of Ilay in November. At the same time shrewd Argyll made the ministry agree to his vote at the election of Scottish representatives. At the elections of 1707 and 1708, Ilay was on the Court lists and elected a representative. In the 1709/10 session Argyll was awarded

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1. HMC, Mar and Kellie MSS. I, 279: D.Nairn to Mar, 17 Sep.1706.

2. Annals and Correspondence of the Viscount and the First and Second Earls of Stair, ed. by J.M.Graham, I, (1875), 229: J.Dalrymple to Mar, 9 Sep.1706.

3. HMC, Mar and Kellie MSS. I, 291: Mar to D.Nairn, 13 Oct.1706.

a Garter, but he was enraged at Godolphin, because he did not allow Ilay to purchase a regiment.[1] With Harley his grace plotted against the ministry. Lord Dartmouth described the characters of Argyll and Ilay. They "valued themselves for knowing when was the proper time to break with an old minister, and make their court to a new."[2]

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1. M-G Corr., III, 1446: Godolphin to Marlborough, 25 March 1710.

2. Burnet's History, VI, 59: Dartmouth's note.

CHAPTER SIX

Godolphin and the Management of the House of Lords

In the previous chapter, we considered the importance of patronage for Godolphin's management of the House of Lords. However, apart from patronage, parliamentary "managers" in the early eighteenth century made use of other resources so that they could shape the proceedings in the upper House to their advantage. This chapter analyses the techniques with which Lord Treasurer Godolphin controlled the House of Lords. Among his techniques, we deal with the pre-sessional and sessional conferences between Godolphin and other leading peers in detail.

Godolphin's techniques to manage the House of Lords

Divisions were undoubtedly the most important elements of Godolphin's management of the upper House. However, there is little evidence that the Lord Treasurer obliged his supporters to attend the House and vote for the ministry. It was the Junto who whipped in the rank-and-file Whig lords. On 15 December 1704 in his diary Lord Ossulston recorded that "a letter from My L[or]d Sommers only to lett me know yt ye Occasional [conformity] bill was to be read ye next day."[1] Apart from the Junto peers, the Lord Treasurer had other

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1. PRO C 104/116, Lord Ossulston's diary. (unfoliated)

allies to control the divisions. The Queen often persuaded Archbishop Sharp to vote for the government before such important votes as the third occasional conformity bill in the 1704/5 session, the "Hanover motion" in the 1705/6 session and the bill for abrogating the Scottish Privy Council in the 1707/8 session.[1] Prince George also prevailed on Court peers to support the government. In the 1703/4 session, anticipating the division over the second occasional conformity bill, Prince George dissuaded some Court lords from attending the House so that the bill could be dropped in the Lords.[2] In his autobiography, the Earl of Westmorland revealed that, through the Prince, Godolphin prevailed upon Westmorland to vote against the bill for abolishing the Scottish Privy Council.[3]

In the previous chapters, we considered the important roles played by the Duke of Somerset and Lord Chancellor Cowper in the Lord Treasurer's management of the House of Lords. Division lists and the Lords' protests confirm this view. At the division over the bill for abrogating the Scottish Privy Council, the Junto rebelled against the Court, but Cowper and Somerset not only voted against the bill but also signed the

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1. The Life of Archbishop Sharp, I, 303, 307, 308.

2. Atterbury Correspondence, III, 146: Atterbury to Bishop Trelawney, 9 Dec.1703.

3. HMC, Westmorland MSS. 51.

protestation with Godolphin and Marlborough.[1] In the 1708/9 session, the Junto accused the ministry of irregularities in the election of the Scottish representative peers, but Cowper and Somerset sided with Godolphin and defended the validity of the election.

After the Union was made, Godolphin regarded most of the sixteen Scottish representatives as his supporters. At the 1707 election, fifteen representatives were Court candidates. However, in the following year, the opposition returned six members.[2] Even the Scottish Court peers were opposed to the measures which did not agree with the interests of the Scots. Thus, they were strongly against the censure of a Scot, Commodore Kerr, in the 1707/8 session, and in the following session they were opposed to the Treason bill which the Court supported.[3] However, the Scottish Courtiers were normally amenable to the ministry in the 1707/8 and 1708/9 sessions. In the 1709/10 session, when the Queen's alienation from the duumvirs was obvious, the Scottish Court peers were not reliable allies for the ministry, although Marlborough believed that most of the Scottish Courtiers would not desert the ministry. However, on 16 March 1710, three Scottish Court members (the Earls of Mar, Northesk and Wemys) protested against the first article of the

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1. See below 324-25.

2. For the Scottish elections see chapter seven.

3. Nicolson Diary, 446, 488, 498.

impeachment of Dr Sacheverell and five days later in addition to these three peers, the Earls of Ilay, Loudoun and Roseberry voted for the doctor's light sentence.[1]

It is remarkable that the Lord Treasurer made efforts to avoid the divisions rather than defeat the opposition in these votes. The table below shows that in the years of the Godolphin ministry, there were fewer divisions than in the reign of King William III or the period of the Harley ministry.[2]

	a	b	c	a/c	b/c
James II (1685)	9	2	1	9.0	2.0
William & Mary (1689-1694)	208	51	7	29.7	7.3
William III (1694-1702)	151	21	8	18.9	2.5
Anne (1702-1710)	149	19	9	16.7	2.1
Anne (1710-1714)	83	27	4	20.8	6.8

a = Number of divisions
b = Number of divisions on which proxies were used
c = Number of sessions

In the 1702/3 session, when the attitude of the Court favoured the Tories, the majority of the Whigs in the Lords was insecure. Thus the number of divisions amounted to thirty-eight. But this figure is the maximum in the years of the Godolphin ministry. In the following

1. J.E.T.Rogers, Lords' Protests, I, 194-95; M-G Corr. III, 1445: Marlborough to Duchess, 24 March 1710; G.Holmes, Sacheverell Trial, 286.

2. This table is based on J.C.Sainty and D.Dewar, Divisions in the House of Lords.

session, divisions were reduced to twenty. In the 1704/5 and 1705/6 sessions, the numbers were only ten and fourteen. One of the reasons for this decrease was that the Tories did not want to take a vote which would only reveal their weakness in the Lords, so that the House made a decision without a division. But another reason was that with the assistance of the Whig peers Godolphin broke the Tories' scheme to take a vote. At the beginning of the 1705/6 session, the Tory lords alleged that the Protestant succession in Scotland was still not settled, and attacked the ministry. According to the MS. minutes on 12 November 1705, the 'heads' of the address proposed by the Tories took a defiant attitude to the government. They tried to "addresse her Ma[jest]y for an account how the matter of ye succession relating to Scotland stand as have come to her Ma[jes]ty's knowledge". Facing a threat from the Tory peers, Godolphin "accommodated" this motion. His modified motion, which was "unanimously agreed to" was that

> an humble Addresse to be presented to her Ma[jes]ty that her Ma[jes]ty wil[l] be graciously pleased to lay before this House what hath passed since the last session of parliam[en]t in England in relation to ye succession of the crowne of Scotland & to ye Intended Treaty of Vnion in ye parliam[en]t of that kingdome.[1]

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1. HLRO, MS. minutes, XLI, (unfoliated); Nicolson Diary, 302.

Three days later Godolphin again succeeded in modifying a motion by the Tories to his advantage. Although Haversham moved a famous 'Hanover motion' so that Princess Sophia of Hanover could be invited to England, the Lord Treasurer again "proposed an Accom[m]odation" which made a fundamental change in this motion. Bishop Nicolson's diary and MS. minutes of the House show that Godolphin proposed a committee of the whole House would "consider of ways & methods to strengthen the succession of ye Crowne", which was realised as the "Regency bill". Seeing that the Court and the Whigs outnumbered the Tories, "the first Movers" of the motion "did not think fitt to insist upon a Division". Thus the "Hanover motion" was negatived in the previous question without divisions.[1]

On 6 December, when the House debated the "Church in danger" motion, the Lord Treasurer treated this motion with skill. High Tory peers could not expect that this motion would be carried. However, they did not give up hope that Archbishop Sharp's motion to suppress the dissenters' seminaries would be put to a vote. Godolphin insisted that the main question, the "Church in danger" motion, should be put. While the Tories lost this main question by a wide margin, the Court and the Whigs were

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1. HLRO, MS. minutes, XLI, on 15 Nov.1705 (unfoliated); Nicolson Diary, 304.

able to modify Sharp's motion to their advantage.[1] In the 1706/7 session, the Lord Treasurer once again defeated a motion proposed by the Tory lords. On 14 January 1707, the Earl of Nottingham told the House that he was apprehensive that the intended Union would endanger the Church of England, and proposed that "an Address be presented to the queen, humbly to desire her majesty, that the proceedings, both of the commissioners for the Treaty of Union, and for the parliament of Scotland, relating to that matter, should be laid before them." This motion was seconded by Nottingham's allies, the Duke of Buckingham and the Earl of Rochester, but Godolphin answered as follows: "this affair was not yet ripe for them to debate, and that they need not doubt, but that her majesty would communicate to the parliament of England." After Godolphin's speech, the Junto lords sided with Godolphin, and "Lord Nottingham's Motion for the Articles of the Union was quashed by Lord Treasurer without a Question."[2] Thus, contemporaries had some reason to praise the Lord Treasurer's technique to turn the proceedings of the Lords to his advantage. John Macky wrote that Godolphin "hath an admirable, clear understanding of slow speech." Lord Raby also referred to the Treasurer's speech. He "speaks seldom in the

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1. Nicolson Diary, 324.

2. Cobbett, VI, 552-57; Nicolson Diary, 409.

House of Lords, but when he does is well heard, and speaks very handsomely and always much to the purpose."[1] Indeed, Godolphin might have been ingenious in managing debates in the Lords. Nevertheless, it is remarkable that his skill was conspicuous mainly in the 1705/6 and 1706/7 sessions when the High Tory peers had been isolated in the House, and the Whigs were united. In the first parliament of the Queen, his management of the upper House was more precarious, and after the 1707/8 session, the division within the Whigs often paralysed his control of the Lords. We will consider this matter again.

At the divisions of the whole House, the Lords were able to exercise proxies. Unlike his successor Robert Harley, who was anxious to get proxies from both lay and ecclesiastical lords, there is little evidence that Godolphin actively collected proxies. A private proxy record of the 1703/4 session shows that neither the Treasurer nor Marlborough kept proxies. But in the 1704/5 session, Godolphin received two proxies (from the Dukes of Ormond and St Albans). Marlborough also had two (from the Earl of Sandwich and Lord North & Grey). It is interesting that Godolphin had proxies from a Tory and a Court Whig. However, from the 1705/6 session, Godolphin obtained proxies only from the Whigs. In this session,

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1. "Characters of the Court of Great Britain", in John Macky's Memoirs, 24; Wentworth Papers, 131.

the Duke of Somerset and the Marquess of Kent sent their proxies to the Lord Treasurer. In the 1706/7 session, Godolphin kept Kent's proxy again.[1] Although the duumvirs made use of the proxies, the Junto took much more interest in collecting proxies. Before the division of the second occasional conformity bill, Godolphin reported to Harley that "The Whig lords have been very industrious to gett proxys and tell votes. They assure themselves of a majority of 5 or 6; some of them bragg of more."[2] In the 1705/6 and 1706/7 sessions, when the Whig lords were co-operative with the Court, the proxies, which were collected by the Junto, might have been an asset to the ministry. But from the 1707/8 session, these proxies were a menace rather than an asset for the Treasurer. On 5 February 1708, there were two divisions in the Lords about the bill for abolishing the Scottish Privy Council. The ministry hoped that the Council would be continued until October 1708. But the Junto were against the ministry, and insisted that it should be taken away in May. The House took a vote on the question whether the bill should be committed. S.Edwin reported this division to the Earl of Manchester: "after a long debate, upon a division, voices

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1. BL, 61495, f.21: the Earl of Sunderland's proxy record (the 1703/4 session); HLRO, Proxy Books, VII. (unfoliated)

2. Bath (Longleat House) MSS. Portland miscellaneous volume, f.151: [Godolphin] to [Harley], 8 Dec.[1705].

were even, but by proxies it was carried against the Council"[1] After the vote, the bill was referred to the whole House committee in which proxies could not be used. Bishop Nicolson recorded the proceedings as follows:

> The Bill for takeing away the Scots privy-council, &c, Lord Chancellor [Cowper], Lord Treasurer and the Generality of the Court, for preserveing it to October but carryed on the Question...to end May 1. Contents, 50. Not Contents, 45. NB. This difference was in the Committee. Had the House voted, the Advantage would have been yet greater on the side of the Majority; who had Ten proxies for the others Four.[2]

Apart from the control of the divisions and proxies, the Court had another resource to manage the House of Lords. The government had vast amounts of information, and the ministry could provide government papers if it was useful to turn the proceedings of the House to the ministry's advantage. But if the Court was apprehensive that the release of the information would have a bad effect upon the Lords, government papers were kept secret. Before the 1707/8 session, the ministry was enraged by the mismanagement of the Earl of

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1. The Duke of Manchester, Court and Society, II, 276: S.Edwin to Manchester, 6 Feb.1708.

2. Nicolson Diary, 448; Vernon Corr., III, 341-42: J. Vernon to Shrewsbury, 7 Feb.1708.

Peterborough in Spain. Consequently, the government did not hesitate to supply government papers which would enable the parliament to censure Peterborough. On 16 December, Joseph Addison observed that "The Secretarys Office is to furnish all the papers that can give any Light to this Affaire."[1] A contrary case happened in the 1705/6 session. On 26 November 1705, the Cabinet Council considered the contents of the Queen's speech, which communicated the letters from the King of Spain and the Earl of Peterborough about the expedition in Spain. The Council agreed to deliver a copy of these letters. But the Council decided to cut off the first paragraph from Peterborough, where he mentioned "the great Danger of his Undertaking".[2] Obviously the ministry was afraid that this paragraph would increase suspicions about the Spanish expedition in the Parliament.

The pre-sessional meetings and sessional meetings between Godolphin and other lords

In his study of the House of Lords, J.C.Sainty regards Robert Spencer, second Earl of Sunderland, as one of the forerunners of the 'leaders' of the upper House. At the same time, Sainty admitted that "it took time for his [Sunderland's] ideas to become fully accepted and for successive ministries to devise effective means of

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1. Addison's Letters, 84: Addison to Manchester, 16 Dec. 1707.

2. Cowper's Diary, 20.

gaining the initiative in the two Houses and of adapting parliamentary procedures to their own ends."[1] Sainty considers that in the ministries of Godolphin and Harley the position of the 'leaders' of the Lords House "was still at a formative, experimental stage". Pre-sessional and sessional meeting, which were one of the most important works of the 'leaders' of the Lords, were also undeveloped in the age of Anne. However, if we compare Harley's management with Godolphin's, Harley was a little more experienced than his predecessor in managing conferences with the leading peers. While the Earl of Oxford organised the meetings not only with his party men but also the opposition lords,[2] there is little evidence that Godolphin had such meetings. Since the 1704/5 session, it appears that Godolphin had almost lost communication with the High Tory peers. However, Godolphin's conferences had some features. In the following analysis, we consider how Lord Treasurer Godolphin had conferences with the lords, and how effective they were upon the management of the upper House.

Before the 1702/3 session, it was unlikely that the Lord Treasurer organised a meeting with the Whig peers. In late August 1702, James Vernon knew that the

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1. J.C.Sainty, "The Origin of the Leadership" in C.Jones and D.L.Jones ed. Peers, Politics and Power, 208.

2. Chatsworth House, Finch MSS. box 3, item 71: Earl of Oxford to [Lord Guernsey], 8 March 1713.

Earls of Montagu, Orford and Lords Halifax and Somers had a conference, and on 10 September, Richard Warre reported to the Earl of Nottingham that "I am told Caballs are still carryed on with great zeale", and Lords Burlington, Halifax and Somers met together.[1] But there is little evidence that Godolphin committed himself to these meetings. In October, the Whigs warned the ministry that they were angry about the miscarriage at Cadiz and that "The business of Cadiz (no doubt) will be one of their [parliament's] first subjects".[2] But the Lord Treasurer was reluctant to confer with the Whigs. It was Nottingham in the Lords and Robert Harley in the Commons who were important allies for Godolphin to manage the proceedings in the parliament. Before the session started, Godolphin had conferred with both Nottingham and Rochester. Henry Horwitz has pointed out that there were some differences of opinion between Nottingham and Rochester over the war and ecclesiastical policy.[3] The Lord Treasurer successfully took advantage of these differences and divided Nottingham from Rochester. In September, Godolphin discussed with Nottingham when the parliament should meet, and supported the

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1. Vernon Corr. III, 226: Vernon to Shrewsbury, 21 Aug. 1702; BL, Add. MSS. 29588, f.198: R.Warre to Nottingham, 10 Sep.1702.

2. Bodl. Add. MSS. A269, p.4: E.Gibson to Bishop Nicolson (copy), 17 Oct.1702; Bodl. Ballard MSS. VI, f. 81: E.Gibson to A.Charlett, 8 Oct.1702.

3. H.Horwitz, Revolution Politicks, 181.

Tories' claim that the opening should be delayed.[1] The Lord Treasurer partly adopted Nottingham's idea in the Queen's opening speech.[2] During the session, Nottingham was still co-operative with the Lord Treasurer except for the first occasional conformity bill. Nottingham exercised his influence over the Tories so that the ministry could settle the dispute between the Court and the Tories about Bishop Lloyd of Worcester's interference with the election.[3] On the other hand Rochester was coldly treated by the Treasurer. Rochester "was as forward as anybody in adjusting Mrs. Morley's [the Queen] words in the company of his friends." However, it was obvious that he could not have had any initiative in drafting the Queen's speech. He refused to attend the Cabinet Council when they decided the contents of the speech.[4]

The political situation before the 1703/4 session was more chaotic than the previous session. Harley warned the Treasurer neither the Tories nor Whigs would give support to the ministry, because of "the mismanagements of the fleet, the uselessness of an

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1. BL, Add. MSS. 29588, f.173 and f.183: Godolphin to [Nottingham], 3 and 6 Sep.1702.

2. BL, Loan 29/64/1: Godolphin's draft for the Queen's opening speech on 21 Oct.1702 amended by Nottingham.

3. See chapter one 44-46.

4. M-G Corr., I, 137: Godolphin to Countess of Marlborough, 21 Oct.1702.

offensive warr in Flanders" and Scottish politics.[1] Godolphin was not ignorant of the danger. Before the session, he was afraid that his ministry would be "torn to pieces with no friends to support it but some few in place".[2] But the Lord Treasurer had begun to grope for a means to save this situation. In October 1703, he talked with the Duke of Somerset about patronage. The Treasurer possibly exchanged views about the prospect of the coming parliament with some Whig lords. The Lord Treasurer supported the publication of Charles Davenant's Essays upon Peace at Home and War Abroad, in which Davenant criticised the occasional conformity bill. Edmund Calamy found that "Lord Halifax had the perusal, sheet by sheet, and added many excellent remarks" about Davenant's Essays.[3] N.Tindal observed that Davenant published Essays "with the approbation of the lord Halifax".[4] Thus, in this session there might have been an agreement between Godolphin and the Whig peers that the occasional conformity bill should be dropped. Richard Steele knew that this bill "was the first

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1. B.W.Hill, Robert Harley Speaker, Secretary of State and Premier Minister, (1988), 81.

2. HMC, Portland MSS. IV, 74-75: [Godolphin] to [Harley], 25 Oct.1703.

3. An Historical Account of My Own Life...by Edmund Calamy D.D. , ed. by J.T.Rutt, II, (1829), 16.

4. Cobbett, VI, 156.

occasion of my Lord Wharton's coming into measures of the old ministry [the Godolphin ministry]."[1]

However, before the session, the Tory lords were still consulted by the Lord Treasurer about the matters of great political importance. The Duke of Buckingham and the Earl of Nottingham joined in drafting the Queen's opening speech. However, the stiff attitude of the High Tory peers made it impossible for Godolphin to have a conference and find agreement with them. In the debate on the "Scotch plot", the Lord Treasurer asked Nottingham to use his influence over the Tory MPs to prevail upon them to accept the Lords' examination of the plotters. But Nottingham refused it.[2] The Lord Treasurer had a talk with Nottingham about the Queen's answer to the Lords' address on 31 January. A draft of the message from the throne to the Lords on 18 February 1704 also shows that both the Treasurer and Nottingham worked together to bring the dispute of this plot to an end.[3] However, while Godolphin co-operated with Nottingham, remarkably he began to seek assistance from the Whig peers. A shrewd contemporary did not neglect this change. On 19 December 1703, Sir Alexander Bruce told the Marquess of Tweedale that the Whigs were

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1. Wharton's memoir, 40.

2. H.Horwitz, Revolution Politicks, 195.

3. The drafts of the Queen's answer and message, which were written by Godolphin and Nottingham, is seen in BL, Loan 29/64/1.

"jealous as if the matter would be stifled by the Court, because some eminent men of the Cabin[et] Councell were not called to it particularly the D[uke] of Somerset and the D[uke] of Devonshire. This being taken notice of in the House [of Lords]."[1] Pressed by the Whig lords, the Treasurer allowed the two dukes to take part in the examination. Nottingham suspected Godolphin of double dealing. In his MS. memoir, Nottingham remarked that "it may probably be found upon Enquiry yt this discovery made by Keith [one of the plotters] has bin publisht before it was communicated to ye Lords, w[hi]ch could not be but by a member of ye Cabinet Council."[2]

Once the Earl of Nottingham left the Court in April, it was impossible for the Lord Treasurer to be reconciled with him, and find room for a compromise in the conference. Nottingham's dissatisfaction with Godolphin was caused by not only his patronage distribution but also his policy in general. In his two MS. treatises, Nottingham severely criticised Godolphin's moderation policy which would lead to the rule of the Junto lords. In a treatise entitled Some few Remarks upon the transactions of the last session of

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1. NLS, MS. 7021, f.88: [A.Bruce] to [Tweedale], 19 Dec. 1703.

2. BL, Add. MSS. 29587, f.133.

parl[iament] in Scotland[1], Nottingham censured Godolphin's Scottish policy. He admitted that Godolphin employed such presbyterian peers as the Marquess of Tweedale and the Earl of Seafield and let them conclude the "Scottish Act of Settlement". However, Nottingham rebuked the Lord Treasurer, because these managers in the Scottish parliament went into business with "the state whiggs". The Protestant succession, which the Godolphin ministry, the Scottish Court and the Whigs advocated, could not be accepted by Nottingham, since they were inclined to be "unkindly to the power of all princes", and "jealous of this Queen's own principles in church matter." Nottingham also criticised Godolphin's ecclesiastical policy. In his other treatise, A short account of the bill entituled An Act for preventing Occasional Conformity, Nottingham admitted that the Godolphin ministry stood for "moderation", and that it was "so amicable a virtue that every man pretends to it".[2] But Nottingham thought that the definition of "moderation" by the ministry was wrong, because it meant nothing but indifference to christianity in general. The government had "so little a concern for any religion as to be indifferent to all". Thus, "the Church of England men" should "renounce all shares of such

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1. Northamptonshire R.O. Finch-Hatton MSS. 792.

2. Leicestershire R.O. Finch MSS. parliamentary and political papers 119.

moderation". Nottingham was of the opinion that the Whig lords got a good lesson from King James II who had a "design of repealing the penal law and Test" under the pretext of 'Indulgence', and, "by overthrowing the Corporations", tried to pack the parliament. It appeared to Nottingham that the ministry and the Whigs were doing the same. As their tyrannical power was increased, they inevitably violated the balance of the constitution.

It was very difficult for the Treasurer to find an agreement through conferences with the High Tory peers. On the other hand, there is little evidence that he consulted the Junto lords before the session. However, Godolphin approached some moderate Whig lords. In addition to the Dukes of Devonshire and Somerset in the Cabinet, the Lord Treasurer tried to make the Duke of Newcastle his ally. After the fall of the High Tories in April 1704, Godolphin had already considered Newcastle's employment.[1] As the Treasurer realised the obstinate opposition of the Tories, his grace's assistance in the parliament was all the more necessary for the ministry. But Marlborough was still opposed to the ministry's co-operation with Newcastle. On 23 October 1704, Marlborough warned Godolphin that Newcastle "was to[o] much a party man", though "his estate is so very great, that he would certainly be of use."[2] However, Godolphin did

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1. M-G Corr., I, 284: Godolphin to Duchess, 24 Apr.1704.

2. Ibid., I, 392: Marlborough to Godolphin, 23 Oct.1704.

not hesitate to go into business with Newcastle. On 21 October, Harley told Newcastle that "Lord Treasurer continues in the same sentiments & resolutions relating to your Grace & I cannot but always say it is for the interest & honor of the Government to have y[ou]r Grace in the service. It remains intirely a secret."[1]

Except for some moderate Whig peers, it is unlikely that the Lord Treasurer conferred with the leading peers, and it resulted in an attack on the government from both sides. The High Tory and the Junto lords censured the Court for giving the royal assent to the Scottish "Act of Security". In the debate, Lord Dartmouth observed that "This was the fatal period of lord Godolphin's life and reign. He had hitherto constantly played a double game...he had no way of defending it [Act of Security], without exposing what he had ever had in his view, and used his utmost dexterity to conceal. When the debate began, he did not know which side would fall hardest upon him...he talked nonsense very fast, which was not his usual way."[2] But it did not take long to "get a thorough conjunction betwixt the Lord Treasurer and the Whigs". Although both Whig and Tory accused the Treasurer, a shrewd observer commented that "the Tories were mad", but "the Whigs were modest

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1. BL, Loan 29/237, f.85: Harley to Newcastle, 21 Oct. 1704.

2. Burnet's History, V, 182, Dartmouth note.

in this business" and left room to be reconciled with Godolphin.[1] As long as the High Tory peers stiffly adhered to their claim concerning Scottish politics that the Dukes of Hamilton and Atholl should be employed to realise the Protestant succession,[2] it was impossible for the Lord Treasurer to have a compromise plan with the Highfliers. Soon after Godolphin was attacked, Dartmouth "saw lord Wharton discoursing very seriously with lord Godolphin, and from him went to lord Somers, and both afterwards to lord Halifax...he [Godolphin] having, as we afterwards understood, delivered himself entirely into their [Whigs'] management."[3] It is obvious how the Lord Treasurer got an agreement with the Whigs. The contents of this agreement were also clear. In this session, the Court was obviously opposed to the "tack" and the third occasional conformity bill, and Godolphin helped the Whigs make such retaliatory enactments against Scotland as the "Alien Act". About patronage, the Duke of Newcastle was appointed as Lord Privy Seal after the session, and some active Whig peers obtained places at Court.

The conference before the 1705/6 session was of importance for Godolphin to manage the House in this

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1. Jerviswood Corr. 12: Earl of Roxburghe to G.Baillie, 30 Nov.1704.

2. This view is seen in Northamptonshire R.O. Finch-Hatton MSS. 792: Nottingham's Remarks.

3. Burnet's History, V, 182-83, Dartmouth's note.

session. In April 1705, the Queen, Godolphin and many Whigs visited Newmarket, and some Court peers, who had voted for the Tories, changed sides. On 17 April G. Lavallade reported that "The Lord Great Chamberlain [the Earl of Lindsey] is newly declared a Whig and I believe the little Lord Chamberlain [the Earl of Kent] too."[1] After the Whigs retrieved their power in the 1705 election, the Lord Treasurer was obliged to hold conferences with the Junto lords. In late June Godolphin let Lord Halifax make an account of Scottish politics, and talked about this account.[2] Bishop Burnet realised that "when the elections were all over...the lord Godolphin declared himself more openly than he had done formerly, in favour of the whigs."[3]

Nevertheless, although the Treasurer reached an agreement about government policy through the pre-sessional meetings, the Junto lords were never satisfied with Godolphin unless they were contented with his patronage distribution. This fact has a crucial meaning, when we consider the parliamentary sessions after 1705. The 1705/6 session is well-known for the "Hanover motion", the Regency bill and the "Church in danger"

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1. HMC, Rutland MSS. IV, 230-31: G.Lavallade to Rutland, 17 Apr.[1705]; Folger Shakespeare Library, Newdigate Newsletters on 3 Apr. (micro in Bodl.)

2. M-G Corr., I, 451: Godolphin to Duchess, 20 June 1705.

3. Burnet's History, V, 223-24.

motion. However, the repeal of the retaliative acts against Scotland and the appointment of the commissioners for the Union treaty were no less important. But there was a striking difference between the proceedings about Scottish politics in the Lords and other debates. Concerning the "Hanover motion", the Regency bill and the "Church in danger" motion, the attitude of the ministry and the Junto lords was clear before the session. Facing the scheme of the High Tories to invite Princess Sophia of Hanover to England, the Lord Treasurer willingly sided with the Whig peers. Two days before Lord Haversham made the "Hanover motion", Godolphin told the Duke of Newcastle that "beleiving it may be necessary to prepare our selves w[i]th some defences against my L[or]d Haversham's great guns tomorrow", and proposed that there should be a meeting of the Whig lords at the Duke of Bolton's house.[1] Edward Gregg has pointed out that "The Junto were most anxious to co-operate with the government in opposing the invitation in the hope of obtaining royal favour, and the Duumvirs were able to concert measures with the Whigs in advance."[2] About the "Church in danger" motion, before the parliament met, the Lord Treasurer decided to stand face to face against the High Tories. On 19 September, he

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1. BL, Loan 29/237, f.115: Godolphin to [Newcastle], 13 Nov.1705.

2. E.Gregg, Queen Anne, 210.

told Harley that "of several insolences of the clergy ...If the Parliament be of the same mind we must submit to it, but if not, I hope they will be punished...all the noise that is fomented in the kingdom of the Church's danger is, in my humble opinion, the first thing that ought one way or other to be cleared upon their meeting."[1]

Repeal of the retaliative acts against Scotland made a contrast with the "Hanover motion" and the "Church in danger" motion. Before the session, Lord Halifax exchanged views with the Lord Treasurer about the Scottish affairs, and Halifax showed that he and Lord Somers were dissatisfied with Godolphin's management of the Scottish parliament. On 4 September, Halifax told Godolphin that "Perhaps the Act for a Treaty is not designed to set a foot a union but to affront England. In that case the Queens choice is not difficult to make, and the lesse she has done the better. I am no competent judge how uneasy the Queen may be in her own reign."[2] It seems that Godolphin's pre-sessional conference with the Junto was not successful, and that the Lord Treasurer found difficulty in making an agreement about the Scottish affairs so that the ministry could start

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1. HMC, Bath MSS. I, 76: [Godolphin] to [Harley], 19 Sep.1705.

2. Letters relating to Scotland in the Reign of Queen Anne, ed. by P.H.Brown, (Edinburgh, 1915), 162: Halifax to Godolphin, 4 Sep.1705.

the negotiation with the Scots about the Union. Nevertheless the House of Lords made an unexpected decision on 23 November. William Jamieson wrote to William Bennett that

> Lord Nottingham proposed it [repealing a clause which declared that the Scots were aliens], and was seconded by the Duke of Buckingham, believing as I am told that the Whig Lords would oppose it, but found themselves very soon to be mistakd for my Lord Somers was third person that spoke in the affaire and was very zealous to have the Act [i.e. the Alien Act] repealed. The Torrys seeing this were confounded.[1]

The Court naturally supported the move of the Whigs, so they repealed the whole act except for a clause to empower the Queen to appoint the commissioners of the Union. P.W.J.Riley is of the opinion that because of the failure of the pre-sessional talk between the Junto and the ministry about the Scottish affairs, "The whig lords had become the largest immediate obstacle to the court's hopes for a union" which the ministry had advocated. Thus, Riley regards the proceedings on 23 November as a "sudden reversal of the whig position" or "junto's

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1. SRO, GD 205 (Ogilvy of Inverquharity MSS.) box 33, portfolio 3/10: W.Jamieson to W.Bennett, 1 Dec.1705; Cobbett, VI, 476-77.

conversion to union".[1] Recently Geoffrey Holmes has cast some doubt on Riley's view. Holmes thinks that "if Riley had known his Westminster and Whitehall scene as thoroughly as that of Edinburgh, would he have stuck by his thesis that the Whig Junto, too, saw the necessity for the Union by 1705-6 purely in opportunistic terms? The claim that they urged it forward with little else in mind than calculations of the future parliamentary balance is hard to sustain."[2] This study does not deal with Scottish politics, but we consider this matter in terms of Godolphin's pre-sessional and sessional meetings.

As we have seen, the Godolphin ministry agreed with the Junto peers about the "Hanover motion" and the "Church in danger" motion before the parliament met. They knew that the High Tories would concentrate their criticism against the ministry on these points, and the alliance of the Court and the Junto lords successfully isolated the Highfliers from the other Tories and defeated the challenges from the High Tory opposition. Before the parliament met, George Lockhart told the Duke of Atholl that

her Majesty having now, more than ever before, de-

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1. P.W.J.Riley, The Union of England and Scotland, (Manchester, 1978), 152, 162-63.

2. G.Holmes, British Politics, xxxiv-xxxv.

> voted herself and interest to the Whigs, the Torys have no hopes of being succesfull in allmost anything they'l propose, during this parliament...The Tories are highly exasperated, and breathe revenge, and threaten to call over the Prince of Hanover...The Churchmen are apprehensive of their danger, and the Earls of Rochester and Nottingham are in correspondence with the Court of Hanover.[1]

The Court and the Junto were so powerful in the Lords that some moderate Tory lords sided with them. Harley observed only "fifteen against the whole House" when the Lords debated the "Hanover motion."[2] Lord Dartmouth had no illusion about the High Tories. He thought that the "Church in danger" motion "was brought on by lord Rochester's passion, without consulting any body, and as ill timed as it could well be."[3] Thus, if we consider the "Westminster and Whitehall scene", the alliance of the Godolphin ministry and the Junto lords had been well-established at the beginning of the 1705/6 session.

Nevertheless the Junto did not hesitate to trouble the ministry if the Court could not satisfy them about patronage. Although Godolphin reached an agreement about

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1. HMC, Atholl MSS. (12th report appendix pt.VIII) 62-63: G.Lockhart to Atholl, 15 Oct.1705.

2. BL, Add. MSS. 61124, f.100: Harley to [Marlborough], 16 Nov.1705.

3. Burnet's History, V, 242, Dartmouth's note.

some policies before the session, it did not imply that the Junto would support the Court in the parliament. Consequently, the Lord Treasurer had to hold two kinds of conferences with the Junto. One was about government policies, and the other was about patronage. When Lord Halifax criticised Godolphin's government policy in early September, the appointment of William Cowper as Lord Keeper came to a complete deadlock because of the Queen's veto on him. Thus it is very possible that the Junto made use of the Scottish affairs so that they could get some concession from the Court. Thus if we separated the Scottish affairs from other sides of the politics at Westminster, we would misunderstand the alliance between the Court and the Junto peers. Before Cowper's appointment was announced on 11 October, Scottish delegates in London were not sure of the prospect of the repeal of the Alien Act. On 2 October, James Johnstone wrote to George Baillie that Godolphin told Johnstone that "noe measures will be taken or resolved on as to Scotland, till it appear what course matters take in the English parliament. This being quite different from what I had been told before."[1] However, after the Queen finally accepted Cowper's appointment, Scottish affairs turned for the better. In her opening speech on 27 October, the Queen told the Lords and the

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1. Jerviswood Corr., 128: J.Johnstone to G.Baillie, 2 Oct.1705.

Commons that

> By an act of parliament passed the last winter, I was enabled to appoint commissioners for this kingdom to treat with commissioners to be impowered by authority of parliament in Scotland, concerning a nearer and more complete Union between the two kingdoms, as soon as an act should be made there for that purpose. I think it proper for me to acquaint you, that such an act is passed there; and I intend in a short time, to cause commissions to be made out in order to put the Treaty on foot.[1]

On 10 November, the Earl of Mar expected that the Alien Act would be repealed although there were still many uncertainties. He told the Marquess of Montrose that

> I believe the English are not yet perfectly resolved what to do in relation to our affair, however, since we have put the bone in their foot, I hope they will not let it stand there, but take off their clause as we desire, though there is no certainty of their doing so.[2]

Thus, if we carefully follow the process in which the Lord Treasurer made an agreement with the Junto peers

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1. Cobbett, VI, 451-52.

2. SRO, GD 220 (Montrose MSS.)/5/95: Mar to Montrose, 10 Nov.1705.

about patronage and policies, repeal of the Alien bill on 23 November was not an unexpected matter.

Although the Lord Treasurer conferred and sided with the Junto lords in this session, he did not like to be under their influence. The Lord Treasurer supported the Regency bill which the Whigs lords drafted. But when the House fixed the membership of the Lords Justices, Godolphin succeeded in appointing the Archbishop of Canterbury, Lord Treasurer, Lord President of the Council, Lord Keeper, Lord Privy Seal, Lord High Admiral and Lord Chief Justice who could all be removed by the Queen except for the Archbishop and Lord Chief Justice. Lord Dartmouth observed that "Lord Godolphin thought he had outwitted the whigs in this scheme: for except the archbishop, who was a very old man, and the chief justice, the rest were in the disposal of the crown during pleasure."[1] It is obvious that the Lord Treasurer expected that he could keep communication with some moderate Tory peers even after he began to co-operate with the Junto lords. After the session, Godolphin told Harley that "As to the narrow measures of any in the House of Lords...I may presume to say such measures are wrong; I take it our business is, to get as many we can from the Tories, without doing anything to lose one of the Whigs."[2] Radical Whig peers

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1. Burnet's History, V, 236, Dartmouth's note.

2. HMC, Portland MSS. IV, 291: [Godolphin] to [Harley], 22 March 1706.

had some reasons to be discontented with Godolphin's wayward course of action. The Earl of Shaftesbury disliked Lord Treasurer's moderation. In January 1706 Shaftesbury was of the opinion that "there may be trimming Measures w[hi]ch may keep us uneasy here at home...whilst we tamper w[i]th a false Party yt must be ever treacherouse to this Government...there may be Feuds and Animositys about Courtiers Favourites."[1]

Before the 1706/7 session, the Lord Treasurer talked with the Junto lords more frequently than before. They took up many topics for discussion. For instance, the peace, diplomacy, the Union treaty and patronage. As we have seen in the 1705/6 pre-sessional meeting, the disputes about patronage made it difficult for the Junto to go into business with the Treasurer in the Lords although there was some agreement about the general policies. The Junto once again made use of the Scottish affairs. On 11 October 1706, the Earl of Shaftesbury reported his talk with Lord Sunderland to Benjamin Furly. Sunderland was of the opinion that "'Tis even uncertain yet whether the Whiggs & Court joyning together have interest enough to carry their main point in parliam[en]t vizt the Union with Scotland (without w[hi]ch we shall be in great Confusion because of ye

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1. PRO 30/24/22/2, f.170: Shaftesbury to Van Twedde (copy), 17 Jan.1706.

succession)."[1] However, while Sunderland's reluctance to the ratification of the Union treaty might have been obvious, we cannot ignore that at that time Sunderland and other Junto members pressed hard for the Queen and the Lord Treasurer to appoint Sunderland as secretary of state. The Queen finally conceded to the Junto and Sunderland took a seat in the Cabinet Council on the very day when the parliament was opened. But once Godolphin satisfied the Junto's desire for patronage, this session became one of the easiest in the years of his ministry. The alliance of the Court and the Junto smoothly expedited the proceedings of the Lords and passed the Union treaty.

Before the 1707/8 session, the Lord Treasurer had conferences with the Junto again. In July 1707 Godolphin reported to Marlborough his discussion about the peace policy with Lords Halifax, Somers and Sunderland.[2] However, the Junto peers were enraged by the appointments of Tory divines as the Bishops of Chester, Exeter and Winchester, and the Junto's dissatisfaction with patronage distribution once again made Godolphin's pre-sessional conferences meaningless. Before the session the Junto did not hide their intention to censure the

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1. PRO 30/24/20/117: Shaftesbury to Furly, 11 Oct. 1706.

2. M-G Corr., II, 854: Godolphin to Marlborough, 21 July 1707.

government about the mismanagement in Spain. In July Marlborough hoped that his son-in-law the Earl of Sunderland would refrain from attacking the ministry about Spanish affairs, and side with the ministry. But in his reply Sunderland did not promise to support the government. He told Marlborough that "there are so many uneasy things preparing by the Common Enemy against next sessions & by the management of the Court...I have terrible apprehensions of the Consequence."[1] Thus, it is conceivable that the Lord Treasurer had conferences not only with the Junto lords but also some moderate Whigs and tried to make allies. Lord Chancellor Cowper was one of the most suitable men for Godolphin to have a pre-sessional talk with. However, Cowper was a genuine Whig and not Godolphin's faithful follower. The Lord Chancellor was most apprehensive of the "division among honest men, who will otherwise be so clear a majority" in the parliament.[2] At the conferences in early September, Cowper pointed out that the indecisive attitude of the ministry would be "disgusting the Whigs" in the parliament, and they would not support the government about Scottish affairs. But at the same time the Lord Chancellor promised the Treasurer "to consider heads for

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1. BL, Add. MSS. 61494, f.73: Marlborough to [Sunderland], 27 July 1707; BL, Add. MSS. 61126, f.76: Sunderland to [Marlborough], 5 Aug.1707.

2. BL, Loan 29/238, f.261: Cowper to Newcastle, 4 Oct. 1708.

the Queen's Speech."[1] A draft of the Queen's opening speech in Cowper's hand with Godolphin's corrections was obviously a product of their pre-sessional meetings.[2] Cowper's draft clearly shows that he was afraid that the Junto would attack the government in the coming parliament. Knowing that the Junto would accuse the ministry of the miscarriage in Spain, Cowper defended the action of the army in the draft. "The diminution of what had been acquired fro[m] the French in Spain is in great measure compensated by the total expulsion of ye French out of Italy". Lord Cowper also recognised a serious difference of opinion between the ministry and the Junto about the Scottish affairs. The Junto aimed at abrogating the Scottish Privy Council. But for the English Court the abrogation was disadvantageous to the management of the Scottish election, and the Scottish Court regarded the abolition as an encroachment on the Union treaty. Thus, in his draft, while Cowper admitted there were "some doubts and difficultys" about the Union and they should be discussed in the parliament, at the same time the Lord Chancellor warned the parliament this debate should not be the "Causes of Jealousy" between the two kingdoms.

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1. H.L.Snyder, "Formulation of Policies", Historical Journal, XI, 158, 160.

2. Hertfordshire R.O. Panshanger MSS. D/EP F135, ff.3-5 (endorsed by Cowper "Sept[ember] [1]707").

It seems that the co-operation between Godolphin and such moderate Whig peers as Lord Cowper gave some Courtiers hope that the ministry would sustain the opposition of the Junto lords. In December 1707, the Earl of Loudoun reported to William Carstares that "by the slow forms of passing bills here, there is good time given to members to consider well of arguments...This gives me hopes that things may be so managed that the council may be continued for one year; which will leave room for the next parliament to reconsider this matter."[1] In early January 1708 the Earl of Mar told Lord Grange that the abolition of the Scottish Council "will be the dispute, but probably that will continue till the end of next session of Parliament".[2] Nevertheless the temporary alliance between the Junto and the High Tories overwhelmed the ministry. The alliance passed the "No Peace without Spain" motion, and made an address in which they criticised the miscarriages of the navy, and finally succeeded in abrogating the Scottish Council. In the debate, Lord Chancellor Cowper "spoke long and warmly" against the Junto's scheme, and such moderate Whig lords as the Duke of Somerset, the Earls of Berkeley,

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1. Carstares Correspondence, 771: Loudoun to Carstares, 30 Dec.[1707].

2. SRO, GD 124/15/754/1: [Mar] to [Lord Grange], 6 Jan. 1708.

Bridgewater, Cholmondeley and Rivers and Lord Herbert of Cherbury protested against the bill.[1] But it was obvious that the Junto accused the government and made use of Scottish affairs only to get concessions from the ministry about patronage. On 6 February, S.Edwin reported to the Earl of Manchester that "Lord Sunderland stuck to Lord Somers and Halifax" in the Lords to abolish the Scottish Council. Edwin realised that the Junto was against the ministry to force Harley "to give way".[2] The Junto lords softened their opposition in the Lords after Robert Harley resigned the secretaryship of state on 11 February. Three days after his resignation, Lord Somers explained that the Junto promoted the bill for abolishing the Scottish Council so that Godolphin might depend upon the Junto and discard Harley. Somers told the Earl of Portland that "I am persuaded the carrying the Bill for taking away the Scottish Privy Council was no little Ingredients towards making the Changes w[hi]ch have since happened."[3]

Before the 1708/9 session, the Junto's discontent with the ministry was more than in the previous years. The Lord Treasurer had a pre-sessional conference with

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1. Addison's Letters, 90: Addison to Manchester, 7 Feb. 1708; J.E.T.Rogers, Lords' Protests, I, 185.

2. The Duke of Manchester, Court and Society, II, 276: S.Edwin to Manchester, 6 Feb.1708.

3. Nottingham University Library, Portland (Bentinck) MSS. PwA 1188: Somers to [Portland], 14 Feb.1708.

Sunderland and tried to appease him.[1] But Sunderland and other Junto members were disillusioned about both Godolphin's policies and patronage distributions. Consequently in the election of the Scottish representative peers in June 1708, the Junto nominated their own candidates, and contested with the Scottish Court peers. In London the Junto pressed hard for the Queen and Godolphin to appoint Lord Somers as Lord President of the Council. To increase their influence over the ministry, the Junto prevailed upon some moderate Whig lords to go into business with them. On 19 October, Sunderland communicated to the Duke of Newcastle that the Junto and their associates had a stiff attitude to the ministry. Sunderland told the Duke that "it was impossible for them [the Dukes of Bolton and Devonshire, the Marquess of Dorchester, the Earls of Orford and Wharton, Viscount Townshend, Lords Halifax and Somers] ...to go on any longer with the Court" and rebuked the ministry about "every part of the administration, the management of the fleet, the Condition of Scotland, the Proceedings in Scotland, the management of the late Invasion, the disposal of Church Preferments, &c."[2] It is very remarkable that unlike the previous sessions, the

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1. M-G Corr., II, 1108, note 2.

2. BL, Lansdowne MSS. 1236, f.246: Sunderland to [Newcastle], 19 Oct.1708.

Junto continued to be against the ministry, even after the ministry satisfied the Junto's desire for patronage. The Queen appointed Lord Somers and the Earl of Wharton as Lord President and Lord Lieutenant of Ireland respectively in November 1708. There seems to have been little agreement between the Court and the Junto before the 1708/9 session. The Junto peers criticised the government on the charges of the irregularities of the Court at the Scottish representative peers' election in June 1708. At the beginning of this session William Bromley was afraid that the Junto would propose the repeal of the sacramental Test in addition of the general naturalisation bill, and that they would force the ministry to support these measures.[1]

Knowing this uncompromising attitude of the Junto lords, the Lord Treasurer once again relied on the moderate Whig peers. In June 1708 Arthur Mainwaring warned the Duchess of Marlborough that Godolphin's divide et impera policy would split the Whigs. Mainwaring thought that "there never was so plain & easy a Game for ministers to play in the world" and that this policy "wou'd be dividing Their party, in which the ministers have many real Friends; And yet they will not put themselves at the head of this Party."[2] Godolphin's plan

1. Leicestershire R.O. Finch MSS. box 4950, bundle 23: W.Bromley to [Nottingham], 31 Dec.1708.

2. BL, Add. MSS. 61459, f.55: [A.Mainwaring] to [Duchess of Marlborough, "Tuesd one a Clock" [15 June 1708].

seemed to be successful. The Duke of Somerset had no affection for the Junto's scheme to return their followers to the House of Lords in place of the Scottish Court peers. Lord Chancellor Cowper supported the validity of the Scottish election, and denied the Junto's claim. However, the Junto was so powerful in the Lords that they passed the general naturalisation bill and defeated the ministry at the votes concerning the Scottish election. However, after the Court gave the Junto such concessions about patronage as the Duke of Montrose's appointment as Lord Privy Seal for Scottish affairs, Godolphin's position was strengthened, and he could make use of his divide et impera policy again. The Lord Treasurer accepted the Junto's scheme to submit the Treason bill to the Lords in March 1709. This bill, which made the Scottish Treason act similar to the English one, was unanimously opposed by the Scottish members. However, for the ministry, their opposition was an asset rather than a liability, because the Treason bill gave the Junto lords a serious dilemma. The "old whigs" in the Commons "had espoused the cause of the Scots in the parliament...as being the nearest to them in their way of life, and the resemblance of their manners."[1] Thus, the Commons softened the bill and returned to the Lords on 14 April, which was more acceptable to the Scots. For the Junto peers, it was impossible to

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1. Cunningham, History, II, 215.

refuse the amendments by the Commons. Lord Yester observed that "there was nothing said against ye clauses" which had been amended by the Commons, "because ye party who have pushed this bill found I believe they could not throw them out."[1] The only way to save this situation was to add some provisos to the Commons' amendments. Lord Halifax, who was apparently weary of the Junto's bellicosity in this session, proposed that the amendments should be in force after the Pretender's death. This motion was seconded by the ministry, and passed.[2] Through the debates of the Treason bill, Godolphin's divide et impera policy was considerably realised. The debate caused not only some differences between the old Whigs in the Commons and the Junto peers but also the alienation of Lord Halifax from the other Junto members, which would unmistakably weaken their power.

Before the 1709/10 session, the Lord Treasurer was anxious to have conferences with the Whig lords about the Peace. The Lord Treasurer, who knew that the expenses of the war had become a heavy burden, hoped that the coming parliament would support the government's peace policy. On 14 August 1709, the Treasurer thought that England would "have more difficulty to prosecute war another

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1. NLS, MS. 7021, f.171: Yester to [Marquess of Tweedale], 14 Apr.1709.

2. Nicolson Diary, 474, 492.

year", so the ministry had to show that the Peace negotiation was on foot and promising.[1] Thus it was necessary for Godolphin to talk with the Junto about the Peace. However, their dissatisfaction with patronage made this talk sterile. As we considered in chapter five, the Junto lords pressed hard for the Treasurer to appoint a Whig divine as the Bishop of Chichester, while they urged Godolphin to give the Earl of Orford the office of first Lord of the Admiralty. However it was ironical that the more the Junto took an obdurate stance, the more the moderate Whigs were weary of the Junto's policy. In October 1709, Arthur Mainwaring feared that the Duke of Somerset had a "design of making Divisions among the whigs."[2]

Throughout the years of the Godolphin ministry, the pre-sessional and sessional meetings between him and leading peers were not very successful. From 1702 to 1704 the Treasurer had talks with the High Tory peers. But their dissatisfaction with Godolphin's policies and patronage distribution made it difficult for the Treasurer to have an agreement with them. After the 1704/5 session, Godolphin's conferences with the Junto lords were often paralysed by their desire for patron-

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1. M-G Corr., III, 1341: Godolphin to Marlborough, 14 Aug.1709.

2. BL, Add. MSS. 61460, ff.81-82: [A.Mainwaring] to [Duchess of Marlborough], "Thursday afternoon", [?13 Oct.1709].

age. However, the Lord Treasurer had meetings with such moderate Whig peers as the Duke of Somerset and Lord Chancellor Cowper and tried to separate them from the influence of the Junto lords.

CHAPTER SEVEN

Scottish Representative Peers

The House of Lords accepted sixteen representative peers of Scotland after the Union treaty was concluded in 1707. Even before the Union, the Scottish lords at times influenced the English House of Lords, because such Scottish affairs as the 'Scotch plot' in 1703, and the Act of Security in 1704 became the main issues in the upper House. Naturally some leading Scots peers were informally summoned to London, and Godolphin often arranged meetings with them.[1] The importance of the Scottish peerage, however, dramatically increased after 1707. The House of Lords of Great Britain had sixteen new members, and in addition the Scottish peers adopted a new system to return their representatives by election.

Some recent studies have shed much light upon 'the road to the Union', and the Anglo-Scottish relationship in the post-Union period.[2] Nevertheless, some aspects have

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1. "It is said that her Ma[jes]ty has ordered the Marquis Annandale The Earle of Cromarty and Rest of the the Scotch Councel here in Towne to set Twice a Week to consult of the Welfare of that Kingdom and finde out Means to settle the succession on the Princess Sophia and her issue." Folger Shakespeare Library Newdigate newsletters on 30 Sep.1704.

2. T.C.Smout, "The Road to Union", in G.Holmes ed. Britain after the Glorious Revolution 1689-1714, (1969), 176-96; W.Ferguson, Scotland's Relations with England: a survey to 1707, (Edinburgh, 1977); D. Daiches, Scotland and the Union, (1977); P.W.J.Riley, The Union of England and Scotland and The English Ministers and Scotland 1707-27, (1964).

been neglected. Concerning the House of Lords, modern historians explain little of the procedure for the elections of the Scottish representative peers in 1707 and 1708 under the Godolphin ministry, and almost nothing about the reason why the number of the peers was fixed at sixteen.[1] In this chapter, we will deal with these problems, and will also discuss Godolphin's management of the Scottish lords after the Union.

In the early eighteenth century, the number of Scottish noblemen was over 130. However, when their financial situation and also the number of English peers (about 170) were taken into consideration, it seemed that not all the Scottish lords would take seats at Westminster. Thus, it was necessary to select their representatives so that one British parliament might be realised. However, it was a controversial matter how many peers should be chosen. In December 1704, Lord Nottingham, who played a great role in an abortive Union negotiation in 1702-3, "foretold that the Nobility of that Nation would never agree to any Union, till the Parliament of England

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1. In the eighteenth century, some studies relating to Scottish representative system were published. A. Wright, An Inquiry into the Rise and Progress of Parliament, chiefly in Scotland, (Edinburgh, 1784); W. Robertson, Proceedings relating to the Peerage of Scotland from January 16 1707 to April 29 1788, (Edinburgh, 1790). For a modern study about the Scottish representative peers, see Sir J.Ferguson of Kilkerran, The Sixteen Peers of Scotland an account of the elections of the representative peers of Scotland 1707-1959, (Oxford, 1960).

should first agree on the Numbers and Rank of such as they would admit into the Parliament of Great Britain."[1] In the 1705/6 session, when the Scottish Court was convinced that the 'Alien Act' would be repealed and saw some hope for the Union, the Earl of Roxburghe thought the 'degradation to Scottish nobility', that is, the election of the peers, would be inevitable if the Scots wished for the Union.[2] In this session, it seems that the Junto lords had already discussed the outline of the Union, especially the principle to fix the number of the Scottish representatives in the British parliament. In January 1706 Lord Somers thought that the English parliament should decide the number of the Scottish lords and Commoners, before they entered the negotiation of the Union treaty. He reached an agreement with Bishop Nicolson on the following point.

> If Scotland were now admitted to a Community of Trade with England, paying their proportion of the public Taxes and haveing a like proportionable Number of their Lords and Commons at the passing of Money-Bills, 'twould be sufficient for the present: For that a farther Union (in Religion Laws and Civil Government) must be the Work of time.[3]

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1. Nicolson Diary, 249.
2. Jerviswood Corr. 138: Roxburghe to G.Baillie, 28 Nov. 1705.
3. Nicolson Diary, 358.

The commissioners of the Union met for the first time on 16 April 1706. It was not, however, until the middle of June that they began to proceed to debate the number of the Scottish peers at Westminster. It appears that most of the Scottish commissioners recognised that only a small number of Scottish lords could represent their country, and thought that these peers should be elected. An anti-unionist commissioner, George Lockhart, was outraged because he thought that the Union would deprive "our nobility of their birthright by reducing their number in the House of Lords to a certain quota to be elected by the whole".[1] But the other commissioners were only interested in the number of representative lords. In the negotiation between the English and Scottish commissioners, the English side proposed the number of Scottish MPs at first. It is not surprising that the Scottish lords were concerned about the number of MPs, since it was conceivable that the number of representative peers would be decided in proportion to the MPs.

On 7 June, the English side handed in a paper which suggested to the Scottish side that the Commoners should be thirty-eight.[2] Both sides had, however, apparently

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1. Letters of George Lockhart of Carnwath 1698-1732, (Edinburgh, 1989), ed. by D.Szechi, 31: Lockhart to H. Maule, 9 May 1706.

2. SRO, GD 18/3132/2, 'A MS. journal of the proceedings of the Scots & English Commissioners in the Treaty for an Union between the Two Kingdoms of Scotland and England Holden at the Cockpit in London anno 1706' written by John Clerk of Penicuik.

exchanged views on this problem before. They considered such criteria as the population, the wealth and the contribution to the land tax. It was said that England was eight times as large as Scotland based on the population, and forty times as large in terms of the land tax contribution.[1]

	population	land tax contribution
Scotland/ England	1:8	1:40
	12.5%	2.5%
prospective Scottish members		
Commons	61	12
Lords	21	4

(English members Commons=489, Lords=170).

The Scottish commissioners were told that the first proposal of the English side was based on the tax contribution.[2] John Clerk recorded that "The scots comm[issione]rs were surprised as the reading of this paper because the number of Representatives in the house of commons was much smaller than was expected".[3] The

1. G.M.Trevelyan, England under Queen Anne, Ramillies and the Union with Scotland, (1932), 267.

2. D.Defoe, The History of the Union between England and Scotland, (1786), 106. However, the Duke of Shrewsbury told James Vernon that "with relation to Taxes, where their [Scottish] quota seems inconsiderable and not proportioned to the number of Representatives." BL, Add. MSS. 40776, f.9: 19 Oct.1706.

3. SRO, GD 18/3132/2, John Clerk's journal.

Scots raised an objection to this proposal. They alleged that in the English counties and boroughs the distribution of the members was not in proportion to the tax contribution. For instance, the constituencies in Cornwall would have returned too many members, if only the tax burden had been considered.[1] Nevertheless, even the first proposal of the English commissioners was not founded only on the tax contribution, as the above table shows. Obviously, the English side took the anti-Union sentiment of the Scots into account and conceded more members so that the Union negotiation might be concluded as soon as possible. At the same time, the English commissioners were reluctant to accept more than thirty-eight members. The Scottish members complained against Robert Harley who "made a very foolish speech" saying that even the thirty-eight members would be too many.[2] Facing this attitude, the Scottish side was obliged to accept that the number of the MPs and peers would be small. On 11 June, a Scottish Courtier, Lord Leven, admitted that they should give priority to passing the Union bill, although the representatives in both Houses were "like to be very small".[3] Seeing the amicable attitude of the Scottish commissioners, the English side

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1. Daiches, Scotland and the Union, 131.
2. SRO, GD 18/3132/2, John Clerk's journal.
3. Carstares Correspondence, 754: Leven to Carstares, 11 June 1706.

tried to settle the number of representatives of the Lords and the Commons at the same time. On 15 June, the English commissioners proposed forty-five Commoners and sixteen peers in proportion to the MPs. On that day, Harley, who was not satisfied with this proposal, reported to the Duke of Newcastle that "we have stretch'd our consciences to forty-five and no more for the House of Commons, and sixteen for the Lords".[1] Newcastle was, however, even severer upon the Scots than Harley. In his reply on 17 June, his grace said

> when they [the Scots] had got their land tax lowered as much as they could, they would not abate us one member for it. Nay I find artifice has had a very ill effect with them, though many of them said when they came first to town, they should ask a greater number to exonerate themselves (as they called it); yet did seem as if they would have been content with thirty-six of the Lower House.[2]

Having heard this proposal, George Lockhart thought "the English did design from the beginning to give the Scots forty-five Commoners, and a proportionable number of peers: but had the Scots stood their ground, I have good reason to affirm that the English would have allow'd

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1. HMC, Portland MSS. II, 193: [Harley] to [Newcastle], 15 June 1706.

2. HMC, Portland MSS. IV, 313: [Newcastle] to [Harley], 17 June 1706.

a much greater number of representatives."[1] But most of the Scottish commissioners did not think so. Indeed the Scottish side might have divided over the number of the Commoners, but about the lords they showed a flexible stand to the English commissioners. John Clerk wrote that "most part of us thought the number [of the representative peers] sufficient, because it was a proportionable number to our representation in the House of Commons and because a greater number of peers wou'd" result in "carrying our large summs of monie from Scotland to England".[2] The Scottish commissioners realised that most of the Scottish lords would not be able to stand the expense in London, and that this expenditure would "more hurt than the most severe tax". The Scottish commissioners still negotiated with the English to increase the number of the representative peers in the private conferences, but they found that the English side "wou'd not give us one man more".[3] The financial situation of the Scottish lords, however, does not elucidate all the reasons why they amenably accepted a small number of representative lords. In the following unpublished

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1. The Lockhart Papers, I, 156. Lockhart's view was answered by John Oldmixon, a Whig historian in his Memoirs of North Britain taken from authentick writings, as well manuscript as printed, (1715), 176-77.

2. SRO, GD 18/3132/2, John Clerk's journal.

3. SRO, GD 18/3132/2, John Clerk's journal.

memoir, John Clerk gives us another reason:

> Most of them [the Scottish commissioners] had promises made to them that the restriction of their number to sit in Parliament needed be no objection to them for that most of them would be after the Union created anew Peers of Great Britain with the privilege of sitting in the house of Peers & that by degrees all the noble families in Scotland would be received into the full enjoyment of the Peerage of Great Britain. I know that such promises were made by the Queen.[1]

These promises, however, were not fulfilled. As we see afterwards in detail, the Court succeeded in creating the Duke of Queensberry a British peer after a fierce struggle with the Junto Whigs, but the Godolphin ministry failed to create any more peerages for Scottish lords. Thus, the Scottish noblemen, who hoped to take seats in the first British parliament, had to contest the election of the representative peers in February 1707.

The 22nd article of the Union bill, which had been drafted in 1706 by the commissioners, provided for the representative peers of Scotland, and this article was

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1. SRO, GD 18/3243, "A Testamentary [MS.] Memorial concerning the Union of the two Kingdoms of Scotland & England in 1707 with a short account of the share I had on the settlement of the present government of Great Britain."

debated in the Scottish parliament at first. The 22nd article was a vital part of the bill, so it is not surprising that Lord Leven thought that the proceedings of the Union bill was "as good as ended" in the Scottish parliament, when he was convinced that the parliament would pass the 22nd article.[1] This article was ratified on 9 January 1707. The Union bill, however, gave only a broad idea of the Scottish representative peers. Consequently, after the 22nd article was passed, the Scottish parliament debated the method to choose the sixteen peers. The parliament mainly discussed the following two points. First, some peers were still reluctant to choose their representatives by election. On 22 January, the Earl of Aberdeen, a moderate anti-unionist, proposed that the Scottish peerage should select the representatives by rotation. But this proposal was refused not only by the unionists but also by such anti-unionists as the Duke of Hamilton and Lord Balmerino.[2] Although there was little possibility that the rotation system would be realised, the English Court was alarmed at the news. The Godolphin ministry had already regarded the Scottish representative peers as the pawns which would make the management of the House of Lords easy. If

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1. BL, Add. MSS. 61136, f.81: Leven to [Marlborough], 7 Jan.1707.

2. NLS, Wodrow Letters Quarto IV, f.177: J.Maxwell to [R.Wodrow], 23 Jan.1707; A Diary of the Proceedings in the Parliament and Privy Council of Scotland by Sir David Hume of Crossrigg, (Edinburgh, 1828), 197.

rotation had been adopted, it would have been impossible for the ministry to pack all the representatives with Courtiers. David Nairn in London reported to the Marquess of Montrose that "Friends here are affrayd of rotation," because if the rotation was adopted, "few friends of the Union may be in the first Parliament" of Great Britain.[1]

The second point was no less important. The 22nd article was quite ambiguous about the qualifications of the Scottish peers who chose their representatives. It seems that there was no agreement among the Scottish Court interest whether the Duke of Argyll, who had had a seat in the English House of Lords as the Earl of Greenwich, could vote in the election. His grace distinguished his English peerage from the British peerages which would be created after the Union, and he insisted that the former peerage should not hinder his right of voting in the election. Although the Scottish Courtiers co-operated with Argyll for the Union, they were indifferent to his claim. For instance, the Earl of Mar said that Argyll's voting would be "pretty odd".[2] His grace was infuriated at the Court. On 31 January, he went to see the Duke of Queensberry, and told him that there would be only two choices whether Argyll would be created an English duke or he would quit the Queen's service, if his voting

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1. SRO, GD 220/5/107/5: D.Nairn to [Montrose], 18 Jan. 1707.

2. HMC, Mar and Kellie MSS. I, 368: Mar to D.Nairn, 1 Feb.1707.

should not be allowed.[1] This dispute was made public soon, and the Squadrone Volante regarded this controversy as a chance to weaken the influence of the Duke of Argyll over the election. Although the Scottish Court avoided bringing this matter into the parliament, the Squadrone did take objection to the validity of Argyll's vote. The Squadrone, however, failed to declare that his grace's vote should be invalid in an additional clause of the Union treaty or other acts, and the Court succeeded in tacitly admitting his vote. But the Courtiers were apprehensive that the British House of Lords would have a hot dispute over this problem.[2] Their apprehension was not groundless, because in the 1708/9 session the upper House discussed the validity of the voting of the Scottish peers who also had English peerages.

After the Union bill, which had been ratified in Edinburgh, was sent to London, the English House of Lords deliberated the 22nd article on 24 February 1707. The main issues debated at Westminster were different from those in Edinburgh. The Tory side was opposed to this article on three points. First, the representative system, especially the election of the representative peers,was unsuitable for the House of Lords. The Tory lords insisted that the lords should have a right to sit

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1. HMC, Mar and Kellie MSS. I, 368: Mar to Nairn, 1 Feb. 1706.

2. Ibid., I, 370: Mar to Nairn, 5 Feb.1706.

in the House based on the dignity and heritage, not on election, and that the Scottish lords, who could not take seats, would lose their privileges.[1] Secondly, the High Tory peers were averse to increasing the number of the representative peers. On the contrary, they alleged that even the sixteen lords would be too many, because they thought that the English parliament should adhere to the tax contribution principle, when they fixed the number of the representative peers.[2] In the House, Lord North and Grey said "The small and unequal proportion Scotland was to pay to the land-tax, urging, that Wales, as poor a country every whit as that, and of a much lesser extent, paid to the full as much again, and yet sent not much more than half the representatives to parliament, which were granted to Scotland".[3] The Tory peers apparently realised that the Godolphin ministry would make the Scottish representatives a stronghold of the Court, and besides the Tories were alarmed at the Court's scheme to promote some Scottish lords to the peerages of Great Britain in addition to the representative lords. In the draft of his speech, Nottingham wrote that the Queen's prerogative should be "bounded as to

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1. Cobbett, VI, 567. The Earl of Rochester's speech.

2. See chapter one 62-63.

3. Cobbett, VI, 565-66.

making Scotch peers peers of the British Parliament."[1] Thirdly, the Tories claimed that the introduction of the sixteen peers into the House would be very dangerous for the Church and State of England, because most of these lords would be presbyterians. Bishop Hooper of Bath & Wells regarded the Union as "the mixing together strong liquors, of a contrary nature, in one and the same vessel." He thought that "in any future debates relating to the church", the Scottish lords "could no ways be supposed to be well affected; and therefore...some provision might be made for debarring them of their vote in any church matter that should hereafter come in agitation".[2]

Although the Whig lords consistently supported the Union in the 1706/7 session, it did not mean that they were favourable to the Scottish peerage. Indeed, the Duke of Shrewsbury might have hoped for the ratification of the Union bill, but he could not agree to the idea that all the Scottish peers would enjoy the same privileges as the English. His grace expressed disapproval of the number of the Scottish representatives. He was still of the opinion that the number should have been fixed on the basis of tax contribution.[3] It was said that "the Whig

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1. Leicestershire R.O. Finch MSS. parliamentary and political papers 128: "The Disadvantage [of the Union] from the manner" all in Nottingham's hand.

2. Cobbett, VI, 568; Nicolson Diary, 420.

3. BL, Add. MSS. 40776, f.9: [Shrewsbury] to [J.Vernon], 19 Oct.1706.

lords indulge themselves mightily in vilifying the Scotch nobility for their part in the Union. My Lord Wharton owned yesterday in the House, that he doubted much he could have been prevailed on to have parted with his birthright, had he been a Scotch Lord".[1] The aim of the Junto lords was only to return their followers, the Squadrone Volante, as many as possible in the coming election.

The Scottish parliament finished the ratification of the Union bill on 16 January 1707. But as we have already seen, they had already passed the 22nd article on 9 January. For the coming parliament of Great Britain, the representative members should be elected. The Scottish Court, however, hoped to postpone the election as long as possible.[2] They understood that the sentiment of the Scots was not favourable to the Union, and that the government might be defeated in many constituencies. The Squadrone, though they were the unionists, disagreed with the Court and asked the Court to hold the election soon. In the negotiations on the Union bill, the Squadrone Volante played a great part, and naturally they called for a reward. They had two assets. One was that the Squadrone was strongly backed by the Junto lords in

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1. Jerviswood Corr. 189: J.Johnstone to G.Baillie, 25 Feb.1707.

2. SRO, GD 124/15/487/9: [Mar] to [D.Nairn], 6 Feb.1707. HMC, Mar and Kellie MSS. I, 368: Mar to D.Nairn, 1 Feb.1707.

London. No sooner had the Scottish parliament passed the 22nd article, than the Junto began their election campaign. On 22 January, Somers wrote to the Earl of Sutherland, a Squadrone peer, that "we [Somers and Sunderland] spoke to the D[uke] of M[arlborough] together since yt I left the matter to his solicitation...& I doubt you have many rivals."[1] Three days later, a Squadrone member in London reported with delight. "The Whig Lords, now that the great job is done, will yield to what is reasonable, if they be well informed, particularly for gaining a majority to their own side."[2] The Squadrone Volante had every reason to hope that the election would be done soon. The Scottish Court, which was supported by Godolphin and Marlborough, was reluctant to return many Squadrone members, but at the same time they had to use every means to exclude the anti-Union lords from the list. Therefore the Squadrone expected that the Court would be finally obliged to co-operate with them. It was said the English ministry would not win the Scottish election without the assistance of the Squadrone, "unless they [the Court] choose of those who have been against the Union, which perhaps they would not venture on at present".[3] In early February, both sides came to an

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1. NLS, Dep 313/532 (Sutherland MSS.): Somers to Sutherland, 22 Jan.1707.

2. Jerviswood Corr., 183: J.Johnstone to G.Baillie, 25 Jan.1707.

3. Ibid., 184: G.Baillie to J.Johnstone, 1 Feb.1707.

agreement. They agreed that the election would take place immediately, but they decided to choose their representatives in the present parliament, not in the constituencies. Obviously, both the Scottish Court and the Squadrone realised the anti-Union feeling was still strong in the constituencies, and they were apprehensive that the Duke of Hamilton and his allies would take advantage of this situation. The common interests between the Court and the Squadrone were to minimize the influence of Hamilton over the election.[1] Nevertheless the Court had much trouble in treating Hamilton. This is fully explained in a letter from the Earl of Mar.

> Some thought that the naming of the D[uke] of H[amilton] was advisable, for he would be insignificant amongst us when none of his own people were named with him & it would intirely break him with his party here...This seemed pretty reasonable, but the Com-[missione]r [Queensberry] tells us today that he believed it would not be acceptable to our friends above, which put ane end to our thoughts that way, but yet we are not sure of being able to exclude him, for several peers who went along with us in the affair of the Union, will not join with us personally against him.[2]

1. HMC, Mar and Kellie MSS. I, 371-72: Mar to D.Nairn, 5 Feb.1707; Jerviswood Corr., 181: G.Baillie to J.Johnstone, 21 Jan.1707.

2. SRO, GD 124/15/487/9: [Mar] to [D.Nairn], 6 Feb.1707.

"Our friends above", the English Court, had successfully used their influence over the election. At first, they entrusted a small core of the Scottish Court with the making of the Court list. Neither the Squadrone nor the Duke of Argyll, a Court ally, could take part in the naming of the Scottish representative peers. The Duke of Argyll, who made an important contribution to the ratification of the Union, was outraged at his being excluded, and finally the Court agreed to Argyll's participation in the naming of the peers.[1] The Court was more cold-hearted to the Squadrone Volante. Although they were backed by the Junto, the number of the Squadrone lords was quite few, and, besides, Godolphin was averse to choosing many Squadrone peers. David Nairn in London observed that "how few their [Squadrone's] partie was, when they pretended to stand upon their own leggs. I have done all I can, and cannot find that Squadron has any underhand dealing here."[2] Facing the complaint from Argyll and the Squadrone, the Scottish Court made a limited concession to them. On 5 February, a week before the election, Mar reported to David Nairn that in the Court list there would be such 'Squadrone lords' as Montrose,

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1. HMC, Mar and Kellie MSS. I, 368: Mar to D.Nairn, 1 Feb.1707; Ibid., I, 374: Mar to D.Nairn, 13 Feb.1707.

2. SRO, GD 124/15/487/15: [D.Nairn] to [Mar], 11 Feb. 1707.

Roxburghe and Tweedale.[1] The Court also agreed that such Argathelians[2] as Lothian and Ilay should be added to the list. The Squadrone Volante was not satisfied with this revised Court list, but the Court could take advantage of the mutual hostility between the Squadrone and Argyll. For example, Argyll was delighted with the exclusion of Marchmont from the list, because he had been opposed to Argyll's voting at the election of the representative peers.[3] Although the Court allowed the Squadrone and Argyll to participate in the making of the list, the secrecy of the English and Scottish Courts was maintained. It was not until the election day that Queensberry made the final version of the list open to the public.[4]

Indeed, the Court might have hesitated to hold the election soon after the ratification of the Union bill, but they felt confident that the parliament would elect nobody but the unionists after the ministry was reconciled with the Argathelians and the Squadrone. On 5 February, Mar optimistically told David Nairn that "our election will, I believe, be made some day next week, & we have little

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1. HMC, Mar and Kellie MSS. I, 371-2: Mar to D.Nairn, 5 Feb.1707.

2. Ibid., I, 374: Mar to D.Nairn, 13 Feb.1707.

3. Ibid., I, 371: Mar to D.Nairn, 5 Feb.1707.

4. Ibid., I, 375: Mar to D.Nairn, 13 Feb.1707.

fear but those chosen will all be of those who have been for the Union."[1] Nevertheless, the Court never dreamed that they would be given full support from the Squadrone Volante. Queensberry understood that the Squadrone lords still hoped to return all their members, and that they might deceive the ministry and vote against the Court list, if they could do a better deal with the Duke of Hamilton's interest. Consequently, Queensberry hinted that all the Squadrone peers would be in the final version of the Court list so that they might not have an underhand intrigue with Hamilton. Queensberry, with the assistance of Argyll and Mar, completed the list on the night of 12 February, the previous day to the election.[2] Apparently they had received instructions from Godolphin and the Junto lords in which they specified the Court peers who should be in the list. Godolphin recommended Ross, and the Junto supported Kilmarnock. At first, Queensberry was inclined to include these two lords in the list, but later he accepted Mar's view that they must not be chosen. The Scottish Court understood that they should esteem the opinion of the English Court, but at the same time they hoped to choose the influential peers in the Scottish Court. Mar was reluctant to elect such peers as would become the minions of the English ministry

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1. SRO, GD 124/15/487/7: [Mar] to [D.Nairn], 5 Feb.1707.

2. HMC, Mar and Kellie MSS. I, 375: Mar to D.Nairn, 13 Feb.1707; Jerviswood Corr., 186: G.Baillie to J.Johnstone, 6 Feb.1707.

in the coming British parliament. He wrote to David Nairn that

> it will be impossible to get them [Ross and Kilmarnock] nam'd, there being so many Lords of more interest & consideration pretending to it & who have been as hearty in the Affair & contributed more than single votes to the carrying it [the Union] through, so if we should set up for these two, it would both disoblidge a great many and we would not be able to carry them either...Ross is not at all considered here by anybody & is of no interest & should we propose him to people of higher rank than him, who beside are of better qualitys every way, would they not laugh at us and would we not lose our interest with them forever after? My Lord Killmarnock is a good humor'd young man & has joined in the measure, but that is all. He was never in business & has little interest. He has indeed one agreeable woman to his w[ife], so I do not wonder that any who saw her...should be desirous of having her there [London], but this to yourself.[1]

It was two hours before the election that Queensberry showed the final Court list to the Squadrone lords. They were outraged by the list, because Marchmont and Haddington were excluded from it. Immediately they

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1. SRO, GD 124/15/487/9: [Mar] to [D.Nairn], 6 Feb.1707; SRO, GD 26 (Leven & Melville MSS.)/13/138: J.Shute to [Leven], 31 Jan.1707.

decided to take their revenge on the Court. They temporarily sided with Ross who had been discarded by the Scottish Court.[1] The Squadrone Volante, however, did not co-operate with the Duke of Hamilton, Queensberry's deadly foe. There were at least three reasons why the Squadrone failed to make an 'unholy' alliance with Hamilton which would be realized in the 1708 election. One was due to the skilful management of Queensberry. The final Court list was kept secret so strictly that the Squadrone had too little time to concert another list with Hamilton. Thus, the Squadrone adopted such tactics that they would vote against only Lothian, Ilay and Roseberry who were in the Court list.[2] The second reason was that Hamilton himself did not want to be on the Squadrone's side. For Hamilton, a probable Jacobite, the Squadrone was no less obnoxious than Queensberry. Hamilton told his mother that "the Court took great pains I should not be chosen...The Commissioner told several that the Queen has sent positive orders that none concerned in the government or in her service should vote for me."[3] Nevertheless, the Duke of Hamilton and his followers voted for the Court candidates, and against the

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1. HMC, Mar and Kellie MSS. I, 375-76: Mar to D.Nairn, 13 Feb.1707; Jerviswood Corr., 188-89: G.Baillie to J. Johnstone, 13 Feb.1707.

2. Jerviswood Corr., 188: G.Baillie to J.Johnstone, 13 Feb.1707.

3. SRO, GD 406/1/7922: [Hamilton] to [Anne, Duchess of Hamilton], 14 Feb.1707.

Squadrone Volante.[1] The third reason was that Hamilton's faction (not to say his grace himself) was quite apathetic to this election. They understood that there was no possibility of their member being elected, so they preferred to stay in the country.[2] Regrettably there is no official voting record for this election. We know only one unauthentic list in which Abel Boyer, the compiler, shows the names of forty-four voters.[3] According to Marchmont, there had been sixty-three members during the debate over the ratification of the Union Bill. He agreed with the view that this decrease was due to the abstention of Hamilton's faction.[4]

Roughly speaking, the Court won the election. Among the lords in the Court list, only Rothes was defeated, but no anti-Unionist was returned. Although the Squadrone was opposed to the Court list, it was Crawford who was elected in place of Rothes, and Marchmont and Haddington could not gain seats. However, neither Godolphin nor the

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1. Jerviswood Corr. 188: G.Baillie to J.Johnstone, 13 Feb.1707.

2. SRO, GD 406/1/7922: [Hamilton] to [Anne, Duchess of Hamilton, 14 Feb.1707. "our own friends who were always together in this session...were so weak as that several of them did not give in lists else the squadrone had been totally thrown out."

3. A.Boyer, Annals, V, 421.

4. SRO, GD 158/1143: Marchmont to Wharton, 15 Feb.1707. "Many of the opposers of the Union both of the peers and the commissioners for the shires and boroughs dropped away into the country."

Junto lords were satisfied with this election result. Apparently the Scottish Court conferred with the English side, and sought a way to exclude Crawford, but two weeks after the election, David Nairn in London wrote that "I cannot think it practicable to turne out the Earl of Crawford at this time being one of 16, if he come hither", and the members of the Scottish representative peers for the first parliament of Great Britain were finally fixed.[1] However, the Squadrone Volante and the Duke of Hamilton's interest, who were dissatisfied with this election, contested the 1708 election against the Godolphin ministry.

The first parliament of Great Britain was dissolved on 15 April 1708, and the second election of the Scottish representative peers was held on 17 June. This election differed from the previous one on several points. First, the 1707 election (for both the lords and the MPs) took place in the Scottish parliament. As we have already seen, the Court knew the anti-Union sentiment of the Scots, and avoided choosing the representatives in a different place, which would only have led to confusion and resulted in returning some anti-unionists. The Union treaty, however, did not allow this procedure, and the Duke of Hamilton and his faction did protest against it. Even some unionists suspected that this election

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1. SRO, GD 124/15/487/31: [Nairn] to [Mar], 28 Feb.1707.

might be illegal, and tried to make an exception in the 22nd article of the Union Treaty. But most of them were contented with the parliamentary resolution that only the first election would be held in the present session.[1] In the following year, the political situation had totally changed. The general election of 1708 turned to the advantage of the Godolphin ministry and the Whigs. The Court decided that the election for the Scottish MPs would take place in the constituencies and the lords would choose their representatives in the Palace of Holyrood House, Edinburgh.

Secondly, the 1708 election was considerably influenced by the abortive invasion of Scotland by the Jacobites and French in March. More than twenty Scottish lords were jailed, including the Duke of Hamilton.[2] They were sent to London. Facing the danger from the Jacobites, it is not surprising that the government arrested some probable Jacobite lords. Many of the Scots, however, doubted the legality of taking the prisoners to London, and insisted that the prisoners should be examined in Edinburgh.[3] But the English Court

1. Jerviswood Corr., 181: G.Baillie to J.Johnstone, 21 Jan.1707.

2. Luttrell, VI, 295.

3. The Earl of Seafield told Godolphin that "the high Tories" alleged that "the Duke of Queensberrie, Earles of Marr Lowdon and Seafield were the advysers of committing and therafter of carrying up the prisoners to London". HMC, Laing MSS. II, 147: 20 June 1708. See also SRO, GD 124/15/859/3: [Lord Dupplin] to [Mar], [July 1708].

had every reason to send up the prisoners to London. The ministry understood that most of the prisoner peers belonged to the Duke of Hamilton's faction. No sooner had the government made a decision to arrest these lords, than the Court began to prevail upon them to submit their allegiance to the government. George Lockhart recorded that Marlborough and Godolphin had "a design to gain them [prisoners] to their syde in the ensueing elections; in which case they [Marlborough and Godolphin] resolved to procure their liberation, otherwise to leave them to the mercy of the laws."[1] As we shall consider in detail, Godolphin had to seek assistance from both Queensberry and Hamilton, because the Lord Treasurer realised that Queensberry could not put any dependence on the Squadrone's interest whose assistance the Court had got to some extent in the previous election. Thus it is possible that Godolphin was inclined to make an approach to Hamilton and the prisoner lords so that the Court could pack all the sixteen peers with their nominees. After the election, the Earl of Mar recollected that Hamilton had had a promise to be one of the sixteen peers when he was taken to London in late April.[2] Alexander Cunningham endorses Mar's view. "The duke of Marlborough and the earl of Godolphin began now to court both parties. It

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1. HMC, Mar and Kellie MSS. I, 438-39: Glasgow to Mar, 1 May 1707; The Lockhart Papers, I, 293.

2. HMC, Mar and Kellie MSS. I, 450: Mar to Stair, 20 June 1708.

was therefore a matter of indifference to them what party either Hamilton or Queensberry took, so long as their own interest and their military schemes met with no check in the parliament".[1]

Indeed Godolphin might have had a design to manoeuvre these two dukes into his camp, but their reconciliation did not seem to be realistic. Thus Godolphin had to weigh whether Queensberry or Hamilton should be entrusted with the management of the election of the Scottish representative peers. It appears that the Lord Treasurer at first chose Queensberry as his partner. On 26 April, Godolphin refused to include the Earl of Orkney, Hamilton's brother, in the Court list, though he was Marlborough's favourite army officer.[2] It was necessary for Godolphin to show that the English Court would support Queensberry. For this purpose the best way was to create his grace a British nobleman and allow him to sit in the House as a hereditary peer. It seems that the Scottish Court welcomed a favour to Queensberry, because in the previous parliamentary session they almost broke the relationship with the Squadrone Volante over the abrogation of the Scottish Privy Council. Mar hoped that the Scottish Court would win the election with the assistance of the jailed peers except for Hamilton, and

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1. Cunningham, History, II, 158.

2. M-G Corr., II, 967: Godolphin to Marlborough, 26 Apr. 1708. Marlborough, who had a Scottish peerage, voted for Orkney at the 1708 election.

exclude all the Squadrone's interest from the list.[1] The Junto lords, however, understood that the promotion of the Scottish lords to the British peerage could lead to increasing the Court supporters, and break the dominance of the Whigs in the House of Lords.[2] Although Queensberry's promotion was supported by the Queen, it appears that the Lord Treasurer gave up this plan and sought another choice. He released Hamilton on 5 May, and probably Godolphin agreed to promote Hamilton to a British dukedom.[3] Godolphin never failed to advertise to the Scottish prisoners that Hamilton's bail was due to the Court, so the Earl of Glasgow, a Scottish Courtier, reported to Mar that "they [the Duke of Hamilton's interest] will as one man be for the Government measures" and they would be qualified for the coming election.[4]

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1. Mar told Lord Grange that "I'm glad to find that the Squadrone have not succeeded with the prisoners. I hope this will make our election easy." SRO, GD 124/15/754/23: on 6 May 1708.

2. BL, Lansdowne MSS. 1236, f.242: Sunderland to [Newcastle], 27 May 1708. The Junto lords and their allies asked the Duke of Newcastle (Lord Privy Seal) not to put his seal to Queensberry's patent. Sunderland did not feel any hesitation to dispute with the ministry in the House of Lords if the Court adhered to Queensberry's promotion.

3. Clavering Letters, 3: A.Clavering to J.Clavering, 15 May 1708; Luttrell, VI, 302.

4. HMC, Mar and Kellie MSS. I, 438-39: Glasgow to Mar, 1 May 1708. Daniel Defoe seems to have been an intermediary between Godolphin and Lord Belhaven, one of the prisoner peers. "I purpose to see his Ldpp [Belhaven]...I shall not fail on all occasions to acquaint your Ldpp with every thing that cont./

Nevertheless Hamilton apparently played a double game with the Court and the Junto. When Hamilton was still in jail and negotiating with the Lord Treasurer, the Duke had already informed the Junto and the Squadrone of his willingness to side with them. As early as 27 April, the Duke of Roxburghe admitted that it was the Junto lords who would release Hamilton and that a secret agreement had been already made between the Junto and Hamilton.[1] Two days after his bail, Sunderland wrote to the Duke of Montrose, one of the leaders of the Squadrone Volante that

> Before this comes to y[ou]r hands, y[ou]r grace will hear of Duke Hamilton's being at liberty, this as it was dexterously manag'd so it has produc'd such an Union, as will in all probability carry the election of the sixteen peers in the manner y[ou]r grace & all of us wish. I can onely say, that the whole squadrone is in the list agreed on & as I am sure you may depend upon Duke Hamilton, & his friends to a man, so I beg you would shew the same confidence towards him and his & by doing so, I think we can't fail of carrying our point...My Lord Orkney will acquaint you that Duke Hamilton, the squadrone, & I may add the W[h]igs

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appeares worth your Ldpps note." Defoe to Godolphin, 20 Apr.1708 in G.H.Healey ed., The Letters of Daniel Defoe, (Oxford, 1955), 255-256.

1. Jerviswood Corr., 192-93: Roxburghe to G.Baillie, 27 Apr.1708.

of England are now upon one bottom.[1]

Once Hamilton deserted the Court, the Godolphin ministry was forced to rely only on Queensberry for the management of the Scottish election. The Junto, backed by the Squadrone-Hamilton alliance, was strongly opposed to the creation of a British peerage for Queensberry. The English Court needed this honour more than before, because they had to show their unchangeable intention that the ministry would trust nobody but the Duke of Queensberry, although Marlborough hated him and regarded this creation as a necessary evil.[2] On 18 May, Godolphin finally succeeded in promoting his grace, and ten days later Queensberry went back to Edinburgh to preside over the election of the representative peers. Robert Pringle in London reported to Marchmont that "the D[uke] of Queensberrie went from this on Saturday. I am told he carries with him his patent of Duke of Dover, after much struggles & opposition made to it & not without insinuations that it may be challenged before he be

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1. SRO, GD 220/5/172/1: Sunderland to [Montrose], 7 May 1708; SRO, GD 124/15/754/24: [Mar] to [Lord Grange], 8 May 1708; HMC, Bagot MSS. 341: Lord Barnard to J. Grahme, 6 May 1708.

2. "I am intierly of your opinion that this last mark of favour to Queensberry might have been spared, but beleive it must be thought by the House of Lords that the Queen has the power of doing it, so that in prudence the Whigs should not attempt what can't be aproved." M-G Corr. II, 991: Marlborough to Duchess, 24 May 1708.

allowed to sit in the house of Peers."[1]

The third point is the relationship between the English Whigs and the Scottish peers. Indeed Sunderland might have bragged of his friendship with Hamilton, the Squadrone and the Whigs, but it was far from the truth. Robert Harley's resignation from the secretaryship in February and the victory of the Whigs at the 1708 general election did increase the influence of the Whigs over the Godolphin ministry. The bellicosity of the Junto lords was, however, not always welcomed by other Whigs. After the prorogation of the 1707/8 session, the Junto aimed at the appointment of Somers as Lord President, but the Duke of Somerset raised an objection to their adhering to Somers' appointment, because his grace knew Somers was not acceptable to the Queen. Sunderland was dissatisfied at Somerset's moderation. Three days before the election of the Scottish representative peers, Arthur Mainwaring wrote to the Duchess of Marlborough that "it is amazing that a man in such a post [Sunderland] shou'd say he never saw a worse prospect at home."[2] Apparently the Scottish election was included in Sunderland's apprehension. The Duke and Duchess of Marlborough were concerned about the rashness of their son-in-law and afraid

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1. SRO GD 158/1097/5: R.Pringle to [Marchmont], 1 June 1708.

2. BL, Add. MSS. 61459, f.55: [A.Mainwaring] to [Duchess], "Tuesd one a Clock" [15 June 1708].

that Godolphin would not control Sunderland.[1] Somerset never supported the Scottish policy of the Junto lords. After they declared the alliance with Hamilton, such Scottish Courtiers as Queensberry and Mar lost contact with Sunderland, one of the secretaries of state, and it was Somerset and Henry Boyle with whom the Scots communicated.[2] Obviously the Lord Treasurer preferred taking the helm of state with the assistance of such moderate Whigs as Somerset, Henry Boyle and the 'Lord Treasurer's Whigs' to capitulating to the Junto lords. Soon after the Scottish election, Mainwaring once again apprehensively reported to the Duchess that Somerset "is set on by Lord Treasurer on purpose to divide them [the Whigs]. I did all I could to convince him of the contrary."[3]

Finally, it has been often said that the co-operation between Hamilton and the Junto was a typical example of the 'unholy' alliances. But was this really made without any principles? Can we regard this as the sheer product of political opportunism? Indeed, Hamilton might have joined in this measure from practical motives.

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1. BL, Add. MSS. 61459, ff.58-59: [A.Mainwaring] to [Duchess of Marlborough], "Wensday morn" [c.16 June 1708].

2. SRO, GD 124/15/831/25: [Mar] to [D.Nairn], 18 June 1708.

3. BL, Add. MSS. 61459, ff.66-67: [A.Mainwaring] to [Duchess], [c.20 June 1708].

One was his hostility to Queensberry. Hamilton's complaint derived only from the fact that Queensberry was "created a Duke [of Great Britain], while I am elective".[1] Besides Hamilton was engaged in a civil case against Lord Mohun, which might be sent up to the House of Lords, so it was advantageous for the Duke to side with the Junto whose leadership was powerful in the upper House.[2] It appears that the Junto had some grounds for allying themselves with Hamilton. In the previous session, they had been opposed to the ministry and Queensberry in the debate over the abrogation of the Scottish Privy Council which they considered to be a source of Queensberry's influence over Scotland. Roxburghe told Dartmouth that "this was the main inducement that he and most of the nobility had to come into the union; finding it impossible to have any redress against the high commissioner and [privy] council."[3] This opposition against Queensberry was maintained in the 1708 election. Soon after the election, Sutherland reported to Sunderland that "we have fought the battle very heartily, the Dukes of Montrose, Roxburghe & I, having been for the abolishing of the Council here, were persons most obnoxious to the London

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1. Private Correspondence of Sarah Duchess of Marlborough II, 262: Hamilton to Sunderland, 19 May 1708.

2. SRO, GD 124/15/754/24: [Mar] to [Lord Grange], 8 May 1708; H.T.Dickinson, "The Mohun-Hamilton Duel: Personal Feud or Whig Plot" Durham University Journal, LVII, (1965), 159.

3. Burnet's History, V, 362, Dartmouth's note.

ministry".[1] Marchmont shared this view. He wrote to Somers that "those who met" in the election "were of two sides differing upon the same grounds whereupon the Scots peers in the House of Lords in the late parliament of Britain did differ...some were for haveing one privie council only for the whole united Kingdome. Others were for keeping up a separate privie council in Scotland."[2]

It seems that the English and Scottish Courts never dreamed that Hamilton would betray them and persuade the Scottish prisoner lords to vote against the ministry. Eight days after Hamilton was released, Mar still hoped that the prisoners would support the Court,[3] but Hamilton's desertion surprised not only the Court peers but also the prisoners themselves. Lord Orkney reported to Sunderland that "I found them [prisoners] extremely surprised at my brother's proceedings, for they expected he would have joined the other people, which made Marischal give his proxy to the Earl of Leven".[4] Consequently Hamilton's first work for the election campaign

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1. BL, Add. MSS. 61628, f.169: Sutherland to [Sunderland], 19 June 1708.

2. SRO, GD 158/1174: Marchmont to Somers, 19 June 1708.

3. SRO, GD 124/15/754/26: [Mar] to [Lord Grange], 13 May 1708.

4. Private Correspondence of Sarah Duchess of Marlborough II, 263: Orkney to Sunderland, 21 May 1708.

was to qualify his followers and collect their proxies. As the prisoner peers had no expectation to attend the election, the proxies were of more importance than usual. In this election thirty-four lords sent their proxies.

After the prisoners understood that Hamilton had deserted the Court, it was not difficult for his grace to get the proxies from them, because most of them belonged to his faction. Marischal recalled his proxy from Leven, and gave it to Hamilton. Hamilton also secured the support of Kilsyth, Belhaven and Rutherford.[1] Hamilton, however, was not optimistic, and his fear was not groundless. The Scottish opposition did not guess that the Duke of Marlborough, who was the father-in-law of Sunderland and had a right to vote in this election as Lord Eymouth, would support the Court. Obviously they expected Marlborough would keep neutral. It seems that his grace hesitated to make his standpoint clear. The Scottish Court was anxious for his support. On 7 May, Seafield asked his grace to send his proxy, but it was only on 31 May that he decided to send Mar his proxy.[2] For the

1. Private Correspondence of Sarah Duchess of Marlborough II, 265-67: Hamilton to Sunderland, 22 May 1708.

2. BL, Add. MSS. 61136, f.107: Seafield to Marlborough, 7 May 1708; Marlborough Dispatches, IV, 44: Marlborough to Mar, 31 May. The Queen pressed his grace to side with the Scottish Court. After the Duke sent his proxy, the Queen told him that "I heard soon after I had writ to you about your proxy, that it was gone, so that it has got there in good time, which was all I was in pain about, for one would not lose the least assistance at such a critical time as this when there is such a mighty struggle, and there cont./

opposition, Marlborough's support of the Court was an unexpected accident. Godolphin and David Nairn were busy collecting proxies of the Courtiers.[1] In early June, it appears that things were getting better for the Court. Mar confidently told Marlborough that "notwithstanding of all this [opposition's campaign], I have good ground to believe that the peers will make choice mostly of those who were of the last Parliament."[2]

We cannot ignore the part played by the Squadrone lords in the election, but for Hamilton this campaign was a chance to make an ostentatious display of his formidable influence over the Scottish peers. However, Hamilton's faction had a problem in voting for the opposition, because many of them were Jacobites or Scottish Episcopalians, and it was impossible to vote for the Squadrone Volante who were well-known to be presbyterians. For instance, Lord Breadalbane refused to support the Squadrone in spite of Hamilton's persuasion. Consequently, his grace prevailed on Breadalbane to vote at least for Hamilton and Orkney "on our relation of

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is no wonder opposition should increase when one of my own servants [Sunderland] is at the head of it". The Queen to Marlborough, 18 June 1708. The Letters and Diplomatic Instructions of Queen Anne, 249.

1. SRO, GD 248 (Seafield MSS.)/572/7/24: Godolphin to Seafield, 3 June 1708; SRO GD 124/15/831/11: D.Nairn to [Mar], 5 June 1708.

2. BL, Add. MSS. 61136: f.109: Mar to [Marlborough], 31 May 1708.

blood & friendship".[1] It was successful. Breadalbane sent Lord Bute his proxy in which Breadalbane nominated Hamilton and Orkney.

Attention should be paid to the proxies which were used in the election of the Scottish representative peers. They differed from those in the House of Lords. While the recipient lords could make use of the proxies at their discretion at Westminster, the Scottish lords had some restrictions, when they exercised their proxies. In the election of the Scottish representative peers, the proxies did not mean the blank letters of attorney. Normally the sender gave either a formal list, which specified the lords to be voted for and would be submitted by the recipients in the election, or informal instructions in which the sender showed the lords to be elected. As we have already seen, the proxies were of more importance than usual, because many of the prisoner peers were expected to exercise them, and both the Court and opposition manoeuvred them into their camps. For both sides, the proxy of the Duke of Atholl, who had been arrested but confined in the Blair Castle because of his serious illness, was indispensable. Atholl's influence over the Highland lords was considerable, so it was conceivable that they would follow his grace's voting. For the Court, Atholl's support for the ministry was all

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1. SRO, GD 26/13/151/1: [Breadalbane] to [Earl of Leven], 1 June [1708].

the more important because he had almost broken his friendship with the Duke of Hamilton. Atholl had taken a disgust at Hamilton, since Hamilton suddenly supported the Court measure to leave the appointment of the commissioners for the Union to the Queen in the 1705 Scottish Parliament, and the united front against the Union collapsed. In early June, when Atholl knew that Hamilton had deserted the Court, Atholl wrote to Mar that "I cannot say I was much surprised with Duke Hamiltone's joyning with the Squadrone, since his politicks have been most unaccountable for some years, but especially at the last Scots Parliament; since which time I have had no manner of correspondence with him. And for the Squadrone, I entirely agree with your Lordship."[1] Nevertheless, the Court had every reason to suspect that Atholl might deceive them, because they got information that Atholl would send his proxy to Orkney. The Court decided to test Atholl's allegiance to them. In late May, Mar let Lord Dupplin prevail upon Atholl to dispose of his proxy for the Court.[2] Atholl's attitude was ambiguous enough to suspect his real intention. On 2 June, his grace answered to Mar that "I would much rather receive the effects of your Lordships and your friends kindness than from others since both my inclinations and

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1. HMC, Mar and Kellie MSS. I, 443: Atholl to Mar, 2 June 1708.

2. SRO, GD 124/15/859/1: [Dupplin] to Mar, 27 May 1708.

principles are the same...I am not yet determined about sending a proxy, which seems not proper in my circumstances, which is but one vote, and I have reason to think there are eight or nine of the peers that will take my advice as to their choice".[1] Doubtless the Duke of Hamilton was included in the 'eight or nine of peers'. It appears that there was a reconciliation between Hamilton and Atholl, although it was not a perfect compromise. The following letter from Atholl from Blair Castle to the Duchess of Hamilton fully explains how a partial agreement was reached between the two dukes.

> The little time E[arl] Selkirk & Orkney were here we had not so much as an opportunity to convers freely, so that it can not be expected I could agree to every thing proposed or rather insinuate...I have had the misfortune to have been deserted & ill treated by all parties I have had doe with hitherto, but since your grace has so earnestly desired my being reconciled with Duke Hamilton, I assure you I doe agree to that & from this time shall forget & pass over all his unkind treatment of me...I have also agreed to send in a proxie with a list of persons for the 16 peers. This, I confess, is what is extremely contrary to my inclination...I cannot refuse your grace anything as to the persons. I have named all the presbyterian

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1. SRO, GD 124/15/802/1: Atholl to [Mar], 2 June 1708.

> peers except E[arl] Hyndford who I hear is very violently opposing Lord Arch[ibald Hamilton, the Duke of Hamilton's brother] election. I have put in two of the squadrone they were the persons turned me out without paying my sallarie...D[uke] Montrose & Roxburgh have done me yet greater injustices & disobligations.[1]

Although a partial alliance between the two dukes was realised, the Court did not despair of Atholl. Indeed on the very day when Atholl wrote the above letter, his grace also gave Mar a message in which he thanked Queensberry and Mar for their efforts to liberate him, and it cannot be regarded as a mere compliment.[2] Mar still maintained close contacts with Atholl, and he got a copy of Atholl's list. On 14 June, Mar confidently told David Nairn that the contents of Atholl's list would not be so disadvantageous as Mar had thought. Atholl listed nine Courtiers (Lothian, Mar, Seafield, Roseberry, Glasgow, Bute, Ilay, Dupplin and Balmerino), although he supported seven opposition peers (Hamilton, Roxburghe, Annandale, Rothes, Buchan, Eglinton and Ross). Atholl's list was a result of his grace's desire to satisfy both sides, so Mar thought that this list was "pretty odd", but at the same time Mar was relieved to have minimized

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1. SRO, GD 406/1/7964: [Atholl] to [Duchess of Hamilton], 12 June 1708.

2. HMC, Mar and Kellie, I, 444: Atholl to Mar, 12 June 1708.

Hamilton's influence over Atholl.[1]

To sum up, the first stage of the election campaign is characterised as a collision between the Scottish Court, which was strongly backed by the English Court, and Hamilton's faction. When Hamilton started his campaign, it seemed that his grace successfully prevailed on the prisoner peers to vote for the opposition, and the situation was turning out to his advantage. The Godolphin ministry, however, did not fail to make a counterattack. Through his proxy to Mar, Marlborough spoke his mind that he sided with the Scottish Court. On the other hand, it is interesting that the Junto did not adopt any effective tactics in the first stage, although Hamilton and Montrose entreated Sunderland to take some measures against the ministry. In the second stage, we will see the Junto's attitude towards the Court in detail.

One of the tactics which was adopted by the Junto, was to assist Hamilton, who was prevailing on the Scottish prisoner peers who had not been released. On 7 June, Sunderland wrote to Montrose that "my letters to D[uke] Hamilton & the D[uke] of Roxburgh, you will see by my letter to the last, which I send to be shewn publickly if it's thought that will do any good".[2] One week after, the Scottish Court found Sunderland sending

1. SRO, GD 124/15/831/19: [Mar] to [D.Nairn], 14 June 1708.

2. SRO, GD 220/5/172/2: Sunderland to [Montrose], 7 June 1708.

expresses to his former "antagonists", Hamilton and the prisoner lords, and saw through the scheme plotted by the opposition. Mar was very apprehensive that their artifice would be successful. He reported to David Nairn that

> some of the prisoners have wrote down that they are to be admitted to baill by the influence of the Juncto... I'm affraid that some of our friends and perhaps some of ourselves may miscarie and some of our opposers come in, though I beleive few of them who were in opposition to us last Parliament...But I'm affraid D[uke] Hamilton, Orkney, Annandale and perhaps Montrose may carrie.[1]

It appears that the opposition circulated at least two other letters. One was to accuse Godolphin of his ill treatment of the prisoner peers. In a long document entitled 'A conference betwixt my Lord Belhaven and the Council of G[reat] B[ritain] in the form of a letter addressed by Belhaven to D[uke] Hamilton', Lord Belhaven wrote that the Earl of Pembroke (Lord President) and Lord Cowper (Lord Chancellor) had been indifferent to his examination, while only Godolphin enthusiastically prosecuted him. As for Sunderland, Belhaven praised him,

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1. SRO, GD 124/15/831/19: [Mar] to [D.Nairn], 14 June 1708. See also HMC, Mar and Kellie MSS. I, 448: "notes of the Earl of Sunderland's letter to the Duke of Roxburghe."

because he found that Sunderland "was of my sentiment".[1]

The other letter written by Sunderland, however, gave a much greater shock to both the English and Scottish Court. This letter was addressed to Lord Dalhousie, a discontented army officer. Unfortunately, it is unlikely that this letter is extant. Mar, however, made it clear that this letter aimed at persuading the Scottish army lords, who were dissatisfied with the patronage of Marlborough and Godolphin, to side with the opposition. Sunderland showed these army peers that their support for the opposition would lead to their promotion, because the Queen approved of the opposition's measure at the bottom of her heart.[2] This letter had an immense effect of separating some army lords from the Godolphin ministry. It is conceivable that Marlborough's patronage system for the Scottish army officers through the channel of the Scottish Court, which had functioned well in the early period of the Queen's reign, was partly paralysed in the middle of 1708. In his letter to Sunderland, Montrose was delighted with the good effect of this letter over the army peers, but at the same time his grace asked Sunderland to fulfil his promises to them

> you will observe that we had a good many of the

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1. HMC, Marchmont MSS. 159-61. Another copy is seen in NLS, MS. 3021.

2. SRO, GD 124/15/868/1: [Mar] to Earl of Stair, 20 June 1708.

> officers of the army of our side since these noble lords [Crawford, Buchan, Glencairn, Dalhousie, and Forbes] are to expect by the appearance all the bad offices imaginable from Duke Queensberry & his party. ...I cannot but take notice likewise of the behaviour of Lord Forfer, Olyphant and Lindores...As the circumstances of your fortunes are not good so if any thing would be done towards the supporting of them, it would not fail haveing a good effect.[1]

While Montrose welcomed Sunderland's letter, Hamilton's attitude was not so favourable to this scheme. He wrote to Sunderland that I "was extreamly surprized with what it [a letter from Sunderland] conteaned [contained] for I am sure your Lo[rdshi]p had not given the least ground for the reporting of that falshood of your making use of her Majesty's naime in relation to our elections of our peers...from the beginning yo[u]r Lo[rdshi]p alwies told uss wee were not to expect any favour from the Court in this affaire much less the assuming the liberty of using her Majesty's naime".[2] Such Squadrone lords as Montrose and Roxburghe did not have to adhere to the opposition, since their interest, with the assistance of the Junto lords in London, would win the election, and the Court

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1. SRO, GD 220/5/172/3: [Montrose] to Sunderland, 22 June 1708.

2. BL, Add. MSS. 61628, f.110: Hamilton to [Sunderland], 24 June 1708.

would surrender to them. It appears that the Squadrone's aim was only to enter the Court and to have the patronage in their hand. Indeed Hamilton might have expected that Queensberry would submit to him if the opposition had defeated the Court in the election, but it would have been impossible for Hamilton to share the same political principles with the Junto and Squadrone Volante. This 'unholy' alliance was destined never to last long, and as early as the 1708/9 session, a breach between the Junto and Hamilton came to light.

Though the Squadrone and Hamilton had a difference of opinion about Sunderland's letter, the Scottish Court could not neglect the fact that this letter led to the desertion of many peers from the Court. Two days after the election, in the long letter to Lord Stair, Mar attributed the reason for the close contest of this election to Sunderland's letters especially that to Dalhousie. Mar wrote that

> my Lord Sund[erlan]d wrote down to some of the Dukes in opposition to us in a very odd manner...which I gott from a gentleman who saw it and is inclosed. I'm told of other letters of his, which are plainer and they made no secrets of them, but read them to most they had occasion to see or speak to... I'm told that it was desireing him [Dalhousie] to joine with those lords against us and that it wou'd be acceptable to the Queen. This made a great maney of our old friends

> run off from us and amongst them most of the peers in the troops and by so doeing thought they were makeing their court. Some days before the election, Eglington went off from us, who was to have been in our list and by that we lost Galloway['s proxy] too. The very night before the election, Crafood [Crawford] who was to be another of our list, went over to them and reallie has jockied himself in...[1]

The Court and the opposition still prevailed on some wavering Scottish peers, so it was not until the election day that both the Court and the opposition completed their lists of the candidates. In the following analysis, we discuss how the Court and the opposition arranged the final lists.

As they had done in the 1707 election, it seems that a small core of the Scottish Court arranged the final version of their list. Before the last meeting, their list included such Courtiers as Eglinton, Crawford and Cromartie. As we have seen in Mar's letter, Eglinton forsook the Court three days before the election. It appears that he sat on the fence. Once he found that the opposition would possibly outnumber the Court, he

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1. SRO, GD 124/15/868/1: [Mar] to Earl of Stair, 20 June 1708; HMC, Mar and Kellie MSS. I, 445-47: Mar to the Queen, 14 June, 1708; HMC, Laing MSS. II, 147: Seafield to Godolphin, 20 June 1708.

immediately shifted his allegiance from the Court to the opposition. On the previous day to the election, Crawford also deserted the ministry for the same reason as Eglinton. With Galloway's proxy, which Eglinton kept, the Court lost three votes. After Crawford left the Court, Glencairn, Buchan and Forfer came to see the leading Scottish Courtiers who were completing the list, and asked them to be Court candidates. The Court refused it. These three peers sent an ultimatum, and told the Court that they would be on the opposition's list, if the Court should not accept them. The Court understood that these uninfluential lords would not gather so many votes, even though they sided with the opposition, so the Court broke with them. The ministry, however, was obliged to exclude such able lords as Cromartie from the list, because the Court had to give priority to those who would prevail on some wavering lords to vote for them. Thus the Court finally gave up listing Cromartie, and accepted Morton.[1]

The Court had another problem. They had some troublesome proxies, in which the senders did not specify the name of the candidates, but ambiguously asked them to allocate several seats for the Court. The Scottish Court adopted a strange tactic so that they might not make any more troubles to fix the list. Mar told Stair that "the way we took which of our friends to leave out...was by

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1. SRO, GD 124/15/831/25: [Mar] to [D.Nairn], 18 June 1708; SRO, GD 124/15/868/1: [Mar] to Earl of Stair, 20 June 1708.

throwing the dyce, which though very equall yett not very polliticall. But our folks had no complyance for one another and preferr'd their own chance of being chosen."[1] It seems that the Lord Treasurer received a detailed report about this matter.

> The [Scottish] Court lords, as they call them here, had 24 proxyes, and, most of the lords who gave them proxyes haveing reserved a vote for Lord Orkney and his brother the Duke [of Hamilton], the 14 remaineing were thrown for at dice at Queensberry house, and Roseberry had great luck and Lord Stair badd...the rest of the lords had what the dice gave them. This shews what comes of granting proxyes in an election of this nature.[2]

It was not easy for the opposition to arrange the final list. They newly accepted Eglinton, Glencairn, Forfar and Buchan who had deserted the Court, so the opposition had the same problem as the Court. Who should be excluded from the list? Montrose wrote to Sunderland that

> your lo[rdshi]p will see a considerable alteration of

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1. SRO, GD 124/15/868/1: [Mar] to Earl of Stair, 20 June 1708.

2. Letters relating to Scotland in the Reign of Queen Anne, (mostly the transcription of BL, Add. MSS. 28055, Godolphin papers), 186: A.Rigby to -?-, 19 June 1708.

> our list from what you expected, but that was necessary to be done to carry members and some would not be prevail'd with to take our list if they had not themselves been of the member, so to make all easie, some of our best friends [Tweedale, Haddington, Selkirk, and Kilmarnock] did generously drop themselves for the publick interest.[1]

At last both the Court and opposition arranged their lists on the previous night to the election day with immense difficulty.

On 17 June, sixty-one Scottish peers were present at the Palace of Holyrood House to elect the sixteen representatives. It appears that they were extremely exhausted when they finished the election, because on the following day it was reported that "the peers met yesterday at one o'clock, and sat till two this morning before they ended their elections".[2] When the time for the opening came, the Lord Clerk Register hoped to start the election immediately, but Hamilton, who obviously distrusted the returning officers, protested and asked for a prayer, which was granted. The two principal Clerks of

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1. SRO, GD 220/5/172/3: [Montrose] to Sunderland, 22 June 1708.

2. SRO, GD 406/1/5499: [D.Crawford] to [Duchess of Hamilton], 18 June 1708. The following description of the election day is mainly based on a copy of the official minutes preserved in NLS, MS. 1026.

Session presided over this election. After they announced their commission from the Lord Clerk Register, they read the roll of the Scottish peers for the calling, and did the same again for the election. Then, according to his rank, the Duke of Hamilton read all the names in the opposition list. He was followed by Queensberry, who nominated all the Court candidates. No sooner had Queensberry finished reading his list, than Hamilton made a first protestation, because Queensberry had already been created a British duke, and could not be qualified for this election. His protest was seconded by Roxburghe and other opposition lords. The returning officers, however, had no competence to deal with this protestation, and continued the proceedings. After Queensberry, Montrose and Roxburghe voted for all the opposition. When the sixty-one present peers finished their voting, Marchmont was under the impression that "a few of the peers mixed their votes."[1] But it is doubtful whether he told the truth. Of the sixty-one peers present, eighteen voted only for the Court candidates, while twenty-three supported only the opposition nominees, and twenty voted for both sides.

Although the Squadrone-Hamilton alliance could not overwhelm the Court, David Crawford observed that the opposition was ahead of the Court when all the pre-

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1. SRO, GD 158/1174: [Marchmont] to Somers, 19 June 1708.

sent lords finished voting.[1] But the situation gradually had an unfavourable turn for the opposition, when the peers proceeded to the proxies. At first, Ross produced the list sent by the Duke of Lennox (the Duke of Richmond in the English peerage). His grace's proxy delighted the opposition. Although he was a man of royal blood and a Court Whig, he supported only three Courtiers (Stair, Roseberry and Ilay), and nominated thirteen opposition candidates. Richmond was followed by Argyll. His brother Ilay naturally read all the names of the Court list. Argyll's proxy was also protested against by the opposition. Marchmont, who had disputed with Argyll over his grace's right to vote in the election of Scottish representatives since the 1706/7 Scottish parliament, alleged that Argyll could not vote, because he had an English earldom. The opposition were not so much enthusiastic about this protest as that against Queensberry. Obviously, they were afraid that this protestation would not only affect Argyll's proxy but also Marlborough's. The third proxy was Atholl's. Although he was reconciled with Hamilton, Atholl was still sitting on the fence. He voted for only seven opposition peers. Hamilton was outraged at Atholl's vote. Hamilton found fault with this proxy, though his brother Orkney was the recipient. Hamilton once again

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1. SRO, GD 406/1/5499: [D.Crawford] to [Duchess of Hamilton], 18 June 1708.

submitted the protestation to the returning officers, and insisted that this vote should be invalid, because it was not sealed.

As the recipient lords read their proxies, the opposition seemed to be losing the election. All that they could do was to shower their protestations against the ministry. After both sides finished reading their proxies, the returning officers declared that the new sixteen peers had been elected, and that this election had come to an end, so the lords should have finished the election. Hamilton, however, persistently made a complaint against the returning officers, because they were reluctant to produce the document of the election result, which Hamilton wanted to send to the Junto lords so that the Scottish opposition and the Junto might confer on the tactics for the election disputes in the coming 1708/9 session.[1] More than twenty-four hours had passed when the lords finally finished all the proceedings and left Holyrood House.

In the election, the Court returned Glasgow, Ilay, Leven, Lothian, Loudoun, Mar, Northesk, Roseberry, Seafield and Wemys. The opposition returned Crawford, Hamilton, Montrose, Orkney, Rothes and Roxburghe. Godolphin was never satisfied with the result, though the Court

1. Nearly two months after the election, it was still said that the Duke of Hamilton and the Marquess of Annandale continued to "fash the clerks [of the Session]." SRO, GD 124/15/870/7: D.Erskine to Mar, 5 Aug.1708.

held a majority of the sixteen.[1] The Lord Treasurer asked the leading Scottish Courtiers to go to London to arrange the Scottish policies. One month after the election, Mar reported to Seafield the political situation in London.

> I find things stand much as you left them & I belive there are no measurs yet taken in order to the Parliament & what or when they will be is uncertain; but I'm told the Juncto is as high as ever & abaited nothing by the victorie...They stile intend to insist against the D[uke] of Queensb[erry's] patent... [however] they [the Junto] will not have a great partie to join with them against either of you [Queensberry and Seafield].[2]

Mar expected that the Junto lords would return to the Whig camp in the 1708/9 session, and that they would support the Court, though they temporarily kept an 'unholy' alliance with Hamilton. Mar's forecast was to be tested at Westminster five months later.

The opposition was not in despair over the election result. In his letter to Sunderland, Hamilton expected that the 1708 election, in which the representative

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1. BL, Add. MSS. 57861, f.100: Godolphin to Earl of Coningsby, 2 July 1708.

2. SRO, GD 248/560/42: Mar to [Seafield], 27 July 1708.

peers' election was included, would make the ministry get into difficulties, and totally depend on the Whigs. On 20 July, his grace wrote that "upon this great victorie and as it is of the greatest consequence to the common cause, soe I recon it of the greatest advantage imaginable to the Whigs, for now the Hous of Lords Addres with relation to the warr will certainly be ca[r]ried through: & Marlborough & Godolphin will see the advantage of the Whigs' assistance and will therfor doe everie thing to putt them in good humour, which I look upon as certain consequence of this glorious victorie."[1] In contrast with Hamilton's delight, Sunderland was not so optimistic. He fretted about the duumvirs' reluctance to side with the Junto, and he was offended by the Duke of Somerset, who had been alienated from the Junto. On 28 July, Sunderland reported to the Duchess of Marlborough that "I send you enclos'd my letter to L[or]d Marlborough. I have endeavour'd to lay before him, what I take to be the present state of things here...I have avoided hitherto writing anything to him about our home affairs they are so very disagreeable."[2] The Junto aimed only at returning more opposition lords by means of the protestations. On 19 June, two days after the election, Hamilton told Sunderland that the opposition would get three or four or

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1. BL, Add. MSS. 61628, f.132: Hamilton to [Sunderland], 20 July 1708.

2. BL, Add. MSS. 61443, f.18: Sunderland to [Duchess], 28 July 1708.

more members through on petition to the House of Lords.[1] After Sunderland got this information, the Junto started to negotiate with Godolphin, expecting that the ministry might make some concession to the Junto and accept more opposition lords. Robert Pringle in London reported to Marchmont that Somers "seemed to be very sensible that my Lord Tr[easurer] had of late shewn little regard to their recommendation...[Somers] seems to have a good opinion of the validitie of manie of the objections against the votes of several peers...He seems very positive, that the Duke of Dover can pretend to no vote."[2] In the following analysis, we consider the election dispute at Westminster and its political background.

The political situation before the 1708/9 session was chaotic. The relationship between the Court and the Junto was even worse after the Scottish election. The Junto insisted that Somers and Wharton should join the

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1. BL, Add. MSS. 61628, f.106: Hamilton to Sunderland, 21 June 1708. See also HMC, J.J.Hope Johnstone MSS. 123: Sunderland to Annandale, 3 July 1708; BL, Add. MSS. 61631, f.73: Annandale to Sunderland, 13 July 1708; The Annandale Family Book of the Johnstones, Earls and Marquises of Annandale, ed. by W.Fraser, II, (Edinburgh, 1894), 241: Annandale to Godolphin, [July 1708]; The Sutherland Book, ed. by W.Fraser, II, (Edinburgh, 1892), 204: Somers to Sunderland, 22 July 1708; SRO, GD 220/5/172/6: Sunderland to [Montrose], 24 July 1708.

2. SRO, GD 158/1097/6: R.Pringle to Marchmont, 20 July 1708, printed in Marchmont Papers, III, 332.

Cabinet. Sunderland was indignant with Godolphin's unwillingness to their entering the Court. On 19 October, one month before the opening of the parliament, Sunderland wrote to Newcastle that "it was impossible for them [the Junto and their associates] with any reputation ...to go on any longer with the Court". He included "the condition of Scotland" and "the proceedings in Scotland" in his dissatisfaction.[1] But Somerset, who had been a channel between the English and Scottish Court in the Scottish representatives' election, had no sympathy with the Junto's tactics. On 16 October, Sunderland and Somerset held a talk. This conference, however, resulted in a quarrel. Arthur Mainwaring reported this meeting to the Duchess of Marlborough stating that Sunderland had said "there was nothing more to be thought of but forcing the ministers, that he was now convinced they were all alike; & that his grace [Somerset] was no better than a dupe of theirs: upon which the Seymour blood was fired & an explanation of that word was desired."[2] Mainwaring was at a loss how to calm Sunderland's anger and how to reconcile the Junto lords and Somerset. Mainwaring wrote to the Duchess of Marlborough that "'tis certain you can do more good than anybody especially with L[or]d

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1. BL, Lansdowne MSS. 1236, ff.246-49: Sunderland to [Newcastle], 19 Oct.1708.

2. BL, Add. MSS. 61459, f. 121: [A.Mainwaring] to [Duchess], "Tuesday Ten a Clock" [19 Oct.1708].

Sun[derland] who you know is made to catch all the heat that is stirring."[1] What was worse, the Queen's veto against the appointments of Somers and Wharton made it more difficult for the Godolphin ministry to be reconciled with the Junto. The Queen, however, finally yielded to the Junto's requirement after Prince George of Denmark, Lord High Admiral, died on 28 October. Somers was appointed the Lord President, and Wharton took office as the Lord Lieutenant of Ireland.

It was expected that Godolphin would save the political situation with the assistance of the Junto lords. However, the reconciliation between the Lord Treasurer and the Junto does not seem to have changed the Scottish affairs. Before their compromise with the ministry, the Junto had continued to back up the Hamilton-Squadrone alliance since the last Scottish election, and they required Godolphin to forsake the Duke of Queensberry. On 8 October, Erasmus Lewis reported to Robert Harley that Godolphin "had promised to drop the Duke of Queensberry, and to surrender himself up entirely to the sage advices of the Junto...there seems to me no room to entertain the least doubt of the truth of it."[2] The Lord Treasurer, however, delayed the fulfilment of his promise. It seems that the Junto lords took a

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1. Add. MSS. 61459, f.119: [A.Mainwaring] to [Duchess], 18 Oct.[1708].

2. HMC, Portland MSS. IV, 508: [E.Lewis] to [Harley], 8 Oct.1708.

stiff attitude toward the Lord Treasurer. They asked Godolphin to discard Queensberry and appoint Montrose to the post of new secretary of state for the Scottish affairs.[1] As far as Godolphin refused the appointment of Montrose, it was next to impossible for the Lord Treasurer to arrange the Scottish policies with the Squadrone Volante and the Junto lords for the coming parliament. On the other hand, Godolphin hesitated to confide the Scottish problems to Queensberry or Mar. Strange as it may sound, these Scottish Courtiers were kept uninformed about the Scottish policies. At the beginning of the 1708/9 session, Mar was discontented with the ministry and told Lord Grange that "[Concerning the Scottish affairs in the Queen's speech,] there was not a Scots man consulted or advised".[2] The election dispute relating to the Scottish representative was not an exception. Indeed both the Court and the Junto lords might have exploited the Scottish peers, but they could never take the initiative in the House of Lords. About a month after the upper House started their proceedings on this controversy, John Pringle, a Scottish MP lamented that "it is thought by some [that] the Scots peers are too much the tool of the parties occasioned by their

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1. NLS, Wodrow Letters Quarto, V, f.15: [J.Maxwell] to [R.Wodrow], Dec.1708; Wentworth Papers, 72: P.Wentworth to Lord Raby, 21 Jan.1708.

2. SRO, GD 124/15/754/34: [Mar] to [Lord Grange], 20 Nov. 1708.

disputes about their controverted elections".[1]

No sooner had the parliament opened on 18 November, than the four Scottish opposition lords, the Marquess of Annandale, the Earls of Marchmont, Ross and Sutherland submitted their petitions to the House of Lords. It was, however, not until 10 January 1709 that the House appointed the select committee for this controverted election. When the proceedings of this dispute are considered, we can divide them into two periods. The first half was the period from the beginning of the debate in November to the Christmas recess, when the Lords mainly discussed the procedural matters. The second half was the period from reopening of the debate in early January to the settlement of this controversy in early February, when Godolphin managed to be reconciled with the Junto after a fierce struggle relating to the validity of Queensberry's voting.

The delay of the proceedings was partly due to an accident to the coach which carried two Clerks of the Session and the documents of this election. But the main reason was, however, that the trial of the disputed election was "a very new thing in the House of Lords".[2] Naturally the Lords spent much time on the procedural

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1. SRO, GD 205 box 34, portfolio 4: J.Pringle to W. Bennett, 18 Dec.1708.

2. HMC, Mar and Kellie MSS. I, 463: Mar to Argyll, 13 Sep.1708.

problems, and in this conflict both the Court and the opposition tried to run the procedures to their advantage. Soon after the upper House started the proceedings, they ordered that two Clerks of the Session should attend the House. This resolution was, however, not unanimous. The Scottish Court, which was afraid that this dispute would make a great ferment, was unwilling to bring them to Westminster. But this tactic was not successful. The opposition succeeded in summoning the Clerks to the House of Lords.[1]

On 25 November, the Cabinet Council finally declared the appointments of Somers and Wharton.[2] It was thought that the Junto lords would be amenable to the Court's measures. But contrary to expectations, the Junto kept a stiff attitude against the ministry. On 27 November, the House continued to deliberate the procedural problems. At first, the Lords resolved that all the petitions from the four Scottish peers would be heard together. After that, a question whether the sitting four Scottish lords could hold their seats until this dispute was settled, was put. The Court managed to postpone the debate of this matter. As the Lords already knew of the coach accident, the Court proposed that the House should stop the proceedings relating to the

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1. SRO, GD 124/15/754/33: [Mar] to Lord Grange, 18 Nov. 1708.

2. Luttrell, VI, 377.

election dispute until the arrival of two Clerks. The Junto lords understood that it was impossible to expediate the proceedings without the Clerks and the official documents of the election. Lord Guernsey reported to Nottingham that

> 'twas moved adjourn it [the debate on the Scottish election] till all the instruments were come...that motion [was] exposed as begging the question which was made from upper end of the house [i.e. the place for the great officers of state], and answered by the Lord President [Somers] as heretofore used to be. After this, the whole matter was dropped but with a private resolution of doing nothing till the papers were come up.[1]

Before the Christmas recess, the House deliberated some procedural matters. The following resolutions of the House elucidate both the political and legal aspects of this election dispute. On 14 December, the Lords resolved that they should not hear the counsels about this controversy in general, but limit their role to stating their opinions about the individual matters. On the other hand, two days later the House decided that no proxies could be

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1. Leicestershire R.O. Finch MSS. box 4950, bundle 23: Guernsey to [Nottingham], 2 Dec.1708.

made use of, apparently because the Lords regarded this dispute as a lawsuit. On the 14th, they discussed another important procedural problem. The Junto lords insisted that many Scottish witnesses should be summoned to the House.[1] For instance, the Court was apprehensive that "my Lord Semple like to be brought before the house of peers for being bribed to give his vote for the court in the election of peers".[2] On the 16th, the Junto was impatient at the ministry's delaying the proceedings, and once again asked the House to start the substantial deliberation before two Clerks' arrival. Mar fully wrote to Lord Grange about this Junto's attack.

> I cou'd not be in the house on Tuesday [14th] last for which I was very sorrie for some Lords especially those of the Juncto take occasion to speak of the summoning so many witnesses from Scotland & reflected upon it as a thing which made the Union disagreeable there...today [16th, the House] appointed for taking in consideration the method of proceedings as to the election. [Some lords suspected that the two Clerks wilfully delayed.] So to take off this, my Lord Loudoun proposed that to save time the House might appoint a short day to take those parts of the

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1. HMC, Lords MSS. 1708-1710, 2.

2. NLS, Wodrow Letters Quarto, V, f.19: J.Maxwell to[R. Wodrow], 6 Jan.1709.

petitions in consideration to which the clerks and those papers had no relation, such as the objections against their votes who were both English and Scots peers &c...for some time nobody spoke. At last it was whispered that no body seconded that motion. [Mar seconded Loudoun's motion.] The Juncto & the other friends of the petitioning lords were against this motion of my Lord Loudoun's.[1]

After the House finished the procedural problems on 16 December, they took a recess until 10 January 1709. As the two Clerks at last arrived in London and delivered the papers relating to the Scottish election on 23 December, it was expected that the Lords would start a substantial debate from the outset of the proceedings when they met again in January. It appears that the Godolphin ministry tried underhand dealings with Queensberry, Hamilton and the Junto. Obviously the Court saw through the fact that the unity of the Junto-Squadrone-Hamilton alliance was not so strong as the Court had been afraid of. As early as 20 November, Mar found that Hamilton and Annandale were dissatisfied with their being not well treated by the Junto and the Squadrone.[2] The ministry fully understood that the best way to win

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1. SRO, GD 124/15/754/38: [Mar] to [Lord Grange], 16 Dec. 1708.

2. SRO, GD 124/15/754/34: [Mar] to [Lord Grange], 20 Nov. 1708.

Hamilton over to their side was to give patronage to his grace. It appears that Godolphin intended to offer the Duke of Somerset as a sacrifice to the opposition. The Court planned to dismiss Somerset from the Mastership of the Horse, and give this post to Hamilton.[1] This appointment would have been welcomed by the Junto, because the Junto lords had almost broken their friendship with Somerset since the last Scottish election. Regardless of the scheme of the Court, Somerset consistently sided with the ministry in this session. On 14 January, his grace wrote to Marlborough abroad that "as your grace doe hear from severall hands of what wee doe in parliament and of the usuall high hand some people have already carryed themselves towards the Queen."[2] The Lord Treasurer finally gave up Somerset's dismissal and Hamilton's appointment. The reason for this is not certain, but probably partly because of the Queen's favour to Somerset, and partly her indignation at the Junto's interference with the Scottish election. At the election, the Queen had been so furious with Sunderland, who made an alliance with Hamilton and was opposed to the Court, that it was unlikely that Godolphin would have prevailed upon the Queen to appoint Hamilton.[3] The only choice that the Lord

1. SRO, GD 124/15/754/37: [Mar] to [Lord Grange], 13 Dec.1708; Wentworth Papers, 73: P.Wentworth to Lord Raby, 25 Jan.1709.

2. BL, Add. MSS. 61134, f.68: Somerset to [Marlborough], 14 Jan.1709.

3. See above 366 note 2.

Treasurer had had was to show the public his unchangeable support of the Duke of Queensberry, as the Court had created him a British duke seven months before. As early as 21 December, Hamilton expected that Queensberry would take office as the new secretary of state for the Scottish affairs. Hamilton wrote to his brother Lord Selkirk that "this bombe is to break on a day or two."[1] Indeed political observers might have taken great interest in this matter, but it only caused various conjectures. For instance, Thomas Mansel also expected Queensberry's appointment, but he thought this decision was made by the pressure from the Junto lords.[2] The fact was, however, that the Lord Treasurer was fiercely struggling with the Junto who insisted that Montrose should take office. The strife between Godolphin and the Junto was not finished by the end of the Christmas recess, so the election dispute about the Scottish peers once again became an arena for the fight between these two camps.

After the recess, the select committee for the controverted election started the proceedings on 11 January. Lord Mohun was appointed the chairman. Although he was an associate of the Junto, he voted for the Court

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1. NLS, MS. 1032, f.72: Hamilton to Selkirk, 21 Dec. 1708.

2. "Lord Queensbury is to be sole secretary for Scotland, and that he used this expression God damn my wife and children if I will not go into the Junto" HMC, Portland MSS. IV, 516: [Mansel] to Harley, 23 Dec. 1708.

when the House was divided on the question of the validity of Queensberry's vote at the Scottish election. Thus Mohun's appointment was a tactical success of the ministry. Moreover, Mohun had a lawsuit against Hamilton, which would lead to their fatal duel in 1712. One of Hamilton's brothers cynically wrote that "in the House of Lords it being resolved the affaire of the petitioning lords should be heard by a committee which is to make their report to the House. Lord Mohun was this day named chairman of it. You may judge how well D[uke] H[amilton] is satisfied with."[1]

The role of this select committee was quite restricted. Its main work was to check the documents delivered by the two Clerks of the Session, and to classify various protestations into some categories.[2] When Mohun's committee was preparing the report, the Junto lords made efforts to alienate the Court Whigs from the ministry. On 11 January, in his diary Lord Ossulston recorded that "I was in the evening att the Duke of Devonshires, where there was a great many other L[or]ds to consult about the Scotch election as the Duke of Newcastle and severall other L[or]ds."[3] On the 17th, the

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1. SRO, GD 406/1/6031: [one of Hamilton's brothers] to [one of Hamilton's brothers], 11 Jan.1709. For this duel, see H.T.Dickinson, "Mohun-Hamilton Duel" Durham University Journal, LVII, (1965), 159-65.

2. HLRO, committee minutes, VII, 326. The activity of Mohun's committee is seen in HLRO, Main Papers 2507.

3. PRO C104/113: Lord Ossulston's diary on 11 Jan.1709.

report was submitted to the House, and on the 21st the conflict between the Court and the opposition culminated in the division over Queensberry's vote. The Court was defeated by a vote of 50 to 57, and on the following day, the House declared that the proxy, which Queensberry had kept, was also invalid.[1] Seeing this fiasco of the Court, the Queen feared that the opposition would invalidate not only Queensberry's vote but also his patent to sit in the Lords.[2] Soon after this defeat, the Court finally made a concession to the Junto and the Squadrone. The Junto accepted Queensberry's secretaryship, and the Court in return appointed Montrose as Lord Privy Seal for Scotland and Roxburghe would enter the Privy Council. In this dispute, the Court lost the Marquess of Lothian, and Annandale took his seat. But the other three petitions had been turned down.

The process of the sudden reconciliation between the Godolphin ministry and the Junto has been fully considered by a recent work, so it is not necessary to describe it again.[3] The Junto succeeded in the promotion of both themselves and their Scottish comrades. As for

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1. HMC, Lords MSS. 1708-1710, 3.

2. The Life of Archbishop Sharp, I, 303: his diary on 18 Jan.1709. The Queen "told me, she heard my Lord Guernsey meant that day to bring in question my Lord Duke of Dover's right of sitting in our House, or rather her right to grant him a patent to be duke... I believed that patent was questioned by several, and perhaps my Lord Guernsey might be one of them."

3. C.Jones, "Godolphin, the Whig Junto, and the Scots" Scottish Historical Review, LVIII, 158-74.

the Godolphin ministry, they could pull through their difficulty, although they were obliged to make a great concession to the Junto Whigs. It was only Hamilton's faction who were left in the cold. It seems that the ministry tried to conciliate his grace with a promise that a rotation system in the choice of representative peers would be adopted and that the peers of higher ranks would be created British peers. One of Hamilton's brothers reported to the Duchess of Hamilton that

> I shall not inlarge upon the subject, every one that is impartiall cannot but thinke him [Hamilton] ill recompensed by his new friends and ungratefully used by his owne countrymen...nothing could perswade him. I meane the altering the election of the 16 to a rotation upon the foot of making som of the heads Brittish peers.[1]

In such crises as the 1708 Scottish election and the following election controversy, it was patronage and the principle of <u>divide et impera</u> on which the Lord Treasurer always relied, and to some extent, they were successful. Concerning this election, patronage played a crucial part. The creation of Queensberry as a British duke caused a strong objection from the Junto and the Squadrone. But this

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1. SRO, GD 406/1/5572: [Lord A.Hamilton?] to Duchess of Hamilton, 5 Feb.1709.

creation was useful for the Godolphin ministry to make a display of their unchangeable support of the Scottish Court. In the election dispute in the 1708/9 session, patronage, which had been given to both Queensberry and the Squadrone Volante, was no less indispensable so that Godolphin could win over both factions to his side. For the Lord Treasurer, the principle of divide et impera was of great importance to manage Scottish politics. At the 1707 election, the ministry took advantage of the mutual distrust between Argyll, Hamilton, Queensberry and the Squadrone, and succeeded in returning most of the peers in the Court list. In the 1708/9 election controversy, Godolphin at last could alienate the Squadrone from the Hamilton faction. To the Argathelians, the Lord Treasurer never failed to manoeuvre them into his camp. Soon after this dispute, Godolphin hoped to give Lord Ilay a vacant regimental commandership, and wrote to Marlborough, "my Lord Isla [Ilay] the Duke of Argyle's brother who is very forward to serve, and has shown himself very usefull in the House of Lords in our disputes about the election of the 16 peers from Scotland".[1] In the following session of 1709/10, however, a quite different political scene can be seen. Godolphin could not make use of the mutual hostilities of the Scottish lords any more. On the contrary, most of the Scottish peers deserted the minist-

1. M-G Corr. III, 1212: Godolphin to Marlborough, 30 Jan. 1709.

ry when the duumvirs tried to made an address for removing Mrs Masham from the Court. On 21 March 1710 ten Scottish peers, including the Dukes of Queensberry and Argyll, voted for Dr Sacheverell's light sentence.

ection of the Scottish representative peers in 1708 (HLRO, Main Papers, 2507).

present	Court																Opposition															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Hamilton																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Queensberry	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Montrose																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Roxburgne																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Tweedale																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Lothian	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
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Crawford																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Sutherland																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Mar	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Rothes																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Morton	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Buchan																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Glencairn																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Eglinton																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Kellie		+		+	+	+	+	+	+	+							+		+	+	+		+			+	+		+			
Haddington																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Lauderdale		+		+				+		+	+						+	+	+	+	+	+	+	+	+				+		+	

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Loudoun	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Wemys	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Dalhousie																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Findlater	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Leven	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
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Dunmore	+	+		+		+	+		+	+	+	+	+	+		+					+				+		+		+			
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Ruglen																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Marchmont																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Seafield	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Roseberry	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Glasgow	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Bute	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																

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Houpetoun	+	+	+	+	+	+	+	+		+	+		+					+	+		+		+							+		
Ilay	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Arbuthnott		+		+	+	+	+	+			+		+		+		+	+				+					+	+	+			+
Kilsyth																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Dumblane	+	+	+	+	+	+	+	+	+	+	+	+	+			+				+		+										
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Gray	+	+	+	+	+	+	+	+	+	+	+	+	+	+		+	+															
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Ross																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Torphinchen										+							+	+	+	+	+	+	+	+	+	+	+		+	+	+	+
Lindores																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Balmerino	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Blantyre	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Cranstoun	+	+	+	+	+	+	+	+	+	+	+	+	+		+	+													+			
Fraser	+	+	+	+	+	+	+	+	+	+	+		+	+			+												+		+	
Bargany								+		+			+				+	+	+	+	+	+	+		+	+			+	+	+	+
Banff		+		+		+	+		+	+			+				+		+	+	+		+						+	+	+	+
Elibank	+	+	+	+	+	+	+	+	+	+	+		+	+	+						+								+			
Rollo	+	+			+	+	+	+		+	+	+	+	+	+	+	+	+											+			
Ballenden																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+

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Kinnaird									+	+			+				+	+	+	+	+	+	+		+	+	+		+	+	+	
proxy and [recipient]																																
Lennox									+	+			+				+	+	+	+	+	+	+		+	+	+		+	+	+	
[Ross]																																
Argyll	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
[Ilay]																																
Atholl	+	+						+		+	+	+	+	+		+	+	+		+			+	+		+					+	
[Orkney]																																
Mariscnal																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
[Hamilton]																																
Caithness	+	+	+	+	+	+	+	+	+	+	+	+	+		+	+						+									
[Glasgow]																																
Strathmore	+	+	+	+	+	+	+	+		+	+	+	+	+	+	+					+										
[Northesk]																																
Abercorn*	+	+	+	+	+			+			+		+						+	+		+	+						+	+	+	
[Sutherland]																																
Galloway						+	+										+	+	+	+	+	+	+	+	+	+			+	+	+	+
[Eglinton]																																
Stirling	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
[Seafield]																																
Airlie	+	+	+		+	+	+	+	+	+	+	+	+	+		+	+				+											
[Seafield]																																

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Breadalbane* [Bute]	+	+		+	+	+	+	+		+	+	+	+			+	+												+			+
Aberdeen [Eglinton]	+	+		+	+	+	+	+		+	+	+	+			+	+			+						+			+			
Hyndford [Glasgow]	+	+		+	+	+	+	+	+	+	+		+						+	+			+			+			+			
Cromartie [Northesk]		+			+	+	+																									
Stair [Loudoun]	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Portmore [Marchmont]										+							+	+	+	+	+	+	+	+	+	+	+	+		+	+	+
Deloraine* [Queensberry]		+		+			+	+		+	+		+	+	+	+			+	+			+								+	
Falkland [Orkney]																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Stormont [Kilsyth]																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Newhaven [Montrose]										+							+	+	+	+	+	+	+	+	+	+	+		+	+	+	+

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Teviot [Marchmont]										+							+	+	+	+	+	+	+	+	+	+	+		+	+	+	+
Garnock [Glasgow]	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Saltoun [Blantyre]	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+											+						
Cathcart [Loudoun]	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																
Sempill [Brantyre]	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+										+						
Elphinstone [Roseberry]	+	+	+	+	+	+	+	+	+		+	+	+	+	+	+	+															
Burleigh [Wemys]	+	+	+	+	+	+	+	+	+	+	+	+		+		+							+						+			
Cameron [Sutherland]								+		+							+	+	+	+	+	+	+		+	+	+		+	+	+	+
Reay* [Wemys]		+			+	+	+	+		+		+		+	+		+					+						+	+	+	
Forrester [Roseberry]	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+																

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Belhaven [Ruglen]																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Duffus [Mar]	+	+		+	+	+	+	+	+	+	+	+	+	+	+	+						+										
Rutherford [Ruglen]																	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Eymouth [Mar]	+	+	+	+	+	+	+	+	+	+	+		+	+	+	+													+			

Court list 1.Lothian 2.Mar 3.Morton 4.Loudoun 5.Wemys 6.Leven 7.Northesk 8.Seafield 9.Stair 10.Roseberry 11.Glasgow 12.Bute 13.Ilay 14.Dupplin 15.Blantyre 16.Balmerino

Opposition list 1.Hamilton 2.Annandale 3.Montrose 4.Roxburghe 5.Crawford 6.Sutherland 7.Rothes 8.Buchan 9.Glencairn 10.Eglinton 11.Dalhousie 12.Forfer 13.Orkney 14.Marchmont 15.Ross 16.Belhaven

* Abercorn, Breadalbane, Deloraine and Reay voted for the lords who were neither in the Court list nor opposition list. Abercorn supported Haddington. Breadalbane voted for Selkirk. Deloraine voted for Tweedale and Haddington. Reay nominated Kilmarnock and Cromertie.

Conclusion

The House of Lords in the early eighteenth century had detailed regulations so that the House could smoothly expedite its proceedings. The number of the standing orders amounted to one hundred and eleven at the end of 1707. These orders provided the precedents of such ceremonial business as the first day's work, the introduction of the peers and the manner of sending messages from the Lords to the Commons. The orders of the upper House also included many provisions of political importance. For instance, the roles of the Speaker of the House, the reading of a bill, divisions, proxies and protestations. In addition to the standing orders, the Lords also had numerous rules which were not reduced to written forms but used as the parliamentary customs. In Part One, we saw such rules in John Relf's MS. Book of Orders.

In "the first age of party", the leading politicians in the Lords naturally took great interest in the procedures of their House. The Earls of Nottingham and Rochester were well-known for their vast knowledge of the customs of the upper House. As the chairman of the privileges committee, Rochester made proposals about procedural matters and played an active part in making two standing orders in the 1706/7 session. The papers of Lord Nottingham fully show that he was well versed in the

procedures, and used his knowledge to the advantage of his party. He harangued and made many motions in the House. He proposed addresses to the Queen in which he criticised government policies. Nottingham also drafted the Lords' protests so that the High Tory lords could show their opposition to the Godolphin ministry. Nottingham tried to show his ability as an opposition leader during the trial of Dr Sacheverell. Showering many complicated procedural questions upon the Court and the Whig lords, Nottingham and his allies intended to perplex the ministry and turn this trial to the advantage of the Tories.

However, the tactics of the High Tory peers were not successful. Since the 1704/5 session, the Queen attended the House, when they discussed matters of great political significance, and she showed her disapproval of Tory policies. In the debates on the "Hanover motion" and the "Church in danger" motion in the 1705/6 session and the Sacheverell trial in the 1709/10 session, the Queen intimated her disapproval to the High Tories. The Whig peers normally held a majority in the Lords throughout the period of the Godolphin ministry, and after the 1705/6 session they co-operated with the Court and successfully isolated the High Tory peers from the moderate Tory lords. It is obvious that the leadership of the Junto lords and their knowledge of the procedures contributed to the powerful position of the Whigs in the

upper House. It was the Junto lords who were busy collecting proxies and whipping in the rank-and-file peers before the divisions. As Lord Dartmouth observed, the Junto introduced a new style of speech to the Lords.[1] They preferred repartee to a 'set speech' which had been the usual style in the Lords. While the Junto held conferences and carefully concerted their policies before the important proceedings, in the debates they fully used their talent for eloquence. It was the Junto lords who often took initiatives in proposing the 'heads' of the addresses and bills. They also controlled the process through which the "resolutions" of the House are made. In the 1705/6 and 1706/7 sessions, the Junto's expertise to make addresses and resolutions was welcomed by the Godolphin ministry. However, from the 1707/8 session, their dexterity troubled the Lord Treasurer rather than supported him, because the Junto often rebelled against the Court in the important debates.

As we have seen in chapter six, Godolphin's technique to turn debates to his advantage was not inferior to the High Tory peers and the Junto lords. However, Godolphin was usually reluctant to stand face to face with the opposition. The Treasurer made more efforts to avoid divisions than to defeat the opposition at the vote. It is also remarkable that Godolphin settled the political issues outside the Lords House rather than in

1. Burnet's History, V, 234. Dartmouth's note.

the debates. Patronage was unmistakably the most important resource for him to maintain a working majority in the House. His patronage distribution was of considerable effect to rally the royal blood, the Court Whigs and some Courtiers of independent nature. Throughout the years of his ministry, Godolphin did his best to conciliate the Courtiers with patronage, and alienate them from the party leaders. In the first parliament of Queen Anne, Godolphin successfully prevailed upon some Tory peers to desert the High Tories and support the ministry. After the Court depended upon the Whig peers in the 1705/6 session, the Treasurer put his confidence in such moderate Whig lords as Lord Chancellor Cowper, with whom Godolphin often had pre-sessional talks and tried to get an agreement. The Lord Treasurer also sought assistance from the Duke of Somerset who had considerable influence over the Court Whig peers, and detached some Courtiers from the Junto lords.

The 1709/10 session showed that the Lord Treasurer could not control the House of Lords as well as in previous sessions. His failure to carry an address to remove Mrs Masham from the Court in January 1710, was evidence that the duumvirs acted against the Queen's intention. This abortive address caused the alienation of the Scottish representative peers from the Court. However, the dissatisfaction of the Scottish lords with the ministry did not suddenly happen in this session. At

the elections of the Scottish representative peers in 1707 and 1708 the ministry exercised their influence over the Scottish lords. But the Court could not fill all the sixteen peers with the candidates in the Court list. It makes a contrast with the Harley ministry which monopolised the sixteen.[1] Above all, the 1708 election revealed that many Scottish peers were discontented with Godolphin's patronage management and that they were prevailed upon by the Duke of Hamilton, who had formidable power in Scotland, to vote for the opposition. In spite of the unanimous opposition of the Scottish representatives against the Treason bill in the 1708/9 session, the Lord Treasurer supported the bill. Thus, it is conceivable that such a leader of the Scottish Court as the Duke of Queensberry did not hesitate to desert the Court at the verdict on the impeachment of Dr Sacheverell. After they understood that the duumvirs lost the Queen's favour, the Scottish representative lords took an important part in paralysing the Lord Treasurer's management of the House of Lords. At the elections of 1707 and 1708, Godolphin aimed at making the representative peers amenable supporters of the ministry. But in the 1709/10 session, the Scottish peers at Westminster became Godolphin's Achilles heel rather than his allies.

However, except for the 1709/10 session, Godol-

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1. D.Szechi, Jacobitism and Tory Politics 1710-1714, (Edinburgh, 1984), 66 and 150.

phin's management of the House of Lords was on the whole successful. Unlike his successor, the Earl of Oxford, Godolphin does not seem to have been zealous in collecting proxies and whipping in the rank-and-file peers. However, Godolphin showed his skill in patronage distribution, which was one of the main reasons why Godolphin could keep power twice as long as Oxford. His principle of patronage distribution; divide et impera, prevented him from slipping into the hands of the Junto lords and enabled him to rally his supporters in the House of Lords.

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