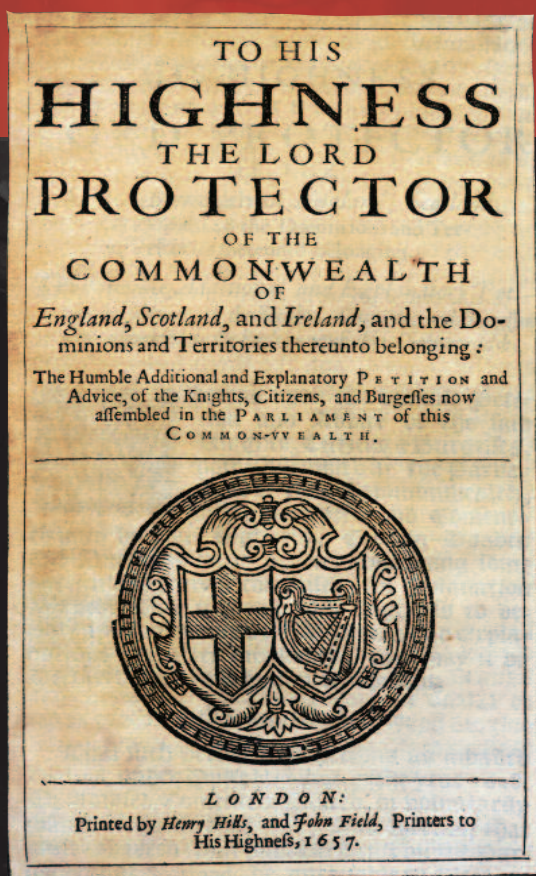


# CROMWELL'S HOUSE OF LORDS

Politics, Parliaments and  
Constitutional Revolution, 1642-1660



JONATHAN FITZGIBBONS

STUDIES IN EARLY MODERN CULTURAL,  
POLITICAL AND SOCIAL HISTORY

Volume 30

CROMWELL'S HOUSE OF LORDS

**Studies in Early Modern Cultural, Political and Social History**

ISSN: 1476-9107

**Series editors**

Tim Harris – Brown University  
Stephen Taylor – Durham University  
Andy Wood – Durham University

Previously published titles in the series  
are listed at the back of this volume

CROMWELL'S HOUSE OF LORDS

Politics, Parliaments and  
Constitutional Revolution, 1642–1660

*Jonathan Fitzgibbons*

THE BOYDELL PRESS

© Jonathan Fitzgibbons 2018

*All Rights Reserved.* Except as permitted under current legislation no part of this work may be photocopied, stored in a retrieval system, published, performed in public, adapted, broadcast, transmitted, recorded or reproduced in any form or by any means, without the prior permission of the copyright owner

The right of Jonathan Fitzgibbons to be identified as the author of this work has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988

First published 2018  
The Boydell Press, Woodbridge

ISBN 978-1-78327-247-1

The Boydell Press is an imprint of Boydell & Brewer Ltd  
PO Box 9, Woodbridge, Suffolk IP12 3DF, UK  
and of Boydell & Brewer Inc.  
668 Mt Hope Avenue, Rochester, NY 14620-2731, USA  
website: [www.boydellandbrewer.com](http://www.boydellandbrewer.com)

A catalogue record for this book is available from the British Library

The publisher has no responsibility for the continued existence or accuracy of URLs for external or third-party internet websites referred to in this book, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate

This publication is printed on acid-free paper

# Contents

Acknowledgements	vi
Abbreviations	vii
Introduction	1
1. Parliamentary Thought and the Abolition of the House of Lords, 1642–49	8
2. Oliver Cromwell, the Other House and the <i>Humble Petition and Advice</i>	36
3. The Membership of the Other House	78
4. The Other House and the Second Session of the Second Protectorate Parliament	122
5. Richard Cromwell, the Third Protectorate Parliament and the Other House Debates	155
6. The Other House, the Army and the Search for a Settlement	195
Conclusion	230
Appendix: The Membership of the Other House	239
Bibliography	247
Index	258

## *Acknowledgements*

My thanks go to the Arts and Humanities Research Council, as well as Balliol and St Anne's Colleges, Oxford, and Christ's College, Cambridge, for providing the funding and support without which this book would not have been possible. I would also like to thank all those archivists and librarians who have provided assistance and advice while I was researching material for this book. Especial mention goes to Adrian Ailes of the National Archives, Sally Larkin and Hazel Forsythe of the Museum of London and Nicholas Rogers at Sidney Sussex College, Cambridge. I am also grateful to the Duke of Northumberland for kindly allowing permission to consult unpublished manuscripts in his Grace's possession.

I owe a great intellectual debt to many of my colleagues at numerous research seminars at Oxford, Cambridge, the Institute of Historical Research and the History of Parliament for their questions and comments on aspects of the research contained in this book. Particular thanks, however, go to John Morrill, David Smith, George Southcombe, Grant Tapsell and Blair Worden who have all generously offered their advice to help give focus to my ideas and research. I also wish to thank Paul Howard, Ruth Faram and Daniel Walters whose friendship and support has kept me sane while researching and writing this work. Special apologies go to Bea and all of my family who have not always had the attention they deserve while I have been deeply immersed in Cromwellian politics. Above all, however, I would like to thank Clive Holmes, who continues to be a boundless source of encouragement and wisdom. This book is dedicated to him.

## Abbreviations

BL	British Library, London
Bodl.	Bodleian Library, Oxford
<i>Boyle State Letters</i>	T. Morrice (ed.), <i>A Collection of the State Letters of the Right Honourable Roger Boyle</i> (London, 1742)
Burton	J.T. Rutt (ed.), <i>The Diary of Thomas Burton</i> (4 vols, London, 1828)
Carlyle	T. Carlyle (ed.), <i>The Letters and Speeches of Oliver Cromwell</i> , rev. S.C. Lomas (3 vols, London, 1904)
CCSP	O. Ogle, W.H. Bliss, W.D. Macray and F.J. Routledge (eds), <i>Calendar of the Clarendon State Papers</i> (5 vols, Oxford, 1869–1970)
CJ	<i>Journal of the House of Commons</i>
<i>Clarke Papers</i>	C.H. Firth and F. Henderson (eds), <i>The Clarke Papers: Selections from the Papers of William Clarke</i> (5 vols, London, 1891–1901, 2005)
CSPD	<i>Calendar of State Papers, Domestic</i>
CSPV	<i>Calendar of State Papers, Venetian</i>
DRO	Derbyshire Record Office, Matlock
EHR	<i>English Historical Review</i>
Firth and Rait	C.H. Firth and R.S. Rait (eds), <i>Acts and Ordinances of the Interregnum, 1642–1660</i> (3 vols, London, 1911)
Gardiner, <i>Documents</i>	S.R. Gardiner (ed.), <i>The Constitutional Documents of the Puritan Revolution, 1625–1660</i> , 3rd edn rev. (Oxford, 1906)
Gaunt, <i>Lansdowne</i>	P. Gaunt (ed.), <i>The Correspondence of Henry Cromwell, 1655–1659: From the British Library Lansdowne Manuscripts</i> , Camden Society, 5 <sup>th</sup> series, 31 (London, 2007).
G.E.C., <i>Baronetage</i>	G.E. Cokayne, <i>The Complete Baronetage</i> (6 vols, Exeter, 1900–9)
G.E.C., <i>Peerage</i>	G.E. Cokayne, <i>The Complete Peerage of England, Scotland, Ireland, Great Britain, and the United Kingdom, extant, extinct, or dormant</i> , rev. V. Gibbs et al. (13 vols, 1910–59)



# CROMWELL'S HOUSE OF LORDS

Guizot, Richard Cromwell	F.G.P. Guizot, <i>History of Richard Cromwell and the Restoration of Charles II</i> , trans. A.R. Scoble (2 vols, London, 1856)
HJ	<i>The Historical Journal</i>
HMC Lords	Historical Manuscripts Commission, <i>The Manuscripts of the House of Lords, Volume IV: 1699–1702</i> , new series (London, 1908), pp. 503–67 [Appendix: 'The Journal of the Protectorate House of Lords']
LJ	<i>Journal of the House of Lords</i>
Ludlow	C.H. Firth (ed.), <i>Memoirs of Edmund Ludlow</i> (2 vols, Oxford, 1894)
Mus. of Lon.	Museum of London
Nicholas Papers	G.F. Warner (ed.), <i>The Nicholas Papers: Correspondence of Sir Edward Nicholas</i> (4 vols, London, 1920).
ODNB	<i>Oxford Dictionary of National Biography</i>
Schilling	W.A.H. Schilling, 'The Parliamentary Diary of Sir John Gell, 5 February–21 March 1659' (M.A. Thesis, Vanderbilt University, 1961)
Stephen	W.S. Stephen (ed.), <i>Register of the Consultations of the Ministers of Edinburgh and some other Brethren of the Ministry</i> (2 vols, Edinburgh, 1930)
Sydney Papers	R.W. Blencowe (ed.), <i>Sydney Papers: Consisting of A Journal of the Earl of Leicester, And Original Letters of Algernon Sydney</i> (London, 1825)
Thurloe	T. Birch (ed.), <i>A Collection of the State Papers of John Thurloe</i> (7 vols, London, 1742)
TNA	The National Archives
TRHS	<i>Transactions of the Royal Historical Society</i>
Vaughan	R. Vaughan (ed.), <i>The Protectorate of Oliver Cromwell, and the State of Europe during the early part of the Reign of Louis XIV</i> (2 vols, London, 1839)
Wariston Diary	J.D. Ogilvie (ed.), <i>The Diary of Sir Archibald Johnston of Wariston, Volume III, 1655–1660</i> , Scottish History Society, 3 <sup>rd</sup> series, 34 (Edinburgh, 1940)
Whitelocke Diary	R. Spalding (ed.), <i>The Diary of Bulstrode Whitelocke, 1605–1675</i> , British Academy, Records of Social and Economic History, new series, 13 (Oxford, 1990)
Wing	Donald Wing, <i>Short-Title Catalogue of Books Printed in England, Scotland, Ireland, Wales, and British America and of English Books Printed in Other Countries, 1641–1700</i> , rev. edn (4 vols, New York, 1982–98)
Worc. Col. Oxf.	Worcester College, Oxford

# *Introduction*

The House of Lords' vote in October 2015 to delay controversial cuts to tax credits once again prompted politicians and political commentators to question the place of the upper chamber in Britain's 'unwritten' constitution. It was not the first time that a frustrated government majority in the Commons raised the pertinent issue of whether an unelected assembly can legitimately defy the will of the people's representatives – and it is unlikely to be the last.

Indeed, for over a century, the House of Lords has been the subject of sporadic scrutiny over its constitutional role, leading to numerous reforms. The rejection in 1909 of the 'People's Budget' by the Lords famously led to the Parliament Act of 1911, which denied them a veto over money bills and allowed them to delay public bills for two years only (reduced to one year by a subsequent Parliament Act of 1949). Besides redefining the relationship between the two Houses, however, the 1911 Parliament Act also hinted at, or threatened, more sweeping changes. The Act's introduction announced that the ultimate aim was to replace the Lords with 'a Second Chamber constituted on a popular instead of hereditary basis'. Yet, as the Act went on to lament, 'such substitution cannot be immediately brought into operation'.<sup>1</sup> In the intervening period there have been lurches towards reforming the Lords, including the admission of life peers and women (Life Peerages Act, 1958), and a significant reduction in its hereditary membership (House of Lords Act, 1999). In the past decade, proposals to have a wholly or mostly elected House have fallen by the wayside, yet recent clashes between the Commons and Lords suggest a lingering sense that the Lords must either be reformed further or replaced by a new chamber.

Perhaps those considering the future of the upper chamber should pay more attention to its distant past, particularly the turbulent period in British history from 1640 to 1660. After all, during the course of those two decades the House of Lords was re-formed, abolished, replaced by a new second chamber and ultimately restored. It was the similarities between the events of the mid-seventeenth century and those of his own time that led C.H. Firth

<sup>1</sup> 1911 Parliament Act <<http://www.legislation.gov.uk/ukpga/Geo5/1-2/13/introduction>> [accessed 3 Sept. 2016].

to publish in 1910 his seminal study of *The House of Lords During the Civil War*. His aim was to 'let the actors in these events, and those who witnessed them, speak for themselves ... to set forth opinions and arguments for the instruction of their descendants'.<sup>2</sup>

Since the publication of Firth's work, however, studies of the House of Lords in the seventeenth century have, until relatively recently, been few and far between. To some extent this was a hangover of historiographical trends in the earlier twentieth century that tended to portray the political history of the seventeenth century as a period when the House of Commons 'won the initiative' at the expense of both the monarchy and the House of Lords. The narrative neatly complemented socio-economic analyses of the period that stressed both the rise of the gentry and the decline of the nobility. In the later twentieth century, however, those assumptions were challenged from a number of directions. Most notably, from the 1970s onwards, a number of 'revisionist' historians stressed the inherent weakness of the Commons in the period before the Civil War; attention turned to the factional and episodic nature of debate, undermining any suggestions of an inexorable clash between a concerted gentry 'country' and the noble-dominated 'court'.

There has also been a growing realization that parliamentary politics in the seventeenth century was bicameral in nature. Since the 1980s, the House of Lords and the nobility have been reintegrated into the political narrative of early seventeenth-century England, particularly through the work of John Adamson. Adamson stresses the guiding hand of the Lords in parliamentary politics, with a number of godly magnates exerting a great deal of influence over the proceedings of the Commons through their 'men of business'.<sup>3</sup> While some aspects of Adamson's thesis have met with heavy criticism, his work has undoubtedly underlined the fact that the parliamentary history of the period must be seen in bicameral terms.<sup>4</sup> Divisions and allegiances were vertical rather than horizontal: like-minded individuals, striving for common goals, co-operated across the Commons and Lords to promote their interests or frustrate their opponents. This view of bicameral parliamentary politics has also been influential in studies of the post-Restoration period, not least Andrew Swatland's important study on the House of Lords in the reign of Charles II.<sup>5</sup>

Aside from these works focusing on the relationship between the two Houses, there have also been in-depth institutional studies of the House of Lords itself. These include Elizabeth Read Foster's indispensable volume on the House of Lords in the first half of the seventeenth century and James

<sup>2</sup> C.H. Firth, *The House of Lords During the Civil War* (London, 1910), pp. v–vi.

<sup>3</sup> J.S.A. Adamson, 'The English Nobility and the Projected Settlement of 1647', *HJ*, 30:3 (1987), 567–602; *idem*, 'Parliamentary Management, Men of Business and the House of Lords 1640–1649', in *A Pillar of the Constitution*, ed. C. Jones (London, 1989), pp. 21–50; *idem*, *The Noble Revolt: The Overthrow of Charles I* (London, 2007).

<sup>4</sup> For a critique of Adamson's approach, see M. Kishlansky, 'Saye What?', *HJ*, 33:4 (1990), 917–37.

<sup>5</sup> A. Swatland, *The House of Lords in the Reign of Charles II* (Cambridge, 1996).

## INTRODUCTION

Hart's examination of the evolution of the judicial functions of the chamber across the seventeenth century.<sup>6</sup>

Yet, if the study of the seventeenth-century House of Lords has been rather sporadic, the examination of another parliamentary second chamber, the Cromwellian 'Other House', has been very slight indeed. Established under the terms of the 1657 parliamentary constitution, *The Humble Petition and Advice*, the Other House has occasionally merited brief discussion in histories of the House of Lords, bridging the narrative between that chamber's abolition in 1649 and restoration in 1660.<sup>7</sup> In studies of the Interregnum period specifically, however, it has been largely ignored. Institutional studies of the 1650s have focused primarily upon the Cromwellian Privy Council or the House of Commons, a notable exception being the study by Patrick Little and David Smith on parliaments and politics during the Protectorate that has drawn attention to some of the functions of the Other House.<sup>8</sup>

In some ways, the relative neglect of the Other House is understandable. It was a short-lived institution, sitting for two parliamentary sessions that collectively lasted barely fourteen weeks. The inescapable fact of the Restoration in May 1660 has also cast a long shadow on historical studies of the years that preceded it. While historians of the 1650s have focused on the genesis of the offer of the Crown to Oliver Cromwell, the period that followed his refusal of the kingly title has been largely ignored. Whether wittingly or not, most studies of the Interregnum tend to end with Cromwell's death in September 1658, or cast only a perfunctory glance at the events of the year 1659, thereby giving the impression that the Restoration of Charles II was a foregone conclusion, demanding little explanation.<sup>9</sup> This trend is complemented by

<sup>6</sup> E.R. Foster, *The House of Lords 1603–1649: Structure, Procedure, and the Nature of its Business* (Chapel Hill, 1983); J.S. Hart, *Justice Upon Petition: The House of Lords and the Reformation of Justice, 1621–1675* (London, 1991).

<sup>7</sup> See, for instance, Firth, *House of Lords*, chapter 8; M.P. Schoenfeld, *The Restored House of Lords* (The Hague, 1967), pp. 46–63; Corinne Comstock Weston, *English Constitutional Theory and the House of Lords, 1556–1832* (London, 1965), pp. 62–78; Jason Peacey, 'The House of Lords and the "Other House", 1640–1660', in *A Short History of Parliament*, ed. C. Jones (Woodbridge, 2009), pp. 49–51.

<sup>8</sup> See, for instance, P. Gaunt, '“The Single Person's Confidants and Dependents”? Oliver Cromwell and his Councillors', *HJ*, 32:3 (1989), 537–60; B. Worden, 'Oliver Cromwell and the Council', in *The Cromwellian Protectorate*, ed. P. Little (Woodbridge, 2007), pp. 82–104; P. Little and D.L. Smith, *Parliaments and Politics during the Cromwellian Protectorate* (Cambridge, 2007).

<sup>9</sup> Firth's two-volume history of the final years of the Protectorate concludes with Oliver's death, omitting Richard's Protectorate completely: C.H. Firth, *The Last Years of the Protectorate, 1656–1658* (2 vols, London, 1909), II, 305–7. Notable exceptions are G. Davies, *The Restoration of Charles II, 1658–1660* (Oxford, 1955); A.H. Woolrych, 'Historical Introduction (1659–1660)', in *The Complete Prose Works of John Milton, Volume VII: 1659–1660*, ed. R.W. Ayers (New Haven, 1980), pp. 1–228; R. Hutton, *The Restoration: A Political and Religious History of England and Wales, 1658–1667* (Oxford, 1985), pp. 3–123.

the recent turn in Interregnum studies to the visual culture of the period, with a number of historians, most notably Kevin Sharpe and Roy Sherwood, stressing that the Cromwellian regime was a monarchy in all but name.<sup>10</sup> Unable to escape its monarchical past, the Protectorate was compelled to embrace it, seemingly underlining the fact that only a monarchy could bring the settlement and stability longed for after the turmoil of the Civil Wars.

Moreover, the Other House tends to be overlooked because it is usually seen as an adjunct to the offer of kingship in 1657. It was part of a constitutional package of which Cromwellian monarchy was the most important proposition. Had Cromwell accepted the kingship, so the argument goes, the Other House would have slipped seamlessly into the position of the defunct House of Lords. As such, the Other House was not a constitutional innovation, it was just another symptom of the backsliding political tendencies of the 1650s.

By providing the first detailed study of the Cromwellian Other House this book not only offers new perspectives on the Protectorate and Interregnum period, but also seeks to reconnect the history of the 1650s with that of the decade that preceded it. A central theme of this study is to rethink the meaning of constitutional 'revolution' during the mid-seventeenth century. In the historiography of the Civil War and its aftermath there is a tendency to see 1649 as the high water mark of the English Revolution. Despite the dramatic events of the trial and execution of King Charles I, and the subsequent creation of the kingless Commonwealth regime, the decade that followed is usually described as one of backsliding and growing conservatism, culminating in the Restoration of Charles II. Yet, it is perhaps better to see the climactic events of early 1649 as an aberration, obscuring a profound shift in constitutional thinking that spanned the 1640s and 1650s.

Rather than taking the desire for Republican, kingless, government as the touchstone of radicalism, this book suggests that less attention should be paid to outward forms of government and more notice taken of the ideas that underpinned those forms. Essentially, there is cause to rethink the nature of conservatism in the period. Appeals to the past were not necessarily reactionary. Greater sensitivity is needed to the ways in which England's past, both distant and recent, was manipulated or rewritten to solve new constitutional problems. When politicians or commentators professed a preference for the known ways of the ancient constitution it is important to ask what exactly they meant – specifically, what did they believe they were returning to? Closer attention should be paid to the substance of their proposed government, rather than the apparent familiarity of its outward form.

As such, the first chapter of this book focuses upon the development of parliamentary constitutional thought in the 1640s and the ways in which

<sup>10</sup> R. Sherwood, *Oliver Cromwell: King In All But Name, 1653–1658* (Stroud, 1997); K. Sharpe, *Image Wars: Promoting Kings and Commonwealths in England, 1603–1660* (New Haven, 2010), pp. 463–537.

## INTRODUCTION

ideas evolved in order to justify actions and exactions. Not only does this chapter provide important context for why the House of Lords was abolished in 1649, leading to bicameral parliaments being dispensed with momentarily, but it also illuminates the ideas and assumptions that subsequently motivated many to seek the creation of a new second chamber in 1657. If those who backed the *Humble Petition and Advice* in 1657 really envisaged the Other House to be a House of Lords, we must ascertain what they understood a House of Lords to be. As this chapter demonstrates, by the late 1640s this definition was by no means clear.

Chapter 2 then turns to the 1650s and the genesis of the parliamentary constitution of 1657, with specific attention on the development of the scheme for the Other House. By shifting focus from the offer of the Crown to the origins of the proposal for a second chamber, it is possible to get a new perspective on the parliamentary constitution of 1657 and the aims of those who shepherded it through the Commons. This chapter also explores Oliver Cromwell's role in the creation of the parliamentary constitution and his aims for the settlement of the nation. It demonstrates that Cromwell actively promoted the Other House scheme because it provided much-needed solutions to a number of constitutional conundrums that had plagued him since the late 1640s.

Chapter 3 builds upon these findings by providing a detailed analysis of those men chosen by Cromwell to sit in the Other House. Besides demonstrating the ways in which the membership of the chamber differed from that of the House of Lords, this chapter challenges historiographical assumptions about the Other House's political and religious complexion. The membership of the chamber, as nominated by Cromwell, reveals a great deal about the sort of settlement that the Protector was striving to secure in the 1650s.

Yet, while Chapter 3 illuminates Cromwell's vision for the Other House in theory, it is equally important to consider the practice. As such, the second half of the book, comprising of the final three chapters, focuses upon the parliamentary sessions of 1658 and 1659 to examine both the Other House in action and the debates surrounding the chamber in the Commons. The fact that there have been so few studies of the activities of the Other House during its brief sitting is partly owing to a lack of evidence. There are no parliamentary diaries or equivalents to the House of Lords' minute books, providing draft notes of the proceedings in the chamber and its committees. The 'finished' version of the Other House's journal is lost, save for a fragment among the archives of Sidney Sussex College, Cambridge covering the period from 28 to 30 January 1658.<sup>11</sup> Thankfully, however, there survives a little-known draft journal, now among the Tangye Collection at the Museum

<sup>11</sup> Sidney Sussex College, Cambridge, MS 109. This manuscript, which was evidently torn from the journal and subsequently folded, is notable because it contains the 'official' parliamentary record of Oliver Cromwell's speech to parliament on 25 Jan. 1658.

of London.<sup>12</sup> Although this manuscript lacks details that would have been contained in the finished version, with notes made by the clerk to 'insert' relevant material such as speeches or commissions, it still provides vital information for all seventy-five sittings of the chamber across the parliamentary sessions of 1658 and 1659, including day-to-day attendance, the appointment of committees, the heads of business under discussion and any resolutions taken by the House. As the final three chapters of this book demonstrate, when taken together with contemporary newsbooks, correspondence and diaries, this draft journal allows one to piece together a great deal about the business of the Other House and its relationship with the Commons.

Scholars have paid far more attention to the Commons' debates over the Other House in the sessions of 1658 and 1659. Here evidence is abundant, thanks in no small part to the parliamentary diary of the MP Thomas Burton, albeit the printed edition of this source is not without its problems.<sup>13</sup> These debates have been scrutinized for evidence that the Protectorate Parliaments were riven by faction. The tactics of the 'Commonwealthsmen', or Republican MPs, in these sessions and their pointed criticism of the Other House have been analyzed in some detail.<sup>14</sup> Yet, as Chapters 4, 5 and 6 suggest, there is cause to reexamine these debates. First, with so little evidence surviving for the debates in 1657 that led to the creation of the *Humble Petition and Advice*, the discussions in the 1658 and 1659 sessions provide crucial reflections from former supporters of the parliamentary constitution about their reasons for creating the second chamber. Second, there is a need to reevaluate the tactics of the Protectorate's supporters during these debates. The fact that they tended to style the Other House as a House of Lords and present it as such through ceremony and print seems further evidence of the backsliding tendencies of the Protectoral regime. Yet, as these chapters indicate, it could actually mean the exact opposite: styling the Other House as a House of Lords was not necessarily a step towards bringing back the ancient constitution but a means to prevent it. Thirdly, while the vociferous Commonwealthsmen have received much scholarly attention, the aims of the 'Presbyterians' have been

<sup>12</sup> Museum of London, Tangye MS 11a, fols 1–62r. This manuscript has been transcribed and printed in *HMC Lords*, pp. 503–67.

<sup>13</sup> J. Fitzgibbons, 'Reconstructing the Debates of the Protectorate Parliaments: The Pitfalls of J.T. Rutt's Edition of "Thomas Burton's" Diary', *Parliamentary History*, 35:3 (2016), 221–41. In this book, whenever Rutt's edition fails to produce accurately Burton's report of a speech or conflates it with a report by the other parliamentary diarist Guybon Goddard, I have cited the original manuscripts. I have also made use, where possible, of the neglected diary of John Gell for the third Protectorate Parliament.

<sup>14</sup> I. Roots, 'The Tactics of the Commonwealthsmen in Richard Cromwell's Parliament', in *Puritans and Revolutionaries, Essays in Seventeenth-Century History presented to Christopher Hill*, ed. D. Pennington and K. Thomas (Oxford, 1978), pp. 283–309; *idem*, 'The Debate on "The Other House" in Richard Cromwell's Parliament', in *For Veronica Wedgwood These: Studies in Seventeenth-Century History*, ed. P. Tudor-Craig and R. Ollard (Glasgow, 1986), pp. 188–203.

## INTRODUCTION

largely overlooked or oversimplified. These chapters suggest that some of the most important debate in these parliamentary sessions was not between the Court and the Republicans but between the Presbyterians. Their discussions concerned not only the nature of the Other House but also the very essence of the parliamentary cause.

The final chapter of this book offers a new perspective on the collapse of Richard Cromwell's Protectorate. Contrary to the suggestions of some historians who have stressed that the kingless constitution was incoherent and inherently flawed, this chapter contends that the Protectorate collapsed at a moment when the constitutional settlement was on the brink of success.<sup>15</sup> Rather than being an insurmountable sticking point, the majority in the Commons eventually recognized the Other House and even began to transact business with it. It was military force, not constitutional wrangling, that brought the Protectorate to a premature end. In fact, it was the fraught relationship between the army and the Other House that hastened this outcome. Contrary to the claims of contemporary critics, the Other House was not dominated by the military interest. The chapter also surveys some of the constitutional schemes for an alternative second chamber advanced by both the army and a number of Republicans after the Protectorate's collapse, and explores their similarities with the Other House scheme. The book then concludes by briefly considering the circumstances of the return of the House of Lords in 1660 and the legacies of the Other House after the Restoration.

<sup>15</sup> See, for instance, R.C.H. Catterall, 'The Failure of the Humble Petition and Advice', *American Historical Review*, 9:1 (1903), 36–65; J. Peacey, 'The Protector Humbled: Richard Cromwell and the Constitution', in *The Cromwellian Protectorate*, ed. P. Little (Woodbridge, 2007), pp. 32–52.



## *Parliamentarian Thought and the Abolition of the House of Lords, 1642–49*

Thomas Hobbes, reflecting on the history of the 1640s and 1650s, found it a ‘strange thing the whole house of Lords should not perceive that the ruine of the Kings Power, and the weakning of it, was the ruin or weakning of themselves’. By fighting the king, the Lords condemned themselves to oblivion; they could hardly ‘think it likely, that the people ever meant to take Sovereignty from the King, to give it them’.<sup>1</sup> In reality, there was no reason for those peers who sided with parliament in 1642 to foresee the destruction of their chamber. Although the Act abolishing the House of Lords, passed by the Rump of the House of Commons on 19 March 1649, claimed that they had ‘too long experience’ of the inconveniencies that the Lords posed, it was really the experience of the 1640s, and particularly the events of the winter of 1648–49, that led them to this conclusion.<sup>2</sup>

From the outbreak of the war, parliamentarian arguments advanced to make plain the king’s contractual and subordinate position vis-à-vis parliament, rendered the position of the House of Lords increasingly anomalous. The story of parliamentarian political thought can be told as one of unintended consequences. By justifying the war effort, parliamentarian writers with no interest in subverting England’s ancient constitution of king, Lords and Commons, promoted ideas that were ultimately invoked by a minority of parliament’s supporters to dismantle that framework.

Parliamentarian thought developed only tentatively during the early 1640s, responding to constitutional questions as they arose, or as opponents posed them. Ideas were not the stimulus for actions, but were found to justify them. Once articulated, defended and clarified, however, those ideas became systematized and concretized into a holistic parliamentarian position that was difficult for its adherents to forget or refute. Most obviously, the idea of parliamentary supremacy became integral to those defending the taking of arms against the king, meaning it could hardly be reneged on at a later stage – to do so would undermine the parliamentarian cause itself. Moreover,

<sup>1</sup> T. Hobbes, *Behemoth Or The Long Parliament*, ed. P. Seaward (Oxford, 2010), pp. 197–8.

<sup>2</sup> Gardiner, *Documents*, p. 387.

ideas, once invoked to justify actions, acted as a guide – or limit – to the range of acceptable future actions open to the parliamentarians.<sup>3</sup>

This chapter focuses on the development of parliamentary thought in the 1640s and how it impinged, directly and implicitly, upon the role and powers of the House of Lords. First, it demonstrates that initial defences for actions against the king gave rise to a set of ideas and propositions with implications for the upper chamber. Once parliament immersed itself in the business of running a war effort, friction between the Houses led the Commons to stake a claim to act unilaterally by invoking ideas very similar to those used to justify the war itself. While such flashpoints were rare, and contained quickly, they left precedents that the Commons could invoke if circumstances changed. These ideas were not voiced only within the walls of Westminster, however, but were appropriated by others, including ‘Leveller’ writers, for more radical purposes. This led some parliamentary polemicists to set limits on the constitutional lessons to be drawn from their theories, not least by stressing that theory must wait on history.

As the final portion of this chapter shows, changing attitudes among the New Model Army ultimately proved fatal for the Lords. Claims of popular sovereignty advanced by the purged House of Commons to expedite the king’s trial determined the constitutional settlement that followed. As MPs tried to reconcile the position of the Lords with the assertion of the Commons’ legislative supremacy they struggled to justify a role for the chamber moving forwards: as the Act for its abolition stressed, the House of Lords was found to be ‘useless’.<sup>4</sup>

### The Parliamentarians and the House of Lords

The constitutional dispute that led to Civil War in 1642 hinged upon the legitimate exercise of executive powers claimed by the king. The parliamentary case is neatly presented in Henry Parker’s *Observations upon some of his Majesties Late Answers and Expresses*, published in early July 1642. For Parker, all power was ‘originally inherent in the people’; power was ‘but secondary and derivative in Princes’.<sup>5</sup> Employing a well-worn maxim of resistance theorists, he stressed that the king was ‘*singulis major*’ but ‘*universis minor*’.<sup>6</sup> The ‘Paramount Law’ for all governments was ‘*Salus Populi*’: the ‘safetie of the people’. Kings were created by the people ‘to preserve the Commonaltie, the Commonaltie was not created for his service’.<sup>7</sup> They held

<sup>3</sup> Q. Skinner, *Liberty before Liberalism* (Cambridge, 1997), pp. 105–6.

<sup>4</sup> Gardiner, *Documents*, p. 387.

<sup>5</sup> H. Parker, *Observations upon some of his Majesties later Answers and Expresses* (London, 1642), pp. 1–2.

<sup>6</sup> *Ibid.*, p. 2.

<sup>7</sup> *Ibid.*, pp. 2–3, 8, 17.

their office by 'Trust'; their position was 'not absolute' but was 'conditionate and fiduciary'.<sup>8</sup>

But this posed an obvious question: who decided when the king was out of line? Either the 'Kings power and trust' must be 'guided by the discretion of Parliament'; or else the Parliament must be 'overruled by the Kings meer discretion'.<sup>9</sup> For Parker, it was obvious that power could 'no where rest more safely then in Parliament'.<sup>10</sup> If the 'State' was to trust those powers to 'one man, or few' then there 'may be danger in it'; but the Parliament was 'neither one nor few, it is indeed the State itself'.<sup>11</sup> Parliaments, like kings, derived their authority from the people; they both had 'the same efficient cause'. Yet, parliaments were 'higher' because 'the whole Kingdome is not so properly the Author as the *essence* it selfe of Parliaments'.<sup>12</sup> If the kingdom was 'in distresse' parliament was obliged to 'judge of that distresse, and relieve it', not least 'by vertue of representation, as the whole body of the State'.<sup>13</sup>

Claims that parliament was the king's great council, or highest court, bolstered the assertion that the two Houses, even without the king, had the supreme legislative power. As Parker saw it, the 'interpretation of Law' implied the 'same supremacy of power requisite, as in the making of it'. If they granted the king was 'supream interpreter' it was 'all one, as if we granted him to be supream maker of Law'.<sup>14</sup> What began as a debate over the exercise of the executive powers became a wrangle over the location of political sovereignty. As Parker put it, the true 'nature' of parliamentary power was 'publike consent': 'consent as well as counsell' was 'requisite and due in Parliament'.<sup>15</sup> The laws created by Parliament were the ultimate form of counsel, which the king simply could not refuse. Comprising the 'many eyes of so many choyce Gentlemen out of all parts', parliament's advice would be 'more faithfull, impartiall, and religious, then any other'.<sup>16</sup> Kings, acting upon their own will, were more likely to 'erre and have sinister ends, then such generall conventions of the Nobility, Gentry, and Commmonalty'.<sup>17</sup>

These points was re-emphasized by William Prynne in his *Soveraigne Power of Parliaments*, published by parliamentary authority in 1643. Although 'the Kings Royall assent' was 'generally requisite' to pass laws, Prynne explained, the 'originall, prime, Legislative power of making Lawes to binde the Subjects and their Posterity' rested 'in the Kingdome, and Parliament, which represents

<sup>8</sup> *Ibid.*, pp. 4, 35.

<sup>9</sup> *Ibid.*, pp. 35–6.

<sup>10</sup> *Ibid.*, p. 45.

<sup>11</sup> *Ibid.*, p. 34.

<sup>12</sup> *Ibid.*, pp. 5, 15.

<sup>13</sup> *Ibid.*, p. 45.

<sup>14</sup> *Ibid.*, pp. 43–4.

<sup>15</sup> *Ibid.*, p. 13.

<sup>16</sup> *Ibid.*, pp. 10–11.

<sup>17</sup> *Ibid.*, p. 21.

it'.<sup>18</sup> Because the 'whole Kingdome (represented in and by both Houses, not the King)' knew 'much better what is good and bad for themselves, than the King alone' it was 'just and reasonable' that they, not the king, should be the 'principall Lawmakers'.<sup>19</sup> As one parliamentary remonstrance of May 1642 put it, the 'Votes of the Lords and Commons' were the 'reason of the King and of the Kingdome'.<sup>20</sup>

Clearly, when these parliamentary polemicists described parliament as the 'representative' of the kingdom they had in mind a bicameral parliament. They contrasted the single person of the king with the whole body of the kingdom embodied by *both* houses. As one parliamentary remonstrance of November 1642 put it, the 'two Estates comprizing the Persons of all the Peeres, and the representative Body of all the Commons' were the 'Collective Body of all the Kingdome'.<sup>21</sup>

Yet this parliamentary stress upon bicameral supremacy was not without inconsistencies. It did not sit well with another claim, common among parliamentary theorists, that England's ancient constitution was essentially a 'mixed' government: the ideal blend of monarchy, aristocracy and democracy represented by the three estates of the King, Lords and Commons.<sup>22</sup> Even Parker saw the government of England as 'geometrically proportionable', ensuring that 'no one' part had 'extreame predominance'. At the crux of the balance was the House of Lords, sitting at 'such faire and comely distances between the King and people' to stop either one from encroaching upon the other.<sup>23</sup> Yet the Lords' (literally) pivotal role was undercut by Parker's subsequent admission that the three components were not really independent of one another. Both Houses of Parliament, he explained, had 'no power but derivative'; but where the Commons depended 'upon the people', the Lords were 'more depending upon the King'.<sup>24</sup> From this perspective, rather than holding the balance of the constitution, the position of the Lords seemed decidedly anomalous.

This became most obvious on occasions during the 1640s when the Lords dragged its feet over reform measures deemed necessary by the Commons. An early example was the Commons' demand to bar all clergy from temporal office, including the exclusion of the bishops from the House of Lords. Twice

<sup>18</sup> W. Prynne, *The Treachery and Disloyalty of Papists to their Sovereignes*, in *Doctrine and Practise Together with The first part of the Sovereigne Power of Parliaments and Kingdomes ... The Second Edition Enlarged* (London, 1643), pp. 46–7.

<sup>19</sup> *Ibid.*, p. 48.

<sup>20</sup> *A Remonstrance of the Declaration Of the Lords and Commons, now assembled in Parliament*, 26 of May, 1642 (London, 1642), p. 17.

<sup>21</sup> *A Remonstrance of the Lords and Commons Assembled in Parliament, Or, The Reply of both Houses, to a printed Book, under His Majesties name, called His Majesties Answer to a printed Book* (London, 1642), pp. 21–2.

<sup>22</sup> Weston, *English Constitutional Theory and the House of Lords*, p. 1.

<sup>23</sup> Parker, *Observations*, pp. 23–4.

<sup>24</sup> *Ibid.*, pp. 23–4.

in 1641 bills were prepared for that purpose – on both occasions they met with resistance in the Lords.<sup>25</sup> The Commons' majority saw the presence of the Lords in the upper chamber as a source of frustration for their reforming agenda: as their Grand Remonstrance of November 1641 complained, the bishops and popishly affected peers had 'hindered the proceeding of divers good Bills' for reforming 'corruptions both in Church and State'.<sup>26</sup> Exasperated, some MPs considered circumventing the Lords altogether. On 3 December 1641, the Commons instructed a committee, empowered to confer with the Lords about their continued refusal to assent to those Bills, to tell the Lords that the Commons alone were 'the Representative Body of the whole Kingdom' while 'their Lordships' were but 'particular Persons' and sat 'in a particular Capacity'. In this instance, the representative nature of the Commons was invoked to assert its superiority over both the king *and* the Lords. If the majority in the Lords would not 'consent to the Passing of those Acts, and others necessary to the Preservation and Safety of the Kingdom' the Commons suggested they would act alone, or with the support of only a minority of the Lords.<sup>27</sup>

Yet the Commons did not press the point. Instead, they redoubled their efforts to make the upper chamber conformable. Even after the Lords assented to the Bill for excluding bishops on 5 February 1642, however, the membership of that chamber continued to concern the supporters of the nascent parliamentary cause. This is particularly evident in the Nineteen Propositions sent to Charles I in June 1642. Primarily, the propositions tackled the perceived problem of the king relying upon the advice of a clique of evil counsellors. John Adamson has pointed to the document's 'baronial' dimension – the nobles sought to reclaim their role as the natural counsellors of the king. In particular, the Privy Council would be reconstituted into a 'baronial council', dominated by magnates and great officers of state.<sup>28</sup> But we should also consider the role assigned to that other bulwark of the noble interest: the House of Lords. After all, the Nineteen Propositions stressed that the weightiest matters that 'concern the Publike' must be transacted by the 'high Court of Parliament ... your Majestie's great and supreme Council' and 'not elsewhere'.<sup>29</sup> Fundamentally, the Nineteen Propositions made the executive powers totally dependent upon parliament: appointments to all chief offices, including privy councillors, must be approved by 'both Houses' of Parliament.<sup>30</sup>

The propositions also demanded that Charles pass a bill 'for restraining Peers made hereafter from Sitting or Voting in Parliament' unless 'admitted ...

<sup>25</sup> CJ, II, 131, 293; LJ, IV, 256, 269, 407–9.

<sup>26</sup> Gardiner, *Documents*, pp. 227–8 (points 170 and 181).

<sup>27</sup> CJ, II, 330.

<sup>28</sup> J.S.A. Adamson, 'The Baronial Context of the English Civil War', *TRHS*, 40 (1990), 96–7.

<sup>29</sup> Gardiner, *Documents*, pp. 250–1.

<sup>30</sup> *Ibid.*, p. 251.

with the consent of both Houses of Parliament'.<sup>31</sup> Although designed to stop the king diluting the influence of the parliamentary lords by flooding the upper chamber with new peers, this expedient had profound constitutional implications. Not only did it shatter the symbiotic relationship between the king's conferral of hereditary titles and the right to sit in parliament, it also altered the relationship between the two Houses of Parliament. By giving the Commons statutory authority to approve future members of the Lords, the independence of the two Houses, and the Lords' capacity to act as a balance between Commons and king, was undermined. It underlined that, despite the rhetoric of a balanced constitution, the House of Lords was not really seen as a neutral or independent body. For the Parliamentarians control over its membership had to be wrested from the king to ensure that the balance was tipped in their favour.

The point was emphasized in the king's famous response to the propositions. Charles, or rather his ghostwriters, lamented how 'all Peers hereafter made' were to be 'approved of (that is, chosen)' by the two Houses. It meant those he had once called 'Our Nobility' would become 'your Nobility' instead.<sup>32</sup> At the heart of Charles' answer was a warning against the encroachment of any one of the three pillars of the constitution upon the others. The government of England by king, lords and commons blended the best of the 'three kinds of Government': monarchy, aristocracy and democracy. But this was only true if 'the Balance hangs even between the three Estates, and they run joyntly on in their proper Chanell'.<sup>33</sup> Charles stressed that the House of Lords was integral to maintaining this balance: it was 'an excellent Screen and Bank between the Prince and People, to assist each against any Incroachments of the other'.<sup>34</sup> No 'one estate' must 'transact what is proper for two, nor two what is proper for three'.<sup>35</sup> For Charles to accept the terms of the Nineteen Propositions would mean a 'totall Subversion' of 'that excellent Constitution of this Kingdom'.<sup>36</sup> Charles ominously predicted that the Lords would soon follow the fate of the king until 'all power' was 'vested in the House of Commons'.<sup>37</sup>

The demand that both Houses should supervise the membership of the Lords persisted throughout the 1640s. On 29 June 1644, for instance, parliament passed an ordinance disabling any peer who joined the Royalist cause from sitting at Westminster, unless their 'readmittance' was approved 'by both Houses of Parliament'.<sup>38</sup> The propositions for peace presented to the

<sup>31</sup> *Ibid.*, p. 254.

<sup>32</sup> *His Majesties Answer to the XIX Propositions of Both Houses of Parliament* (London, 1642), pp. 9–10.

<sup>33</sup> *Ibid.*, pp. 17–18.

<sup>34</sup> *Ibid.*, p. 19.

<sup>35</sup> *Ibid.*, p. 12.

<sup>36</sup> *Ibid.*, pp. 10, 20.

<sup>37</sup> *Ibid.*, p. 21.

<sup>38</sup> Firth and Rait, I, 458–9.

king at Uxbridge in early 1645, at Newcastle in 1646 and the Army's *Heads of the Proposals* of August 1647, all contained the demand that 'all Peers' made by Charles since 21 May 1642 and those 'who shall be hereafter made', should 'not sit or vote' without 'consent of both Houses of Parliament'.<sup>39</sup> The proposal was also one of the 'Four Bills' presented to Charles in December 1647 after his escape to the Isle of Wight, albeit its terms were modified so that 'no person that shall hereafter be made a Peer, or his heirs' could 'sit or vote in the Parliament' without 'consent of both Houses'.<sup>40</sup>

Charles finally assented to the proposal during the Newport negotiations in 1648.<sup>41</sup> Yet, as he explained in a letter to his son in early November, his feelings were unaltered since 1642: he granted this concession reluctantly, not only 'as it limited us that were the fountain of honour' but also because it 'submitted the Peerage and sitting of the Lords in Parliament to the House of Commons, and so might in time change the whole frame and constitution of that House'.<sup>42</sup> The proposal allowed the Commons and the parliamentary peers to create a House of Lords in their own image. Not only would the Royalists be kept out, but also only those who they approved would be let in. A glimpse of what the future composition of the chamber might have looked like was revealed in December 1645 when the Commons drafted proposals urging Charles to confer peerages upon many of parliament's supporters – including Denzil Holles, Sir Henry Vane senior, Sir William Waller, Sir Thomas Fairfax and Oliver Cromwell.<sup>43</sup>

These proposals aside, however, the relationship between the two Houses was also shifting in practical terms during this period. Specifically, there were occasions during the 1640s when, as threatened in late 1641, the Commons, exasperated by obstructions in the Lords and conscious of their duty to the public, acted unilaterally. A salient example was the Lords' refusal to assent to the Commons' vote of 15 May 1643 for creating a new great seal to replace that taken by Lord Keeper Littleton.<sup>44</sup> Having failed to convince the Lords in conferences of the necessity of a new seal, the Commons pressed on regardless, appointing a committee on 5 July 1643 to 'take care of the speedy

<sup>39</sup> Gardiner, *Documents*, pp. 283, 297, 320. This proposal was also passed as an ordinance by parliament on 30 Oct. 1646: Firth and Rait, I, 884–5.

<sup>40</sup> Gardiner, *Documents*, pp. 340–1, emphasis added.

<sup>41</sup> *LJ*, X, 548 (17 Oct. 1648).

<sup>42</sup> R. Scrope and T. Monkhouse (eds), *State Papers collected by Edward, Earl of Clarendon, commencing from the year 1621* (3 vols, Oxford, 1767–86), II, 439–40.

<sup>43</sup> *CJ*, IV, 359–62 (1 Dec. 1645). Holles was to be made a viscount; Cromwell, Fairfax, Vane and Waller were to receive baronies. Fairfax's father Ferdinando, who already held a Scottish barony, was to be given an English earldom. The Commons also proposed the elevation in rank of a number of parliamentary peers: Essex, Northumberland, Pembroke and Warwick were to be made dukes; Manchester and Salisbury were to become marquises; Robartes, Saye, Wharton and Willoughby were to be made earls.

<sup>44</sup> *CJ*, III, 86 (15 May 1643).

and effectual Execution' of their order.<sup>45</sup> On 19 July the engraver Thomas Simon was employed by the Commons to make the new seal, which was eventually delivered to the House on 28 September.<sup>46</sup> Only on 12 October, with the seal already made, did the Lords finally assent to the Commons' vote for its creation.<sup>47</sup>

The most telling clash between the two Houses, however, came in May 1646 over the Commons' proposals for dealing with the defeated king, then in possession of the Scots. Sir John Evelyn reportedly raised the ire of the Lords by telling them that 'if your Lordships shall not think fit to agree' with the Commons, 'they shall never fail to do their Part ... it being a thing wherein the Parliament and Kingdom is so much concerned'. The incensed Lords took Evelyn's 'Sense' to be that 'in case their Lordships do not agree with the House of Commons, that they will do it without them'.<sup>48</sup> Although the Commons claimed the Lords were mistaken, they added that, even if Evelyn had meant it, it was 'not contrary to the Course and Proceedings of Parliament'. In fact, as the great seal episode attested, 'the like' course had 'been used several times this Parliament, without any Exceptions taken thereunto by their Lordships'. They hoped that the Lords did not think 'in no Case whatsoever' the Commons 'might not do their Duty, for the Good and Safety of the Kingdom, in such a Way as they may, if they cannot do it in such a Way as they would'.<sup>49</sup>

Yet, the story of the 1640s was not one of inexorable conflict between the two Houses with a progressive Commons pitted against a conservative Lords. For the most part, the relationship between the two Houses was harmonious; divisions were more apparent within the Houses than between them. It would be easy, for instance, to portray the debates around the Self-Denying Ordinance as an example of conflict between the two Houses of Parliament. Although the ordinance, passed by the Commons on 19 December 1644, would have removed members of both Houses from military and civil office, it could be argued that the burden fell heaviest on the peerage. As the Lords explained in a conference, to deprive the peers of military command would divest them of 'that Honour which in all Ages hath been given unto them... in being employed to Military Commands'.<sup>50</sup> Yet, as Adamson has suggested, the manoeuvrings that led to the Self-Denying Ordinance, the creation of the New Model Army and the displacement of lordly commanders like the

<sup>45</sup> CJ, III, 155 (5 July 1643). For details of the conferences, see CJ, III, 130; W. Prynne, *The Opening of the Great Seale of England* (London, 1643), pp. 31–2.

<sup>46</sup> CJ, III, 174, 257.

<sup>47</sup> The ordinance for empowering the new seal passed the Commons on 30 Oct. and again faced delays in the Lords before they assented on 10 Nov. LJ, VI, 254, 300–2; CJ, III, 295–6, 305–7.

<sup>48</sup> CJ, IV, 548 (16 May 1646).

<sup>49</sup> CJ, IV, 550–1 (19 May 1646).

<sup>50</sup> LJ, VII, 129 (7 Jan. 1645).



earls of Essex and Manchester, need not be read as the Commons striving for the political eclipse of the Lords. Rather, it was something of a 'coup' by a group of peers *within* the House of Lords acting in unison with a faction within the Commons.<sup>51</sup> Close political and personal connections, sealed by bonds of kinship and friendship, between members of the two Houses helped to contain tensions.

Ultimately, the Commons were determined to work with the Lords. In March 1645, to soothe tensions between the Houses, the Commons issued a declaration condemning 'unworthy endeavours to asperse the integrity of their proceedings, as aiming at the overthrow of the Peerage and undermining the rights and privileges of the House of Lords'. The Commons held 'themselves obliged, by the fundamental Laws of the Land, their several Protestations and Covenant, to preserve the Peerage, with the Rights and Privileges belonging to the House of Peers, equally as their own'.<sup>52</sup> The Solemn League and Covenant, and its promise 'to preserve the rights and privileges of the Parliaments' of England and Scotland, bound the consciences of those who took it to work for the preservation of the framework of the ancient constitution.<sup>53</sup> As the Commons' declaration of April 1646 announced, they had no intention of 'altering the fundamental Constitution and Government of this Kingdom, by King, Lords, and Commons'.<sup>54</sup>

In another declaration, directed to the States General of the United Provinces in August 1645, the two Houses went to extraordinary lengths to point out the 'mistakings' of reports by the Dutch ambassadors concerning acrimony between the Commons and Lords.<sup>55</sup> They found troubling a report in January 1645 that the 'upper House' was to be 'melted into the Lower' and 'reduced into one Body' thereby bringing 'all the power under the Commons'.<sup>56</sup> In their declaration to the States General, the Commons rejected the report outright: they would not alter the 'Fundamentals of Parliament, by taking away the House of Peeres'; there was 'never any debate in the House of Commons concerning any such matter, nor was the same ever intended or desired by the said House'.<sup>57</sup>

Despite this professed commitment to the 'Fundamentals of Parliament', however, there were clearly moments in the 1640s when the unwillingness of the Lords to act led the Commons to make claims strikingly similar to

<sup>51</sup> Adamson, 'Baronial Context', pp. 115–16; Adamson, 'Men-of-Business and the House of Lords', pp. 21–50.

<sup>52</sup> CJ, IV, 88 (24 Mar. 1645).

<sup>53</sup> Gardiner, *Documents*, p. 269.

<sup>54</sup> CJ, IV, 514.

<sup>55</sup> *A Declaration of the Parliament of England Written to the House and Mighty Lords, the Lords States Generall of the United Provinces... Concerning their Last Embassie Extraordinary into England* (London, 1645), p. 3.

<sup>56</sup> *Ibid.*, p. 14.

<sup>57</sup> *Ibid.*, p. 15.

those deployed by both Houses against the king. The political instinct of the majority in the Commons was to work with the Lords as far as was possible. Yet, clearly the arguments were there for the Commons to justify acting by themselves if they felt it was their ‘duty’ to do so. True, such actions were justifiable only in ‘extra-ordinary’ circumstances, but as the Commons told the Lords in 1646 there had already been many recent examples: their claims were not consigned to theory but had been given practical application. In the extraordinary circumstances of the Civil Wars and their aftermath it seems that exceptions could quickly become the rule.

### The ‘Levellers’ and Their Critics

Prior to the turbulent events of the winter of 1648–49, however, the most vigorous challenge to the House of Lords came not from the Commons, but from that group known derisively as the ‘Levellers’. Their criticism of the Lords grew out of John Lilburne’s long-running dispute over the military conduct of his former commander, the earl of Manchester. On 11 June 1646, Lilburne was summoned before the Lords to answer for his ‘scandalous’ pamphlet entitled *The Just Mans Justification*, which took swipes at Manchester, then routinely acting as speaker of the House.<sup>58</sup> Lilburne refused to answer any questions, but instead delivered a ‘Protestation’ denying the Lords’ competence to judge a commoner. Citing *Magna Carta*, Lilburne stressed that his ‘proper and legall triers and Judges’ were ‘the Commons of England assembled in Parliament’; the Lords were ‘merely made by prerogative’ and ‘never intrusted or impowered by the Commons of England, the originall and fountaine of Power’.<sup>59</sup> Unimpressed, the Lords committed Lilburne to Newgate prison.

Just days into his incarceration, Lilburne penned *The Freeman’s Freedom*, which described his treatment at the hands of the Lords, restated his plea for trial by the Commons and renewed his attacks on Manchester, concluding that the earl’s ‘Head hath stood, it seems, too long upon his Shoulders’.<sup>60</sup> Unsurprisingly, this scandalous publication again brought Lilburne before the Lords on 23 June and 11 July. Obstinate, Lilburne refused to kneel at the bar of the House and put his fingers in his ears as the charge against him was read – for this contempt, he was fined £2,000 and sentenced to a seven-year imprisonment in the Tower.<sup>61</sup>

Lilburne’s case galvanized Leveller demands for the abolition of the House of Lords. Their key arguments were enumerated in *A Remonstrance of Many*

<sup>58</sup> LJ, VIII, 368; J. Lilburne, *The Just Mans Justification; or a Letter by way of Plea in Barre* (London?, 1646).

<sup>59</sup> J. Lilburne, *The Free-mans Freedom Vindicated* (London, 1646), pp. 5–6; LJ, VIII, 370.

<sup>60</sup> Lilburne, *Free-mans Freedom*, p. 8.

<sup>61</sup> HJ, VIII, 388, 429–30 432–33; Gregg, *Free-Born John*, pp. 141–2.

*Thousand Citizens, and other Free-born People of England*, written by Richard Overton and published shortly after Lilburne's imprisonment. Addressing the Commons directly, the *Remonstrance* stressed that 'Yee only are chosen by Us the People; and therefore in you onely is the Power of binding the whole Nation, by making, altering, or abolishing of Lawes'. It claimed that the Commons had 'prejudiced' the people by acting 'as if ye could not make a Law' without the assent of King and Lords. In reality, the Lords' assent was 'meerly formall' as it had 'no root in the choice of the People, from whom the Power that is just must be derived'. The *Remonstrance* demanded to know why the Commons maintained the charade – they should 'reduce this case ... to a certaintie, and not ... waste time' or 'be lyable to so many Obstructions as yee have been'.<sup>62</sup>

Indeed, the *Remonstrance* recommended that the Lords be abolished and its members instead 'stand to be chosen for Knights and Burgesses by the People'. The Lords so elected would be on an equal footing with the rest of the Commons: 'they would be distinguished by their vertues, and love to the *Common-wealth*, whereas now they Act and Vote in our affaires but as intruders ... thrust upon us by Kings, to make good their Interests'. It also demanded an end to lordly priviledges: there was 'no reason' why the Lords 'should in any measure be lesse lyable to the Law then the Gentry are'.<sup>63</sup> Lilburne too was adamant that all must be equal before the law, especially in 'paying their debts, &c', albeit he was not averse to the Lords retaining their 'titles of honour to their posteritie for ever' or 'enjoying their large estates', which should not be taken from them 'but by their own free consent'.<sup>64</sup>

The Levellers denied any novelty in their suggestions; they were only holding the parliamentarians to their own arguments and actions. As Lilburne noted in a tract of early 1648, provocatively entitled *A Whip for the present House of Lords*, both 'reason' and 'the Parliaments own Declarations' demonstrated 'that though the present House of Lords, (de facto) exercise a law making and a law judging power, yet (de jure) they have no right to either'.<sup>65</sup> Similarly, the *Remonstrance of Many Thousand* alluded to those occasions in the 1640s when the Commons acted unilaterally: the Commons had 'so much sense of your owne Power' that 'when either King or Lords assent not' they simply gave their 'assent' to 'what yee thinke good by an Order of your owne House'.<sup>66</sup>

The Levellers had something of the quality of Frankenstein's monster. The fact their arguments drew upon those of the parliamentarians was surely

<sup>62</sup> R. Overton, *A Remonstrance of Many Thousand Citizens, and other Free-born People of England, To their owne House of Commons* (London, 1646), pp. 3, 6–7.

<sup>63</sup> *Ibid.*, p. 7.

<sup>64</sup> J. Lilburne, *A Whip for the present House of Lords, Or The Levellers Levelled* (London?, 1648), p. 8.

<sup>65</sup> *Ibid.*, p. 1.

<sup>66</sup> Overton, *Remonstrance*, p. 6.

troubling for any who professed to have gone to war to preserve the framework of England's ancient constitution. It is no coincidence that William Prynne, one of the most vociferous opponents of the Levellers, also happened to be one of the foremost proponents of those parliamentary ideas upon which they claimed to draw succour. Prynne's two tracts of 1648, entitled *The Levellers Levelled* and *A Plea for the Lords*, attempted to set the record straight.<sup>67</sup> He denied that the 'Commons House alone' was the 'Supreme Power of England' with 'power of binding the whole Nation, by making, altering, or abolishing Lawes'.<sup>68</sup> They might as well argue that 'the Leggs and trunke of a man are a perfect man without head, necke, armes and shoulders' as the 'House of Commons are or ought to be an entire Parliament; the sole Legislative Power'.<sup>69</sup> As Prynne railed, those 'Fire-brands of Sedition' were looking to 'extirpate Monarchy and Magistracy, Nobility and Gentry', not least through their demands to 'levell the Lords to the Commoners, by bringing them downe into the Commons-House to sit and vote together with them as one'.<sup>70</sup>

Prynne based his case upon what he claimed were the hard facts of the historical record; he looked to 'Scripture, Histories, Antiquities and Parliament-Rolls' to refute the 'illiterate seditious Pamphlets' of 'Ignoramus Lilburne, Overton, Walwin'.<sup>71</sup> The Levellers' claims that 'in times past' kings had 'kept their Parliaments, when & before there were any Bishops or temporall Lords' were a matter of 'groundlesse assertion, contradicted by our Antiquaries and Historians'.<sup>72</sup> It was a 'grosse mistake' to say the Lords were 'Sonnes of Conquest introduced by the Conquerour'; they had 'sate anciently in all our Parliaments, and Generall Counsellis' for 'many hundred yeares before the Conquest'.<sup>73</sup> There was 'no one president' that could be found 'in History or Record of any one Parliament held in this Island' that did not include 'Lords and Peeres'.<sup>74</sup>

But if the records demonstrated that the Lords were a staple feature of parliaments, this was hardly true of the Commons. As Prynne noted, there was 'little or no mention at all of any Knights of Shires, Citizens, or Burgesses in any of our Parliaments and Councils, before the Conquest, or in the Conquerors time, and his next Successors'.<sup>75</sup> Prynne also questioned the

<sup>67</sup> W. Prynne, *The Levellers Levelled to the very Ground* (London, 1648); *idem*, *A Plea for the Lords: Or, A short, yet full and necessary Vindication of the Judiciary and Legislative Powers of the House of Peers* (London, 1648). Thomason dates the first tract 21 Feb. 1648 and the second 2 Mar. 1648.

<sup>68</sup> Prynne, *Plea for the Lords*, pp. 2–3.

<sup>69</sup> *Ibid.*, p. 16.

<sup>70</sup> Prynne, *Levellers Levelled*, p. 1.

<sup>71</sup> Prynne, *Plea for Lords*, sig. A2r–A3v: introductory letter to the Lords.

<sup>72</sup> Prynne, *Levellers Levelled*, p. 21.

<sup>73</sup> Prynne, *Plea for the Lords*, p. 5.

<sup>74</sup> *Ibid.*, pp. 3, 7–8.

<sup>75</sup> *Ibid.*, pp. 3–4.

commonplace assumption that the two Houses had anciently sat together only to be divided into separate Houses at a later date. He could find 'no one Author or record of credit' that 'proves directly, that the Lords and Commons did ever sit, vote, or act together as one intire house'. The matter of 'when, by whom, and upon what occasion' the Houses came to be divided was 'altogether uncertain'. Sir Edward Coke placed it during the early years of Edward III's reign, but Prynne believed the 'Records of these Parliaments' did 'not necessarily warrant his conjecture therein'.<sup>76</sup>

Of course, Prynne realized this omission was as damaging for the parliamentary cause as it was for the Levellers, not least because it gave credence to those Royalists who questioned the antiquity of the people's representatives sitting in parliament. He admitted that it was possible, 'as some affirm', that 'many of our ancient Parliaments were held without Commons' at all – a position that would 'much invalid the Commons authority'.<sup>77</sup> But Prynne would not draw definite conclusions from the silence in the records. Instead, he suggested that the division of the two Houses was probably 'farre more ancient' than realized. The fact 'our historians writing of our ancientest Parliaments' made no mention of 'Elders of the people, Senators, Knights or Commons to represent the people' need not mean that the Commons were absent, as perhaps they were sitting somewhere else instead; it seemed 'more then probable' to Prynne 'that they sat and voted not together but distinctly'.<sup>78</sup>

Yet proving the continued presence of the Lords in parliament was one thing, justifying that presence was another. As such, Prynne stressed the utility of having a second chamber, especially its judicial functions. He ridiculed the fact that Lilburne previously made no complaints about the Lords' judicature when he appealed to them 'for reversall of the sentence against him in Starchamber'.<sup>79</sup> He also denied that *Magna Carta* supported Lilburne's claims; its provision for trial by one's peers 'extends onely to exclude villains and those who are not Freeholders from being Judges of Freemen and Freeholders'. It did not exclude Lords 'who are Freemen in the highest degree' from being judges of Commoners 'who are Freemen'. As such, the Lords were 'certainly Peers to Commoners, though Commoners be not Peers to them'.<sup>80</sup> The practice of the Lords dealing with cases involving commoners was also well established by the fact that writs of error to reverse erroneous judgements

<sup>76</sup> Prynne, *Levellers Levelled*, p. 3.

<sup>77</sup> *Ibid.*, pp. 3–4. The 'some' here clearly included Robert Filmer and his *Freeholders Grand Inquest* published in Jan. 1648.

<sup>78</sup> Prynne, *Levellers Levelled*, pp. 3–4. Interestingly, after the abolition of the Lords, Prynne apparently changed his opinion on this point in order to confound the Rump's claims to sole legislative authority. See W. Prynne, *The First Part of an Historical Collection of the Ancient Parliaments of England, From the yeer of our Lord 673, till the end of King John's Reign, Anno 1216* (London, 1649), p. 31.

<sup>79</sup> Prynne, *Plea for the Lords*, p. 16.

<sup>80</sup> *Ibid.*, pp. 62–3.