National Library of Canada
Bibliothèque nationale du Canada

Canadian Theses Service
Service des thèses canadiennes

Ottawa, Canada
K1A 0N4

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

NL-339 (r. 88/04) c

Canada

UNIVERSITY OF ALBERTA

THE HOUSE OF LORDS AND THE CONSTITUTION: THREE EIGHTEENTH CENTURY CASE STUDIES

BY

© CAROL ANN MILOVIC

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES

AND RESEARCH IN PARTIAL FULFILMENT

OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

DEPARTMENT OF HISTORY

EDMONTON, ALBERTA

FALL, 1991

National Library of Canada
Bibliothèque nationale du Canada

Canadian Theses Service
Service des thèses canadiennes

Ottawa, Canada
K1A 0N4

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-315-70074-2

Canada

UNIVERSITY OF ALBERTA

RELEASE FORM

NAME OF AUTHOR: Carol Ann Milovic

TITLE OF THESIS: The House of Lords and the Constitution: Three Eighteenth Century Case Studies

DEGREE: Master of Arts

YEAR THIS DEGREE GRANTED: 1991

PERMISSION IS HEREBY GRANTED TO THE UNIVERSITY OF ALBERTA LIBRARY TO REPRODUCE SINGLE COPIES OF THIS THESIS AND TO LEND OR SELL SUCH COPIES FOR PRIVATE, SCHOLARLY OR SCIENTIFIC RESEARCH PURPOSES ONLY.

THE AUTHOR RESERVES OTHER PUBLICATION RIGHTS, AND NEITHER THE THESIS NOR EXTENSIVE EXTRACTS FROM IT MAY BE PRINTED OR OTHERWISE REPRODUCED WITHOUT THE AUTHOR'S WRITTEN PERMISSION.

9929-89 Avenue

Edmonton, Alberta, Canada

T6E 2S6

Date: 25.vii.91

UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

THE UNDERSIGNED CERTIFIED THAT THEY HAVE READ, AND RECOMMEND TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH FOR ACCEPTANCE, A THESIS ENTITLED **THE HOUSE OF LORDS AND THE CONSTITUTION: THREE EIGHTEENTH-CENTURY CASE STUDIES**

SUBMITTED BY **CAROL ANN MILOVIC** IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS.

P. LAWSON (SUPERVISOR)

C.M. SMALL, (COMMITTEE CHAIRMAN)

D.J. MOSS (COMMITTEE MEMBER)

R.J. MERRETT (COMMITTEE MEMBER)

Date: 17 vi. 91

ABSTRACT

The British constitution is in a constant state of change. This is because of its unique quality of not being written in one document, but in hundreds of decisions, statutes, and resolutions. However, the essential structure of the constitution remains the same. The changes involve the relationship between the pillars of the constitution, namely the monarch, the House of Lords, and the House of Commons. Chroniclers and historians have examined the role of the monarch, and whig historians have concentrated on the House of Commons. The House of Lords has been acknowledged as being important to maintaining a constitutional balance between the monarch and the Commons, but its development and history has been neglected.

Throughout the eighteenth century the House of Lords played a crucial role in establishing a constitutional balance after the Glorious Revolution. By examining three cases of constitutional significance spanning the century, we can see that the Lords was passionately concerned with issues like the rights of electors and property rights, and that it was influential in determining how these issues would be decided in the future. As well, this examination will begin to redress the neglect the House of Lords has received from historians.

ACKNOWLEDGEMENT

Many people encouraged me to pursue this thesis, from historians to fellow graduate students, and I would like to thank them all. Special thanks and credit, however, must be given to my adviser, Professor Philip Lawson. With his patience, knowledge, and good humour, I have not only become a better historian, but also enjoyed it along the way. In addition, I would like to thank my mother, Irene Milovic, who has always encouraged me in everything I wanted to do.

I would also like to thank the librarians at the University of Alberta and the University of Toronto.

TABLE OF CONTENTS

CHAPTER ONE

Introduction

Since Sir Lewis Namier shattered the whig interpretation of history over sixty years ago, historians have been obsessed with correcting the traditional, whig view of the House of Commons in the emergence of the modern British constitution. Historians of Hanoverian Britain have not, however, been concerned with shattering the whiggish interpretations of the role of the House of Lords in the constitution, and in the daily life of the nation. Nineteenth century whig historians were concerned with finding the roots of the sort of powerful Commons that they saw in their own periods. They saw a Commons that had gained power and privilege in the constitution at the expense of the other two constitutional bodies, the Lords and the Monarch. This scholarly search for the roots of a modern day Commons has been conducted at the expense of the history of the Lords. The secondary literature does not represent the Peers the way they were understood by contemporaries. A recent bestseller, David Cannadine's The Decline and Fall of the British Aristocracy, argues that this ruling class did not begin losing its position, respect, and authority until the late nineteenth century.[1]

---

[1]David Cannadine, The Decline and Fall of the British Aristocracy, (New Haven: Yale University Press, 1990), see 'Prologue', especially 25-31.

The primary goal of this thesis is to revive the constitutional debate about parliamentary power in eighteenth century Britain.

My means of reviving this debate is to examine three constitutional cases where the jurisdiction of both Houses is in doubt, by presenting snapshots of three contemporary debates. Snapshots can provide the scholar with a good summary of the circumstances and debates in a relatively small space. The cases studied herein represent constitutional crises of significance to the whole Hanoverian period. The cases chosen range across the century, and show that the constitutional difficulties between the two Houses of Parliament were in a state of flux and uncertainty throughout the century. The snapshots used in this examination are the cases of Ashby versus White in 1704, John Wilkes and the Middlesex Elections, 1768 to 1770, and the rejection of Charles James Fox's East India Bill in 1783. In Ashby v. White, an elector's right to vote was denied at an election, and through several stages of court action and appeals, the case was decided in the Lords by way of a writ of error. The Commons reacted vigorously, arguing that because they had the right to determine elections, they should also have the right to determine the rights of electors.

The second case also concerned the rights of electors, but in very different circumstances. John Wilkes, well

known to contemporaries for his involvement in having general warrants declared unconstituticnal, was elected as knight of the shire for Middlesex in the general election of 1768. The House of Commons would not seat him. It declared that since he was outlawed and lost his seat over the general warrants issue, he was ineligible to sit again. Therefore, the Commons resolved, the votes cast for him were null and void, and the Lower House seated the opposition candidate, who happened to be a loyal government supporter. An influential minority in the House of Lords took this issue to the people through a petitioning movement, and then pursued the case in the Upper House to the point of proposing a bill to redress Wilkes' grievances.

The third case does not concern the rights of electors, but it does concern the issue of public responsibility. Charles James Fox put forward a bill in 1783 which would change the management of the East India Company so that it rested in government hands, rather than in the hands of the stock holders. Although the Bill passed the Commons with a large majority, it was defeated on the second reading in the Lords. While most historians report the Lords' involvement, they do so by saying that the Peers were reacting to George III's wish to see the Bill defeated. What the historians have ignored is the debate and controversy in the Lords that surrounded the defeat, which places the Lords in a very different political and constitutional light. These cases

concerned different issues, but they are woven together by the common thread of the Lords' assertion of its constitutional role and prerogatives in the face of an ambitious Commons eager to expand its power in the post 1688 political world.

The role of the House of Lords in each of these cases has been almost entirely ignored by the secondary literature. One of the cornerstones of this thesis is the work of Archibald S. Turberville and his classic study, The House of Lords in the Eighteenth Century, published in 1927. This book is a magisterial work which encompasses a vast range of material in a lyrical and a scholarly fashion. Turberville's book was such a tour de force that no historian has attempted so complete a study since. It remains, nearly 65 years after its publication, an unquestioned authority about the Lords in eighteenth century Britain. The secondary sources seem to assume that the Lords is a closed subject with no further work needed. Yet, just as the view of the House of Commons was changed dramatically by Namier's pioneering research, the same rigorous approach must be attempted in studying the House of Lords in order to gain a clearer picture, a fuller understanding of the eighteenth century constitution. Turberville's work is sorely in need of revision in certain respects. The book was published too early to benefit from the Namierite revolution in Hanoverian history, and the

topic of the House of Lords could benefit from a more Namierite approach, as mentioned above, than Turberville could provide.

The discussion of the cases in the thesis are structured as follows: fIrst, the chapters discuss the decrepit state of the secondary literature. After establishing that the literature is sparse and badly in need of supplement, the chapters then turn to examining the parliamentary debates themselves in order to grasp the constitutional points that the literature has omitted. A final section of each chapter is devoted to an analysis of the popular perceptions of the House of Lords. To this end, contemporary newspapers have been culled for their perceptions on the Lords, both from editorials and correspondence from readers and contributors. It was important to go back to the parliamentary debates and press literature because the secondary sources had so obviously missed them. Also, they reveal an accurate story of what was said.

The accepted standard of printed reports of parliamentary debates was set by William Cobbett's Parliamentary History of England, being a series of reports covering parliamentary proceedings and debates from the seventeenth century to 1803. This collection is often utilized by historians because the Commons' and Lords' debates are ordered chronologically, which makes reference

to debates easier than using the Journals of both Houses. The series covering the later periods are very accurate because they draw on extensive source material, such as the reports of the Journals themselves, newspaper reports, and other material, such as correspondence or memoirs. This series will be used extensively in the thesis for reference to parliamentary debates in both Houses.

CHAPTER TWO

The House of Lords and the case of Ashby v. White

I

Polling day for the general election of 1701 was held for the borough of Aylesbury on 6 February. During the polling, an elector called Matthew Ashby was denied his right to vote by one of the constables of the town, William White, even though Ashby had voted in previous elections. White based his decision on the facts that Ashby was a poor, indigent cobbler who was thought to be using parish relief. He and the other constables said that Ashby was neither a resident of the borough, nor a contributor to the church or to poor relief. Ashby brought an action against White to the assizes at Buckinghamshire, asked for £200 relief, and was awarded £5. White appealed the decision in the court of Queen's-Bench, and the court decided in his favour, overturning the decision of the assize court.

Of the four judges presiding in the Queen's-Bench, Powel, Gould, and Powis ruled for White, and said that no hurt was done to Ashby, so no damages could be awarded. Also, they ruled that all judging of elections belonged to the House of Commons, and that this action, being the first of its kind, should not be allowed because it would occasion other cases of a similar nature, which would cause the electoral officers to be liable for each vote. The

dissenting vote was from the very influential legal figure Chief Justice Holt, who argued that this case was of the greatest importance. He differentiated between the Commons' right to judge elections and the right to vote in an election. He then said that the right to vote was an original right, not one of simple parliamentary law as the Commons' argued, and that this right was sacred, and deserved to be heard before the nation's courts.[2]

Despite Holt's argument, the decision came down in favour of White, and it said that Ashby was guilty of a breach of privilege of the House of Commons by bringing this action. Ashby pressed the case further on a writ of error before the House of Lords. A writ of error simply meant that the appeal of a court decision was based on the assertion that there was an error in the trial, which must be examined and possibly corrected. The House of Lords traditionally had the right to hold plea on a case of writ of error from Queen's-bench cases, and thus possessed the right to decide the case over another appellate court. The Lords decided on 14 January 1704, in an examination of the writ of error, that the decision had to come down in favour of Ashby, based on the fact that a freeholder and elector had been denied his original right of a vote. The Lords

---

[2]William Cobbett, The Parliamentary History of England, from the Norman Conquest in 1066, to the year 1803, 36 vols., (London: T.C. Hansard, 1806-1829, reprinted 1966; hereafter cited as Parliamentary History), 6:225-226.

also decided the question over Ashby's claim to be a freeholder within the borough of Aylesbury by saying that he had been a qualified elector on polling day. The House of Commons debated this decision from 17 to 25 January 1704, mostly arguing that this was an attempt within a broader plan of the Lords to strip the Lower House of its prerogatives and privileges. The Lords printed their report on the state of the case later that year on 27 March. A subsequent case was brought by five electors of Aylesbury on similar grounds to Ashby's. This case became known as the case of the 'Aylesbury Men,' and occupied the Commons and Lords from March 1704 to March 1705. For the most part, this second case will not be considered in this chapter because it raises issues, such as the right to Habeas Corpus, that are not decisive to the re-casting of the constitutional argument over the rights of electors that is the focus of this thesis. The animosity caused by these cases between the two Houses of Parliament was so great that Queen Anne called for a prorogation of Parliament in May 1705, warning of "our own unreasonable humour and animosity, the fatal effects of which we have so narrowly escaped in this session."[3].

Unlike the other two cases examined in this thesis, the case of Ashby versus White does not have a monograph, or parts of one, devoted to it. For the most part, the

---

[3]Ibid., 6:437.

recording of the case has been left to the writers of general constitutional history books. The first scholarly study of this type to refer to the case was The Law and Custom of the Constitution, written by Sir William Anson in 1909. Anson's work focused on the constitutional legalities in the period, and he discussed the case of Ashby v. White in terms of parliamentary privilege of the Commons and the limitation of it by courts of law. He did not recognize or discuss the role of the House of Lords in the decisions and resolutions taken by the Commons. He did, however, correctly state that the right to vote was not in question, only Ashby's right to sue for damages for the refusal of his legal right. Anson summed up the entire case by writing that "...there ensued a long altercation between the two Houses, into the details of which it is unnecessary to enter, and the matter was ended by a prorogation."[4] He then quickly passed to another case concerning the privileges of the House of Commons. By concluding in this manner, Anson completely ignored the role of the House of Lords, and he did not explain how a prorogation would settle such a thorny constitutional issue. The structure of the constitution would not have changed with parliament prorogued, nor would the question of jurisdiction have been finally answered.

---

[4]Sir William R. Anson, The Law and Custom of the Constitution, 2 vols., (Oxford: Clarendon Press, 1911), 1: 182-183.

The next scholar to take a serious interest in this case was Archibald Turberville in his classic work on the House of Lords. Turberville changed the emphasis in discussing this case because he treated it on its own merit, not as a vehicle to make some broader point about Commons' privilege. Turberville used 13 pages to discuss the case of Ashby v. White, which resulted in a longer story, but not a more insightful one. He did, however, set the case in the context of Anne's early parliaments and the rage of party. Turberville commented that,

> [i]t has to be remembered that this quarrel arose at a time when the relations between the Houses had been exacerbated by the Lords' rejection of the second Occasional Conformity Bill, and that its later stages were contemporaneous with the much more important conflict over the case of Ashby v. White.[5]

Turberville argued that the case was an unsuccessful attempt by the Lords to reassert its authority, which required a prorogation of parliament by Anne. In addition, he did not address what lay behind the case, the two Houses battling for jurisdiction in a time of instability, where opinion on the outcome of the Glorious Revolution and its immediate constitutional settlement was not clear cut. In consequence, Turberville ended his discussion with a somewhat disappointing conclusion. He claimed that,

> the point of really permanent significance ... is that it had no successor, that the House of Lords

---

[5]Archibald S. Turberville, The House of Lords in the XVIIIth Century, (Oxford: Clarendon Press, 1927), 46.

> did not again challenge the exclusive right of the Commons to determine election disputes, as being essentially their own concern.[6]

This comment ignored the case of John Wilkes and the Middlesex Elections, which Turberville, and this thesis, comment on below. Although Turberville provided a context for the case, his overall discussion of the issues raised therein still lacked definition and a fuller comprehension of the constitution after the Glorious Revolution of 1688.

After Turberville's work, the first post-war scholar to consider the case in any detail[7] was E. Neville Williams in his work The Eighteenth-Century Constitution, 1688-1815, which was part of a series by Cambridge University Press. William's main contribution was to reprint some of the debates, resolutions, and court decisions in the case. Like Anson, he placed the case in a section of the book about Commons' privilege. Like so much of the secondary literature, he placed his emphasis on the Commons in all discussions of cases and precedents.[8]

---

[6]Ibid., 70-71.

[7]Other works which mention the case include Keith Feiling's A History of the Tory Party 1640-1714, (Oxford: Clarendon Press, 1924), 373, 377, 383, 386; Frederick George Marcham's A Constitutional History of Modern England, 1485 to the Present, (New York: Harper and Brothers, 1960), 225-226; and Sir David Lindsay Keir's The Constitutional History of Modern Britain since 1485, 7th ed., (London: Adam and Charles Black, 1964), 341.

[8]E. Neville Williams, The Eighteenth-Century 1688-1815. Documents and Commentary, (Cambridge: Cambridge University Press, 1960), 221-228. In the section on Commons' privilege, Williams used the cases of Ashby v. White, Wilkes

The most recent work to consider the case of Ashby v. White is the book chapter by Eveline Cruickshanks published in 1984. Although she examined the role of the House of Lords in the case in greater detail than anyone before her, Cruickshanks' reasons for doing so were still rooted in the Commons. Like the whig scholars before her, she wrote about the case in terms of party allegiances. She was not interested in the Lords as the part of the constitution, but rather, only as party divided it the way it divided the Commons. Her concern with the constitutional issues raised by the case carried as far as they highlighted party differences. This traditional viewpoint of examining the debates in order to discover party allegiances does not, however, add to the knowledge about the role of the Lords in the early eighteenth century constitution.[9]

Overall, the secondary sources on this topic are not satisfactory for a number of reasons. First, they display a whig bias by studying the significance of the Commons at the expense of the Lords. In their eagerness to trace the

---

and general warrants, the Middlesex Elections, and the Printer's Cases of the 1770s. Although this nicely ties this thesis together, William's work contributed nothing to an understanding of the House of Lords' role in this matter, because he never mentioned it.

[9]Eveline Cruickshanks, "Ashby v. White: the case of the men of Aylesbury, 1701-4," in Clive Jones, ed., Party and Management in Parliament, 1660-1784, (New York: St. Martin's Press, Inc., 1984), 87-106.

supremacy of the Commons that they see in their own times, these historians have ignored the vital role of the House of Lords in the eighteenth century constitution in favour of stressing that of the Commons.

Second, the secondary literature is obsessed with viewing the case in terms of party politics which is, again, more evident in the parliaments of their own historical settings than in the case of Ashby v. White. Although party politics did play a role in the details of the case, the debates show that both Houses were concerned more with their own constitutional role regarding the rights of electors. To this end, the Houses were pitted against each other, rather than as a debate of whig versus tory, or of court versus country. This case brought out a fundamental constitutional issue, not simply the shadings of party differences.

Third, the secondary literature has missed the important point of the case, that the evidence shows that the Lords was protecting the rights of electors, and the Commons was willing to sacrifice an elector's right to chose a representative in favour of securing its right to determine elections. In this case, contemporaries saw that the Commons was not the bastion or guardian of individual rights, but rather, they realised that the Lords played this role. If the case of Ashby v. White is recast in a different light than that of the secondary literature, a

more accurate view and fuller understanding of the constitutional balance in eighteenth century Britain will emerge. In light of the patchy state of the secondary literature on this constitutional issue, it seems sensible to re-examine the evidence with a sharper focus on the actions of the Upper House. A brief examination of the parliamentary debates available to us will highlight the fundamental issues in the recasting of this debate.

II

For the later chapters, the use of Cobbett's Parliamentary History of England is satisfactory, because they provide the scholar with complete debates. However, the volume that contains the recordings of the early period of Ashby v. White is neither as complete nor as accurate. It is compiled in a very different way from the other volumes, for example, the table of contents. Instead of the regular list of debates in chronological order, the volume covering Queen Anne's reign has collected the debates concerning Ashby v. White into one section under the title, "Proceedings of Both Houses in the Great Case of Ashby and White."[10] Due to a lack of available evidence, the records for this period are not as complete as for the other two chapters of this thesis.

---

[10]William Cobbett, Parliamentary History of England, vol. 6, 225.

On 17 January 1704, the House of Commons began a debate about the House of Lords' examination of a writ of error brought from the Court of Queen's-Bench in the case of Ashby v. White. From this point on, the merits of the case were lost in the argument between the two Houses of Parliament over who had jurisdiction to decide the case. The emphasis shifted to the question about who had the greater power within the courts, and ultimately, within the constitution. The debaters used the case as a springboard for discussion of the privileges and prerogatives of the two Houses of Parliament. Although the uniqueness of the case was a valid point of contention between the two Houses, the tone and tenor of the debate points to a much more profound division over supremacy within the constitution. This was a time, so soon after the Glorious Revolution, that both Houses were unsure of their roles, and their juridical prerogative was uncertain.[11] It is this more profound aspect of the constitutional re-positioning that will be examined in the rest of this chapter.

Perhaps the Speaker of the House of Commons, Harley, set the tone and agenda for the debate in his opening remarks to the Commons on 21 January 1704. After giving a brief history of statutes, some from Henry VI's reign, and

---

[11]See, for example, J.H. Plumb's seminal work, The Growth of Political Stability in England 1675-1725, (London: Macmillan and Company Limited, 1967), chapter four.

telling the Commons that he hoped it would examine this unprecedented case fairly, Harley further stated that he hoped "that nobody would see the dignity of the House of Commons impaired."[12] The debate was resumed on 25 January by one M.P. named Mr. Brewer. After agreeing with the Speaker that the rights of the Lower House must be maintained, he thought that the case was of crucial constitutional significance: "a matter of the last consequence to the privileges of the House of Commons, which I think are dangerously invaded by the Lords pretence of Judicature upon them."[13] Brewer then commented that the reversal of the Queen's bench decision was what, "I take to be a new attempt of their Lordships, to bring this, [the right to determine elections] and all our privileges before them in Judgement."[14] This comment showed how the Commons regarded the case of Ashby v. White as not having as much to do with the rights of electors as much as it had to do with the jurisdiction of the two Houses of Parliament.

The next speaker was Sir Thomas Powis. During his long speech, he mentioned that the Peers seemed to be assuming power that had never been theirs, that the members of the Commons had the right to judge elections to their House, and

---

[12]Parliamentary History, 6:231.

[13]Ibid., 6:232.

[14]Ibid., 6:232.

that determining elections included determining the rights of electors.[15] His argument was that "[h]e that hath a right to vote, hath a right to send a person to represent him, and sit in parliament; therefore it is a parliamentary right; where then must be your remedy? In the House of Commons, where you have a right to send a person to sit and represent you...."[16] His last point was that there should not be two courts who can decide on the same case with neither having superiority. In this remark he was referring to the Houses of Commons and Lords. The Commons was supposed to decide upon elections, and Powis argued that this included rights of electors as well. Yet, at the same time, if that elector chose to pursue his action through the courts, and to bring a writ of error against a court, the Lords has the prerogative to judge upon that writ. Hence, both Houses might judge the same case, yet neither House has superiority over the other in the judgement of such a case. The Lords was not considered in this case to be an appellate court to the Commons. The key to Powis' argument revolved around a belief that the Commons' right to determine the right of electors was inextricably linked to its right to determine the outcome of elections themselves without recourse to another court or House of Parliament.

---

[15] Ibid., 6:239-243.

[16] Ibid., 6:243.

The next speaker in the Commons was Sir John Hawkes, who had been Solicitor-General during William III's reign. He recalled that in Henry VI's time, Peers were to judge on matters of law, and Commoners were to judge the facts of the case.[17] He pointed out that the only way to reverse a decision of the lower courts was by a writ of error; "If you think you do it by a bill in this House, that must likewise pass the House of Lords, and so will be the same thing as a Writ of Error."[18] No matter what route the Commons took for reversal, the Lords would have to agree with the Commons in order for the decision to pass. Perhaps Hawkes' comments showed that some Commoners believed that the Peers were attempting to subvert all Commons' constitutional privileges in order to allow the Lords to override their independence.

Hawkes went on to say that most of the decisions the Commons had made on such issues were to do with elections, not electors. As for the Lords,

> [i]f they have a jurisdiction, we cannot justly complain;... I think the plaintiff in this case was damnified, and the court of Queen's-bench ought to have given Judgement against those who did him the injury, for the damage he sustained; and the Lords have done right in reversing that Judgement; and in giving such as the court of Queen's-bench ought to have given.[19]

---

[17]Ibid., 6:250-251.

[18]Ibid., 6:252.

[19]Ibid., 6:255.

With this statement, Hawkes and the Commons were finally discussing the essence of the case. For the House of Commons, the case of Ashby v. White was not about whether or not a poor cobbler from Aylesbury was allowed to vote. Rather, it was about who had the jurisdiction to decide on the case, who had the power to determine the rights of electors, and, by implication, who would determine elections.

The next speaker was Sir Edward Seymour. He picked up the threads of debate woven by Hawkes. Although this was an unprecedented case, Seymour thought that this case may never had been made "(for I do not think there was virtue enough in the cobbler of Aylesbury, nor had he purse enough) if a Lord had not acted that part."[20] This statement shows that this Commoner thought the importance in the case was not about Ashby himself, but his benefactor, Wharton, in the Lords. As for the actions of the Upper House itself, Seymour had some definite thoughts on that point as well. Continuing the line of thought expressed in his statement above, Seymour said that

> I do not think this to be the single instance of the House of Lords, we have reason to complain of: I think in a great measure, by their proceedings, they seem to hold forth, That the axe is laid to the root, and that they have a dislike of this House of Commons, and endeavour to get rid of

---

[20] Ibid., 6:255.

them.[21]

Although this comment shows more rhetoric than constitutional argument, Seymour did see the reversal of the Queen's-Bench decision as consistent with other behaviour by the Lords to weaken the role of the Commons within the constitution.

The next speaker in the Commons was the Marquis of Hartington.[22] He commented that the last speaker, Seymour, was only concerned with the case as far as it could be used to attack the Lords. He, on the other hand, would rather discuss the case itself. The House had forgotten Ashby, and "I think the liberty of a cobbler ought to be as much regarded as of any body else; this is the happiness of our constitution."[23] He continued by saying that he thought the Lords acted correctly, and that he saw no way for an elector to receive satisfaction from the Commons, but only from a court like the assizes, or the Queen's-Bench. These courts could award damages, whereas the Commons could only punish the officer.

The next speaker was a Mr. Lowndes, who said that the real question was not of the Lords, or of where an elector can receive satisfaction, but simply a question of what the

---

[21]Ibid., 6:255.

[22]This was a courtesy title of the eldest son of a living peer - the Duke of Devonshire.

[23]Ibid., 6:257.

law is in relation to determining elections. Laws are determined by customs and precedents of parliaments. Since committees have been determining elections since the time of Queen Mary, they must have some time or other determined on the right of electors. Furthermore, since the Commons have always determined elections, it should hold on to this right. He expressed a desire to see the Commons pass a law saying that all matters of election to the House of Commons should be dealt with by the Commons, yet he did not foresee such a bill passing the Lords. He concluded that "[t]he rights of the people of England are safer in the hands of their representatives than any other; if they do not like them, they can turn them out and chose new ones; but they cannot do so in the case of the Lords."[24] Although this was true, and remains true today, the Commons also had a stake in determining who was to join its ranks by election, so conceivably M.P.s might sacrifice the rights of electors in order to see certain people sit in the House. One need look no further than the case of Wilkes and the Middlesex Elections, when Wilkes was refused his seat, and electors denied their right to choose their representative in order to make way for Henry Luttrell, a loyal government supporter, to sit as member for Middlesex.

---

[24] Ibid., 6:264.

The next speaker was the Solicitor General, Sir Simon Harcourt. He agreed with Seymour, and said that the question did not concern the Lords' right to hold plea on writs of error brought from Queen's-Bench judgements. Rather, the question was truly about which House had the sole right to determine elections to the Commons. He also believed that this case was part of a broader plan by the Lords to subvert the privileges of the Commons. To this end, he said that "... gentlemen will not much wonder why this is brought now, when they consider what endeavours have been used to make this House contemptible. I believe this may be thought the most probable method to attain that end."[25] Harcourt also felt that the Commons could fight this by using the powers that it inherited from its predecessors, if only it would take action to stop this encroachment. By way of conclusion, he said that the only way to judge elections was through the rights of electors, and therefore, the Commons had the right to determine in this case. He warned that, if members of the Commons allowed these cases to go to the courts, they would be submitting themselves to inferior courts.

These comments were countered by an M.P., Mr. Dormer. He asked that if an elector could not go to the courts, where could he be awarded relief and damages? This echoed

---

[25]Ibid., 6:265.

the thoughts of Sir John Hawkes and the Marquis of Hartington. Dormer was followed by Sir Joseph Jekyll, who redefined the question yet again. He argued that the issue was to decide if a breach of parliamentary privilege had occurred when Ashby took his case to the Buckinghamshire assizes. Jekyll argued that the definition of common law was what was in common usage, and that "a right of voting is not a parliamentary right, but an ordinary, legal one, and by the common-law."[26] Therefore, if voting is under the common law, then courts can pass judgement on it, which deflates the case made earlier that ordinary court judges could not decide on questions of parliamentary law.

As in the beginning of the debate in the Commons, the Speaker of the House added his own interpretation of the discussion near the end of it. Harley's view of the case represented, in essence, the question of whether or not the determination of all electoral matters belonged to the House of Commons.[27] Although Harley mentioned examples of other cases, he could not escape the fact that this case was the first one of its kind, and that the outcome could set a precedent for such constitutional challenges in the future. It is little wonder, in these circumstances, that M.P.s found it difficult to determine the right way of proceeding.

---

[26]Ibid., 6:272,

[27]Ibid., 6:278.

If the Commons gave up power to decide over elections and the rights of electors, it might be seen to have given up all rights to determine elections, and this right might be forfeited to the Lords. Furthermore, as stated earlier, this period after the Glorious Revolution was a time of confusion about what rights each House had in the newly cemented constitutional, parliamentary monarchy.

To this end, the Commons resolved, without a division,

> [t]hat Matthew Ashby having, in contempt of the jurisdiction of this House, commenced and prosecuted an action at common law against William White, and others, the constables of Aylesbury, for not receiving his Vote at an election of burgesses to serve in parliament for the said borough of Aylesbury, is guilty of a breach of the privilege of this House.[28]

Although the House voted Ashby guilty of a breach of privilege, it did not order him to be taken into custody, which was the usual procedure.[29] By passing this resolution, the Commons had attempted to settle all future questions of the nature of Ashby v. White by stating that the Lower House was solely responsible for determining not only elections, but also the rights of electors. The Commons took this action after a long debate about how the Lords appeared to be claiming powers and privileges that its

---

[28]Ibid., 6:300.

[29]The Commons did, however, charge the Aylesbury Men with breach of privilege from this resolution when they brought a similar action, and they were taken into custody. See Parliamentary History, 6: 376-436.

ancestors had never enjoyed. The Commons beat them to it.

It can be seen that much of the discussion in the House of Commons about the case of Ashby v. White had little to do with Ashby, or the details of his denial to vote. Instead, the debate focused on the rights of the Commons, and whether or not the House of Lords was attempting to encroach on its right to determine elections to its House. This was seen by the Lower House as part of a larger plot of the Lords to strip the Commons of its exclusive power to determine elections. This closer reading of the evidence suggests that historians should reevaluate their discussions of this case to reflect more accurately the evidence found in the debates. Despite the emphasis about how this case affected the Commons in the secondary sources, historians must recognize that Commoners discussed the role of both the Commons and the Lords within the constitution. The evidence also shows that the Commons was concerned about how the actions of the Lords might encroach on its parliamentary privileges. These points are never discussed by the secondary literature, yet they are evident in the primary sources.

On 14 January, 1704, the Lords reversed the judgement given by the court of Queen's-bench, and ordered a committee to draw up a report on "The State of the Case upon the Writ

of Error lately depending in this House...."[30] The report was read to the Lords on 27 March by Lord Viscount Townshend, and contained several resolutions. It was resolved that in such cases the plaintiff had the right to seek a remedy in the court of Queen's-Bench and to receive damages for proven injury. To deny this right was to deny a remedy, and that was perceived to be destructive of the subject's property and against the freedom of elections. It was also resolved that to declare Ashby guilty of a breach of the Commons' privileges was "an unprecedented attempt upon the judicature of parliament, and is in effect to subject the Law of England to the Votes of the House of Commons."[31] Furthermore, the Lords resolved that to deter electors and solicitors from prosecuting such cases "is a manifest assuming a power to controul [sic] the law, to hinder the course of justice, and subject the property of Englishmen, to the arbitrary Votes of the House of Commons."[32] The Lords' debate was similar to the Commons' debates in that it centered on the role of the House of Lords in the constitution and on the importance of preserving its constitutional position after the Glorious Revolution.

---

[30]Journals of the House of Lords (hereafter cited as Lords Journals), 16:369.

[31]Parliamentary History., 6:324.

[32]Ibid., 6:324.

The report then commented on the reversal of the writ of error. Ten judges decided for the plaintiff, Ashby, and gave three reasons for this action.[33] First, the plaintiff had a legal right to vote as a burgess of the borough of Aylesbury. Second, there must be a process of remedy for the plaintiff to pursue. Finally, the decision to pursue a writ of error through the House of Lords was the proper remedy to pursue.[34] It is important to note that the question of Ashby's qualifications to vote in Aylesbury was never at issue. The Lords had decided that he was a burgess and, therefore, entitled to cast his vote. The report followed these reasons with a discussion about the legality of borough electors, such as knights, burgesses, and citizens, as well as contemplating what sort of legal remedy was needed to protect these rights, such as ecclesiastical courts, admiralty courts, and the court of common pleas. An objection was noted that the people Ashby wanted to vote for were not elected, nor would they have been if Ashby had been allowed to vote. The report countered this objection by saying that who was actually elected was not the point, that this was an irrelevant ex post facto argument of

---

[33]Lords Journals, 16:527-535. The only details of the reversal of the writ of error comes to us through this Lords' report. The Lords Journals omit any discussion of the reversal, and instead have simply reported the reversal (see Ibid., 16:369).

[34]Parliamentary History., 6:302-303.

justification. The case was about being allowed to vote, not for whom to vote.

A comment was made in the report that many people were too poor to take such an action through the courts. The report praised Ashby for standing up for his right: "It is not every one that has such a true English spirit as the plaintiff, who could not sit down meanly under a wrong done to him, in one of the most valuable privileges of an Englishman."[35] In reaction to the novelty of the case, the report stated that "[t]he law of England is not confined to particular precedents and cases, but consists in the reason of them; which is much more extensive than the circumstances of this or that case...."[36] This last comment served as the impetus for a discussion about the right of the freehold itself. The report stated that it was proper for the case to be heard by the court of Queen's-bench, as compared to the Commons, because that court has the right to determine the freehold. Although the Commons had many precedents supporting its right to determine elections, there was a difference between determining elections and the rights of electors. A person elected has a temporary right to sit until the next election. An elector had his rights for a much longer period of time, as determined by the original

---

[35]Ibid., 6:314.

[36]Ibid., 6:314.

borough charter, not by a future parliament. The report asserted that the rights of electors were established even before parliaments. To this end, an elector's rights were founded in the common law. As stated earlier, the plaintiff must have a remedy if wronged, and the same law that provided the right must provide the remedy.[37]

The report went on to say that it cannot be argued that the plaintiff should have gone to the Commons, because no elector had ever brought this complaint to the Commons. This logic implied that there was no precedent then for believing that the Commons was the place for the remedy. The Commons had only determined the right of elections, not the rights of electors:

> When the right of the candidate is examined in the House of Commons, it is in order to determine which person hath the right to join with them in the making of laws, and other public services; and if, in order to be determining this point, the House of Commons must judge the electors, they do it only to this purpose. But the courts of law judge of an elector's right wholly to another end, as it is a right, to assert that, and to repair in damages the elector who is wrongfully hindered from exercising it. This is what the House of Commons cannot do, nor to this day was there ever any application made to do it, and it may reasonably be supposed they will not now begin to take it upon them.[38]

This passage summed up the Lords' reasoning in judging this case. The Lords' report concentrated on the details of the

---

[37]Ibid., 6:317.

[38]Ibid., 6:317-318.

case, and looked to the principle behind the circumstances to decide the case. The Commons' debate, on the other hand, focused on its own role, and the alleged encroachment role of the Lords, while rarely mentioning the details of the case. The different issues debated in each House reveal with what they were concerned.

The next point the report attacked was the view that electors' rights had been determined by the Commons in the past over a case of a disputed election. The report stated that:

> If the House of Commons judge of a particular elector at any time, it is only 'pro ista vice', so far as it relates to the particular case before them; but surely the House never thought the elector's freehold finally concluded thereby, because he is no party to that suit, his right came not there in question originally, but consequently, in a cause litigated between other persons, to which he is no party; and it cannot be agreeable to right reason, or the principles of law, for a man's right to be conclusively determined, in a cause between other parties.[39]

The report went on to state that if the Commons had the right to determine the rights of electors, it would be strange if the elected could choose their electors.

The report concluded with a discussion about where an elector might seek relief for his damages, if not in the House of Commons. It argued that,

> Magna Charta, cap 29, is very express. No freeman shall be disseised of his freehold, or liberties, or free customs, unless by the lawful judgment of his peers, or by the law of the land. ...there is

---

[39]Ibid., 6:319.

> not one precedent can be produced, that ever any man, upon such an occasion, did ever apply to the House of Commons for relief.[40]

Therefore, an elector's rights could be determined by the Lower House, which contained the lawmakers, but not the law enforcers. The law enforcers were the courts, who could award damages to an elector who had been denied his right to vote. With this, the Peers had given all their reasons for reversing the Queen's-Bench decision in the case of Ashby v. White. Historians have ignored this report by the Lords in favour of concentrating on what the Commons had to say about the case. Yet, by examining this report, it is possible to recast the debate in a light that more accurately reflects the evidence, and therefore, provides a fuller understanding of the constitutional balance in early eighteenth century Britain.

III

The debates over the case of Ashby v. White conducted in the Houses of Parliament were also echoed in the more public forum of the popular press. This press debate offers insight into the popular view of the beneficial role played by the Lords in defending the rights of electors. Very few newspapers were available for this study due to the small

---

[40]Ibid., 6:323.

print culture in the early eighteenth century. None of the papers which discussed the case did so when the Houses of Parliament were discussing them. Rather, they all waited until 1705 before printing their first commentaries upon the case, and then did so in great detail and exploration. No explanation for this delay is evident, except that the newspapers may have waited until the case of the Aylesbury men had been decided. Another explanation is that perhaps the editors and printers were fearful of a general warrant being issued to silence their publications. The first newspaper available to the present writer which discussed the case was the twice weekly Observator. This paper took the format of a discussion between 'an observator' and 'a country-man,' where the observator was more learned about politics and is teaching the country-man lessons. The comments on the House of Lords are particularly interesting in this published debate. While discussing writs of error, and saying that they are an Englishman's right, not gift, the paper referred to the Lords as "the Supream [sic] Court of Judicature in the Kingdom."[41] This comment clearly showed the paper's opinion about the Commons' claim that it was the highest court in the kingdom to determine elections.

> In a later issue, the Observator commented that, the last Refuge and Recourse of Distressed

---

[41]The Observator, 7-10 March 1705.

> Englishmen was to their own Representatives; but now, had not God rais'd [sic] up the Lords on our side, our Free Birth-Rights and Properties had been Destroy'd [sic] by the very Persons we chose as Guardians of the Liberties of England.[42]

One week later, the paper discussed the power of the Commons as being derived from the people it was supposed to represent, yet the Commons had used that power to deny the rights of the people. A display of arbitrary power meant to the paper that the Commons no longer had authority. Moreover, while discussing the Lords' Address to the Queen over the Aylesbury matter, the paper said that "... their Lordships have said more in Vindication of English Liberty, than I, or any Man Living can Speak or Write; they have spoken like themselves, like the best Patriots that ever England knew."[43] Although this newspaper discussed the case in terms of the Commons' actions, its commentary on the role of the Lords showed a clear appreciation of the role played by the Upper House in the case of Ashby v. White.

Another newspaper to report on the case was the Mercurius Politicus: or, an Antidote to Popular Misrepresentation; containing Reflections on the present State of Affairs. This weekly paper started discussing the case in June 1705, and much of the commentary concerned the case of the five Aylesbury men, rather than Ashby v. White alone.

---

[42]Ibid., 17-21 March 1705.

[43]Ibid., 24-28 March 1705.

The paper had commented that it considered the Commons justified in treating the Aylesbury men case the way that it did. Like the Observator, the Mercurius Politicus used the Commons as the focus for its discussion. However, when the House of Lords was mentioned, it received a very favourable rating. For example, while discussing a possible breach of privilege of the Commons, the paper commented that

> [t]o this suddain [sic] Fancy of some People, for the Lords we have nothing to object, provided it be not taken up out of a Humour of Opposition, and not out of real Respect. They ought to have a due Veneration for the Lords, not only as they are great Men, and Persons of Honour, but as they are likewise one of the 3 Estates, a third Part of the Legislature and Civil Constitution, to which we all owe Reverence and Respect, and in some Cases obedience too....[44]

However, this praise for the Upper House was soon tempered by some doubt about its impartiality. On the next page, the paper stated that "[f]or as strenuous Assertors and Patrons of the Liberties of the People, as the Lords now appear to be, we should not however think our selves safe in the strength of the Habeas Corpus Act, if They should happen to think a Decision contrary to their Arguments, a Breach of Priviledge [sic] of their House."[45] The paper was critical of both Houses, and did not underestimate the potential of either House for imposing its will upon the people. After commenting that the rights and privileges of the Commons

---

[44]Mercurius Politicus, 11-14 August 1705.

[45]Ibid., 11-14 August 1705.

depended upon the Aylesbury cases, without explaining how this could be, the paper did not forget the role of the Upper House. The paper warned that "The House of Lords do, as becomes them, assert their Authority, and on occasion let those, that would play with their Power, see how dangerous the Sport is...."[46] Although the Mercurius Politicus concentrated on the rights of electors and their determination, the Commons discussed the plans of the Lords, and touched on the question of electors' rights very briefly.

A further newspaper to discuss the case was a parody of The Observator. The Rehearsal of Observator, &c. adopted the same style as the Observator, that of a discussion between an observator and a country-man. Where the first example of this style took the form of a master giving a student lessons, this format reads more like an ongoing argument between two political foes. Much of this paper seems to be the exposition of clever rhetoric.

One of the few times the paper discussed the roles of the Commons and Lords within the constitution, the two debaters argued about where the power lay in the constitutional balance. The Observator stated that he put the power of England in the hands of the people. Country-man challenged this, and asserted that by people, Observator

---

[46]Ibid., 14-18 August 1705.

must mean the people collectively, by their representatives in the House of Commons. Observator replied by exclaiming, "No! No! No! These are they that I Battle. I make them Rogues and Villains, Betrayers of their Trust... And now I like the Lords better than the Commons." To this, Countryman argued that "[t]he Lords are All and Every One of them made Solely and Arbitrarily by the Crown. And if YOU like the Choice of the Crown better than of the People; then let the Crown Name all the House of Commons too." Observator replied, "No. I thank you for that. WE Hate Prerogative. We'r [sic] for Pulling it Down, not Raising it Higher. And one of Our Quarrels with the Commons is, for their Asserting the Prerogative against the Lords."[47] Countryman went on to argue in a later issue that the Crown came before all parliaments, and was the source for all authority that the Houses of Parliament subsequently occupied.

The press demonstrated that the debate over the constitutional jurisdiction of both Houses regarding the rights of electors was carried on in a public arena. As well, the press offers insight into the popular view of the beneficial role played by the House of Lords in defending the rights of electors. Although the emphasis of the discussion remained on the Commons, the Lords was favoured

---

[47]The Rehearsal of Observator, &c., 31 March - 7 April 1705.

because the Commons was viewed as only concerned with preserving its privileges at the cost of the rights of electors.

There are several clear messages in the parliamentary and press debates. The first message is the turmoil in the post-1688 world. Neither House was confident of its role in the constitution in the new constitutional monarchy. If the crown had relinquished certain prerogative powers, such as determining borough charters, to whom were they passed? In an age of instability, the Houses of Parliament were attempting to find stability. The second clear message from the parliamentary debates was that the House of Lords was not going to be robbed of its legal and constitutional functions without a struggle. The Upper House had the right to hold plea on writs of error from the Queen's-Bench court. If electors had chosen that route to receive damages, the Lords would determine the rights of electors, not the Commons under the aegis of the right to determine elections. The third, and perhaps most important, message is that too much emphasis has been placed on the House of Commons by historians. These scholars are trapped in a whig paradigm, and are looking for the advent of the supremacy of the Commons that they see in their own day. This biased viewpoint has manifested itself in an almost complete denial of the vital and viable role of the House of Lords in the early eighteenth century. They have ignored the

aristocratic nature of society in favour of seeking a burgeoning middle class that they have seen in their own historical surroundings. Neglect of the contemporary debate on fundamental issues like the rights of electors in this period has obscured a fuller understanding of what the Mercurius Politicus called in 1705 "the Ground and Foundation of what some at present dignify with a new name, and call Revolution Principles."[48]

[48]Mercurius Politicus, 11-15 September 1705.

CHAPTER THREE

The Middlesex Elections and the House of Lords

I

On 8 May 1769 John Wilkes lost his final attempt to be seated in the House of Commons as the Member for the County of Middlesex. His soundly defeated opponent, Henry Lawes Luttrell, was seated in his place. The background to this event is well documented,[49] and Wilkes has become a notorious figure within eighteenth century British history. In the aftermath of this rejection by the Commons, the focus of the protest to seat Wilkes as Member for Middlesex moved out of the Commons Chamber into the country at large and eventually the House of Lords. It is this extra-parliamentary protest, which became known as the Petitioning Movement, and the profound, but neglected, constitutional debate initiated by the Lords on the issue of the rights of electors which will be examined in the pages that follow.

Many historians have compared the cases of Wilkes and the Middlesex Elections with the similar issue of Ashby v. White. Both cases involved the rights of electors, and both cases did not decisively decide the question of who may

[49]For further information on the Middlesex elections, see George Rude, Wilkes and Liberty, A Social Study of 1763-1774, (Oxford: Clarendon Press, 1962), chapters 1-8; John Brewer, Party Ideology and Popular Politics at the Accession of George III, (Cambridge: Cambridge University Press, 1976), chapters 8 and 9; Robert R. Rea, The English Press in Politics 1760-1774 (Lincoln: University of Nebraska Press, 1963), early chapters.

determine the rights of electors, certainly not in the latter case. Many books which cover constitutional issues have placed the cases side by side in a discussion of Commons' privilege, and agree that after Wilkes, the idea was tacitly accepted that an elector's rights could not be denied by a Commons' resolution. While discussing Wilkes, James Rogers compared the case to Ashby v. White, and described the role of the Lords as, "the rights and powers of the Peers being a trust to be held and exercised for the benefit of the people and the preservation of their liberties."[50] Yet, in both cases, the Peers who supported the rights of electors were in the minority, and ultimately lost their attempt to preserve the existing powers within the constitution.[51]

After 8 May the case for Wilkes seemed lost. Not only had he been expelled from the House of Commons, he was then declared incapable of sitting in the Commons, a singularly spectacular precedent in itself. The Lower House proceeded to seat his opponent, Col. Henry Lawes Luttrell, a loyal court man, and resolved that Luttrell 'ought' to have been seated.[52] But all hope had not been lost. A Petitioning

---

[50]James E. Thorold Rogers, A Complete Collection of the Protests of the Lords with Historical Introductions, (Oxford: Clarendon Press, 1875), 2:109.

[51]For more comparisons of the two cases, see Turberville, 346; Williams, 221-244, 386; Marcham, 226-227, Keir, 340-341.

[52]Parliamentary History, 16:588-589.

Movement to redress Wilkes' grievances arose from the Middlesex electors, and spread, with the essential support of Peers, such as Lords Temple and Rockingham. It came to encompass large areas of the country and approximately 60 000 petitioners. Freeholders across the country sent petitions to parliament for redress of the grievances that they believed the voters had suffered at the hands of the Commons by denying the Middlesex electors their chosen representative. Some Peers, such as Rockingham and Temple, were continuously involved from the 1763 dispute over general warrants, to the 1769 question concerning the Middlesex elections, showing not only their deep interest in the case but also that the House of Commons was not the only means of redress. There existed in eighteenth century England an essential and traditional link between the superior social status of the peerage and political power both around the King and in the country at large. And it was this link that provided the crucial impetus to the Petitioning Movement, which would not have made any headway without the Peers' support. The concern here is not to explore the social phenomenon of the common people voicing directly to the King their opposition to government. Other historians, most notably George Rude, as mentioned above, have more than adequately written about the movement in terms of crowd behaviour or the role of the press. Instead, my emphasis will be on the continued and vital involvement

of the Lords in the Wilkes case over the summer and fall recess of Parliament in 1769, and the debates of 1770. In this examination it is intended to explore events behind the Lords' involvement in the Petitioning Movement and the debates of 1770, which have suffered neglect in both the older scholarship of Archibald Turberville, and the more recent writings of Robert Rea and John Brewer on this topic.[53]

Once Wilkes had been expelled from the Commons, a group of his supporters in February 1769 founded the Society of the Supporters of the Bill of Rights (hereafter referred to as the SSBR) to support Wilkes in his challenge to parliament. The SSBR performed such tasks as collecting money to pay Wilkes' legal debts, and its members were best known at this time for being a driving force behind the Petitioning Movement. They encouraged freeholders to exercise their constitutional rights, as founded in the Bill of Rights of 1689, by petitioning George III for redress of grievances concerning the denial of the Middlesex electors'

---

[53]See Archibald S. Turberville, The House of Lords in the Eighteenth Century (Oxford: Clarendon Press, 1927), 330-350; Rea, chapter 3; Brewer, chapter 9. Other historians who have neglected the role of the House of Lords in Wilkes' expulsion include Luke Owen Pike, A Constitutional History of the House of Lords from Original Sources, (London: Macmillan and Co., 1894); John Wardroper, Kings, Lords and Wicked Libellers, Satire and Protest 1760-1837, (London: John Murray (Publishers) Ltd., 1973); and Corinne Comstock Weston, English Constitutional Theory and the House of Lords 1556-1832, (London: Routledge and Kegan Paul Ltd., 1965).

choice of their chosen representative to sit in the House of Commons.

Although the petitions expressed outrage at the denial of the rights of the electors of Middlesex, according to Rude, they were not all alike in their constitutional focus or membership. It is important to note that two out of these three groups were led by peers. The role of the peers proved crucial in the attempt by the SSBR to attain support in the various counties around England where many of the petitions were written. Rude was careful to point out that the petitions were hardly spontaneous outbursts from angry freeholders, but rather, were highly organized, legal documents and "their promoters had to be drawn from the country gentry, or even from territorial magnates, whose influence was generally decisive in matters relating to elections or political campaigning."[54] England was still a deferential society where the voice of the local country squire or lord held much sway among the general population, hence the important position of these aristocrats sitting in the House of Lords who were involved in the Movement. While most historians of this period would agree that England was governed by a social and political relationship of

---

[54]Rudé, 106.

deference,[55] they have still ignored the active political and constitutional role of the House of Lords, especially throughout the case of Wilkes and the Middlesex elections.

The reason that petitions were favoured, as opposed to any other form of protest, was primarily due to Rockingham's secretary, Edmund Burke. As he noted in one of his many letters to Rockingham:

> I confess I am, when the objects are well chosen, rather more fond of the method of petition; because it carries more the air of uniformity and concurrence; and being more out of the common road, and yet I apprehend constitutional enough, it will be more striking, and more suitable to the magnitude of the occasion.[56]

Burke had rightly assessed that the Movement needed as much influence, such as that of the social position of the peers on its side, as it could muster. The legal precision of a petition meant that it would have a chance to be taken seriously by an otherwise resistant Commons. Burke also suggested that the petitions be limited to the redress of grievances resulting from the Middlesex elections, and not include various other complaints that did not directly concern the elections.

What the minority in the Lords did not seem to realize

---

[55]Frank O'Gorman, The Emergence of the British Two-Party System 1760-1832, (London: Edward Arnold Ltd., 1982), 1-20.

[56]The Correspondence of Edmund Burke, 1768-1774. ed. Lucy S. Sutherland, (Cambridge: Cambridge University Press, 1960; hereafter cited as Burke Correspondence), 2:40-41.

was that the King was firmly behind the Commons' expulsion and declaration of Wilkes' incapacity, for he too detested him and his principles. In Fortescue's collection of George's letters, the King indicated that he only saw a person trying to defame the person and office of the King, rather than to protect the constitutional rights of electors, so George encouraged members of the Commons to treat his case as one of simple seditious libel. As early as 15 April 1769, the king was sure that if Wilkes' case was handled with "firmness...this affair will vanish into smoke."[57] Undoubtedly the Petitioning Movement was not what he had in mind.

If the king could not grasp the constitutional significance of the Wilkes affair, perhaps the popular press could. A newspaper report of a meeting on 5 October at Exeter Castle regarding a petition captured the true spirit of the constitutional question by stating "that the stability of government and of that happy constitution...depend upon the maintenance of the rights, privileges and prerogatives of the three Estates of the Realm distinct from and not to be impaired by each other."[58] The fact that there was little contemporary comment in

---

[57]The Correspondence of King George the Third from 1760 to December 1783, 6 vols., ed. Sir J. Fortescue, (London: Macmillan and Co., Limited, 1927), 2:89.

[58]Rude, 125.

memoirs or private papers on the role of the Lords does not lessen the impact of the peerage in these events. As the last quotation so aptly states, each of the three elements of the parliamentary structure was responsible for the maintenance of the constitution. What has been neglected by historians was the fundamental role of the Lords, that of a go-between for the King and the people, as represented by the Commons. The remarkable scope of the Petitioning Movement was due, in fact, to the involvement of opposition peers in the constitutional argument.

Most of the petitions against the Commons' treatment of Wilkes had been presented to St. James' Palace between April 1769 and January 1770. By the time of the speech from the throne on 9 January 1770, George had been presented with 12 petitions from the counties, and 11 from the boroughs. By early April 1770, three more county petitions and one from a city had been presented to the King. As noted earlier, the petitioners totalled approximately 60, 000 signatories, which Rude estimated constituted more than a quarter of the total number of electors. Despite such an outpouring of support for Wilkes against the Commons' expulsion and declaration of incapacity, the Movement seems to have had little impact on the government's majority position in both the Commons and Lords. The King's position of 'firmness' seemed to have paid off. In fact, on 19 February 1770, the Commons decided by a majority of 69 votes that their actions

concerning Wilkes conformed to the law of the land; at first glance, then, it appeared that all the effort of the Petitioning Movement had been wasted.

In fact, nothing could have been further from the truth. Historians, in their fascination with the Commons, have ignored the link between superior social status and political influence in eighteenth century politics. Peers had always been involved in the Petitioning Movement, usually in their traditional supporting, background role, and in the early months of 1770, they would take center stage by picking up where the Movement left off.

II

Throughout the case, the Lords seemed to be in agreement with the government position. The Upper House seemed to agree, that is, until Chatham began making the Peers listen to one of their own supporting the Wilkesite cause. Both in the speech on the Lords' Address of Thanks to the Speech from the Throne on 9 January, and in his remarkable Bill for redress of Wilkes' grievances suffered at the hands of the Commons from 1 May 1770, Chatham addressed the Lords with sound, legal arguments which chastised the Lower House for its unconstitutional behaviour. He avoided argument over Wilkes' personal outrages and stuck to the specific constitutional issues themselves. Chatham, a peer of the realm, addressed his own fellow peers, and called them to action. Despite the fact

that his motion for the Address and the Bill were defeated, Chatham and his supporters recorded their names for posterity against what they considered to be the tyranny of the Commons.

Turberville began his discussion of the 1770s by saying that it was "the magnetic personality of Chatham that supplies the dominant interest in the history of the House of Lords up to the date of his death."[59] In this analysis he is correct: because of Chatham's career in the Commons as William Pitt, he had mastered a voice that demanded to be heard, and an oratorical debating style that was difficult to match. He could think on his feet, a great ability for a parliamentarian, and was not timorous when it came to standing up and making a point, unlike such notable political contemporaries as Grafton and Rockingham. Chatham's speaking ability was one of the few weapons that the Wilkesite cause had left, and he used it with great force throughout the early debates of 1770.

The first opportunity for Chatham to make the Wilkesite case was in the Lords' Address of Thanks to the Speech from the Throne, which opened the third session of the thirteenth parliament, on 9 January 1770. It is worth looking at the debates in detail because they touch on many fundamental concepts surrounding the issue of the rights of electors. In

---

[59]Turberville, 331.

the throne speech, the King was greatly concerned that a "distemper" had broken out among the "horned cattle" of the kingdom. Although he obviously was concerned about what actions the petitioners might take (reminiscent of other Wilkesite crowds), he did not appear to consider giving in to their requests. Nor did he want his ministers to give in. After the Duke of Ancaster and Lord Dunmore moved and seconded acceptance and reply to the speech, the Lords began a debate on the Address. Chatham was the first to speak, and after some discussion about peace in the nation, he suggested that the peers should look into what was causing the disturbances, inform the king, and give him what advice they could, because they were the hereditary counsellors of the crown.[60] After all, they would have done less than their duty if they only sat by and did not act as the go-between for the King and Commons.

Chatham then turned his speech in the direction of the latest discontents. He drove the point home by showing how the liberty of the English subject had been invaded by the Commons' arbitrary declarations, and that the electors should get redress for their grievances, and that the Lords ought to tell the king, in an amendment to the reply to the Throne Speech, that the present discontents were due to Wilkes' expulsion from the Commons. The Lower House was

---

[60]Parliamentary History, 16:644-651.

guilty of "refusing, by a Resolution of one branch of the legislature only, to the subject his common right, and depriving the electors of Middlesex of their free choice of a representative."[61] This was strong language. Although this language might be expected in a petition, for a Peer to accuse the Commons of denying the rights of one of its own electors was unlikely.

A formidable character like Chatham needed, and deserved, a suitable foe to argue the other side of the case, and one was found in Lord Mansfield, Lord Chief Justice. He began his reply to Chatham's fiery words with a slow, almost apologetic statement that he had not given his opinion on the case, was not going to, and did not cause the discontent. He then went on to say that he was not happy about either House proclaiming resolutions on laws which the courts might have to change. Then he said, "a question touching the seat of a member in the Lower House, could only be determined by that House; there was no other court where it could be tried, nor to which there could be an appeal from their decision."[62] In effect, he was saying that the Lords should not include Chatham's amendment because it had no right, judicial or from precedent, to do so. In fact, he said that the proposed amendment "was a gross attack upon

---

[61] Ibid., 16:653.

[62] Ibid., 16:654.

the privileges of the House of Commons, and, instead of promoting that harmony which the King had recommended, just inevitably [threw] the whole country into a flame."[63] Such action, in Mansfield's opinion, was without precedent, and he concluded by warning the peers that they should take care to have justice on their side.

Chatham struck back by demanding that "[i]n what instance does it interfere with the privileges of the House of Commons? In what respect does it question their jurisdiction, or suppose an authority in this House to arraign the justice of their sentence?"[64] Chatham declared that his amendment only pointed out the cause of the discontent to the King, and did not pass judgement either way on the Commons' proceedings. As for the supreme jurisdiction of the Commons, Chatham went on to say that "[t]yranny, my Lords, is detestable in every shape; but in none so formidable as when it is assumed and exercised by a number of tyrants. But, my Lords, this is not the fact, this is not the constitution."[65] After arguing that Wilkes was neither patriot nor the vilest incendiary, but just an English subject, thereby distinguishing between personality and issue, the amendment was put to the vote, and was

---

[63]Ibid., 16:654.

[64]Ibid., 16:657.

[65]Ibid., 16:660.

received in the negative. After some dispute as to how long to adjourn the House, a vote was taken on the original question, and was passed 103 to 36.[66] Yet, among the 36 dissenting voters were some very notable names. Besides the obvious names of Chatham and Temple, there were Rockingham, Portland, Lyttelton, Camden, and Fortescue, and many other members of the Rockinghamites and Grenvillites. The original Address of Thanks went through as proposed.

While Chatham and his supporters may have lost their amendment to an unusually full House, they nevertheless made their point about the Commons' arbitrary actions when it decided on the spot that expulsion was grounds for incapacity. Chatham and his supporters had laid the ground work for further discussion in the Lords, and had assured the leaders of the petitioning movement that the protest was not yet over.

The next debate (or should it be called a parliamentary battle?) took place less than a month later, on 2 February, and concerned a motion "[t]hat in Matters of Election the House of Commons is bound to judge according to the law of the land...."[67] Rockingham put forward the motion that the

---

[66]Ibid., 16:657. Cobbett reports the final vote to have been 203 to 36, yet there were not this many peers sitting in the Lords at this time, so Turberville, and this writer, have assumed that the first figure was mistaken and should be 103 votes. Furthermore, the revised numerical split in the vote is in keeping with other divisions.

[67]Ibid., 16:813-14.

Commons, with regard to elections, was bound to judge according to the law. At first, such a suggestion may have seemed obvious, without need for a resolution stating the necessity for the Lower House to obey the law in explicit terms. Sandwich, a foe of Wilkes since 1763, said that he saw no need for such a motion, because it might widen the differences between the two Houses, and that the Commons should be allowed to seat their own Members.

Chatham decided to take him on. He made the crucial distinction between personality and issue. Wilkes was not at issue, but rather "[t]he course of complaint...is the inherent rights and franchises of the people [which] are, in this case invaded, trampled upon, and annihilated."[68] After all, parliament was not just the Commons. As for the fact that only 13 out of 40 counties petitioned, Chatham argued that the petitioners had the spirit to fight against the decisions of the Commons, and then Chatham asked an important question: "Are numbers to constitute right?"[69]

Chatham then continued to make the case that he had established in January. The Lords, he said, was also entrusted with protecting the rights of electors, and the Upper House, he went on, along with the law, was supposed to protect them. Instead, the Commons took the law into its

---

[68]Ibid., 16:817.

[69]Ibid., 16:818.

own hands, created laws as it went along, and had violated other laws as well. Chatham was careful not to place blame upon the King, and, instead of shifting it to the Commons or the Lords, he placed it squarely on the King's advisers.

Despite this brilliant oratorical display, Rockingham's motion went down to defeat, 96 to 47. Yet the minority vote had grown from the 36 dissentients in January. In addition, the dissenting Lords drew up a six-point protest against rejecting Rockingham's resolution, saying that the resolution was necessary in light of the decisions of the Commons, and that if their Lordships were allowed no say or appeal of Commons' decisions, the law of the land would be left in arbitrary hands. The protest went on to state that the case of expulsion being grounds for incapacity was only a Commons resolution, not grounded in law. The fifth point in the protest stated that, in cases of creating new powers and privileges in the constitution by one House, the other House had the right and the duty to interfere, and to support this argument the Lords used none other than the 1704 case of Ashby v. White. By using this case, the Peers showed that they were aware of the precedents set for this issue, and that the case was still being used by contemporaries. The protest concluded by saying that the assumption of such a power by the Commons may one day make freedom of speech a criminal act and that in the name of justice it was necessary for one House to interfere with the

other. Finally the protest declared that the actions of the House of Commons, unknown to the law, were flagrant usurpations of the constitution.[70]

However, the majority which defeated Rockingham's motion struck back by presenting their own motion "That any Resolution of this House, directly or indirectly, impeaching a Judgement of the House of Commons, in a matter where their Jurisdiction is competent, final, and conclusive, would be a violation of the Constitutional Rights of the Commons, tends to make a breach between the two Houses of Parliament, and leads to general confusion."[71] This motion was presented after the midnight hour by Marchmont, and seconded by Mansfield, who had not spoken in the previous debate. Marchmont, in his introduction, extended the idea of interference to a "foreign assistance," but when challenged by the Duke of Richmond as to what he meant by that phrase, Marchmont did not defend it. He let the idea drop, after the suggestion of foreign interference or possibly invasion had been laid in the minds of his fellow peers. Then Egmont carried the motion further by saying that the petitioners had no right to petition, which was a treasonable act. This, after Burke and others had ensured that many of the petitions were worded as legal documents.

---

[70]Ibid., 16:822.

[71]Ibid., 16:823.

Not surprisingly, after more debate, the dissenting Peers again drew up a protest against the resolution, this time including seven new points. One of these stated that they would consider themselves as betrayers of the constitutional trust ensuring the benefit of the people if they agreed to the resolution. Another said that if the Commons should decide to change or override any of the laws that are fundamental to the rights of the subject, the Lords would have no say in rectifying such abuses. The resolution rendered the House unable to stand by the people or give advice to the King, and it meant that the authority of Parliament would suffer as a consequence. The former resolution forwarded by Marchmont lowered "all the constitutional powers of the Kingdom, rendering the House of Commons odious, and the House of Peers contemptible."[72] Finally, the protest argued that, due to the lateness of the hour and the fatigue of the Peers, to force this motion was unparliamentary and unjust, but the 40 dissentient signatories would continue to fight for the people.

The struggle of the opposition in the Lords culminated in Chatham's presentation of a Bill:

> for reversing the adjudications of the House of Commons, whereby, John Wilkes, esq. has been adjudged incapable of being elected a member to serve in this present parliament, and the freeholders of the County of Middlesex have been deprived of one of their

---

[72] Ibid., 16:827.

legal representatives[73]

which was moved on 1 May 1770. The Bill objected to the Commons' resolution declaring Wilkes' incapacity, as being "most arbitrary, illegal, and dangerous."[74] Temple, the first to speak after the first reading of the Bill, spoke of the shameful actions of the Commons, and in this he was supported by the Duke of Richmond and Lord Lyttelton. After this show of support, the Earl of Denbigh raised the first opposition to the Bill by saying that he proposed that the Lords interfere in the inherent and exclusive powers of the Lower House, something which he would not bring himself to do. After these initial speeches, the real debate began. Chatham stood up to speak.

Chatham opened his argument by saying that the Commons had presumed a power superior to that of the people, the source of all their power. The Middlesex electors had elected a man who was not incapacitated by the law, and by doing so, the Lower House was acting in defiance of the law: "This is laying the axe at once to the root of our constitution; and arguing in extenuation of it, is only adding insult to injury, and desiring us to kiss the hand of the assassin, while he mercilessly plunges a dagger in our

---

[73] Ibid., 16:955.

[74] Ibid., 16:956.

hearts."[75] By denying the electors discretional power to chose their own representative, the Commons had trampled on the constitution.

Mansfield then took up the challenge of facing Chatham. He began his counter-argument by addressing the Peers as a whole, and casting their memories back to several other cases of people expelled from the Commons, such as Sir Robert Walpole (former First Lord of the Treasury), without an objection from the Lords. Wilkes, he claimed, was like any of those other cases, with no noticeable extenuating circumstances. This part of his argument seems to have been delivered in a calm, deliberate manner, using legal terms. His demeanour changed suddenly, however, when he directed his oratory towards the Bill itself. He asked the Lords to think of what might be the result of adopting such a Bill:

> Good God, what may be the consequence! The people are violent enough already, and to have the superior branch of legislation join them, would be giving such a public encouragement to their proceedings, that I almost tremble, while I even suppose such a scene of anarchy and confusion.[76]

Such a dramatic style of speaking seems more attributable to Denbigh, or even Temple, but not that of the rational, well thought out oratory that observers had come to expect of Mansfield. He then closed his argument by saying that

---

[75] Ibid., 16:958.

[76] Ibid., 16:961.

because he believed the Commons could determine the rights of their members, he was against the Bill.

Camden then stood to speak to the Bill, which even he considered to be an unusual occurrence. He began by pointing out that his noble friends had made a sound case for the Bill, and that Mansfield was correct in reminding the House that the Lords had never objected to an expulsion from the Commons in the past. Yet, in his opinion, Wilkes' case was different. Camden asked Mansfield, "Was there not a time when Mr. Wilkes was not under expulsion, and when he was unanimously chosen? What then prevented the House from admitting him their member?"[77] He continued his speech by saying that, while the bill addressed the specific question of Wilkes against Luttrell, it should be taken on a more broad bottom, to apply to all such cases. He then concluded his argument by saying that the noble lord had forgotten one precedent of one branch of the legislature having interfered in the case of another: the infamous tax of Ship-Money under Charles I in 1627. The tax, although it received the support of twelve judges, was overturned by the next parliament, and "then ceased to be a case between Mr. Hampden and the King, but the people of England against the venal and oppressive ministers."[78] Camden did not doubt

---

[77]Ibid., 16:963.

[78]Ibid., 16:964.

that this case of Wilkes against Luttrell would have universal constitutional importance, and in the long run, Camden was proved correct in this assessment.

After a few more speakers, the question was put as to whether or not the Bill should be read a second time. The Bill went down to defeat, 89 votes to 43, showing that the opposition had grown since January, and remained fairly constant since February. Again, the opposition Peers drew up a protest, but instead of listing specific grievances yet to be properly addressed, as they had done before, this protest appears more like a final surrender. The Peers wanted it recorded for posterity:

> that this great constitutional and effectual method of remedying an unexampled grievance, hath not been left unattempted by us; and that to our own times, we may stand as men determined to persevere in renewing, on every occasion, our utmost endeavours to obtain that redress, for the violated rights of the subject, and for the injured electors of Great Britain, which, in the present moment, an overruling fatality hath prevented from taking effect; thereby refusing reparation and comfort to an oppressed and afflicted people.[79]

Thus ended the third and final attempt by the Lords to address the grievances of Wilkes and the Middlesex electors.

Turberville dismissed this Bill by saying that "its author, having foolishly maintained that the Commons could be sued for damages for having unseated Wilkes, had been

---

[79]Ibid., 16:965-966.

soundly trounced by Mansfield."[80] This statement is not only false, but misleading and unfair to Chatham. First, Chatham was not the sort of person to attempt foolish endeavors. He conducted this argument with due seriousness and propriety, if witnessed only in the final protest. Secondly, the Bill was not designed to sue the Commons for damages, but to receive a redress of grievances through undisclosed means. A suitable redress may have been a public declaration of error on the part of the Commons, not necessarily a monetary settlement. Thirdly, if anybody was soundly trounced, it was Mansfield, not Chatham. Mansfield was defeated not only by Chatham, but especially by Camden, who pointed out the flaws in Mansfield's argument. When he resorted to fear tactics, Mansfield proved that his argument was not based on legal grounds. In this judgement, as in his earlier mistaken assertions on the role of the Lords in the Middlesex elections, Turberville's authority on the Lords in the eighteenth century is thrown into doubt.

These three debates from January to May 1770 clearly demonstrate the Lords' keen interest and deep concern for Wilkes and the Middlesex electors. A strong, large minority of Peers consistently challenged the accepted view that the Commons' behaviour should not be questioned. This minority ably argued that the Lower House's actions were

---

[80] Turberville, 347.

unconstitutional, and that it was the duty of the Lords to step in to correct this injustice. Although these outspoken Peers remained in a minority, and were finally defeated in May 1770, their role in the Wilkes case should not be ignored by historians recreating these momentous events. The House of Lords played a vital, important role in the Middlesex elections. The dissentient Peers were finally successful, because in 1774 Wilkes was seated as the Member for Middlesex. As well, in 1782 the House of Commons expunged from its Journals the resolution declaring Wilkes incapable of being elected a Member. Although it took twelve years, Wilkes' cause was finally recognized by the House of Commons.

By not examining the Lords' involvement in the case of Wilkes and the Middlesex elections, historians have become trapped in a whig paradigm which dictates that the constitution and the will of the people resides solely in the Commons. Through their obsession with the Lower House, scholars have missed gaining a fuller understanding of the constitutional issues Wilkes' activities have raised. The Lords must be consulted if a full sketch of Wilkes and the Middlesex elections is to be painted.

III

Newspapers can provide the historian with a glimpse into the political theatre outside Westminster: the world

John Brewer referred to as, "alternative structures of politics."[81] Newspapers may provide another glimpse into eighteenth century British society, but as an historical source they have to be viewed with caution because they present the most difficult evidence by which to judge motivation. Often the historian does not know who was funding the paper, or what their political motivations were for publishing. Even when the printer and publisher's political loyalties are known, such as in the case of William Bingley, who was a staunch supporter of Wilkes, the historian can not be sure if the reporting is strictly a radical contrivance or polemic, or as an accurate account from an independent observer. Any evidence of political news found at this time in newspapers should be treated with some scepticism. The fact remains, however, that they can provide information that can not be found in official records or in any personal diary or correspondence.

The newspaper campaign surrounding the Middlesex Elections is fascinating. Perhaps more so in this case study than in the other two in this thesis, newspapers play a unique role. Wilkes himself was a newspaper man of a sort. His reporting in the North Briton caused him to be arrested on a general warrant in 1763. Many of his friends

---

[81]John Brewer, Party Ideology and Popular Politics at the Accession of George III, (Cambridge: Cambridge University Press, 1976), Introduction.

were also in the news business, and as such they helped to plead his case before the judgement of popular opinion, either through occasional editorial comments or through more vigorous support.

Many newspapers had moderate to little coverage of the Middlesex Elections and the Lords' involvement. The newspapers first to report the news were almost always the London newspapers because they were located at the source of the news. The provincial papers would often reprint London reports afterwards, perhaps a week to a month later, and would usually carry these London stories verbatim. Such newspapers as the Dublin Mercury, the Scots Magazine, and the Independent Chronicle, reported the Lords' debates, but little else, and much of the stinging commentary came from the London newspapers.

One of the earliest references to the involvement of the Lords in the Middlesex Elections was made by the Sussex Weekly Journal. On 25 December 1769, a letter from William Moore to Dr. Musgrave outlined the case of Ashby v. White, long before the Lords made this comparison. Moore reminded Musgrave, an M.P. from Devon, that the right of election is an original right of the people, not just from the law and custom of Parliament. He stressed that "... all the rights and privileges which we enjoy are founded upon that one, the Right of Free Elections; and when ever that shall be destroyed, the Parliament of England, like those in France,

will become mere engines of government."[82] Moore drove his point home by referring to a foreign government that was considered by the English to be despotic.

In the issue of the Sussex Weekly Journal covering 6-8 February 1770, after discussing the Lords' debate from 2 February, an editorial comment appeared, saying, "And it may be added in general, that there never was a public cause so upheld by so many respectable characters of private worth and public honour as at present."[83] This comment acknowledges that the Peers were thought of not only as leaders of society, but also as leaders of the political nation. In addition, the fact that the wealthiest peers were concerned with the issue of the rights of electors seems to have indicated to the publisher their concern for the welfare of the electors. This issue also stated that in the 2 February debate, "The Lords have not sat so late since the revolution,"[84] indicating that the Lords thought that this was an important national issue deserving of their time and efforts.

It cannot be disguised that the press coverage of the Middlesex elections mostly centred on the House of Commons. Yet this attention is often quite negative, and the space

---

[82] Sussex Weekly Advertiser, 25 December 1769.

[83] London Evening Post, 6-8 February 1770.

[84] Sussex Weekly Journal, 12 February 1770.

devoted to the Commons was full of criticism for the representative branch of the legislature. In a letter from Atticus to the printer of the Leeds Mercury about the Middlesex Elections, the writer said that "I acknowledge the legislature to be omnipotent, but not infallible."[85] This made an important distinction between the right and the responsibility to govern.

A comparison between the Middlesex elections and the case of Ashby v. White was not missed by contemporaries. The comparison was usually made by writers associated with Wilkes himself, through newspapers operated by his friends. For example, in two letters to the North Briton, 'Legionarius de Comitatu Cantii' outlined the details of the Ashby v. White case. The anonymous correspondent said that he was providing an example

> of the conduct of the House of LORDS, and the substance of some of their PROTESTS, when in the case of the men of AYLESBURY, who were deprived of their right of election like the men of Middlesex, these gallant NOBLES stepped in to save the constitution of their country, and procure a dissolution of that villainous House of Commons, which attempted to trample upon the authority of the Queen and the Laws.... [86]

In his next letter, after recalling that Queen Anne ordered a dissolution of Parliament, the writer commented that:

> You may see in HER SPEECH that she does not insult her people, in the midst of their

---

[85] Leeds Mercury, 13 February 1770.

[86] The North Briton, Saturday 10 February 1770.

> grievances, or baulk in Parliament the public expectation of redress, by an idle account of the disorders among the horned cattle, but immediately takes in hand, as the primary and proper object of Royal and Parliamentary concerns, the disorders of the NATION.[87]

The writer made the comparison between Queen Anne, the last of the Stuarts, and George III with his lack of concern for the rights of electors.

This lack of concern of the King towards the petitions, and the ministry's support of him, was echoed in The Parliamentary Spy, which made the editorial comment that in regard to the ministry's defence of their actions:

> The principles of Toryism are visible in every word of this curious and elaborate sentence. Passive obedience and non resistance are the buttresses on which it stands, and to make the king forget that to his people, not hereditary right, he owes his crown, is its whole scope.[88]

As well, in commenting on the agreement between the ministry and the majority of the Lords, the Parliamentary Spy said that:

> The House of Commons, instead of rescinding, have confirmed the act of injustice, and the Lords, forgetful of their own dignity, of the very essence of their existence, as a House of Parliament, and of their duty to society, and remembering only their places and pensions, by a midnight vote, basely surrendered into the hands of the minister, the right of interposing between the people and their representatives, a right which their ancestors, warmed with a far different

---

[87]Ibid., 3 March 1770.

[88]The Parliamentary Spy, 27 March 1770.

> zeal, so nobly asserted, and would have gifted away only with their lives.[89]

In these examples, although the focus may be on the conduct of the House of Commons as compared to the Lords, the content is critical of the representative branch, and also critical of the Peers who supported the Commons' actions. Furthermore, it is important to note that there was popular support for the intervention of the Lords to protect the rights of electors.

On the same day that the above comments were printed, The North Briton printed a letter from 'Junius.' In it 'Junius' said that "[w]hen the loyalty of Tories, Jacobites, and Scotchmen, has once taken possession of an unhappy prince, it seldom leaves him without accomplishing his destruction."[90] This same quotation appeared in the Sussex Weekly Journal a month later. It is interesting to see how such arguments as the Bute myth of secret advisers behind the throne and the old Jacobite scare were still being expressed to explain how an innocent monarch could be governed by evil advisers so long after Bute had left the court, and so long after the Battle of Culloden.

Not all commentary on Wilkes himself was as positive as the North Briton would print. The Public Advertiser printed a letter on 26 April signed by 'Charles Stuart' to John

---

[89]Ibid., 17 April 1770.

[90]The North Briton, 7 April 1770.

Wilkes, which stated, among other things, that Parliament was their common foe, that as soon as Charles was made monarch, Wilkes would be seated for Middlesex, and that the bulk of people were stupid, ignorant animals.[91] Obviously, not all papers were in favour of Wilkes. This paper tried to make it appear that he was as corrupt as the Stuart dynasty that had gone before him.

The connection made between the defeat of the Bill by evil, corrupt advisers was continued through the Middlesex Journal. While discussing the division on the Bill, the paper commented that "[t]he Scotch Lords and the Bishops, aided by the Lords of the Bedchamber, and the rest of the placed Lords, made up eighty-nine, who were against the second reading. However, there were forty-three independent English Lords for it."[92] Again, the protesting Lords appear to be the guardians of the peoples' rights. In addition, the majority who defeated the Bill are portrayed as people who had no respect for the rights of electors, and more importantly, who gained their positions through patronage or position, and who were, nevertheless, subverting the constitution.

Up to two months after the Bill was defeated, several papers contained mentions of toasts drunk to the minority of

---

[91]The Public Advertiser, 26 April 1770.

[92]The Middlesex Journal, 1-3 May 1770.

Lords led by Chatham. A popular quotation used by the papers was that "[t]he Protesting Lords is the toast drank in all patriotic companies."[93] Even though the Peers lost the battle, their efforts were remembered and appreciated through the papers and their readers.

Perhaps as the last word, the Annual Register reported all the Lords' debates in the 1770 edition, as well as providing its readers with a lengthy history of the petitions. After the Bill was defeated, it then referred to the Lords as providing "healing mediation" between the people and their representatives.[94] This last excerpt from the press is evidence that the efforts of the Lords in the case of the Middlesex elections were noted by contemporaries, if not by historians. In concentrating on the Commons, scholars have missed an important element in the Wilkes saga and the whole political debate on this issue. As evidence from official state papers, printed primary material, and from the newspapers proves, the Lords must be consulted by historians if a full picture of Wilkes and the Middlesex elections is to be painted.

---

[93] The Middlesex Journal, 8-10 May 1770.

[94] The Annual Register; or, A View of the History, Politics and Literature for the Year 1770.

CHAPTER FOUR

The House of Lords and the East India Bill, 1783

I

Most history books that touch on the constitutional crisis created over Charles James Fox's India Bill of 1783, state, without detail, that the King expressed his displeasure against the Bill, informed his Peers of his feelings, instructed them to defeat the Bill, and it was subsequently defeated. Most of the attention in the secondary sources is concentrated upon the traditional conflict between the King and the House of Commons. Closer examination of the House of Lords' debates, and the newspaper campaign surrounding the Bill, reveal a much more complex story than has traditionally been told. Despite what the secondary literature says about the Lords' involvement in Fox's India Bill of 1783, the primary evidence proves that it acted constitutionally, according to its own conscience and not the King's, and that the newspaper community was overwhelmingly in favour of the Lords' actions, not those of the King.

By the summer of 1783, George's strong dislike of Charles James Fox and Lord North was widely known. Fox had played a significant role in the Prince of Wales' gambling debts, wayward ways, and inappropriate secret marriage to Mrs. Fitzherbert. Probably more important than these

character flaws, Fox had maintained a belief that royal influence should be decreased in the constitution. He had inherited Rockingham's whig party after the latter's death in July 1782, and was a symbol of whig principles, as Rockingham, and earlier John Wilkes, had been. Lord North had been first minister for 12 years, which was unprecedented in George's reign to that point, but fell out of favour with the King as the war with America deteriorated. The loss of the American colonies was associated, especially in America, with George himself, and this humiliating defeat was taken very seriously by George. After North was relieved of office, and after Rockingham died, George was faced with the animosity of an administration headed by Lord Shelburne with Rockinghamites as the core. By early 1783, it seemed that the only choice for a workable administration was to be made from the recent, remarkable union of North and Fox, who had been long time enemies. George made them Secretaries of State, with the Duke of Portland as a reluctant, silent figurehead. Since Rockingham's death, George had indicated that his preferred choice of ministry would be headed by William Pitt the Younger, but Pitt refused to take office because he knew the Coalition of Fox and North had much parliamentary support. He would only come in on his own terms, not part of another administration, and cooked up a deal with his cousin Earl Temple to convince George to defeat the

coalition on its India Bill. Such a ploy would create a crisis of leadership, and Pitt would come in on his own terms. This, of course, was a secret deal.[95]

After many years of making a profit, the East India Company seemed to experience fairly constant financial problems from the mid-1760s onwards. By 1783, the difficulties of the Company had compounded from the unreasonably high expectations of profit predicted by Robert Clive. The Company's problems had been dealt with by successive governments through legislation affecting its trading practices, both in 1767 by the Earl of Chatham, and again with North's Regulating Act of 1773. Despite the arguments made against Fox's East India Bill on the grounds that it would interfere with the charter, and chartered rights of the Company, this charter had already been interfered with in 1767, and again in 1773. Precedents for government intervention in the Company's trading affairs had already been set.

Fox, with the encouragement of Edmund Burke and the rest of the parliamentary select committee, introduced an India Bill into parliament on 18 November 1783. The Bill's key feature was to set up a committee of seven, appointed by the government, which would govern the affairs of India from

---

[95]John Cannon, The Fox-North Coalition. Crisis of the Constitution, 1782-4, (Cambridge: Cambridge University Press, 1969), 1-4, 104-5, 113-4, 128-32, 165.

London, and supervise the Company's affairs without the Company having direct control, either in London or India. This Bill removed the traditional prerogative over foreign policy and gave it to the Commons, and thus moved this area from executive to legislative control. The Bill passed the House of Commons with a majority of 106 on 5 December. The debate was characterized by discussion about the exact financial state of the Company, if it was in debt or not, the interference with the charter by making references to the Act of 1773, and the motives of the Coalition. The Bill stated that the seven directors would be chosen by the Coalition government for a four year term, which was seen as a method of keeping the government in power for perpetuity. These arguments were all discussed again in the Lords in November and December, 1783.[96] Before examining the Lords' debates in greater detail, we must not make the common mistake of thinking of the Lords as a united whole. The Upper House had party allegiances and whips, as in the Commons. The Bill was defeated in the Lords, and this chapter will set about correcting the misconception that the defeat was a foregone conclusion because the King had told the Lords to vote it down, and that it acted like obedient

---

[96]Cobbett, W., The Parliamentary History of England from the Earliest Period to the Year 1803, 36 vols., (London: T.C. Hansard, 1806-1820, reprinted 1966; hereafter cited as Parliamentary History), vol. 23, 1187-1434, vol. 24, 1-61.

sheep in doing so. The Lords were deeply concerned about the Bill's proposed measures, and debated it with as much vigour as the Commons, and for the majority, voted with their own conscience, not according to George's wishes.

As stated throughout the thesis, Turberville's study has been monumental in the historiography, but is in extreme need of revision. The case of the constitutional crisis of the early 1780s is a case in point. In describing the proceedings of the various readings of the Bill, Turberville gave many details about the debates, how the Lords proved passionate about the rights of citizens regarding charters, private property, and the danger to the constitutional balance of such legislation, as well as the principles of whiggism. After this detailed account of the debates and the mixed feelings of the peers, he dismissed the content of the debate by stating that "[o]ne has a sense of unreality in reading the record of the debate of this day. Every one in the House must have known that speeches would not affect the issue; that the defeat of the measure had already been virtually assured."[97] He then proceeded to discuss the division numbers: 57 contents, 19 proxies for the bill, versus 75 non-contents, 20 proxies against, which made a majority of 19 against committing it to a third reading. Out of a total of 171 votes, the division was won by only

---

[97]A. S. Turberville, The House of Lords in the Eighteenth Century, (Oxford: Clarendon Press, 1927), 413.

19. If this was an obvious conclusion, why was the division not longer for the rejection?

The historiographical tradition that Turberville created has carried through to the present, and entered popular texts such as Ian Christie's recent, Wars and Revolutions. Britain, 1760-1815. Christie spent his discussion of this issue on either the despicability of Fox, or on the constitutional correctness of George's message to Temple that supposedly decided the Lords. He wrote long paragraphs on explaining why the King would choose such an extraordinary route for defeating a bill, or on the support he received after the defeat, and not once did he make mention of the Lords involvement. The Upper House was portrayed as a tool of George, a tool to defeat the Bill, and the Peers were not credited with their own thoughts on the constitutional correctness of the Bill. Also, like so many other historians, Christie treats the Lords like a solid voting block, thereby ignoring the deep divisions within the House, divisions that he easily acknowledged were present in the Lower House.[98]

Perhaps the most neglectful treatment of the Lords in the case of the India Bill, 1783, is to be found in the one place where one would think this oversight would be put right. John

---

[98]Ian R. Christie, Wars and Revolutions. Britain 1760-1815, (Cambridge, Mass.: Harvard University Press, 1982), 153-4.

Cannon's 1969 book, The Fox-North Coalition. Crisis of the Constitution, 1782-4, discussed the coalition and the Bill with Namier-like precision. Yet, in the chapter set aside to discuss the role of the House of Lords, Cannon instead concentrated on the King and the Commons, and largely ignored the debates and role of the Lords. Although he used many of the sources that will be used in this chapter, he did not do them justice because he did not analyze their full significance. After reading this book, one does not have an accurate picture of the crucial role the peers played in killing the Bill. Cannon's study perpetuated the traditional historiographical conflict between King and Commons, and the neglect of the role of the Lords.

II

Fox brought his East India Bill into the House of Lords for its first reading on 9 December 1783. Earl Temple was the first to speak on the Bill, and after he spoke against the measures the Bill embraced, he wanted the Peers to have the opportunity to examine all the evidence which made the Bill necessary. Lord Thurlow made his opposition to the Bill more expressive. In agreeing with Temple that they needed more information on the necessity of the Bill, he stated "that the subject was, perhaps, the most important that had ever been agitated in parliament, in whatever light it was taken. In the first instance, it was a most atrocious violation of

private property; an inquiry which cut every Englishman to the bone.... It was, in fact, a most direct and daring attack upon the constitution of this country, and a subversion of the first principles of the British government."[99] Because of the importance of this Bill, Thurlow argued, the Peers needed to be fully and accurately informed. From the beginning of the debates, the Peers showed their deep concern for the measures of the Bill, and demonstrated that they were aware of their role in the passage of the Bill. Language, such as that used by Thurlow, was not the language of people who were convinced of a foregone conclusion, and the Peers were not simply following George's wishes.

This attack on the Bill and its potential effect on the constitution was immediately countered by Lord Loughborough. He recalled previous violations of the charter, especially North's Regulating Act, "which he disapproved, because it did not go far enough. In fact it was impossible to regulate the Company's affairs without an infringement of their charter. Surely their lordships must all agree in the propriety of something being done."[100] He then called attention to the debts the Company had in England, and to the sorry state of affairs in India created by poor management and unnecessary wars. Like those of Temple and Thurlow, Loughborough's

---

[99]Parliamentary History, 24:123-4.

[100]Ibid., 24:124.

earliest remarks showed that the peers were acting according to their own opinions on the Bill, and remained loyal to them.

Thurlow had not been satisfied by Loughborough's reference to a previous infringement on the Company's affairs. He believed that this was not only an infringement, itself unallowable on private property, but that the Bill had further intentions:

> The present Bill means evidently to create a power which is unknown to the constitution, an '<u>imperium in imperio</u>;' but as I abhor tyranny in all its shapes, I shall oppose most strenuously this strange attempt to destroy the true balance of our constitution. The present Bill does not tend to increase the influence of the crown, but it tends to set up a power in the kingdom, which may be used in opposition to the crown, and to the destruction of the liberties of the people.... In the last year we passed an act to prevent custom-house officers from voting for members of parliament, so cautious were we to preserve the purity of the House of Commons, and to diminish the influence of the crown; but in defiance of every principle which was then professed, no jealousy is expressed of the man who is to have in his possession the boundless patronage of the East.[101]

As well as opposing the Bill for its infringement upon the Company's charter, and the possibility that it could introduce a fourth estate into the constitution, Thurlow laid the blame for this Bill squarely at the feet of Fox and the Coalition. He went on to stress further that, despite what the Lower House had said about the necessity for the

---

[101] <u>Ibid</u>., 24.125-6.

Bill, the Upper House must conduct its own inquiry, and therefore needed full evidence to assess the financial state of the company. His tone indicated a passion about defending the Company and the constitution, and did not indicate that he was part of an elaborate royal plot to defeat the Bill.

The next speaker took parts of both Temple's and Loughborough's arguments. Viscount Townshend agreed that, although he thought the papers provided were adequate enough, further papers would be welcomed, to prove the merits of a Bill that he was convinced was parliamentary and necessary. He even put in a good word for Fox. In regard to Thurlow's charges that the Bill infringed upon the Company's charter, Townshend replied that the "...charter was to allow them a monopoly of the trade, which was not to be taken from them, nor any other part of their charter, farther than to prevent them from committing such horrid ravages and massacres."[102] Like Loughborough, Townshend was convinced of the necessity of the Bill because of his own opinions.

After further debate among Thurlow, Loughborough, and Temple, the Earl of Carlisle stated his support for the Bill, based upon the Company's enormous debt, only to be contradicted by the Duke of Richmond, who stated that:

---

[102]Ibid., 24:130.

> [i]n his opinion, it was entirely owing to the interference of government that the Company had been ruined: they had supported themselves with credit, had enlarged their settlements, grown rich, and had raised their stock to 300 per cent. At this period government had interfered, and had continued to interfere, until they had brought them to the brink of ruin.[103]

He then suggested that the government, as they should have done with the Americans, leave the Company to itself. This excerpt indicates anything but a foregone conclusion to the debate, as Turberville suggests. The Lords was not about to pass or defeat the Bill without full debate.

The petition from the East India Company was then read, presumably by Temple who had urged its reading when Carlisle suggested an adjournment. The petition outlined the Company's objections to the Bill, citing infringement of charter rights, interference with private property, all without laying charges against the Company, which they said was "a proceeding contrary to the most sacred privilege of British subjects, that of being tried and convicted upon a specific charge, before judgment is passed against them."[104] The Company was also concerned about continuing to trade, but at their own risk, without parliament's consent or control. After this petition was read, the House adjourned on a vote of 87 to 79, by a slim majority of 8 votes, until 15

---

[103]Ibid., 24: paragraph based upon 133-4, quotation from 134.

[104]Ibid., 24:135.

December.

During this adjournment, a most extraordinary event occurred. Temple had a meeting with George to tell him that the Bill was likely to pass, and that the monarch should take action if the Bill was to be defeated. This sense of danger displayed by Temple may seem unlikely to us, considering that the majority of speakers in the debate on 9 December were against the Bill. Temple was certainly not receiving his information from the debates themselves. Yet, official records of debates do not provide the historian with rumours, gossip, and other information that Temple may have been privy to which may have indicated the way the vote would go. George agreed with Temple, and on 11 December, he sent a note telling him that "His Majesty allowed Earl Temple to say, that whoever voted for the India Bill was not only not his friend, but would be considered by him as an enemy; and if these words were not strong enough, Earl Temple might use whatever words he might deem stronger and more to the purpose."[105] To have a monarch inform an independent House of Parliament about how to vote was an important breach of the constitution. Although such a suggestion would likely carry much weight, the Lords had shown its preferences about the Bill before the King had

---

[105]The Correspondence of Edmund Burke, vol. v, edited by Holden Furber, (Cambridge: Cambridge University Press, 1965), 119.

said that he was inimical to the Bill. The debate of 15 December did not show evidence that the Lords had changed its opinion or voting intention.

Presumably Temple relayed the King's message about friends and enemies to his fellow peers, yet the debate that continued on the 15th, and the second reading on 17 December, did not reflect any change of sentiment on the part of the speakers. True, more people spoke out against the Bill in the debate on 15 December, but the time allowed for debate was longer, which would allow more people to express their voting intentions, whatever they might have been. Also, perhaps more people spoke out against the Bill because the unrecorded sources mentioned above indicated that the Bill might pass, so the opposition felt the need to work harder for its rejection. If this was the case, George's orders were obviously not carried out by all the Peers. These divisions within the Upper House were evident. Not only was it clear that the Lords cannot be considered a solid voting block, as indicated by the secondary sources, but also that the Lords cared deeply about the Bill, and would not all follow the King's wishes.

In the reconstituted debate, the Earl of Abingdon not only spoke out against the clauses of the Bill, but also against the Bill's sponsor. He began by comparing the Bill to measures taken during the Civil War. His first criticism of the Bill was its seeming power to decrease the powers of

the crown, describing this intent as "... propositions, big with ambition, with ambition no less violent than that which filled the mind of Cromwell, and brought the head of Charles I. to the block. No less violent, did I say, my lords? Ten times more violent, more daring, more enterprising!"[106] If this was not a strong enough plea, Abingdon then attacked the head of the administration:

> My lords, when Charles 2, and James 2, seized upon the charters, which they did for the purposes of the state, as they said... it gave great and just offence. but it seems Charles James Fox can now of himself attempt what those tyrants, neither Charles not James Stuart put together, dared to do - seize upon charters by force and violence.[107]

The insults hurled by Abingdon were noticed by the Earl of Derby, who said that it was out of order to name a member of the Commons in such a manner. Temple shot back that to mention a minister's name was in order if the intention was to incriminate him. Derby retaliated by saying that Fox did not pass the Bill, the House of Commons did, and that the Peers were to review this Bill as any other passed by the Lower House. This rejoinder ended the personal attack, and Abingdon proceeded with his long tirade against the bill. After he was finished, the order of the day was called for, and the Duke of Richmond introduced a petition from the city

---

[106]Parliamentary History, 24:137.

[107]Ibid., 24:142.

of London against the Bill. This petition echoed arguments previously made by opposition Peers, such as that no witnesses were called to assess the Company, that the Bill was a violation of charter rights, and that the Bill was an attempt to subvert the principles of law. It argued that "the election of executive officers in parliament is plainly unconstitutional, productive of intrigue and faction, and calculated for extending a corrupt influence in the crown; that it freed ministers from responsibility, while it leaves them all the effect of patronage,"[108] and that it deprived the stockholders of their own property without a charge laid. The Duke of Manchester criticized the petition for stronger language than considered appropriate for a petition, but Richmond defended the petition, saying that "it had been drawn up in the very language of a famous protest, signed by the late marquis of Rockingham, and many other noble lords."[109] This was surely a reference to the Petitioning Movement and the case of Wilkes and the Middlesex Elections fifteen years earlier, a movement which was spearheaded by the opposition Lords and which, arguably, would not have been as successful if it had not had the support of the Peers.

---

[108]Ibid., 24:144.

[109]Ibid., 24:145.

Loughborough and Thurlow then continued their long-standing argument regarding additional evidence, and were corrected on some misconceptions by the leading jurist of the day, Mansfield. This was the only time he spoke in the debates about the Fox's East India Bill. He used this opportunity to remind the Lords that when discussing bills that would affect the material status of individuals, the House always took great care to examine a great array of evidence. He agreed with Thurlow that this same procedure should be followed in this case, and also that he hoped they would get on with it.[110]

After Lord Fitzwilliam stated his opposition to the Bill, Richmond then read a report from an unspecified evening paper, which outlined the rumour that George had told his Peers through Temple to vote against the Bill. The newspaper article then proceeded to say that it could be considered libelous to name Temple and George in such circumstances, and that they were sure that neither of these personages had done anything wrong. Having read the article, Richmond then asked Temple if he wished these rumours to be submitted to the judgement of his Peers. Temple replied that it was well known that he had met with the King the previous Thursday:

> He said, that it was the privilege of peers, as the hereditary counsellors of the crown, either individually or collectively, to advise the crown.

---

[110] Ibid., 24:149-50.

> He had given his advice; what that advice had been he would not then say.... [but he would say that] It was unfriendly to the principle and object of the Bill. If these were the rumours to which the noble duke alluded, he gloried in being the cause of them; and he would ever be ready to meet the noble duke on this ground, confident that he had acted a dutiful part towards his sovereign, and one worthy the approbation of their lordships.[111]

Thus, the infamous meeting was discussed, if rather vaguely, in the House. This may have influenced some peers, as may Temple's arrogance in presenting his argument.

Richmond replied to Temple that he had hoped that before the Coalition came into office, it would act according to whig principles. Since coming into office, it had failed to do so, and it had used patronage in order to support its injurious Bill.[112] The Earl of Derby then reproached Richmond for having used patronage himself to place friends and relatives into government positions, and then stated that he "reprobated such unconstitutional means of endeavouring to subvert a Bill, which could not be overthrown by fair argument."[113] Townshend managed to direct their lordships back to the discussion of the Bill, a[illegible]liam again returned to the rumour. He was glad th[illegible]ng's name had been cleared, and warned Temple that if the rumour had been true, it would have been wrong

---

[111]Ibid., 24:154.

[112]Ibid., 24, 155.

[113]Ibid., 24:156.

to give advice about how to vote to the King in his Closet because Temple as a Peer was not responsible to the electorate, nor could the King's ministers be held responsible for advice they did not give. Fitzwilliam asked who would be responsible for such reckless advice. Temple, as a peer and not a minister, was not responsible, nor was the ministry. The principle that the crown can do no wrong had been established by the late eighteenth century. Temple would not let the matter drop, nor would Fitzwilliam, so Temple asked that Fitzwilliam's words be taken down. The bar was cleared, Fitzwilliam recalled his story to the House, and finally an adjournment was called for. The content vote was 69 with 18 proxies which equalled 87. The non-contents were 57 with 22 proxies which equalled 79 It was a majority of eight for the adjournment. The tightness of this vote, as well as the vote to come on 17 December, indicated that many Peers wanted to continue the debate further on into the night of the 15th or 16th of December. This first division, in conjunction with the acrimonious debate, indicated that the Peers were deeply divided on the Bill, and were disturbed about rumours of the King's unconstitutional behaviour.

On 16 December, some additional evidence was presented to the House regarding the financial state of the Company, and on 17 December the second reading of the Bill took place. The debate continued much as before. Earl Gower

expressed his disagreement with the Bill, Carlisle said he was for the Bill, the Earl of Coventry, and Lord Rawdon were against the Bill. The Duke of Manchester was also against it, but since no other measures had been proposed, he suggested that the Bill should be taken into committee, and the Earl of Sandwich agreed. Lord Walsingham, who had not previously spoken on the Bill, commented that the Bill would deny the Company's stockholders control over their own affairs - stock, property, and patronage. Although the Company needed outside advice, he argued that the assistance should not touch their patronage:

> I contend, said his lordship, that if we touch that, we seize their property. Let this office [third secretary of state] be established, as it ought to be, under the crown. I hold this to be the first principle of our constitution; and when we establish any other power in the kingdom, we destroy the constitution.[114]

Perhaps he was following George's words, but if so, he presented these words with a strong, valid constitutional argument, and did not simply do so in order to remain in the King's good graces.

Derby defended the Bill, only to be countered by Lord Camden, the Earl of Radnor, and the Bishop of Salisbury. An opposition to the Bill was made by Lord King, and the record stated that he "... with considerable heat demanded, if, as it was said that certain peers were influenced by secret and

---

[114]Ibid., 24:186.

unavowed means, he was ranked among the number? He dared any man to say that he was dictated to in his opinion on this or upon any other occasion."[115]

This could be an indication that the House of Lords knew, not only of the truth of the rumour about the King's opinion of the Bill, but that he had cut a deal with Pitt. If it knew of these events, Lord King's comments might be a reflection that the Upper House was not pleased at being manipulated for a commoner's purposes.

After the Bishop of Salisbury's remarks, the question was finally put, "[t]hat the Bill be committed," to a third reading. The results were; contents 57, proxies 19, for a total of 76: not contents 75, proxies 20, for a total 95. The majority against the commitment came to 19 votes out of a total of 171. Fox's East India Bill was rejected by the House of Lords, and subsequently, George III asked the two Secretaries of State to return their seals of office,[116] and the Fox-North Coalition was replaced by an administration headed by William Pitt the Younger.

Careful examination of the debates over the Bill in the Lords proves that the Peers acted according to their own opinions, their own consciences, before the King's opinion

---

[115]Ibid., 24:193.

[116]The Correspondence of George III, vol. vi, edited by Hon. Sir John Fortescue, (London: Macmillan and Co., 1928), 476.

was made known to them after 11 December. Three striking features can be noted about the text of the debates. The first feature is the sheer volume of Peers involved; 171 lords and proxies. These numbers are often provided by historians, but are never given thoughtful analysis. An exception is Cannon, who stated that he knew of no larger turnout in the century, yet he still attached little significance to the event. This unusually large attendance of peers clearly indicated that the Peers thought that this Bill was a profound constitutional issue worthy of their full attention.

The second feature was the closeness of the divisions. This also reflected the fractured opinion over this issue within the House, as well as the importance attached to the debates. If the King's influence had been as strong as all contemporaries, and historians alike, believed, then why was there not an overwhelming majority for the rejection of the Bill? Why did the Upper House even discuss it? If the King informed Temple of his feelings because he was not sure that the Bill would be defeated on its own, again, why was there not a more decisive majority, to send a clear message to the Coalition? The course of the debates indicated that the peers had already made up their mind before the King told Temple of his feelings.

The third striking feature of the recorded debates is really the key to understanding this whole issue in the

House of Lords. The Peers expressed great passion about the Bill, both those in favour of it and those opposed to it. This passion encouraged the Peers to put forward extensive constitutional and legal arguments, in order to see their intentions about the Bill carried out, not just on the basis of feelings, but on sound, thoroughly thought out arguments that would stand the test of time. This passion brought people to the House who were not planning to come, until they read the Bill, people such as Earl Gower:

> he could not resist the impulse of declaring his dissent to the Bill. He felt it so forcibly, that he should not be satisfied with giving it a silent negative. It went to condemn where no criminality was proved: it went to rob a body of men of their corporate rights, without the appearance of guilt, nay, when their innocence was clearly established. It had been called a bold and rapid measure: it was a bold one he would admit, for as it appeared to him, it militated against the constitution of this country. He was happy to see it was considered as of the greatest consequence by many noble lords, as well as himself, and had brought them, as it had done him, from their country retirements. He had not thought of coming to town until he received a copy of this Bill, which he no sooner read, than its alarming tendency made him determine to set off and give what weight he possibly could towards its rejection.[117]

This passion brought people who did not normally speak in the House, people such as Lord Rawdon, who

> made an apology to their lordships, that he, who was unaccustomed to speak, should venture to trespass on their time and patience. But when he considered that the dearest privileges and rights of this House and this nation were attacked by the Bill, he felt bold, and could not resist the

---

[117] Ibid., 24:160-1.

impulse that urges him to oppose it.[118]

This passion also brought out Peers who felt strongly about the principles of whiggism and private property. One of these Peers was Lord Camden, who said that:

> he came down unsolicited, and unconnected, to deliver his candid and independent opinion on the Bill. He declared himself an enemy to its principle, for it was a most violent infringement of the property of the greatest Company in the world. It, in fact, deprived them of their property....[119]

These are but a few examples of the many Peers who spoke passionately about the Bill, and most importantly, such examples prove that the peers were aware of their own role in the nation's constitutional balance, and did not consider themselves pawns of the King. The opponents of the Bill could have said nothing and given a silent negative to the Bill. Instead, they chose to be accountable for their own opinions and actions.

The Lords' debates answer many questions about what the Peers thought of the Bill, yet they also leave many important questions unanswered: Did the King feel so bold as to direct the House of Lords on its procedure because he knew he had Pitt in the wings to take over the administration? Did the Lords know of this deal? If so, was the House angry at being manipulated, not for the King's

---

[118]Ibid., 24:176.

[119]Ibid., 24:190.

means per se, but for Pitt's? Lord King's remarks cited above would indicate that this might be true. Furthermore, why did Temple advise George to have the Lords defeat the Bill, and avoid use of the royal veto? Could it be that the royal veto had not been used in 80 years, and was seen by contemporaries as being, therefore, a dubious constitutional mechanism or procedure? Were Temple and George aware that a government with large support in the Commons must be defeated by parliamentary means, within parliament? If so, this would have been an unprecedented acknowledgment by George about the changing form of the constitution. After all, how many governments had been defeated in the Lords since the Glorious Revolution? The answer is none. Why did they choose the Lords to defeat Fox's India Bill in 1783? This would appear to be a major constitutional development, and yet even this has been ignored by historians. Why is this?

III

The benefits and drawbacks of using newspaper evidence have been discussed in the previous chapters. However, another problem with assessing newspaper evidence in this period is the sheer volume of materials. Besides several London newspapers, there were many provincial papers which often took their stories directly from a London newspaper. Despite these problems, it is overwhelming how much of the

discussion after the defeat of the East India Bill was in favour of the Lords and against the Coalition, and its power base in the Commons. Pitt, and even the King, did not escape without criticism. Almost every paper reprinted Commons' and Lords' debates, which was not as noticeable for the rest of the parliamentary session. The reprinting of Lords' debates is especially interesting, because this indicates that contemporaries considered the opinions of the Lords on this issue a vital part of the constitutional debate. In addition, the reprinting of the debates prompts the idea that they may have been published because they could be marketed. The provincial newspapers seem to copy the London press in this context.

Often, the newspapers showed that the writers felt that the principles of whiggism had been betrayed by the Coalition regarding the sacredness of charter rights and private property. Before the Bill was defeated, the Public Advertiser wrote that:

> If the present Ministers lose the India Question, which is the earnest Wish of all true Friends to Liberty and Property, it would be happy for the Country if they should chose [sic] in Disgust, after such a Check to their Power, to resign their Places. The Public even think they have a Right to request that such Resignation may not be left to their own Choice; but that the Sovereign, in Compliance with the Wishes of a faithful People, will dismiss from his Councils Men who have given such flagrant Proofs of holding Principles incompatible with a Free Constitution. While such Men rule the Helm, we shall be for ever in Danger

of Shipwreck.[120]

This editorial comment reveals much about the changing state of the constitution. The quotation contains ideas about votes of non-confidence other than votes on budgets, as well as the traditional prerogative rights of the monarch. Yet, in this instance it also suggested that such action was most constitutional if it took place in conjunction with the wishes of the electorate. Beyond these constitutional measures, the quotation shows how this paper thought about the Coalition, and how the India Bill was thought of as a violation, not only of charter rights, but of the rights of private property, which were supposed to be protected by the constitution.

Other newspapers also expressed disgust at the Bill before it was defeated in the Lords. The Whitehall Evening Post noted on 11 December that "The friends of Ministry expect to carry the India Bill in the House of Peers by the majority of eighteen," and then commented that, if the Bill passed, these further measures may also come into being:

> The establishment of an aristocracy, which should overawe the Crown, has long been a favourite measure with the Pseudo-Whigs of the present age. If the East-India Bill be carried,... the few will govern the many, the equipoize [sic] will be destroyed, and the Sovereign, however estimable for his virtues, will become as insignificant with

---

[120]Public Advertiser, Monday 15 December 1783.

respect to power as the Polish Monarch.[121]

By referring to the Coalition as pseudo-whigs, this indicates the betrayal noted in many other newspapers.

After the Bill was defeated, the newspapers' view of the Coalition coalesced into much stronger feelings of betrayal. In reflecting on the Fox-North administration, the Public Advertiser commented that

> [t]he Coalition, when considered in the most calm and friendly Light, whether we view it as the only Means to give to the People an able and firm Ministry, or in any other Way to promote the restorative Plans of Mr. Fox, plainly has proved a Grave wherein true Whiggism is buried.[122]

In addition, while discussing Fox, the paper quoted an unknown source as stating that "[h]is Friendships are perpetual, his Enmities are not so."[123]

While many newspapers published the names of the peers on either side of the questions of adjournment on 15 December, and then the rejection of the Bill on 17 December, the St. James's Chronicle; or, British Evening Post published the not-contents list upside down.[124] This would appear to be a strong political comment by itself, perhaps in order to show disdain for the actions of the Lords. As

---

[121]Whitehall Evening Post, Tuesday 9 December to Thursday 11 December 1783.

[122]Public Advertiser, Saturday 20 December 1783.

[123]Public Advertiser, Saturday 20 December 1783.

[124]St. James's Chronicle; or, British Evening Post, Thursday 18 December to Saturday 20 December 1783.

for other London newspapers, The London Gazette, whose subtitle was "Published by Authority," did not mention anything to do with the India Bill, the Coalition government, or the new administration of William Pitt, until the issue which covered 13 to 17 January 1784. At this time, the only mention of these events was to reprint an address to George from the mayor and common council of the City of London, which agreed with the common criticisms of the Bill, and of the King requesting his Peers to vote a particular way.[125]

Another newspaper, this one from Gloucester, had a very interesting excerpt from the English Chronicle, on the present state of affairs:

> The descendants of Whigs and Tories, at the beginning of the present reign, have actually changed sides. The progeny of a Chatham is become the champion of secret influence; the progeny of a Bute opposes it; and even Mr. Wilkes, who, in the famous North Briton, was the first to detect and condemn it, by his late conduct in the House of Commons, hath shewn [sic] himself one of its fastest friends.[126]

In this quotation, not only was the old administration given a further dose of abuse, but the writer also included the present administration as being just as guilty of offence to the constitution.

---

[125]The London Gazette, 13 to 17 January 1784.

[126]Gloucester Journal, Monday 12 January 1784.

In conclusion, an extensive examination of the debates of the Lords proves that in the case of Fox's India Bill of 1783, the peers spoke and voted according to their own consciences and opinions. They were not all following the King's order to defeat the Bill, and were not his pawns within the parliamentary game. They obviously thought it was an important debate, as indicated by the unusually large number of peers present. They obviously saw their vote as crucial, as indicated in the tightness of the voting divisions. As well, they were passionate about their beliefs regarding the Bill, as indicated in the language of the debate. The newspaper community also proved that the public felt equally strongly about the machinations in parliament. A profoundly important constitutional issue gripped the country and the press and the political nation became obsessed with the actions of all branches of the legislature. The secondary sources have done the House of Lords a disservice by concentrating solely on the House of Commons and the King's unconstitutional behaviour, and thus have not presented a complete picture of the issues in this time of political crisis.

Postscript

The essential purpose of this thesis has been to explore the role of the House of Lords during three significant constitutional crises in the eighteenth century. Close analysis of these episodes has revealed a different picture of the role of the Lords in the constitution from that portrayed in the traditional accounts of these events. It is now possible to appreciate that the House of Lords was extremely active in all constitutional debates. It did not simply rubber stamp Commons' decisions. It protected both its political and judicial functions in the constitution with vigour and some success. Most importantly, the House of Lords cannot be ignored in the way done by the historical accounts of these events and the entire period.

Three key links exist between the three cases discussed in this thesis. First, much has been assumed by scholars about the power of the Commons in the constitution, but these cases prove that some of these assumptions need rethinking and revision. Second, the secondary literature always provides the impression that the Commons, as the representative arm of government, was the protector of the rights of electors, and the protector of the property of citizens of the realm. This was not so in these cases, but rather, the Lords, who were the hereditary branch of the constitution, fulfilled this role on behalf of the electorate. Nor is the assumption correct that the Commons would have the support of the popular press

against the Lords in any given quarrel. A third link among the case studies is the idea of constitutional balance. The secondary sources have, at different times, had an undue emphasis on the importance of the role of the monarch, and more recently, on the role of the House of Commons, in the constitutional view of eighteenth century Britain. These cases prove that the role of the House of Lords in the constitution must be included in this equation in order to provide a balanced, fuller understanding of the constitution.

Some progress has been made of late in correcting this historiographical imbalance of Commons' history. Notable in this progress is the work of Clyve Jones and Michael McCahill. Yet, even these recent attempts to revive interest in the House of Lords do not concentrate on the constitutional significance of the Lords. Much still needs to be done, however, not only on Westminster politics and its practitioners, but also on the popular views of the Lords. After 1688 the House of Lords did not dissolve into constitutional insignificance, but rather, as John Cannon wrote, the eighteenth century was an aristocratic century,[127] both in terms of political and societal leadership.

---

[127]John Cannon, Aristocratic Century. The Peerage of eighteenth-century England, (Cambridge: Cambridge University Press, 1984).

BIBLIOGRAPHY

Printed Primary Sources

i Official and Parliamentary Sources

Journals of the House of Commons (cited as Commons Journals)

Journals of the House of Lords (cited as Lords Journals)

Cobbett, W., The Parliamentary History of England from the Earliest Period to the Year 1803. 36 vols. London: T. C. Hansard, 1806-1820, reprinted 1966; (cited as Parliamentary History).

Rogers, James E. Thorold. A Complete Collection of the Protests of the Lords with Historical Introductions. 3 vols. Oxford: Clarendon Press, 1875; (cited as Complete Protests).

ii Contemporary Correspondence

Correspondence of John, Fourth Duke of Bedford, selected from the originals of Woburn Abbey. ed., Lord J. Russell. 3 vols. London: n.p. 1842-46; (cited as Bedford Correspondence).

The Correspondence of Edmund Burke. vol. v, 1782-1789. ed. Holden Furber. Cambridge: Cambridge University Press, 1965.

Correspondence of William Pitt, Earl of Chatham. ed. W.S. Taylor and J.H. Pringle. 4 vols. London: John Murray, 1838-40; (cited as Chatham Correspondence).

The Correspondence of King George the Third from 1760 to December 1783. vol. vi, 1782-1783. ed. Sir J. Fortescue. Oxford: Clarendon Press, 1927-1928.

Horace Walpole. Memoirs of the Reign of King George the Third. 4 vols. ed., G.F. Russell Barker. Freeport, New York: Books for Libraries Press, 1970; (cited as Memoirs).

The Correspondence of the late John Wilkes, with his friends, printed from the original manuscripts, in which are introduced memoirs of his life, by John Almon. 5 vols. London: Richard Phillips, 1805.

iii Newspapers

(a) London

Dublin Mercury
Gazetteer and New Daily Advertiser
Independent Chronicle
London Chronicle
London Evening Post
London Gazette
Mercurius Politicus: or, an Antidote to Popular Misrepresentation; containing Reflections on the present State of Affairs
The Middlesex Journal
The North Briton
The Observator
The Parliamentary Spy
Public Advertiser
The Rehearsal or Observator
St. James's Chronicle; or, British Evening Post
Whitehall Evening Post

(b) Provincial

Caledonian Mercury
Felix Farley's Bristol Journal
Gloucester Journal
Leeds Mercury
Sussex Weekly Advertiser
Sussex Weekly Journal

iv Magazines

Annual Register
European Magazine
Gentleman's Magazine
Scot's Magazine

Secondary Sources

Anson, Sir William R. The Law and Custom of the Constitution. 2 vols. Oxford: Clarendon Press, 1911.

Black, Eugene Charlton. The Association. British Extraparliamentary Political Organization 1769-1793. Cambridge, Mass.: Harvard University Press, 1969.

Brewer, John. Party Ideology and Popular Politics at the Accession of George III. Cambridge: Cambridge University Press, 1976.

Brooke, John. King George III. London: Constable and Company Ltd., 1972.

Cannadine, David. The Decline and Fall of the British Aristocracy. New Haven: Yale University Press, 1990.

Cannon, John. Aristocratic Century. The Peerage of eighteenth-century England. Cambridge: Cambridge University Press, 1984.

_____. The Fox-North Coalition. Crisis of the Constitution, 1782-4. Cambridge: Cambridge University Press, 1969.

Christie, Ian R. Wars and Revolutions. Britain, 1760-1815. Cambridge, Mass.: Harvard University Press, 1982.

_____. Wilkes, Wyvill and Reform. The Parliamentary Reform Movements in British Politics 1760-1785. London: Macmillan and Company Limited, 1962.

Cranfield, G.A. A Hand-List of English Provincial Newspapers and Periodicals 1700-1760. London: Bowes and Bowes, 1961.

Cruickshanks, Eveline. "Ashby v. White: the case of the men of Aylesbury, 1701-4," in Clyve Jones, ed., Party and Management in Parliament, 1660-1784. New York: St. Martin's Press, Inc., 1984.

Emden, Cecil S. The People and the Constitution. Being a History of the Development of the People's Influence in British Government. Oxford: Clarendon Press, 1956.

Feiling, Keith. A History of the Tory Party 1640-1714. Oxford: Clarendon Press, 1924.

Foord, Archibald S. His Majesty's Opposition 1714-1830. Oxford: Clarendon Press, 1964.

Gunn, J.A.W. Factions No More. Attitudes to Party in Government and Opposition in Eighteenth-Century England. Extracts from Contemporary Sources. London: Frank Cass and Company Limited, 1972.

Harris, R.W. Political Ideas 1760-1792. London: Victor Gollancz Ltd., 1963.

Keir, Sir David Lindsay. The Constitutional History of Modern Britain since 1485. 7th. ed. London: Adam and Charles Black, 1964.

Kemp, Betty. King and Commons 1660-1832. London: Macmillan and Company Ltd., 1957.

Maitland, F.W. The Constitutional History of England. Cambridge: Cambridge University Press, 1926.

Marcham, Frederick George. A Constitutional History of Modern England, 1485 to the Present. New York: Harper and Brothers, 1960.

McCahill, Michael W. Order and Equipoise. The Peerage and the House of Lords, 1783-1806. London: Swift Printers Ltd., 1978.

Namier, Sir Lewis B. The Structure of Politics at the Accession of George III. 2 vols. London: Macmillan and Co., Limited, 1929.

O'Gorman, Frank. The Rise of Party in England. The Rockingham Whigs 1760-1782. London: George Allen and Unwin Ltd., 1975.

Petrie, Sir Charles. William Pitt. London: Duckworth, 1935.

Pike, Luke Owen. A Constitutional History of the House of Lords from original sources. London: Macmillan and Co., 1894.

Plumb, J.H. The Growth of Political Stability in England 1675-1725. London: Macmillan and Company Limited, 1967.

Pollard, A.F. The Evolution of Parliament. 2nd. ed. London: Longmans, Green and Co., 1938.

Rea, Robert R. The English Press in Politics 1760-1774. Lincoln: University of Nebraska Press, 1963.

Rudé, George. Wilkes and Liberty, A Social Study of 1763-1774. Oxford: Clarendon Press, 1962.

Thomas, Peter D.G. The House of Commons in the Eighteenth Century. Oxford: Clarendon Press, 1971.

_____. Lord North. London: Allen Lane, 1976.

Turberville, Archibald S. The House of Lords in the Age of Reform 1784-1837, with an epilogue on Aristocracy and the advent of Democracy, 1837-1867. London: Faber and Faber Limited, 1958.

_____. The House of Lords in the Eighteenth-Century. Oxford: Clarendon Press, 1927.

Valentine, Alan. The British Establishment, 1760-1784. An Eighteenth-Century Biographical Dictionary. 2 vols. Norman: University of Oklahoma Press, 1970.

Wardroper, John. Kings, Lords and Wicked Libellers, Satire and Protest 1760-1837. London: John Murray (Publishers) Ltd., 1973.

Weston, Corinne Comstock. English Constitutional Theory and the House of Lords 1556-1832. London: Routledge and Kegan Paul Ltd., 1965.

Williams, E. Neville. The Eighteenth-Century 1688-1815. Documents and Commentary. Cambridge: Cambridge University Press, 1960.