

The earls of Derby and the opposition to their estate bills in parliament, 1660-92:
some new manuscript sources

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Abstract: The bills introduced in 1660-62 by Charles Stanley, 8th earl of Derby, to reclaim his property conveyed by legal procedures to other proprietors during the Interregnum are well-known to students of the Restoration, as their ultimate defeat is seen as evidence of the royal government's wish to enforce 'indemnity and oblivion' after the civil war. The leading members of the House of Lords opposed to the bill of 1661-2 can be gauged by the protest against its passage on 6 February 1662, which has been readily available to students to consult since the 18th-century publication of the Lords Journals. A number of manuscript lists of the protesters against the bill's passage reveal that the opposition to the bill was even more extensive and politically varied than the protest in the Journal suggests, which raises questions of why the printed protest is so incomplete. A voting forecast drawn up by William Stanley, 9th earl of Derby, in 1691 further reminds us of the often neglected point that the Stanleys continued to submit bills for the resumption of their hereditary lands well after the disappointment of 1662. Derby's manuscript calculations, though ultimately highly inaccurate, reveal much about how this particular peer envisaged the forces ranged for and against the claims of an old civil war royalist family, a good forty years after the loss of their land.

Keywords: earls of Derby, forfeiture, Restoration, estate bill, House of Lords, protest, manuscript lists, draft journal, manuscript journal, Lords Journal, voting forecast

1. Introduction

For those royalists disappointed by Charles II's failure to reward them adequately after the Restoration, Charles Stanley, 8th earl of Derby became a talismanic figure. His mother was Charlotte de la Trémouille, a grand-daughter of William 'the Silent' and niece to many of the leaders of the European Calvinist movement. She herself showed some of this same martial spirit by her defence in her husband's absence of Lathom House in Lancashire when besieged by Parliament in 1644 and in her initial haughty refusal to surrender the Isle of Man, over which the earls of Derby had a hereditary lordship, in 1651. His father, James Stanley, 7th earl of Derby, tried unsuccessfully to rally the royalists in his territorial base of Lancashire in the first civil war but salvaged his reputation in royalist eyes when he joined Charles II's invasion attempt in 1651. Derby was defeated by the troops of the New Model Army at Worcester, captured, tried by a hastily-established court martial, and executed at Bolton on 15 October 1651. He quickly became, after Charles I himself, perhaps the best known and most lamented 'martyr', and his wife one of the foremost heroines of steadfast loyalty, in the royalist pantheon.¹ Their son Charles, 23 years old at the time of his father's death when he became 8th earl of Derby, further burnished his own and the family's royalist credentials when he joined Sir George Booth in his rising in Lancashire and Cheshire in August 1659, when he was one of the last insurgents to be captured. Upon Derby's release from the Tower in February 1660 John Barwick reported to Sir Edward Hyde that Derby's 'reputation is now higher than ever because he was last in the field'.²

The long description of the fate of the earls of Derby in the memoirs of Thomas Bruce, 2nd earl of Ailesbury, written sometime after 1728, is a good example of the meaning and significance royalists placed on the fate of the 7th earl's unfortunate heir Charles. To the tory jacobite Ailesbury the 7th earl of Derby and his

countess, were exemplars of 'steady and generous and loyal conduct', throughout the war, but after the defeat at Wigan Lane in 1651 the earl 'was most barbarously murdered by a pretended court martial, his estate confiscated or rather sequestered and from that time to the king's joyful and happy restoration that noble lady and children lived, as one may term it, on the charity of friends'. At the restoration of Charles II, Ailesbury continues, 'that heroine lady of the family of the noble house of La Tremouille', the dowager countess

presented a bill to the Parliament for to be restored to those lands her lord was obliged to divest himself of by force [which] passed the two houses unanimously, and the Commons agreeing with the Lords, the whole house, save the Speaker and a few to attend him, went up with the bill to do it honour, and the king after having given his consent by the mouth of the Clerk to all save this, the Clerk pronounced "Le Roy s'avisera", on which I have been told that the two houses fetched a deep sigh.

To Ailesbury the treatment of this family was one example of a general pattern after the Restoration which led to a pernicious result – the growth of disloyalty and 'Whiggism' – owing to the king's failure to favour his natural supporters. But Ailesbury can never criticise the king his master outright and saves most of his spleen for the Charles II's leading counsellor, Edward Hyde, earl of Clarendon:

The noble historian [Clarendon] could never give the earl of Derby scarce one good word in his history, and crowned his dislike at the Restoration towards my lord his son and my lady his mother in advising my good king and master to give the negative to that just bill, and so unpopular an action in that happy and joyful conjuncture This is but one particular case, but his [Clarendon's] maxim in general was, and such he gave as advice, that his Majesty must reward his enemies to sweeten them, for that his friends were so by a settled principle, and that their loyalty could not be shaken.³

Ailesbury is incorrect on a number of points in his account: it was the earl of Derby himself and not his mother who presented the bill, or rather bills, for the resumption of the estate and the subscriptions of a large number of peers to the protest against the House's passage of this bill on 6 Feb. 1662 suggests that support for it was far from 'unanimous'. But in this long passage he crystallises those events which make the 8th

earl of Derby important to the parliamentary history of the early Restoration and the royalist, and later tory, gloss on those events. For the numerous bills the 8th earl of Derby and his heir introduced in parliament in an attempt to reacquire the Stanley land lost in the 1650s became a *cause célèbre* and brought to the fore many of the contentious issues surrounding the Restoration settlement and the peace hoped for after the civil wars.

The extensive Stanley estates were centred in southern Lancashire, formed around a nucleus of the manors of Knowsley and Lathom in the hundred of West Derby. The family also had subsidiary estates in other regions, particularly Flintshire in north Wales, which were to be of great importance. The Commonwealth government began selling this confiscated royalist land in June 1651 and the 8th earl of Derby spent most of that decade engaged in risky and complicated legal schemes to claw back what he considered his patrimony. He made arrangements with his agents, most often the existing tenants on his property who had the right of pre-emption of the confiscated lands, that they would purchase the land in trust for him until he was able to reimburse them. However, pending repayment, and often in return for a further 'consideration' (sometimes equivalent to three years' value of the land), he often entered into legal contracts formally conveying the land to them and recognizing their title to it. The earl evidently saw this as a short-term measure before he could use the money accumulated by these transactions to buy the property back, but more often than not he found himself unable to make these payments and thus found that he had been complicit in signing Stanley land over to others.⁴

In the first years of the Restoration Derby worked hard to reclaim his family's lost lands through parliament. He was able to see enough other peers (admittedly a small number, but making up in prominence what they lacked in numbers)

successfully reclaim their confiscated land through the aid of their colleagues in the House of Lords that he must have been confident that he too would succeed.⁵ In 1660-61 he introduced four separate bills to repudiate the sales in the 1650s of his land to agents of the Commonwealth regime, in some bills claiming that the sales were illegal as they had been conducted by force and fraud and in others offering to pay compensation to the current owners. The story of their complicated journeys through both the Convention and Cavalier Parliament is more comprehensively dealt with elsewhere and need not detain us here.⁶ The bill that most concerns us was that which Derby introduced in the Cavalier Parliament on 10 Dec. 1661 and which sought to reclaim the family's lands in Mold and Hope in Flintshire, with an offer to recompense the current owners for their loss. This bill became notorious because it was the only one of his bills to get past the committee stage and to be passed by both houses of Parliament, before it was controversially vetoed by the king at the last moment – as was recounted with bitterness by Ailesbury so many years later.

The rejection by the king of the Derby estate bill in 1662 appears in most standard works on the Restoration as an example of Charles II's unwillingness to dole out retribution and revenge in the early days of his reign when he was offering indemnity to those involved in the former regime and oblivion to their actions (as long as they were not regicides).⁷ Far less well known or commented on, though, are the continuing attempts after 1662 of the 8th earl of Derby and his son and successor the 9th earl to reclaim their land by legislation. The 8th earl, embittered by his defeat, largely retired from Westminster life after 1662, although he remained still active as lord lieutenant of Lancashire and Cheshire and as hereditary 'lord' of the Isle of Man, and died in 1672. His son and heir William George Richard Stanley, the 9th earl, continued his ambition of reclaiming his family's lands, first through the courts (with

only partial success) and then again by parliamentary bill. He brought in a bill to that effect in 1685, which was lost owing to the shortness of James II's Parliament, and again in 1691, which met a more ignominious defeat than his father's, being rejected at its second reading. Throughout the long period of 1660 to 1702, in which year the 9th earl died, the bills of the earls of Derby to reclaim their (perceived) ancestral lands were an almost constant in the legislative business of parliament. The family's continuing disgruntlement at the way they were treated in the interregnum and Restoration was well known and, with their power base in Lancashire and Cheshire, was a frequent consideration in the political calculations of the time.

The earls of Derby's bills were ostensibly private bills, specifically relating to the interests of one individual, the earl of Derby, and thus are often neglected in accounts of the late Stuart period in favour of more 'general' bills. Contemporaries though were aware of the important ramifications of the bills and the level of debate, controversy and interest they provoked suggests that we should look at them more carefully, both the issues they raised and the forces ranged for and against them. For the legislation proposed by the earl of Derby crystallized the more general debate that took place in 1660-2 and beyond over the legality, even the validity, of actions taken during the Interregnum.

This paper will consider the impact of the bills the earls of Derby brought into Parliament by examining the composition of the opposition to them. This is done by the aid of a number of sources, some well known and printed but most more hidden and in manuscript. That so many contemporaries saw fit to draw up lists of those against the 1662 bill speaks to its relevance and importance. A further examination of the voting forecasts pertaining to the bills of 1685 and 1691 also reveals much about the changing politics of the long period between Charles II and queen Anne.

2. The 8th earl of Derby's Bill and the protest of 6 February 1662

After the failure in the Convention of his bills for the enforced restitution of his estates, Derby introduced a general bill in the House of Lords on 24 May 1661 which offered to redeem, at 6 per cent interest, the purchase price of all his father's properties. The committee appointed to consider it was first assigned to determine whether the bill infringed the provisions of the Act for Confirmation of Judicial Proceedings and Act of Indemnity passed the previous summer by the Convention.⁸ The committee eventually reported that they could find 'no fraud or force' in the majority of Derby's transactions in the 1650s, except in the case of the conveyance of the Stanley estates in Hope, Mold and Hawarden in Flintshire to some of the more prominent members of the Cromwellian regime, which were deemed highly suspect, 'by reason of the undue practices which seem to be in the case'.⁹

Derby probably calculated that his bill for the restoration of all his paternal estate was not going to succeed and so he grasped on to the only sliver of hope the committee had provided him – the Flintshire estates and 'the undue practices' detected in their purchase. Thus on 10 Dec. 1661 Derby introduced a revised bill for the recovery of Mold and Hope. The bill was not committed until 13 Jan. 1662, after counsel for both sides had been heard, and was passed, with some amendments, at its third reading in the House of Lords on 6 Feb. 1662.¹⁰ But it was clearly controversial as a number of peers signed a long protest against the bill, arguing that the bill was 'a breach of the Act of Judicial Proceedings ... and a Trenching on the Act of Indemnity and Oblivion'.¹¹

The printed Journal of the House of Lords lists the names of 25 lords of parliament as signatories of this protest on 6 Feb. 1662 - out of 93 members of the House who are recorded on the attendance list for that day. However, an examination of the draft and manuscript journal for this day as well as a number of manuscript accounts of this protest, found among the papers of a number of contemporaries, suggests that the number of protesters against this bill was more than that suggested by the printed Journal. The names from these manuscript sources are set out in the table below, along with those from the Journal. I have retained the original spelling of the titles as found in the manuscripts, but their order of presentation is by precedence, as suggested by the attendance lists for that day in both the manuscript and printed Journals.

There are however a number of peers listed below who do not appear in the attendance list of the printed Journal for 6 Feb. 1662. I have included them in the precedence lists below because ancillary evidence strongly suggests they were engaged in the affairs of the House at the time of the protest and were most likely present on the day itself or those following. The earl of Carlisle was clearly present because, although he is not on the Journal's attendance register, he is noted in the manuscript minutes for 6 Feb. 1662.¹² That his name appears at the very bottom of one of the columns of the attendance register in the minutes and that his signature is the 'last' one on the second page of the protest, with no further signatures appearing below it (see fig. 1), strongly suggests that he may have been a late arrival, and indeed the last one to sign the protest, either on that day or the following, 7 January. The presence of Francis Lennard, 14th Baron Dacre, who appears in lists 3 and 4 below, was noted in the Journal on 4 and 5 Feb. and then again on 7 February, under the name of 'D'acres', so it is highly likely that he was in the House to hear the debate

and to sign the protest on 6 February, although perhaps another late arrival. More doubtful, though, is the case of Thomas Howard, earl of Berkshire, written merely as ‘Berks.’ in lists 2 and 5, who was a regular attender of the House throughout January 1662 and was last marked as present by the clerk on 4 Feb. until a long period of absence – from the pages of the Journal at least – ended on 26 March, when he requested leave to be absent from the House upon ‘urgent occasions’. As Berkshire had been present a mere two days before the protest it is possible that he was still in Westminster at that time and he certainly would have been informed of, and involved in, the proceedings on Derby’s bill. However, to further complicate matters, there is also the possibility that the compiler was here confusing the earl of Berkshire with his son Charles Howard, who was then sitting in the House under a writ of acceleration as Baron Howard of Charlton and did not succeed to be 2nd earl of Berkshire until 1669. Even more doubtful is the lord treasurer Thomas Wriothesley, 4th earl of Southampton, one of Clarendon’s principal allies. His presence in the House was last recorded on 1 Feb. 1662, when he was nominated to a committee (although his name is omitted from the attendance register), but his next appearance in the Journal is not until 7 March. His name only appears in list 3, drawn up by the duke of Ormond in about 1673, and even there it is interlineated almost as an afterthought. Most likely Southampton’s opposition to the measure from the proceedings of late January 1662 was known to Ormond even if the duke could not remember ten years later whether the lord treasurer had actually been present in the House on 6 Feb. to sign the protest. With these caveats in mind, these four peers have been incorporated into the lists of protesters below, according to their place in the precedence of the peerage.

Table 1. Printed and manuscript lists of the protesters of 6 February 1662

| | | | | |
|--|--|---|--|--|
| 1. LJ xi. 378-9; Original protest on 6 Feb. 1662, as printed from PA, HL/PO/JO/1/49, pp. 532-3 | 2. Bodl. Tanner 49, f. 138, from papers of William Sancroft, archbishop of Canterbury, c. 1662 | 3. BL, Add. 33589, f. 220 Duke of Ormond's list, 'A protest Against the Earle of Derbies Bill', probably compiled c. July 1673-March 1676 | 4. Bodl., Carte 77, fol. 520 'The Protestation of severall Lords against the Earl of Derby's bill' (c. 1673-78), in papers of Theophilus, 7th earl of Huntingdon | 5. Lancs. RO DDK/1615/9 Endorsed by 9th earl of Derby 'names of those Lords who enter their protestations against my father's bill', c. 1691 |
| Clarendon | Clarendon | Clarendon | Clarendon | Clarendon |
| J. Robertes | | Lord Privy Seal [i.e. Robartes] | Ld: P: Seale | |
| | | Southampton [interlineated] | | |
| Brecknock [i.e. Ormond]. | Brecknock | Brecknock | D: Ormond | Brecknock |
| E. Manchester | Manchester | Manchester | E. Manchester | Manchester |
| Northumberland | Northumberland | Northumberland | E: Northumberland | Northumberland |
| Bedford | Bedford | Bedford | E: Bedford | Bedford |
| Suffolke | Suffolk | Suffolk | E: Suffolke | Suffolk |
| | | Dorset | E: Dorset | |
| Exeter | Exeter | Exeter | E: Exeter | Exeter |
| J. Bridgewater | Bridgwater | Bridgewater | E: Bridgewater | J Bridgwater |
| C. Warwicke | Warwick | Warwick | E: Warwicke | Warwick |
| Bristol | Bristoll | Bristol | E: Bristoll | Bristol |
| | Berks. | | | Berks. |
| Chesterfield | Chesterfield | Chesterfield | E: Chesterfield | Chesterfield |
| Portland | Portland | Portland | E: Portland | Portland |
| Scarsdale | Scarsdale | Scarsdale | E: Scarsdale | Scarsdale |
| Essex | Essex | Essex | E: Essex | Essex |
| Anglesey | Anglisea | Anglesey | E: Anglesey | Anglesey |
| Carlisle | Carlisle | Carlisle | E: Carlisle | Carlisle |
| | | Montacue | Vic: Mountaigne | |
| Stafford | Stafford | Stafford | Vic Stafford | Stafford |
| Fauconberg | Fauconberge | Falconbridge | Vic Falconbridge | Fauconberg |
| Abergavenny | Bergavenny | Abergavenny | Ld Abergavenny | Abergavenny |
| | | Dacres | Ld Dacres | |
| Windsor | Windsor | Windsor | Ld Windsor | Windsor |
| | | Ewer | Ld Ewer | |
| P. Wharton | P. Wharton | Wharton | Ld Wharton | Wharton |
| | | Willoughby | Ld Willoughby | |
| Will. Paget | W Pagett | Paget | Ld Paget | Will Paget |
| H. Arundell | H Arundle | Arundell | Ld Arundell | H. Arundell |

| | | | | |
|---------|--------|----------|------------------|--|
| W. Grey | | | | |
| | | Bellasis | Ld Bellasisse | |
| | | Berkley | Ld John Berkeley | |
| | Ashley | Ashley | Ld Ashley | |
| | | Crew | Ld Crew | |

Twenty-three of the 25 protesters in the printed Journal appear in each of the four manuscript lists. Most prominent among these protesters, appearing first in every list, was the king's leading minister and lord chancellor Edward Hyde, earl of Clarendon, followed by some of his close associates, such as James Butler, duke of Ormond, and the active committee chairmen in the House John Egerton, 2nd earl of Bridgewater and Jerome Weston, 2nd earl of Portland.

Catholic royalists who had no formal position at court, such as William Howard, Viscount Stafford, John Nevill, 10th Baron Abergavenny, Henry Arundell, 3rd Baron Arundell of Wardour and George Digby, 2nd earl of Bristol – this last already known as a determined enemy of Clarendon – joined with the lord chancellor and his allies in signing the protest. Equally a number of peers of strong royalist lineages or connections who themselves had been unable to take an active part in the fighting or politics of the previous twenty years owing to their youth also signed – Philip Stanhope, 2nd earl of Chesterfield, Arthur Capel, 1st earl of Essex, John Cecil, 4th earl of Exeter and Thomas Windsor Hickman, 7th Baron Windsor.

On the other side of the political and religious spectrum many 'Presbyterian' members of the House, and former Parliamentarians of the 1640s, who had been given positions in the government and court at the Restoration, also expressed their opposition to the bill, such as the lord chamberlain Edward Montagu, 2nd earl of Manchester and the privy councillors Algernon Percy, 4th earl of Northumberland, and Arthur Annesley, 1st earl of Anglesey. Other Presbyterians who had not been co-opted into the government, such as Philip Wharton, 4th Baron Wharton and William

Russell, 5th earl of Bedford, signed as well. The signatures of the leading Cromwellians Charles Howard, made earl of Carlisle and a privy councillor at the Restoration, and Thomas Belasyse, 2nd Viscount Fauconberg, Cromwell's own son-in-law, also appear.

Of the 25 protesters in the Journal two cause particular problems of explanation. The Presbyterian peer William Grey, 1st Baron Grey of Warke only appears in the manuscript and printed versions of the Journal and not on any of the other manuscript lists – even though his signature is clearly visible on the first page of the protest in the manuscript journal. Try as I might I cannot interpret the scrawly autograph as anything other than 'W Grey'. There is no obvious explanation why contemporaries ignored Grey of Warke so comprehensively in this matter. Even more intriguing and surprising is the omission in two of the manuscript lists of a far more prominent peer, the Presbyterian-inclined lord privy seal John Robartes, 1st Baron Robartes. These two lists, nos 2 and 5, appear to be, or are derived from, contemporary extracts from the official manuscript Journal. List 2 is a fair copy of the protest in the papers of William Sancroft, archbishop of Canterbury, and has some differences in the names of the protesters from the printed protest, even though both lists have the same number of signatories (25). These differences are almost exactly repeated, less one name, in a list drawn up in 1690-91 by Derby's son the 9th earl of Derby (List 5). Both these lists omit Robartes's name. This is even more unusual as the autograph signature of this prominent government official is clearly visible near the top of the protesters in the manuscript Journal and Robartes's position among the signatories is corroborated by the two other lists (nos. 3 and 4) and even by the draft journal for this day in the Braye manuscripts (another record to be discussed further

below). Again there is no immediately apparent explanation for the omission of the lord privy seal from the contemporary copy of the Journal.

The four manuscript lists between them contain eleven names of peers who do not appear in the printed Journal. The odd one out is Thomas Howard, earl of Berkshire, who only appears in Lists 2 and 5, and is the name that would appear to replace Robartes in their accounts. As discussed above, Berkshire's presence in the House at this time cannot even be ascertained, and the omission of his name from the two other manuscripts lists must make his inclusion among the known protesters even more doubtful. Nine of the other peers missing from the Journal appear in both Lists 3 and 4. These two manuscript lists were probably compiled in the early 1670s, List 3 drawn up by the duke of Ormond, who from 1673 acted as guardian of the young 9th earl of Derby, who had married his grand-daughter Lady Elizabeth Butler, and List 4 in the papers of Theophilus Hastings, 7th earl of Huntingdon, who in around 1673 was showing an interest in Stanley family history.¹³ Those nine appearing in both of these lists include other Clarendonians such as the busy committee chairman Richard Sackville, 5th earl of Dorset and former royalist generals such as Francis Willoughby, 5th Baron Willoughby of Parham and John Berkeley, Baron Berkeley of Stratton. Ormond's list, but not Huntingdon's, also includes, as discussed above, the name of Clarendon's principal ally the lord treasurer Southampton. The Catholic royalist John Belasyse, Baron Belasyse also appears in the lists but not the printed protest. On the other hand, former agents and supporters of the Cromwellian regime such as George Eure, 6th Baron Eure, William Crew, Baron Crew and, most prominently, the privy councillor Anthony Ashley Cooper, Baron Ashley, also appear in these lists of opponents of the bill.

Ashley may provide the key to how we explain and interpret these additional names superfluous to the 'official' account of the protest in the printed Journal. There is evidence beyond these two lists from the 1670s that Ashley signed the protest of 6 February 1662. His name also appears in Sancroft's list (no. 2), though not in List 5, and also in the intriguing entry for this protest in the draft journal for this day found in the Braye manuscripts (fig. 2).¹⁴ This records that, leave having been granted leave to enter a protest against the motion to pass the bill, the following peers entered their protest: lord chancellor, lord chamberlain, lord privy seal (although this appears to be written, perhaps hurriedly, as 'L Privele'), Anglesey, Ashley and Paget.¹⁵ Ashley is the only one of these who does not appear in the printed list of protesters, but an examination of the manuscript journal on which the printed Journal is based strongly suggests that the first page of protesting signatures was cut off at the bottom when the sheets were bound, excising a number of names. As plate 3 shows, the bottom of Windsor's signature is cut off, although it is still largely legible, and it is almost certain that the tops of the three letters just visible at the bottom left of the page are the 'A', 'h', and 'l' of Ashley. That Ashley was concerned with this matter is also suggested by his appointment in June 1662, after the bill's veto, to a commission consisting of himself, Clarendon, Southampton and Robartes – all of whom feature among the various lists of protesters – to find some way of reconciling Derby with the purchasers of his family's estates.¹⁶

After listing the six prominent protesters above, including Ashley, the draft journal then continues that the protest was further signed by 'all the rest that were negative'. Fortunately the record makes note of the numbers in the division on the bill – 40 votes and 2 proxies for the contents and 32 votes and 5 proxies for the not contents (fig. 4). With a majority of only five, this was a closer vote than Ailesbury in

his memoirs asserted. These minutes thus suggest that 32 peers voted and protested against the bill on the day, yet the printed Journal only has 25 names. If we add to this number the nine names that do not appear in the printed Journal but are found in both Lists 3 and 4 – thus excluding the problematical cases of Southampton and Berkshire – we have a total of 34 protesters, only off by two from the number suggested by the draft journal, and this discrepancy may well be explained if Dacres and perhaps Carlisle were absent for the actual vote on 6 February, but were later able to add their names to the Journal's protest. It would thus appear that Ormond's list (save for the afterthought of the interlineated Southampton) and Huntington's represent the fullest and most accurate accounts available of the level of opposition to the Derby bill in 1662 and the names of the 34 peers who signed the protest against it.

Clyve Jones has already pointed out some of the problems involved in relying exclusively on the names attached to the dissents and protests found in the manuscript and printed versions of the Lords Journals to gauge the level of opposition to measures voted on in the House.¹⁷ To the problem he flagged up – the likely existence before 1831 of an interim 'clerk's book', now unfortunately lost, in which the text of protests and those adhering to them were entered – must be added the difficulties raised by the measures taken when binding the loose pages of the manuscript journal, such as this apparent abrupt excision of part of the first page of signatures to the protest of 6 Feb. 1662. That pages of the manuscript journal occasionally exceeded in length the binding provided for them, and thus had to be manipulated, is suggested by the manuscript page for the protest of 26 April 1675 against Danby's Non-resisting Test Bill, though in this case the compiler of the bound volume of the manuscript journal merely folded it up. At first glance that page of the protest only has four names, but when the flap is folded down the names of thirteen

protesting peers appears (figs. 5 and 6).¹⁸ The bottom of the first page of the protest of 6 February 1662, with the names of eight additional protesters to the bill, has since disappeared, either having come off through excessive wear and tear of its fold (which must have happened before the publication of the Journal) or, as appears more likely, deliberately cut off to facilitate the binding of the manuscript.

Does this detailed discussion of a handful of lists of peers and their views on a private bill have anything larger to tell us? We could perhaps dismiss this as an exercise in parliamentary minutiae if we consider the Derby Estate Bill as 'just' a private bill. For although it ostensibly dealt with the private and personal economic interests of an individual and his family, the bill evoked attention and controversy in its time, enough for the text of the protest against it and its signatories to be copied out several times, precisely because of its wider ramifications, which affected the foundations of the Restoration settlement. As described above, the protesters against this bill represented a surprisingly wide array of political and religious views and experiences – royalists and parliamentarians; Anglicans, Presbyterians and Catholics; ministers and officials and those outside the royal government. The general sentiment that bound these disparate protesters together would have been a desire to preserve the precarious Restoration settlement in its early days and particularly those measures taken to dampen down the divisive passions of the previous twenty years.

In some quarters, though, the protest and even more seriously the bill's veto by the king when presented to him for his assent on 19 May 1662, only enflamed these passions. According to Ailesbury's later account the veto caused great consternation – 'the two houses fetched a deep sigh' - and was interpreted as an example of the king's abandonment of those royalists who had suffered so much for his and his father's cause over the past twenty years. It also further embittered Derby

himself, who continued to have a prickly relationship with the king for the next ten years, until his death in 1672. Deprived of much of his landholdings in the west, Derby increasingly sought to emphasize his power and prestige through his roles as lord lieutenant of Lancashire and Cheshire and lord of the Isle of Man, offices traditionally (and hereditarily in the case of the Isle of Man) held by members of his family. Throughout late 1662 and 1663 the king and secretaries of state constantly upbraided him for his management of the lieutenancies of Lancashire and Cheshire, particularly his sweeping purges of local corporations that went well beyond the conditions of the Corporation Act and sought to exclude all those who had ever stood against the king in the previous decades, regardless of whether they were now willing to take the requisite oaths.¹⁹ Most serious in further souring relations between Derby and the king was his behaviour as lord of the Isle of Man and in particular the treatment meted out to William Christian. Christian, having previously helped to deliver the island to Commonwealth forces in 1651, dared to return to it in 1662, confident that he was protected by the Act of Indemnity. Derby excepted him from his own general pardon for the island, charged him with treason and had him tried and found guilty by a packed local court. The privy council in Westminster, in considering a petition from Christian, determined that he should be reprieved and released from prison to attend the council, but they were too late as the earl had already taken decisive action and had had Christian shot by firing squad on 2 Jan. 1663 before the order from the council had been received. In his defence Derby claimed that the writ of the Act of Indemnity did not extend to Man, as the island had never been 'taken anciently as a part of England (though in homage and subjection to it)'. This was an indication of what he thought of the Westminster Parliament's Act of Indemnity,

which he almost certainly saw as the obstacle which had prevented the bill for the restoration of his father's estates from going through.²⁰

3. The 9th earl of Derby's bills and his lists

The matter of the Stanleys' estates did not rest there. The 8th earl's son and heir William George Richard Stanley, 9th earl of Derby, clearly harboured his father's resentment against the loss of the family's lands and their subsequent treatment by the 'ungrateful' Charles II. As the 9th earl told his family steward, 'he possessed no estate in Lancashire, Cumberland, Westmorland, Yorkshire, Cheshire, Warwickshire and Wales, but whenever he viewed any of them he could see another near or adjoining to that he was in possession of equal, or greater of value, lost by his grandfather for his loyalty and service to the Crown and his country'.²¹ Upon inheriting the title in 1672 as a minor, Derby and his guardians, such as his grandfather-in-law the duke of Ormond, had sought out legal advice to determine the best course to repossess the lands by law and from almost the moment he reached his majority in 1676 he brought suits in the courts to enter into possession of those lands, particularly the forest of Macclesfield, which had originally been entailed on the Stanley male heirs.²² Within a week of the convening of James II's Parliament in 1685, Derby introduced in the House his bill for restoring to him the estates of Hawarden (with its castle and advowson) and Moldsdale in Flintshire, as well as the manor of Bidstone in Cheshire and Broughton in Lancashire.²³ This was a more ambitious bill than his father's last attempt in 1661-2, as it added additional properties, those in Lancashire and Cheshire, to the Flintshire estates to which the 8th earl had limited himself. In preparation for the opposition which the bill would inevitably face, he carefully drew up answers to the various points against his father's bill raised in the Lords' protest of 6 Feb. 1662 and Derby's continuing bitterness is evident in his answer to the objection that the 8th

earl had voluntarily entered into legal conveyances in the 1650s, which the 9th earl thought was 'no more [voluntary] than when a man beset with robbers delivers them nine parts of his goods to save the tenth and perhaps his life'.²⁴ The bill received a second reading before the petitions from the present occupants of the lands came flooding in and the House decided to hold hearings on the bill. These were continuously postponed in the panic surrounding the duke of Monmouth's landing in the west and, although the hearings on the bill came to the House' attention briefly when the House resumed in November, it was lost at the prorogation of Parliament on 20 November.

Sometime around the time he reintroduced this bill, on 16 Dec. 1691, Derby marked up a printed list of the peerage - as it stood on 1 March 1690 - with marks indicating 'who I believed were for, doubtful, against my bill in the year 85', in order to forecast the possible success of his measure in the House. Of course the political situation was very different in 1691, and particularly for Derby himself. In 1685 Derby was lord lieutenant of both Lancashire and Cheshire, had revived his reputation by acting competently in the government's interest in the months following the Rye House Plot in two counties with large pockets of whigs, and had worked hard and effectively to have tory candidates returned to Parliament. In the Revolution, Derby, having been hurriedly reinstated in his role as lord lieutenant of the two counties by a panicking James II in October 1688, entered into an agreement with the local whig Henry Booth, 2nd Baron Delamer, that he, Derby, would hold the two counties safe while Delamer marched to join troops to William's army. Delamer, however, felt that Derby had not held up his side of the bargain sufficiently, even allowing a brief occupation of Chester by Catholic troops, and, as one of William's leading English allies, took his proximity to the prince to turn him against Derby. Delamer himself

wrote to the earl 'your lordship must think you cannot be esteemed by the Prince or those with him as a man that has given any assistance to the cause, and I believe the nation will have the same opinion of you'.²⁵ Perhaps wishing to recover from the damage thus done to his reputation, Derby supported the Orangist claims to the throne in 1689, both in the Lancashire elections to the Convention and in his voting in the House itself.²⁶ This was to little avail, as in April 1689 William III installed Delamer (later earl of Warrington) in Derby's place as lord lieutenant and *custos rotulorum* of Cheshire and then, after Derby had proudly asserted that he would not serve in only one of his traditional lieutenancies, added to his humiliation the following month by appointing Charles Gerard, Viscount Brandon, to Derby's positions in Lancashire.

Despite these political reversals and humiliations, Derby remained optimistic over the fate of his bill and predicted that, based on their previous attitude towards his bill, 58 peers would support him, while 13 would stand against and only 9 were of doubtful opinion. This annotated sheet is significant in that it is one of our few, if not the only, forecasts for a private bill in the House of Lords for the late seventeenth century and as such we may be able to determine if party divisions held for private legislation as well as in more public matters.²⁷ Was there still a segment of the peerage who, thirty years on, wished to reject the proceedings of the Interregnum and who wished to have vengeance on its agents and their despoliation? Did the new party divisions of whig and tory affect voting behaviour on this private matter concerning transactions of forty years previously? For these questions, this forecast requires some scrutiny.²⁸

Derby's calculations of who were for, doubtful and against his bill is set out in Table 2. The original printed sheet, 'A Catalogue of the Nobility of England, According to their respective Precedencies, and titles of Honour They now enjoy, the

First of March 1689', lists the members of the lay peerage according to precedence and also includes the lords spiritual, archbishops and bishops, as well. There are 162 separate male peers listed on the sheet - that is, excluding both the five peeresses in their own right listed and those four male peers holding the great offices of state who are listed twice, both under their offices and under their ranks in the peerage. Derby put his signs – a dash for 'for', a 0 for 'doubtful, and three 0s (000) for 'against'—next to the names of only eighty-one of these individuals, leaving half of the peers, and all the 26 members of the bishops' bench, uncategorised. The printed sheet also includes in the margin and in Derby's own hand, a list of the 'names of those lords who entered their protestations against my father's bill' in February 1662, which has already been discussed as List 5 in Table 1 above. Though not comprehensive in its coverage, this forecast appears to have been well thought out and shows Derby's attempts - and it is Derby himself, as all the annotations are written in his hand - to judge future voting by what he could remember of past political actions in the same cause.

Table 2. Derby's forecast, on a printed list of the peerage, of support and opposition to his 1691 estate bill, based on previous alignments in 1685. Lancs. RO DDK/1615/9.

| <u>FOR</u> | <u>AGAINST</u> | <u>DOUBTFUL</u> |
|--|---|--------------------------|
| Duke of Norfolk | Marquess of Carmarthen (Pres. of Council) | Duke of Bolton |
| Duke of Somerset | Marquess of Halifax | Earl of Huntingdon |
| Duke of Southampton | Earl of Devonshire (Lord Steward) | Earl of Bridgwater |
| Duke of Grafton | Earl of Dorset (Lord Chamberlain) | Earl of Fauconberg |
| Duke of Ormond | Earl of Sussex | Viscount Hatton |
| Duke of Beaufort | Earl of Radnor | Lord Eure |
| Duke of Northumberland | Earl of Nottingham | Lord Lovelace |
| Earl of Lindsey (Lord Great Chamberlain) | Lord Wharton | Lord Leigh ²⁹ |
| Earl of Oxford | Lord Coventry | Lord Rockingham |
| Earl of Shrewsbury | Lord Herbert of Chirbury | |
| Earl of Kent | Lord Vaughan | |
| Earl of Rutland | Lord Delamer | |
| Earl of Bedford | Lord Carteret | |
| Earl of Pembroke | | |
| Earl of Bristol | | |
| Earl of Westmorland | | |
| Earl of Manchester | | |
| Earl of Berkshire | | |

| | | |
|---------------------------|-----------|----------|
| Earl of Mulgrave | | |
| Earl Rivers | | |
| Earl of Peterborough | | |
| Earl of Stamford | | |
| Earl of Carnarvon | | |
| Earl of Chesterfield | | |
| Earl of Strafford | | |
| Earl of Sunderland | | |
| Earl of Scarsdale | | |
| Earl of Clarendon | | |
| Earl of Anglesey | | |
| Earl of Bath | | |
| Earl of Craven | | |
| Earl of Ailesbury | | |
| Earl of Burlington | | |
| Earl of Lichfield | | |
| Earl of Feversham | | |
| Earl of Macclesfield | | |
| Earl of Berkeley | | |
| Earl of Rochester | | |
| Earl of Abingdon | | |
| Earl of Monmouth | | |
| Earl of Marlborough | | |
| Viscount Newport | | |
| Viscount Weymouth | | |
| Lord de la Ware | | |
| Lord Morley | | |
| Lord Ferrers | | |
| Lord North | | |
| Lord Brooke | | |
| Lord Maynard | | |
| Lord Jermin | | |
| Lord Byron | | |
| Lord Ward | | |
| Lord Lexington | | |
| Lord Berkeley of Stratton | | |
| Lord Cornwallis | | |
| Lord Ossulston | | |
| Lord Dartmouth | | |
| Lord Godolphin | | |
| Lord Cholmondley | | |
| Total: 59 | Total: 13 | Total: 9 |

A careful scrutiny of Derby's view of his supporters and opponents throws up many immediate problems and it is clear, considering the ultimate fate of his bill in 1691, that he was wildly optimistic in his forecast. Several immediate inconsistencies in his predictions must lead one to question the care with which he considered some of his annotations. Of the 34 peers who signed the protest in 1662, five were long-lived enough to still be around in 1691 for Derby's forecast. Two of these – Bedford

and Chesterfield – are marked as supporters of his bill in 1691 for some reason despite their previous protest, while another, Arundell of Wardour, is not even given a designation. Derby did have enough intuition to realise that Wharton, an opponent in 1662, was probably still opposed to the bill in 1691 and he listed the other surviving protester, Fauconberg, as doubtful. Further problems arise when we consider that seven of the peers marked by Derby on the printed list of the peerage in March 1690 – Ormond, Anglesey, Bridgwater, Delawarr, Cholmondley, Coventry and Vaughan – were not even sitting in the House in November 1685.³⁰ The first three in the above list are particularly interesting as previous holders of these titles were among the protesters of 1662 and were still in the House in 1685, yet in 1691 Derby considered John Egerton, 3rd earl of Bridgwater, 'doubtful' and placed James Annesley, 2nd earl of Anglesey and James Butler, 2nd duke of Ormond among the 'for' camp, despite the previous actions and attitudes of their fathers (or grand-father in Ormond's case).³¹ The placement of the 2nd duke of Ormond among his supporters is understandable and is most likely accurate. Although the first duke may have followed the line of his close colleague Clarendon in protesting against the 8th earl's bill in 1662, from 1673 he was, as we have seen, acting as guardian for Derby, who was married to his granddaughter, and would have been keen to rebuild the earl's estates, for his own family's honour. The 2nd duke, Lady Derby's brother, would have had more cause to try to help his brother-in-law and correspondence between Ormond and Derby at the time of the Revolution in 1688 suggests the brothers-in-law were close, or at least that Derby relied heavily on Ormond's advice. Other choices among his supporters appear more implausible. Despite Derby's predictions, it is unlikely that Charles Gerard, earl of Macclesfield, head of a family that had been rivals with the Stanleys for influence in Lancashire since at least the Restoration, would have supported a bill that would only

have increased Derby's local interest. It was Macclesfield's son Viscount Brandon who, after all, had ousted Derby from the lieutenancy of the county.

In the event Derby's bill was thrown out of the House, after some debate, at its second reading on 25 Jan. 1692.³² The attendance register of the Journal for that day shows a low attendance of only 11 bishops and 61 lay peers. He had made no forecast regarding the bishops and of the peers indicated as present that day 20 were left unmarked on Derby's forecast. Of the remaining 41 peers present, 32 were among those he had marked as 'for' and only 9 were those he thought were 'against' or 'doubtful'. If his memory of the numbers for and against the bill in 1685 had been accurate those voting for the bill in 1691 should have had the slight advantage against those opposed to it, even with the low attendance. The bill however was thrown out without even a division.

His long list of peers 'for' his bill in 1685 thus appears severely misjudged and not much would probably be gained by a detailed analysis of the names included there. More fruitful, perhaps, to our understanding of the fate of the bill and of the management of the House at that time is the smaller list of peers 'against' the bill in 1685, and again in 1691. Unfortunately for Derby, what the lords whom he forecasted were 'against' him lacked in numbers they made up for in influence. The thirteen whom he thought would be opposed to his bill included some of William III's leading supporters, among whom were those who had been instrumental in the Revolution and in securing William of Orange's claim to the throne –Carmarthen, Halifax, Devonshire, Wharton and Delamer. These and most of the others among Derby's opponents and 'doubtfuls' went on to serve as privy councillors and as leading officers in the early part of the new regime: Carmarthen, Lord President of the Privy Council; his rival Halifax, privy councillor and Lord Privy Seal (until his resignation in

February 1690); Devonshire, privy councillor and Lord Steward; Dorset, privy councillor and Lord Chamberlain of the household; Nottingham, Secretary of State; and Bolton, Bridgwater and Fauconberg, all privy councillors whom Derby included among his 'doubtfuls'. Delamer, one of those 'against', was also a privy councillor and had been Chancellor of the Exchequer until March 1690, when he left the Treasury board owing to his disagreements with his colleague Monmouth. He was also Derby's chief rival in the northwest and had already acted decisively to ruin Derby's reputation in William III's eyes.

Derby's forecast is admittedly not the most sophisticated piece of political analysis, but in its broad outlines, it is clear that his bill was not likely to succeed. The 22 peers listed as the opponents and 'doubtfuls' to his bill reads like a roll call of the leading Williamites of 1689-91 and it seems likely that the government would have tried to block the bill if it had proceeded further. What we can not know is if Derby was correct in his assessment of the mood for his bill in 1685, in a Parliament at the height of the 'tory reaction' where there may have been a mood to reward loyalism of the type exhibited by Derby's grandparents and to punish radicals who struck at the roots of royal power and legitimacy, even if retrospectively. Whether, as Derby's woefully over-optimistic forecast for 1691 suggests, the mood was more in his favour in 1685, and it was only the brevity of James II's Parliament which prevented him from achieving his goals, we can never know precisely because of that brevity and the lack of any other comment on the bill at that time. Certainly though by 1691 the moment had passed as those peers who may have been in the minority in opposing his bill in 1685 now exercised power and influence in the new Williamite regime.

4. Conclusion

Did the rejection of the final version of the Derby estate bill in January 1692 mark the death of any last royalist hopes of rejecting the Interregnum regimes? By 1691 that world seemed far away and there was now another former discredited regime, that of James II, whose agents and their actions had to be repudiated, integrated or merely forgotten. The project of the Stanleys, in all its many manifestations and versions, had never been so comprehensively rejected as in 1692, without even being allowed a second reading. The Stanleys themselves, however, never forgot and in the 1720s the last of the line of the Stanleys of Knowsley, James, the 10th earl of Derby, had inscribed on the lintel of his rebuilt house at Knowsley a commemoration (in somewhat confusing grammar) of himself as 'James, earl of Derby, Lord of Man and the Isles, grandson of James, 7th Earl of Derby by Charlotte, daughter of Claude, Duke of Tremouille, who was beheaded at Bolton, the 15th of October 1651, for strenuously adhering to Charles II, who refused a bill unanimously passed by both Houses of Parliament for restoring to the family the estates which he had lost by his loyalty to him'. This earl of Derby died in 1736 without male heirs and the earldom passed to a distant collateral branch, the Stanleys of Bickerstaffe who, to the benefit of their political effectiveness, did not harbour the same rancour and bitterness towards the Restoration settlement which made the regular appearance of a Derby estate bill a notable feature of the second half of the seventeenth century.

¹ For a contemporary account of the role of the 7th earl and his countess in the civil war, see *A Discourse of the Warr in Lancashire*, ed. William Beaumont (Chetham Soc. lxii, 1864). For a more recent account, see Ernest Broxap, *The Great Civil War in Lancashire (1642-51)* (Manchester, 1910).

² CSPD 1659-60, pp. 114, 139, 145, 193; *Calendar of Clarendon State Papers* (5 vols., Oxford, 1872), iv. 498, 500-1.

³ Thomas Bruce, 2nd earl of Ailesbury, *Memoirs of Thomas, earl of Ailesbury, written by himself* (Publications of the Roxburghe Club, 2 vols., London, 1890), i, 4-7. For Clarendon's disparaging comments on the 7th earl of Derby, see Edward Hyde, earl of Clarendon, *History of the Rebellion and Civil Wars in England*, ed. W. Dunn Macray (6 vols., Oxford, 1888), ii. 469-71; iii. 325, 339; v. 174-5, 178-9, 182-5.

⁴ Barry Coward, *The Stanleys, Lords Stanley and earls of Derby, 1385-1672* (Chetham Soc. 3rd ser., xxx, 1983), 70-73; Lancs. RO, DDK/12/4, DDK/1451-1474.

⁵ Joan Thirsk, 'The Restoration Land Settlement', *Journal of Modern History* xxvi. 320-5; Ronald Hutton, *The Restoration* (Oxford, 1985), 142.

⁶ Coward, *The Stanleys*, 72-9.

⁷ Paul Seaward, *The Cavalier Parliament and the Reconstruction of the Old Regime, 1661-1667* (Cambridge, 1989), 201-3; Andrew Swatland, *The House of Lords in the Reign of Charles II* (Cambridge, 1996), 236-7; Hutton, *The Restoration*, 163.

⁸ PA, HL/PO/JO/10/1/304 (25 May 1661); PA, HL/PO/CO/1/1, 23-4, 26; *LJ*, xi. 265, 271, 273-4, 281.

⁹ PA, HL/PO/CO/1/1, 29, 33-4; *LJ*, xi. 283, 289, 292, 296, 301, 310.

¹⁰ PA, HL/PO/JO/10/1/309 (10 Dec. 1661), bill and its amendments; *LJ*, xi. 347, 348, 363, 372.

¹¹ *LJ*, xi. 378-9.

¹² PA, HL/PO/JO/5/1/13, for 6 Feb. 1662.

¹³ *HMC Hastings*, ii.163.

¹⁴ PA, BRY/27 (for 6 Feb. 1662).

¹⁵ This entry is noted briefly by Clyve Jones in , ‘Dissent and Protest in the House of Lords, 1641-1998: An Attempt to Reconstruct the Procedures involved in Entering a Protest into the Journals of the house of Lords’, *Parliamentary History* xxvii (2008), 329

¹⁶ *CSPD* 1663-4, pp. 614-15; Lancs. RO, DDK/1602/10.

¹⁷ Jones, ‘Dissent and Protest in the House of Lords, 1641-1998’, 309-29

¹⁸ PA, HL/PO/JO/1/55, for 26 April 1675.

¹⁹ *CSPD* 1661-2, pp. 463, 483, 495, 509, 517, 524, 532, 549, 553, 596; *CSPD* 1663-4, p. 69.

²⁰ Coward, *The Stanleys, Lords Stanley and earls of Derby, 178-82; Seventeenth Century*, xv. 199-216; *CSPD* 1663-4, pp. 9, 14, 238-9; *CSPD* Add. 1660-70, p. 687.

²¹ J. Seacome, *Memoirs containing a Genealogical and Historical Account of the ... House of Stanley* (1793), 385.

²² Lancs. RO, DDK/1604/2-4; 1602/4.

²³ PA, HL/PO/JO/10/1/398/428; *LJ*, xiv. 17, 20.

²⁴ Lancs. RO, DDK/1602/9; 1615/7, 8.

²⁵ *HMC Kenyon*, 197-202, 204-7, 431-2.

²⁶ *LJ*, xiv. 112-13, 116, 121; Eveline Cruickshanks, David Hayton and Clyve Jones, ‘Divisions in the House of Lords on the Transfer of the Crown and Other Issues, 1689-94’, *Bulletin of the Institute of Historical Research*, liii. 83; *HMC Kenyon*, 210.

²⁷ *British Parliamentary Lists, 1660-1800: A Register*, ed. G.M. Ditchfield, David Hayton and Clyve Jones (London, 1995).

²⁸ The printed list of the peerage, annotated by Derby, is Lancs. RO, DDK/1615/9.

²⁹ This was originally a mark for ‘for’, later changed to ‘doubtful’.

³⁰ An eighth, Rockingham, presents problem as the name on the 1690 list is, incorrectly, 'Edward Watson, Lord Rockingham', who had died in June 1689 and been succeeded by his son Lewis. Derby could have remembered and predicted the way Edward, Lord Rockingham, would vote, but that was not the 'Lord Rockingham' then sitting in the House.

³¹ There is some doubt as to Anglesey's categorization, as the mark is very faint and Derby may well have tried to erase his initial judgement that Anglesey would be for the bill, particularly as the contemporary earl of Anglesey was a minor at that point and could not vote in any case.

³² *HMC Lords*, n.s. iii. 450-3; *LJ*, xiv. 689, 699; xv. 11, 38, 48.