

Peers, Parliament and Power under the
Revolution Constitution,
1685-1720

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'I, Philip Loft, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.'

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Figure 1: Title Page of R. Gosling, *The Laws of Honour, or A Compendious Account of the Ancient Derivation of All Titles, Dignities, Offices, &c as well as Temporal, Civil or Military* (1714). This focus on honour and title perhaps represents our typical view of the peerage during the ‘long eighteenth century’.

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Abstract

This thesis argues that the late Stuart and early Georgian period saw the development of what may be termed a ‘deliberative oligarchy’, and sets out its contours. In short, a pluralistic politics enabled competing viewpoints to represent themselves to the British state, in a way that meant interests and partisans interacted with ‘reason’ and ‘fact’. Rather than the public being spectators to politics, they were seen as fellow co-legislators, and parliamentarians increasingly sought to direct the public into deliberative participatory processes. This argument builds on Mark Knights’ work on the culture of partisanship and misrepresentation during the ‘rage of party’, Paul Langford’s demonstration of the role of ‘propertied Englishman’ to the functioning of the state in the ‘aristocratic century’, the importance of Barbara Shapiro’s ‘culture of fact’, E.P. Thompson’s characterisation of the rule of law, and the extensive participation in local government. This was a distinct stage in British history, where the state became increasingly ‘reactive’ to the middling sorts, but also that ‘reason’, ‘fact’ and balancing of ‘interests’ became more important for judging policy. Partly inspired by Jürgen Habermas’ ‘two track’ model of the public sphere, the thesis considers how the ‘informal’ public sphere present in print, coffee houses and public debate was directed into, and influenced by, a deliberative parliament. The thesis examines the cultural causes of public participation—namely the concept of ‘interest’ and a ‘culture of facts’—and the nature of state structures. Using the largely unused archive of the House of Lords, the thesis systematically examines the use of the House as a British appeal court, the incidence of petitioning, and considers parliament’s relationship with the wider public sphere. These features enabled some of the partisan features of the ‘rage of party’ and ‘clash of interests’ to be contained within a pluralistic and stable political system.

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Abbreviations

<i>AHR</i>	<i>American Historical Review</i>
BL	British Library, London
BM	British Museum, London
Bodl.	Bodleian Library, Oxford
CA	Cheshire Archives, Chester
<i>CJ</i>	<i>Journals of the House of Commons</i>
CKS	Centre for Kentish Studies, Maidstone
<i>CSPD</i>	<i>Calendar of State Papers (Domestic Series)</i>
<i>CTB</i>	<i>Calendar of Treasury Books</i>
<i>CTP</i>	<i>Calendar of Treasury Papers</i>
Cumb.	Cumbria Archives, Carlisle
<i>EBLJ</i>	<i>Electronic British Library Journal</i>
<i>EcHR</i>	<i>Economic History Review</i>
<i>EHR</i>	<i>English Historical Review</i>
<i>Grey's Debates</i>	A. Grey, <i>Debates of the House of Commons</i> (10 volumes, 1769)
<i>HJ</i>	<i>Historical Journal</i>
HMC	Historical Manuscript Commission
<i>HP 1690-1715</i>	E. Cruickshanks, S. Handley, D. Hayton, eds, <i>The House of Commons, 1690-1715</i> (5 volumes, Cambridge, 2005)
<i>HR</i>	<i>Historical Research</i>
<i>JBS</i>	<i>Journal of British Studies</i>
<i>JLH</i>	<i>Journal of Legal History</i>
<i>JMH</i>	<i>Journal of Modern History</i>
LA	Lancashire Archives, Preston
<i>LJ</i>	<i>Journals of the House of Lords</i>
LMA	London Metropolitan Archives
Lowther, <i>Correspondence</i>	D. Hainsworth, ed, <i>The Correspondence of Sir John Lowther of Whitehaven 1693-1698</i> (Oxford, 1983)
Nicolson, <i>Diaries</i>	C. Jones and G. Holmes, eds, <i>The London Diaries of William Nicolson, Bishop of Carlisle: 1702-1718</i> (Oxford, 1985)
NRS	National Records of Scotland, Edinburgh
NUL	Nottingham University Library, Special Collections
PA	Parliamentary Archives, London
<i>PH</i>	<i>Parliamentary History</i>
<i>P&P</i>	<i>Past and Present</i>
<i>SHR</i>	<i>Scottish Historical Review</i>
SP	State Papers
TNA	The National Archives, London
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>
<i>W&MQ</i>	<i>William and Mary Quarterly</i>

Note: The place of publication of pre-1800 works is London unless otherwise stated.

French and Dutch Representations of the House of Lords. Figure 2, above: Henri Chatelain, *Chambre des Seigneurs*, from *Representation du Parlement d'Angleterre, les Chambres Assemblees et de la Reine sur son Throne* (1708-1719). Figure 3, below, Jacob Gole, *Afbeelding vant Hooger Huys des Parlements van Engelant* (1688-1695), British Museum Number 1868, 0808.3312.

INTRODUCTION

This thesis explores the growing culture and status of public participation in parliament and the ruling of Britain from the accession of James II to the beginnings of the whig oligarchy of the mid-eighteenth century. It is a study of the most significant outbreak of petitioning with the centre since the 1640s, the role of civil litigation in a period that saw the effective creation of a new high court, and the engagement between Scots and English at Westminster in the first decade or so of union. My subject is not the peerage as individuals, patrons or ministers, but the impact and role of the House of Lords in British political culture in the first thirty years after the Glorious Revolution. What impact did the increased presence of parliament after 1688 have on the rhythm, pattern, and extent of political culture, ‘Britishness’ as a new national identity, and how did it contribute to the achievement of political stability by the 1720s?

There are four significant schools of thought on eighteenth-century Britain that this thesis seeks to interact with. The first is the collection of work that owes its origins to the interpretations set out in J.H. Plumb’s *Growth of Political Stability* and Geoffrey Holmes’s *Politics in the Age of Anne* (both published in 1967). This model had the ending of the ‘rage of party’ at its core, with the decline of the tory party leading to an ‘age of oligarchy’. Plumb’s oligarchy was based on the establishment of single party government, the growth of the executive and its control over parliament, and greater stability for landed families through stricter estate settlements. The focus on party in these accounts meant the period of Walpole’s ascendancy remained firmly the ‘age of oligarchy’.¹ It was not until the Wilkite and

¹ Marxist historians took little issue with this account of political structures—see, for example, D. Hay et al, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1976); Hay and N. Rogers, *Eighteenth-Century English Society: Shuttles and Swords* (Oxford, 1997); E.P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth

parliamentary reform petitions of the second half of the eighteenth century that parliament was forced open to outside influence and the elite consensus collapsed. However, despite the decline of electoral strife after 1716, John Brewer, Linda Colley and Frank O’Gorman have been able to show the importance of party and ideology to a period previously interpreted by reference to Namierite concerns for kinship, patronage and hierarchy.² In this thesis, a focus on interest groups rather than party, and on the locality rather than the central state, shows that many features and concerns regarding partisanship continued to be raised by interest groups, litigation and public participation in parliament, questioning further the nature of political stability and oligarchy after 1716. Public ‘restraint’ was earned through negotiation throughout this period of oligarchy. Robert Walpole harvested the spoils of cultural trends developing from the Restoration onwards, and whose pace was quickened by the presence of parliament after 1688/89 and the growth of both ‘party rage’ and the ‘clash of interests’.

A reaction to this narrative of a growing middling sort and a divisive political culture came in the form of revitalising the role of the peerage, and the characterisation by Jonathan Clark that England was ruled by an ‘ancien régime’.³ It was argued the peerage were a central pillar of the whig oligarchy, with John Beckett and John Cannon stressing the rise of great estates, the growth of patronage and paternalism, and increasing social deference towards the

Century’, *Past and Present*, 50 (1971), pp. 76-136; idem, *Whigs and Hunters: The Origin of the Black Act* (London, 1977).

² J. Brewer, *Party, Ideology and Popular Politics at the Accession of George III* (Cambridge, 1976); L. Colley, *In Defiance of Oligarchy: The Tory Party 1714-1760* (Cambridge, 1982); F. O’Gorman, *Voters, Patrons, and Parties: The Unreformed Electorate of Hanoverian England, 1734-1832* (Oxford, 1989). P. Langford, *Public Life and the Propertied Englishman, 1689-1798* (Oxford, 1991) explores the importance of the ‘middling sorts’.

³ J.C.D. Clark, *English Society 1688-1832: Ideology, Social Structure and Political Practice During the Ancien Régime* (Cambridge, 1985).

group in the eighteenth century.⁴ Cannon followed Plumb and Lewis Namier closely, in arguing the whig oligarchy saw a ‘closed’ elite of peers dominate eighteenth-century Britain, with the labouring and middling sorts largely acquiescing to this ‘aristocratic’ hegemony. The birth of a consumer society, a growing central state and rising significance of the ‘middling sorts’, remained eclipsed by ‘traditional’ features of eighteenth-century Britain, namely aristocratic and monarchical power, ‘anglicanism’, and conservative thought.⁵ The importance of the peerage in this oligarchic state was less about their role in parliament, but in wider society. Land, inheritance and local service were the basis of their status and credibility, not parliamentary, legal, or wider political activity.⁶ This was because the role of the Lords was perceived to be a conservative and marginal one—Cannon argued its role was to ‘preserve the balance of elements established at the revolution.’⁷ The model of

⁴ J. Beckett, *The Aristocracy in England, 1660-1914* (Oxford, 1986); J. Cannon, *Aristocratic Century: The Peerage of Eighteenth-Century England* (Cambridge, 1984); C. Jones and D. Jones, eds, *Peers, Politics and Power: The House of Lords, 1603-1911* (London, 1986); C. Jones, ed, *A Pillar of the Constitution: The House of Lords in British Politics, 1640-1784* (London, 1989); A. Swatland, *The House of Lords in the Reign of Charles II* (Cambridge, 1996). For an earlier work, see G. Holmes, ‘The Court and the Parties in the House of Lords’, in his *British Politics in the Age of Anne* (London, 1967).

⁵ J. Brewer, N. McKendrick and J.H. Plumb, *The Birth of a Consumer Society: The Commercialisation of Eighteenth-Century England* (London, 1982); I. Christie, *Stress and Stability in Late Eighteenth-Century Britain* (Oxford, 1985).

⁶ The introduction to Beckett, *The Aristocracy in England*, explores this argument.

⁷ Cannon, *Aristocratic Century*, p. 125; C. Jones, ‘The House of Lords and Parliamentary Stability’, in his edited volume, *Britain in the First Age of Party, 1680-1750* (London, 1987), p. 109; M. McCahill, *Order and Equipoise: The Peerage and the House of Lords, 1783-1806* (London, 1978).

constitutional development on which this argument relied saw the role of the House of Lords waning, declining from a ‘fire raiser’ of the 1710s to ‘firemen in a town without fires’ by the 1730s. This thesis suggests the peerage remained important, but their power was created through negotiation with lower orders, reflecting the growth of parliament and the wider ‘public sphere’.

My thesis does not wish to challenge these two central pillars of eighteenth-century Britain, in terms of the presence of political stability or an oligarchy, but rather to argue that these were constructed on a different basis to our current understanding and were more challengeable and negotiable than assumed in these above accounts. This approach builds on the work inspired by Paul Langford, who demonstrated the importance of parliament as a ‘legislative marketplace’ to a range of middling propertied interests.⁸ The focus on the House of Lords in this thesis is not, therefore, an attempt to resurrect the kind of studies that were produced during in the 1980s (which was probably the greatest period of focus on the peerage), or rewrite Arthur Turberville’s *House of Lords in the Reign of William III* (1913)—readers are referred elsewhere to studies of the procedures, parties and ministers of the house, or the aristocracy as a social unit.⁹ Neither does the work seek to resurrect a high politics

⁸ For work Langford inspired, see P. Gauci, ed, *Regulating the British Economy, 1660-1850*

(Farnham, 2011), which explores the interactions between the state, interest groups and economic development; J. Hoppit, ed, *Failed Legislation, 1660-1800* (London, 1997); idem, ‘Patterns of Parliamentary Legislation, 1660-1800’, *Historical Journal*, 39 (1996), pp. 109-31; J. Innes, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford, 2009).

⁹ A. Turberville, *The House of Lords in the Reign of William III* (Oxford, 1913). For useful studies on procedure, see A. Rees, *The Practice and Procedure of the House of Lords, 1714-1784* (PhD, Aberystwyth University, 1987); R. Tennyson, *Private Legislation: Function and Procedure in the Eighteenth Century* (PhD, University of California, Berkeley, 2009). See note 4 for works

view of parliament or the peerage, it attempts the opposite, by identifying the points of interaction between politics, society and culture, and demonstrates the extent ordinary Britons were involved in the functioning of the state.

Since the 1980s, great strides forward have been made in our understandings of politics in the seventeenth and early eighteenth century. Inspired by Jürgen Habermas's 'public sphere', historians have explored the increasing avenues for public discussion and involvement in politics, with coffee houses and the print revolution taking centre stage. Britain between 1679 and 1715 saw an incidence of elections not seen before, growing political partisanship, representation through print, addresses and ideas of credit, as well as 'misrepresentation' through manipulation and lies. The 'public' were becoming an umpire of politics through participating in general elections, with the electorate being as high as one in five adult males.¹⁰ The work of Mark Knights on this culture of 'representation and misrepresentation' and how it was managed and resolved is an important inspiration to the approach this thesis takes.¹¹ The centrality of parliament, and the Commons in particular, to the growth of the public sphere has also been demonstrated in the early Stuart period, with Chris Kyle stressing parliament's role as a 'theatre' for public consumption.¹² This thesis

on the aristocracy. Some work has begun on the peerage in recent years—particularly J.

Adamson, *The Noble Revolt: The Overthrow of Charles I* (2007) and R. Paley and P.

Seaward, eds, *Honour, Interest and Power: An Illustrated History of the House of Lords*

(London, 2010), which precedes the forthcoming work of the History of Parliament Trust.

¹⁰ G. Holmes, 'The Electorate and the National Will in the First Age of Party', in his *Politics, Religion and Society in England, 1679-1742* (London, 1986).

¹¹ M. Knights, *Representation and Misrepresentation in Later Stuart Britain* (Oxford, 2005), esp. pp. 335-75.

¹² C. Kyle, *Theatre of State: Parliament and Political Culture in Early Stuart England* (Stamford, 2012).

seeks to expand on the nature of these changes and the impact they had on political culture, especially in relation to petitioning and the language of interest, both ensuring a pluralistic and divided political culture co-existed with a relatively stable oligarchy.

But this thesis differs from these previous accounts in one important respect. I argue that to overlook the role of ‘participation’ in our accounts of politics and parliament in this period is to miss important aspects of how society functioned—and not only because it brings in the Lords (which, of course, had no elections), but also because it was central to the creation of a deliberative political culture. Concerns for public rationality were found not just in elections or overtly ‘political’ issues such as the trial of Sacheverell or the making of peace and war, but in everyday participation. Britain, and England especially, was not just a ‘society of spectators’ commenting indirectly on politics through print, discussions in coffee houses, or even as voters delegating authority to MPs, but dependent on a participative culture and mechanisms, even at Westminster. Too often, accounts of politics, both in the modern world and the early modern period, consider the subject along the lines of ‘voting’ and ‘representative democracy’, ignoring a further axis of participation and the active involvement of the public in decision making.

The extent that England at a local level was such a participative state is a familiar one; the structural weakness of the central state was a prominent part of the accounts of Conrad Russell and John Morrill to explain the outbreak of civil war.¹³ Mark Goldie has described the ‘unacknowledged republic’ of local office holders that existed in the late seventeenth century and called for a shift to the study of ‘governance’—a dispersed and shared process of

¹³ C. Russell, *The Fall of the British Monarchies, 1637-1642* (Oxford, 1991) and J. Morrill, *Revolt of the Provinces: The People of England and the Tragedies of War, 1630-1648* (London, 1976).

governing, with a lack of clear division between rulers and ruled.¹⁴ But parliament has not yet been integrated into these accounts of the state or, indeed, political culture. Here, it is argued parliament was the apex of the participative state and capable of setting the rhythm, timing, and subject of print and political culture. Debates in coffee houses, the incidence of printing and the forming of political and social identities, were all influenced by events in parliament.

The main source for this thesis, the archive of the House of Lords, is well placed to demonstrate the presence of this culture. Whilst we are reasonably well served with records of parliamentary debates for the Commons, the lower house struggles to provide information on the involvement of the public in its proceedings, as only its printed journals avoided destruction in the parliamentary fire of 1834. But the Lords, in many respects, forms the ‘jewel’ of the parliamentary archive. Not only do we have its manuscript journals, but its witness books, appeal cases, committee books and the petitions presented to it—a source of systematic evidence of public participation in the upper chamber of parliament throughout the ‘long eighteenth century’. The result of being able to consider methodically participation in parliament through the lens of petitioning, lobbying, committees and appeals cases, is to show the Septennial and Riot Acts only ended an element of the partisan political culture. The oligarchy was open to opinion ‘out of doors’ that was expressed through petitioning, litigation and direct participation in parliament itself. In addition to the archives of parliament, this thesis also mobilises archives of the central state (particularly the treasury) and those of corporations and local communities to understand the social depth and geographical reach of petitioning and litigation. This also allows us to trace the processes of policy-making through several layers of the state, creating the ‘circulation of power’ between different institutions and interests that together constituted the ‘deliberative oligarchy’.

¹⁴ M. Goldie, ‘The Unacknowledged Republic: Office-Holding in Early Modern England’, in T.

Harris, ed, *The Politics of the Excluded, c. 1500-1850* (Basingstoke, 2001), pp. 153-9.

Investigating participation is not just about considering an alternative to elections and more distant forms of engagement like commenting in print, but also its relationship with the culture of ‘misrepresentation’. Mark Knights highlighted the issues and concerns raised by fears of lies, manipulation, the involvement of ‘the people’ and self interest up to 1716 in his *Representation and Misrepresentation*, and sketched out some responses that contributed to reasoned public judgement.¹⁵ In his account, the anxieties of decaying public discourse and reasonableness was one of factors resulting in the Septennial Act of 1716, reducing the frequency of elections from three to every seven years in an attempt to cool this ‘party rage’ and carefully manage the involvement of the public in politics.

This culture bears many similarities to today, and it should be noted that the direction my work in this area has been influenced by recent themes in political science and contemporary debates. Matthew Flinders has recently offered an updated version of Bernard Crick’s *In Defence of Politics* (1962) in his *Defending Politics* (2012). Public discourse is full of rhetoric of ‘lies’—on Iraq, tuition fees, and Europe—whilst memories of ‘corruption’ from the expenses ‘scandal’ still justifies a prevailing anti-politics mood, with politicians being seen as modern ‘folk devils’.¹⁶ Polls continue to record concern on how Scots on competing sides of the independence referendum campaign of 2014 could possibly be reconciled after months of intensive, partisan campaigning.

A primary response to this ‘crisis of politics’ has been the shift towards what the American scholar Michael Schudson has termed, a ‘monitory democracy’, building on the greater intensity of communicative media. If we check every statement by politicians, and

¹⁵ Knights, *Representation and Misrepresentation*, pp. 337-61.

¹⁶ M. Flinders, ‘The Demonization of Politicians: Moral Panics, Folk Devils and MPs’ Expenses’, *Contemporary Politics*, 18 (2012), pp. 1-17.

listen to technocrats and ‘experts’, so the theory goes, then politics will be better.¹⁷

Alternatively, expanding the capability of the ‘majority’ to decide issues through referenda, rather than considering avenues for negotiation and balancing the ‘public voice’ with the rule of law, is also commonly cited. But these solutions start with the same underlying issue—that politics is a liar’s game, incapable of responding to the interests of ‘real’ people. In short, Knights and many contemporaries today have identified a problem in political culture, and my thesis offers a partial resolution to these. If society and politics were so divided in 1716 (and remained so after 1716, driven by petitioning, litigation, and interest groups), how did the British state and society function sustainably in the long term? Why did the political system not just collapse, or individuals withdraw from the public sphere, especially if a strong oligarchy was not created that did not eliminate some of these pressures? Such questions will be combined with the longer-held concern of historians for how the autonomy of local communities and propertied interests in the eighteenth century was protected, the failure to do so having contributed to the instability of the previous century.

My answer to these questions is to advance the notion that eighteenth-century Britain was ruled by a ‘deliberative oligarchy’—a political system where reasoned thought (such as law, political arithmetic and other modes of fact-finding), existed alongside partisanship, pluralism and division, with relatively open access to policy-making (such as through popular participation in petitions or committees). The local origins of disputes also ensured there were opportunities for reconciliation; policy makers being not an unknown ‘other’, but

¹⁷ M. Schudson, ‘Changing Concepts of Democracy’, *MIT Communications Forum* (8 May 1998). For ideas of monitory democracy, see J. Keane, *Life and Death of Democracy* (London, 2009), pp. xxvii-xxxiii, 686-701, 736-47; idem, ‘Monitory Democracy and Media-Saturated Societies’, *Griffith Review*, 24 (2009), no pagination.

geographically close neighbours and interests.¹⁸ The fact that Britain was not a straight-forward oligarchy has been noted before. As Paul Langford wrote after demonstrating the importance of the middling sorts to the politics and culture of eighteenth-century England, ‘if this was indeed an oligarchy, it was one which operated within a restricted framework and on a consensual basis, it accepted the priorities of a broadly bourgeois society’.¹⁹ But I wish to go further, and establish the characteristics and limits of this oligarchy. Following an ‘institutional turn’ in studies of the science of the public sphere and deliberative politics, the importance of parliaments and the legal system to their functioning has come under increased study.²⁰ We should imagine a two stage process, examining the means that debates and discussions in the wider public sphere are channelled into legislative bodies, in a way conducive to the legitimation of the law through participation and deliberation under certain rules and ‘norms’.²¹ Borrowing from this concept of the public sphere—but not being beholden or restricted to it—I examine how effective parliament was as the most significant body in the ‘public sphere’, and how far it was able to see wider civil society directed into it and influence its functioning. As Nancy Fraser puts it:

In fact, the issue becomes more complicated as soon as we consider the emergence of parliamentary sovereignty.....Sovereign parliaments are what I shall call strong publics, publics whose discourse encompasses both opinion-formation and decision-making. As a locus of public deliberation culminating in legally binding decisions (or laws), parliament was to be the site for the discursive authorization of

¹⁸ J. Parkinson, *Deliberating in the Real World* (Oxford, 2006).

¹⁹ Langford, *Public Life*, p. vii.

²⁰ J. Dryzek and S. Niemeyer, *Foundations and Frontiers of Deliberative Governance* (Oxford, 2010), pp. 6-7.

²¹ J. Habermas, *The Structural Transformation of the Public Sphere* (Cambridge, Mass., 1989); idem, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, 1996), esp. Chapters 8-9.

the use of state power. With the achievement of parliamentary sovereignty, therefore, the line separating (associational) civil society and the state is blurred.²²

Following this, the thesis considers how responsive the Westminster parliament was to the wider public, and the ‘norms’ and values that lay behind public participation. Legal systems, parliaments and regulatory regimes have a far more important role in Jürgen Habermas’s model for the creation of a deliberative political system, offering a new significance and audience to parliamentary history, and this is primarily why I quote it here. Let me state now that eighteenth-century parliaments did not mirror Habermas’s model, any more than the early modern public sphere fitted his periodisation of its development, was rational, consensual, or dominated by the bourgeois. How power was legitimised, the relations between parliament and the public, the basis and nature of public participation, and ultimately how political stability is achieved, have long been questions of historians, and this thesis builds on previous work under a concept of ‘deliberation’ that eighteenth-century Britons would have recognised. John Parkinson in his *Deliberating in the Real World* provided eight features of a deliberative political system, which I primarily concentrate on in this thesis:

1. Those affected by proposed policies must be able to participate.
2. Procedures of decision-making must be inclusive, rational and have input from ‘experts’.
3. There must be no division between speakers and policy-makers.
4. To solve this problem, elected and accountable agents should be part of this process (such as, but not limited to, MPs).
5. Because every citizen cannot be physically present, those that participate on their behalf must be seen as legitimate and representative.

²² N. Fraser, ‘Rethinking Public Sphere: A Contribution to the Critique of Actually Existing Democracy’, *Social Text*, 25/26 (1990), pp. 56-80, at p. 75.

6. ‘Relationship representation’ can be created through publicity of events, enabling the monitoring of events by outsiders.
7. Participation must have a substantive impact—in either a negative or positive sense. It should not be symbolic or ritualistic.
8. Deliberative institutions need some stability. If the ‘rules of the game’ frequently change, only those that can bear the cost of relearning the rules will be enfranchised.²³

The ‘deliberative oligarchy’ of the eighteenth century performed many of these elements. The culture of parliament and policy-making met these eight tests in the following terms:

1. Petitioners, lobbyists and pamphleteers could comment unhindered, with the policy-making processes not dominated by traditionally defined groups (such as corporations or chartered companies).
2. Fact-finding, political arithmetic and ‘cultures of fact’ were institutionalised and expected by both parliamentarians and outsiders.
3. Those who attended parliament were seen as co-legislators, not spectators. The use of parliament to pass local acts and the presence of an effective legal system were also important.
4. There was an expectation for Peers and MPs to carry out business on behalf of interests and localities. Parliamentarians often functioned as agents for communities that they had no direct electoral relationship with.²⁴ Parliamentary

²³ ‘The Institutions of a Legitimate Deliberative Democracy’, in Parkinson, *Deliberating in the Real World*, pp. 147-73.

²⁴ P. Langford, ‘Property and “Virtual Representation” in Eighteenth-Century England’, *HJ*, 31 (1988), pp. 83-115.

agents and witnesses sent by communities to attend committees offered another alternative, especially in the Lords.

5. Petitioners were able to claim to represent an ‘interest’ or locality, which was shared and recognised in the wider community.
6. Parliamentary secrecy and limits to public access were more limited than thought.
7. The role of witnesses, litigants and ‘experts’ had substantive impacts on the policies made and enforced. The local origins of much legislation and opportunities to litigate also aided this ability.
8. Parliamentary and legal procedures changed little over this period, and understandings of them were aided by the growth of printed guides of the law and parliament, as well as direct experience of the population in both.

At base, the form of political society I argue existed meant a plurality of interests and views was accepted by elites as positive feature of political life, and that all operated within a culture that decided that impartiality and openness should be the primary features of how policy-making occurred. Dissent was not seen as leading to revolt and instability, but rather better politics, policy and, indeed, stability. There were, necessarily, tensions between the pressures of petitioning and electioneering which encouraged decisions based on a simple ‘majority’, with the role of ‘facts’ and reason in a deliberative culture, but the resolving of these is a feature of all politics. Not all citizens could participate in parliament, but the middling sorts who lobbied the state were doing so in a way that was in a qualitatively different form from what occurred before 1689. As Edmund Burke told the electors of Bristol:

Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where not local purposes, not local prejudices, ought to guide, but the general good resulting from the general reason of the whole... all

these widespread interests must be considered; must be compared; [and] must be reconciled, if possible.²⁵

This echoed comments made earlier in the century. In 1732, an MP had told the Commons that ‘in all cases where there seems to be a clashing of interests, we ought to have no regard to the partial interest of any country, or set of people; the good of the whole should be considered...’²⁶ The *Political State of Great Britain* described the debates on the trade bill of 1713 in similar terms:

Consider how much pains [parliamentarians] took to inform themselves fully. Never was any matter managed with more deliberation and candour; the numerous petitions which were sent up from all parts of the nation against this treaty were read and examined, the merchants and tradesmen were heard in both houses....²⁷

These views ensured that procedures and attitudes were in place that contributed to a deliberative parliament. Committees, courts and parliament were spaces in which multiple opinions acknowledged the presence of others in order to uncover the ‘public interest’. This meant in addition to an adversarial politics focused on elections and petitioning, policy-makers and participants were in a culture of dialogue, creating legitimacy for the state and tying in the wider political community. The reality of dialogue and deliberation through participation at the centre and in the locality was the counterpoint to polarisation. These pluralistic features and procedures ensured Britain was not a simple oligarchy where political power was monopolised, with formal and imposed limits on participation, and where parliamentary proceedings were largely secret. Instead, there existed an open political culture reaching right into the heart of policy-making and its enforcement, creating an authentic

²⁵ J. Prior, ed, *The Works of the Right Honourable Edmund Burke* (2 volumes, London, 1834),

Volume 1, pp. 446-9.

²⁶ *London Magazine* (1732), p. 324.

²⁷ A. Boyer, *Quadriennium Annæ Postremum; or The Political State of Great Britain* (8 volumes, 1718), Volume 6, p. 104.

pluralism. The engagement of parliamentarians and lobbyists with alternative views within the parliamentary arena—and the localities, where much litigation and legislation originated—helped ensure that animosities could be reduced, acting as a counter-balance to the partisan culture described by Knights, and ensured political pluralism co-existed with one party government and social oligarchy.

THEMES

There are seven broad themes of research in this thesis that take up these points, a number of which expand the list of challenges to achieving a culture of deliberation, and others that sought resolution. They show that concerns for the rationality of the ‘public voice’ were raised on both material and ‘political’ issues, and that the origins of the ‘deliberative oligarchy’ were both institutional and cultural. The nature of politics and participation was sufficiently altered for this period to be considered a distinct phase of ‘deliberative’ policy-making.

1. Civil Litigation and a ‘New’ High Court

Although the seventeenth century was the most litigious period in English history, the impact of civil litigation is not well understood, the majority of work on the law having focused on crime and criminal law.²⁸ Although the eighteenth century was the period of the ‘great litigation decline’ and the growth of the statutory state, the legal system remained a central aspect to the functioning of the state. The role of law has been much debated, it either supporting the ideology of the ruling oligarchy, replacing the importance of religion (found in *Albion’s Fatal Tree*) or, alternatively, providing a tool to challenge those in power. The work of Christopher Brooks, Henry Horwitz and David Lemmings has been of particular

²⁸ For example, J. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), idem, ‘The Pattern of Crime in England, 1660-1800’, *P&P*, 62 (1974), pp. 47-95; P. King, ‘Decision-Makers and Decision-Making in the English Criminal Law’, *HJ*, 27 (1984), pp. 25-58.

importance in the opening up the field on the role of civil litigation.²⁹ This thesis expands on their work by demonstrating the role of civil litigation as a policy-making tool, using the example of the House of Lords. The consequences of the Glorious Revolution on the frequency of meetings of parliaments, elections and the growth of statutes has been well examined, but the effective establishment of a ‘new’ high court in the House of Lords has gone largely unstudied.³⁰ The annual presence of parliament after 1689 ensured the Lords had a greater significance as a court than it had during the Restoration, and was firmly established as an appeal court after disputes were settled over its jurisdiction by the 1670s. The creation of this new court was significant, constituting a new dynamic in the legal system and the capacity of civil law to amend statutes. On the surface, it suggests the peerage were in a more powerful position, capable of being the supreme power in the constitution, with the court providing another tool that ensured there was ‘no escaping’ their power and patronage,

²⁹ C. Brooks, ‘Interpersonal Conflict and Social Tensions: Civil Litigation in England, 1640-1830’, in A. Beier, D. Cannadine and J. Rosenheim, eds, *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge, 1989); D. Lemmings, ed, *The British and Their Laws in the Eighteenth-Century* (London, 2005); H. Horwitz, ‘Chancery’s “Younger Sister”’: The Court of Exchequer and its Equity Jurisdiction, 1649–1841’, *Historical Research*, 72 (1991), pp. 160-82; idem and P. Ploden, ‘Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?’, *Journal of British Studies*, 35 (1996), pp. 24-57.

³⁰ It has been studied for the period between 1621 and 1675 in J. Hart, *Justice Upon Petition: The House of Lords and the Reformation of Justice, 1621-1675* (London, 1997). An overview of the court in the seventeenth century is provided in A. Horstmann, *Justice and Peers: The Judicial Activities of the Seventeenth-Century House of Lords* (PhD, University of California, Berkeley, 1977).

paralleling their economic power.³¹ But if we examine the use it was put to, and by whom, the challenges to aristocratic control and the policy pursued appear far more widespread.

The study of law can be an uncomfortable one. The issue of studying the criminal law, as noted by Douglas Hay, is how to separate the ‘good’ criminals pursuing ‘social crime’ as proto-revolutionaries and protesters, and the ‘bad’ who murdered and raped indiscriminately.³² Although this issue is less acute in relation to civil litigation, views echoing the sentiments of Charles Dickens’ account of *Jarndyce v. Jarndyce* in his *Bleak House*, are hard to escape. The description of the case as ‘drag[ging] its dreary length before the court, [being] perennially hopeless’, with the ‘whole estate...found to have been absorbed in costs’ after generations of dispute, does question the utility and significance of legal cases to general historical inquiries.³³ If many cases were about familial disputes, what does litigation tell us, other than the hostility of individuals towards one another? The grounds on which people pursued litigation is an important issue, and will be discussed in relation to why Scots appealed to the Lords. Nonetheless, the fact is the state was challenged and policy amended through litigation, and it was undertaken by those outside the social or political elite. This is not to argue that the law was an equal-opportunity, open-access mechanism, without social bias, but a surprising proportion of appeals to the Lords were from lower social groups.

Appeals to the House of Lords dealt with a wide variety of issues, and not just estate settlements and credit relations (which were important and significant on a collective level). Cases dealt with the status of the Episcopal Church in Scotland, river navigation, the right to hold markets, the monopolies of the East India and African Companies, and a host of other

³¹ Beckett, *Aristocracy in England*, p. 1.

³² Hay, *Albion’s Fatal Tree*, p. xvi.

³³ C. Dickens, *Bleak House* (London, 1853), pp. 3, 616.

issues. My primary argument is that litigation was perceived as ‘no way inferior...to the express positive text of an act of parliament’ and appeals were used as such, capable of creating the same ‘clash of interests’ as bills and acts did, and having the same consequences for the scope of the state’s activity.³⁴ The ability to pursue litigation was present throughout this period and enabled policies contained in acts to be challenged in the courts. Together with the extent of smuggling and other means of challenging enforcement, litigation raises the question of who was more important in the forming, amending and enforcing of policy—ministers and parliamentarians, or smugglers and litigants?

In addition to the mechanisms of policy-making were the cultural implications of the law for political culture. The law provided an impartial discourse that ‘locked’ the powerful into the rhetoric of precedent and equity. As E.P. Thompson wrote in his conclusion to *Whigs and Hunters*, if the landed interest used the law for their own interests, being ‘evidently impartial and unjust, then it will mask nothing, [and] legitimise nothing’.³⁵ If peers wished the law to stand in order to protect their own interests and estates, then it had to be applied equally in spite of social inequalities and prejudices—whether inspired by party, interest, or rank. The law was a pillar creating conditions for deliberation, forcing elites and those who claimed to represent the ‘majority’ to negotiate with minorities—one of the consequences of this being a ‘culture of fact’, explained further below. The creation of these ‘norms’ was important in creating shared explanations, justifications and routes for policy-making, helping

³⁴ E. Wynne, *Eunomus, or Dialogue Concerning the Law and Constitution of England* (4 volumes, 1785), Volume 3, p. 193.

³⁵ Thompson, *Whigs and Hunters*, p. 263.

to reconcile tensions between competing interests under a system that tended towards more reasoned debate.³⁶

2. A Weaker State

A central reason why participation was seen as ‘inevitable’ was the need of parliamentarians for information and advice. Since the publication of John Brewer’s *The Sinews of Power*, an important narrative of this period has been that Britain was developing into a strong fiscal-military state, with a clearer division between the state and the public.³⁷ Complementing this has been the work of Julian Hoppit and Joanna Innes showing that the state was increasingly placed on a statutory basis during the eighteenth century.³⁸ Clearer parliamentary sovereignty and the replacement of customary law by regulation through statute ensured there was a shift in the eighteenth century from ‘consent to command’.³⁹ It is undoubtedly the case that the period from the 1640s to the 1720s saw the transformation of the capacity of the English state to raise revenue and the extent of legislative activity after the Glorious Revolution, elements of which did strengthen the executive. The British state did enter a new phase of sustained warfare, and demands from the middling sorts supported a higher level of legislative activity in parliament throughout the eighteenth century.

But there were areas in which the state remained weak—particularly when the creation and enforcing of policy is considered. Indeed, there is a strong case, which this thesis

³⁶ F. Kratchowil, ‘How Do Norms Matter?’, in M. Byers, ed, *The Role of Law in International*

Politics: Essays in International Relations and International Law (Oxford, 2000), pp. 35-68.

³⁷ J. Brewer, *The Sinews of Power: War, Money and the English State 1688-1783* (London, 1989). See

p. 15, note 8, above, for works on the local nature of much parliamentary business.

³⁸ Hoppit, ed, *Failed Legislation*; idem, ‘Patterns of Parliamentary Legislation, 1660-1800’.

³⁹ D. Lemmings, *Law and Government in England in the Long Eighteenth Century: From Consent to Command* (Basingstoke, 2011).

makes, that local influence over policy *increased* during the eighteenth century. Bills and acts were altered by committees, lobbyists, and litigants, reducing the power of local elites.⁴⁰ We are familiar with the interpretation of the ‘bloody code’—a series of acts that laid out the death penalty for more than two hundred crimes—being very different from the tone of the acts, and this could be found across much legislation.⁴¹ Equally, the standing orders of parliament restricting access to the Palace of Westminster were also primarily ‘reserve’ powers. Litigation did alter the enforcement and nature of statutes, the state being as much constructed by litigation, both by individual appeals and communities, as statutes or central government action.⁴²

3. ‘A Culture of Fact’

Many of the acts parliament passed aimed to strengthen the power of local communities and institutions, not the centre, and of which Westminster had little information to judge the merits of the proposed bill. The thesis, following the ideas of the ‘unacknowledged republic’ outlined above, argues that because of the local origins of much legislation, parliament continued to be reliant on parish officials, local businessmen and traders to inform debate and determine the merit of bills.

We can go further, and show that a culture existed which meant parliament was reliant on outside advice and expertise to function effectively. The argument takes as its starting point the argument of Barbara Shapiro that changes in the legal system inspired a

⁴⁰ J. Innes, ‘Local Acts of National Parliament: Parliament’s Role in Sanctioning Local Action in Eighteenth-Century Britain’, *Parliamentary History*, 17 (1998), pp. 23-47. This experience is echoed in the practice of the law, see P. King, *Crime and the Law in England, 1750–1840: Remaking Justice from the Margins* (Cambridge, 2006), esp. p. 3.

⁴¹ Hay, ‘Property, Authority and the Criminal Law’, in idem, *Albion’s Fatal Tree*.

⁴² S. Hindle, *The State and Social Change in Early Modern England* (Basingstoke, 2000), p. 89.

growing ‘culture of fact’, that meant new standards of evidence were required to inform and justify policy.⁴³ During the Restoration, the status of expert witnesses in courts was changing, and justifying arguments by ‘facts’ diffused across society and into parliament.⁴⁴ This challenges the idea the eighteenth century was ruled by a poorly-informed state, in comparison to the nineteenth-century ‘information state’ and the work pursued by William Petty and others during the Restoration.⁴⁵ The method exposed by Petty was not a new intervention in political culture, he arguing writers and policymakers should express themselves only ‘in terms of number, weight or measure; to use only arguments of sense... [and to study causes that] have visible foundations in nature’ in response to the turmoil of the mid-seventeenth century, but it gained new importance after 1689.⁴⁶ Political arithmetic and the diffusion of a ‘culture of facts’ meant there was a need for lobbyists, witnesses and experts to inform parliament.

Although the method did attempt to restrict discourse to a narrow range of people—Petty believed he should become ‘accounter general’ who could inform the crown of the means to ‘balance interests and parties’, overcoming self and private interest—this was not

⁴³ B. Shapiro, *A Culture of Fact: England, 1550-1720* (London, 2003).

⁴⁴ D. Dwyer, ‘Expert Evidence in English Civil Courts, 1550-1800’, *Journal of Legal History*, 28 (2007), pp. 93-118.

⁴⁵ An argument taken issue with in J. Hoppit, ‘Political Arithmetic in Eighteenth-Century England’, *Economic History Review*, 49 (1996), pp. 516-40; J. Innes, ‘Power and Happiness: Empirical Social Enquiry From Political Arithmetic to Moral Statistics’, in her *Inferior Politics*. M. Poovey, *The History of the Modern Fact: Problems of Knowledge in the Science of Wealth and Society* (Chicago, 1998), argued eighteenth-century society moved away from numerical quantification and measurement as it threatened creating a stronger government.

⁴⁶ W. Petty, *Political Arithmetic* (1691), Preface.

the practice.⁴⁷ Due to the weak nature of the state, it was necessary for ‘ordinary’ people and interests to present information taken from local ‘archives’ and businesses to committees after 1689. This was because there was a political culture that demanded ‘facts’ and evidence to evaluate bills and acts, cementing the role of the public in the proceedings of parliament.

4. News, Secrecy, and Access

A further element that ensured the peerage and the oligarchy were more porous to outside influence than assumed is a more common subject of study, especially in relation to political culture. The relationship between parliament and print culture has been explored for some time, but the interpretation of the Lords continues to stress their distance from the public, in stark contrast to the Commons. Many historians still, even if implicitly by not including the Lords in their studies, echo the remarks of a pamphlet of 1679 which suggested ‘the people not knowing what the Lords do in a session... makes them think they do nothing at all’.⁴⁸ The Lords is commonly seen as the most hostile to public involvement in their business and wider politics, refusing to print its votes, and the first to take action against printers and newspapers.⁴⁹ The role of the peerage in politics and society was not created through negotiation, judicial processes or ‘popularity’, but through deference, patronage and kinship.

⁴⁷ Marquis of Lansdowne, ed, *The Petty-Southwell Correspondence, 1676-1687* (London, 1928), pp. 234, 242, 248; J. Graunt, *Natural and Political Observations on the Bills of Mortality* (1676), in C. Hull, ed, *The Economic Writings of Sir William Petty* (2 volumes, Cambridge, 1899), Volume 2, pp. 396-7.

⁴⁸ *Truth and Honesty in Plain English* (1679), Chapter 2, p. 4.

⁴⁹ L. Schwoerer, ‘Press and Parliament in the Revolution of 1689’, *HJ*, 20 (1977), pp. 545-67, at p. 546. For the later period, see P. Thomas, ‘The Beginning of Parliamentary Reporting in Newspapers, 1768-1774’, *English Historical Review*, 74 (1959), pp. 623-36; idem, ‘John Wilkes and the Freedom of the Press (1771)’, *HR*, 33 (1960), pp. 86-98.

This means that the Lords played little role in the growth of the Habermasian public sphere that is said to have developed in Britain in the late seventeenth century. Print and press helped to contribute to the ‘rage of party’, but also, along with coffee houses, aided the development of spaces for reasoned political debate. Parliament has been overlooked as one of these spaces. Parliamentarians were surprisingly tolerant of the public accessing the Palace of Westminster and the two chambers of parliament in the early modern period. Rather than being dominated by concerns with secrecy, access of the public to Westminster was tolerated, being seen as an inevitable part of legislating. Parliamentarians sought to manage public access, in terms of ensuring lobbyists and petitioners did not turn to violent protest, rather than seeking to reduce their presence. This was despite the rhetoric of standing orders and statutes such as the 1661 Tumultuous Petitioning Act or the 1715 Riot Act. This access ensured groups could be self-selecting and lobby parliament relatively unhindered throughout the early modern period. The debates and political mobilisations that resulted from the establishment of the ‘public sphere’ could be directed into parliament and impact on the deliberations of MPs and peers.

5. A Petitioning Society

An element, like litigation, that ensured communities across the British Isles were participating in politics at Westminster was the extent and intensity of petitioning. Not everyone could deliberate together, but a representative petition—signed, as was sometimes the case, by hundreds, and sometimes thousands of individuals—could bring legitimacy to the process of legislating at the centre. Parliamentarians were actively increasing the status of petitioners and the ability to petition after 1689. Although far from being a new feature of political culture, a wide range of social and geographical groups (including women on occasion) were able to lobby parliament to negotiate and challenge policies pursued by elites.

It should be stated from the outset that this will not be a general discussion of petitions based on pamphlets, second hand evidence from contemporaries, or the partial records of parliamentary journals, but rather the hundreds of petitions presented to the House of Lords and survived the fire in 1834. Their survival allows us to produce systematic evidence on the true extent of the political nation during this period and the capacity of local groups to learn about and influence events in Westminster. The presence of petitions ensured all groups could comment on proceedings before parliament, including those beyond the electorate, and for this to continue despite the decline in the frequency of general elections. The extent of petitioning to parliament is central to demonstrating that a plural politics was firmly established in early modern Britain, and for ideas of the ‘majority’ and ‘consent’ to establish themselves in political rhetoric. The ‘democratising’ element of this can be overstressed—these petitions fluctuated in number and intensity over the century, but they ensured dialogue and negotiation were present in the ‘aristocratic century’.

Petitions raised many of the issues that concerned contemporaries regarding public participation, as set out by Mark Knights. The public were shown through their subscribing to be divided and have multiple voices. Petitioners could, and did, call for laws to be rejected or supported on the basis of majority support, raising issues about the ability of the public to be judges and arbiters, and the tension between deliberative and ‘democratic’ legitimacy. In addition, they ensured that parliamentarians (including peers) were accountable to their communities, re-opening debates on whether they were ‘representatives’ or ‘delegates’, and added to pressure for a deliberative culture to counter these demands. Nonetheless, petitions provided a form of restrained opposition and alternative to violence, helping to build political stability, though on very different terms to that proposed by Plumb.

6. Interest Groups

The late Stuart period, from the Exclusion Crisis to the accession of George I, was a period that experienced the first extended ‘rage of party’, with ideological conflict following largely whig, tory, and occasionally jacobite, lines. The work of Holmes, William Speck and the History of Parliament project has shown the extent Namierite characteristics were not a feature or driver of politics in this early period, political divisions being partisan, ideological, and popular.⁵⁰ This model is often complicated by the presence of court-country divisions over the power of the executive, but this thesis seeks to add another element to this spectrum, namely the role of interest groups. As Perry Gauci has shown, it was unincorporated merchants and those with no formal representation who were the most frequent petitioners to the House of Commons, enabling petitions to reach far into communities and strengthen local and interest-based identities.⁵¹ The requiring of members of a community to subscribe and support an action over an extended period of time, motivated by hostility to an ‘other’—potentially another locality or interest group—aided the formation of alternative identities to those based on ‘party’.

This concern for interest groups is not new—Holmes even has a chapter on the ‘clash of interests’ in his *Politics in the Age of Anne*—but their role in British society and their

⁵⁰ L. Namier, *The Structure of Politics at the Accession of George III* (London, 1929), pp. 221-5. This offered the view that whigs and tories had no place in the politics of the eighteenth century, a thesis applied to the late Stuart period by Robert Walcott in his *English Politics in the Early Eighteenth Century* (Oxford, 1956). Holmes, *British Politics in the Age of Anne*; W.A. Speck, *Tory and Whig: The Struggle in the Constituencies, 1701-1715* (London, 1970); E. Cruickshanks, S. Handley, D. Hayton, eds, *The House of Commons, 1690-1715* (5 volumes, Cambridge, 2005), offer the alternative view.

⁵¹ P. Gauci, *The Politics of Trade: The Overseas Merchant in State and Society, 1660-1720* (Oxford, 2001), Chapter 5, especially parts i-ii.

functioning is still not fully understood. Public partisanship and adversarial conflict was reflected in more than just party politics, despite attempts by Steve Pincus and others recently to argue otherwise.⁵² Divisions on parliamentary legislation did not follow party lines, rather reflecting tensions between geographically close economic challengers or interest-groups.⁵³ This language and concept of interest offered an alternative ‘rage’ that continued throughout the century, being reflected in local legislation and petitioning. This means an alternative explanation to why political stability was achieved is needed, given these continuing divides. In addition, it questions the extent of aristocratic hegemony. As Hoppit has suggested, studying how the landed interest functioned shows a group that was a poor competitor to their mercantile and manufacturing counterparts.⁵⁴

This argument requires us to address the extent local communities were not insular or consensual communities, in contrast to divided London and other urban centres. The experience of ruling at a local level and extension of the ‘nerves of state’ into the localities would have aided the creation of a national political consciousness, but also shows that, on their own initiative, localities and interest groups themselves lobbied parliament at the centre for state and statutory power to be employed. This creates a dialogue between social and

⁵² S. Pincus, *1688: The First Modern Revolution* (New Haven, 2009); C. Dudley, ‘Party Politics, Political Economy, and Economic Development in Early Eighteenth-Century Britain’, *EcHR*, 66 (2013), pp. 1084-1100, offers a similar approach on the relationship between party and economic policy.

⁵³ R. Sweet, ‘Local Identities and a National Parliament, c. 1688-1835’, in J. Hoppit, ed, *Parliaments, Nations and Identities in Britain and Ireland, 1660-1850* (Manchester, 2003); K. Snell, ‘The Culture of Local Xenophobia’, *Social History*, 28 (2003), pp. 1-30.

⁵⁴ J. Hoppit, ‘Rethinking the Interests of the British State’, Paper delivered to the IHR ‘Britain in the Long Eighteenth-Century Seminar’, October 2011; idem, ‘The Landed Interest and the National Interest’, in Idem, ed, *Parliaments, Nations and Identities*.

political history, through demonstrating the educative potential of extensive office holding and local participation for involvement in national politics. Stuart Handley has shown the frequency of petitions and proposals from Lancashire in the late Stuart period, and other areas followed a similar pattern.⁵⁵ Too often these struggles in the localities over the woollen trade, river navigation, calicoes or enclosure are portrayed as occurring on a ‘lower’ level of politics. But as was shown by Tim Harris, the material demands of the London crowd during the Restoration fed into wider attitudes towards France, popery, and the rule of Charles II.⁵⁶ Equally, David Sacks has shown the extent that local ‘little business’ often highlighted national issues and reflected struggles for power amongst elites that later flowed into national politics.⁵⁷ The consciousness and political identities of the lower orders were not just constructed over religious or constitutional issues, but material ones too. Not only did the act of subscribing to a petition or suing a more powerful individual or institution have consequences on the attitude of the individual or group towards the wider generality, but would form the context in which national decisions were received. Petitioning and interest groups ensured that an alternative existed to electoral and party strife and continued debates on the role and ability of the public act as arbiters of policy.

7. A Composite State: The Lords as the ‘British House’.

The final theme this thesis examines is the nature, functioning and survival of the ‘composite state’. Historians have long attempted to address the Anglo-centricism of much historical

⁵⁵ S. Handley, ‘Provincial Influence on General Legislation: The Case of Lancashire, 1689-1731’, *PH*, 16 (1997), pp. 171-84.

⁵⁶ T. Harris, *London Crowds in the Reign of Charles II: Propaganda and Politics From the Restoration Until the Exclusion Crisis* (Cambridge, 1987).

⁵⁷ D. Sacks, ‘The Corporate Town and the English State: Bristol’s “Little Businesses” 1625-1641’, *P&P*, 110 (1986), pp. 69-105.

writing and produce a truly ‘British’ perspective of this period, and this thesis addresses this in relation to the Lords’ role as a high court for Ireland, Scotland, England and Wales.⁵⁸ The

conflicts between the Westminster and Dublin Parliament for judicial supremacy are discussed, but individual appeals were most significant in the case of Scotland.⁵⁹

Explanations for Scotland’s place in the union after 1707 have tended to focus on its involvement in empire, arguing that the union articles created a separate sphere of autonomy where Scottish national institutions, notably the General Assembly and the Convention of Royal Burghs, filled the void left by the dissolution of the Scottish parliament. Until recently, the major themes for the construction of a British state and identity after 1707 have largely overlooked the role of the Westminster parliament and its reception in different parts of the ‘British Isles’. One of the few studies of this by Joanna Innes, focusing on Scottish legislation at Westminster, showed the extent that Scottish legislative activity declined after 1707, supporting the thesis that Scots retreated into a domestic sphere of autonomy, leaving empire as the dominant space of Anglo-Scottish interaction.⁶⁰ Bob Harris has shown Scottish activity at Westminster was largely defensive during the early years of union, but Scottish MPs and peers were capable of advancing their ‘national interest’ on occasion, with Scotland more than a ‘landowner’s world’.⁶¹ The common view, however, is that outnumbered at

⁵⁸ For example, G. Burgess, ed, *The New British History: Founding a Modern State 1603-1715* (London, 1999).

⁵⁹ These are explored in D. Hayton, ‘The Stanhope/Sunderland Ministry and the Repudiation of Irish Parliamentary Independence’, *EHR*, 113 (1998), pp. 610-35.

⁶⁰ Innes, ‘Legislating for Three Kingdoms’, in Hoppit, ed, *Parliaments, Nations and Identities*, p. 28.

⁶¹ B. Harris, ‘The Scots, the Westminster Parliament, and the British State in the Eighteenth Century’, in Hoppit, ed, *Parliaments, Nations and Identities*; idem, ‘Landowners and Urban Society in Eighteenth-Century Scotland’, *Scottish Historical Review*, 92 (2013), pp. 231-54.

Westminster by English MPs, peers and bishops, with the continuities of the Westminster parliament favouring them also, Scots saw little of interest across the border.

This thesis considers the use of the House of Lords as an appeal court after 1707 by Scottish interests (their petitions to parliament were to the Commons in this period, meaning they were unfortunately lost in the fire of 1834). It follows Innes in showing there were distinctive national characteristics to the use of parliament. Legislative business remained overwhelmingly English, whilst appeals business was increasingly Scottish. Scotland, with the smallest electorate in the union, could see its elites and established institutions challenged by litigants at Westminster, showing Scotland was not as oligarchic or as distant from Westminster as believed. But it also aided the strengthening of a British identity and state. The idea of a 'North Britishness' did inspire some appeals from Scotland, in an attempt of some to move towards a commercial society on an English model.⁶² Litigation offered a means to challenge dominant Scottish institutions.

The calming of relations with Ireland and Scotland was a small element of Plumb's account of the achievement of political stability.⁶³ Through Scots and English meeting in the same parliament, it became far harder for monarchs to pit their kingdoms against one another, as Charles II had during the Exclusion Crisis (the Scottish parliament voting against the exclusion of James from the throne, threatening civil war if the whigs pursued their cause).⁶⁴ One English and Scottish parliament now faced one monarch. Making policy through statute and legal appeal in reaction to the demands of interests after 1707, meant changes largely

⁶² C. Kidd, 'North Britishness and the Nature of Eighteenth-Century British Patriotisms', *HJ*, 49 (1996), pp. 361-82.

⁶³ J.H. Plumb, *The Growth of Political Stability in England, 1675-1725* (London, 1967), pp. 23-4.

⁶⁴ T. Harris, *Restoration: Charles II and His Kingdoms, 1660-1685* (London, 2005); idem, *Revolution: The Great Crisis of the British Monarchy, 1685-1720* (London, 2006).

reflected the strength of interests in their respective regions and kingdoms. This largely occurred without provoking a response in the other kingdom, because the creation of a uniform 'British' policy was not an aim of parliamentarians.

Conclusion

The role of parliament had been growing in political culture since the 1620s, and the post-revolution period saw a new height achieved in its reach and role. This growth had not been a linear process, but rather one that ebbed and flowed reflecting political, religious and economic flashpoints. The presence of conflict at certain moments from the 1620s, into the 1640s, and onwards into the Exclusion Crisis and the 'rage of party' marked a transformation in political culture. The presence of parliament after 1689 helped to cement this, sustaining public commentary and participation in politics, not just in terms of relations between crown and parliament, but also the usefulness of parliament to the wider political nation. This thesis initially seeks to expand our understanding of the nature and extent of the political nation during the post-1688 period. But it also offers further explanations for how political stability was achieved, through the development of a 'deliberative oligarchy'. Parliament was understood by its members and those 'out of doors' to be an institution reliant on outside advice and influence. There were theatrical aspects to its role that attracted spectators—notably in set piece events like the trial of Henry Sacheverell—but also a culture of deliberative participation. This was the primary reason the eighteenth-century oligarchy was so resilient. Despite a narrow membership, access to policy-making was relatively open, making the terms and direction of oligarchic rule negotiable and adaptable. This meant the culture of 'misrepresentation' that continued to build after 1716 thanks to petitioning and interest-based disputes had a means of being resolved.

This thesis is organised into five thematic chapters. The primary purpose of investigating the 'deliberative oligarchy' in this fashion is to allow an examination of how far

politics in this period met the features of deliberation outlined above. It also enables an illustration of the richness of the archival material of the Lords, and the range of subjects it encompasses. However, a culture of deliberation was developing throughout the period covered in this thesis (and indeed earlier, as we shall see). The moments when deliberation was strongest are highlighted throughout the chapters.

The first two chapters of this thesis consider the impact of the Glorious Revolution on the Lords' role as high court, attention being given particularly to the use of the house by Scottish litigants. Nowhere was the capacity of interests to alter policy clearer than their ability to pursue litigation at a local and national level. This addresses questions on the knowledge of parliamentary proceedings, the geographical and social reach of its participants, and the strength of the state.

The third chapter considers how open the House of Lords was to outside advice and lobbying presented through print and physical access. Central to this is examining the attitude of parliamentarians towards the presence of the wider public in the Palace of Westminster—and so this section does consider parliament's role as a 'theatre'. But it goes beyond demonstrating the Palace was 'open', by examining the role of lobbyists and interest groups in committees, acting as co-legislators, rather than mere spectators.

The fourth chapter pursues the question of why this was the case. It examines the demand of peers for 'facts' and political arithmetic as means to overcome self-interest and division. These methods became an expected and necessary part of policy making. But political arithmetic also offered a challenge to deliberation and open participation, in seeking to limit discussion to 'experts'. This chapter considers why, on balance, demands for 'facts', especially in subjects beyond the fiscal-military sphere, contributed to wider public involvement in the state and parliament.

The final chapter considers a further challenge to deliberation, namely the partisan mobilisations inherent in the petitions presented to the House of Lords. It examines the role of petitioning in creating a conception of society based on the idea and identity of interest, as opposed to class, rank, or party. The presence of these petitions and interest-based disputes ensured pluralism and contestation continued into the 1720s. Participatory mechanisms were firmly part of the formal and informal operation of the state, and remained despite the Septennial Act of 1716. The mobilisation of the public, concerns for ‘misrepresentation’ and partisan rhetoric remained, but within a more deliberative culture and system that enabled the public to remain central to the politics of eighteenth-century Britain.

CHAPTER ONE

The Transformation of the House of Lords as High Court, 1689-1720

‘...Delays in judgement in other courts shall be redressed in parliament... [but this] has rarely been put into practice by reason of discontinuance of parliament or default or neglect of the peers of this realm...’

Peers commenting on their role before 1689, from Parliamentary Archives, HL/PO/JO/10/1/421/244, Law Reform Bill, 4 April 1690.

There was one feature of eighteenth-century Britain that moderated the power of elites, parties and, later, the whig oligarchy more than any other: the weakness and the multilayered nature of the state. Through lacking the capacity and habit of executing laws, aristocratic elites simply lacked the tools for being a true political oligarchy, having to share the processes of policy-making with the wider population. The Glorious Revolution, and the union in the case of Scotland, strengthened this fundamental fact. The Westminster parliament’s role as a ‘legislative marketplace’, being useful to a wide range of interests—particularly the ‘propertied Englishmen’—has been well established by Julian Hoppit, Joanna Innes and Paul Langford.¹ England was clearly a ‘reactive state’ when it came to policy-

¹ The changes in the scope of parliament’s legislative business are shown in J. Hoppit, ed, *Failed Legislation, 1660-1800* (London, 1997). Important studies of legislation are found in J. Innes, ‘Parliament and the Shaping of Eighteenth-Century Social Policy’, *Transactions of the Royal Historical Society*, Fifth Series, 40 (1990), pp. 63-92; P. Langford, *Public Life and the Propertied Englishman, 1689-1798* (Oxford, 1991), esp. Chapter 3; idem, ‘Property and “Virtual Representation” in Eighteenth-Century England’, *HJ*, 31 (1988), pp. 83-115. For studies of the judicial business of the Lords, see J. Hart, *Justice Upon Petition: The House of Lords and the Reformation of Justice, 1621-1675* (London, 1991); idem, ‘Judicial Review in the House of Lords (1640-1643)’, *JLH*, 5 (1984), pp. 65-76; A. Horstman, *Justice and Peers: The Judicial Activities of the Seventeenth-Century House of Lords* (PhD, California, Berkeley, 1977); A. Swatland, *The House of Lords in the Reign of Charles II* (Cambridge,

making.² But a further structural change that resulted from the events of 1688/89 has gone largely unexplored and which made it harder for any one interest to dominate policy-making. Due to the increased frequency, predictability and length of parliamentary sessions, the Glorious Revolution, in effect, created a new layer to the legal system. The House of Lords became a permanent ‘high court’, capable of altering the decisions of lower courts across the British Isles. Its presence means the narrative of decline of customary rights, the increasing power of statutes and the coercive power of the central state, projected by historians from this growth of the statute book, needs to be amended.³

Although peers were active judges, these two chapters temper the interpretation that their newly-empowered role should lead to a restating of ideas of an ‘aristocratic century’ or be seen as bolstering the power of the whig oligarchy, with peers abusing the law to pursue political or personal gripes. Rather, the growth of legislative activity and a pre-existing, albeit declining, culture of litigation, meant laws could last for only a short period of time before being amended or challenged during the eighteenth century. Later chapters consider public influence on the legislative process, but these two chapters consider the capacity of non-elites to influence policy through the legal system. If parliament and the central state was dominated by a whig oligarchy, and Scotland by the Presbyterian Church and Convention of

1996), Chapter 5; W. Prest, ‘An “Ordinary Court of Justice?” The Appellate Jurisdiction of the House of Lords, 1689-1760’, sketches out the developing power of the Lords. I am grateful to Wilfred Prest for sharing this draft paper.

² A concept encapsulated in L. Davison, T. Hitchcock, T. Keirn and R. Shoemaker, eds, *Stilling the Grumbling Hive: The Response to the Social and Economic Problems in England, 1689-1750* (Stroud, 1992).

³ J. Brewer, *The Sinews of Power: War, Money and the English State, 1688-1784* (London, 1989), Chapter 3; D. Lemmings, *Law and Government in England in the Long Eighteenth Century: From Consent to Command* (Basingstoke, 2011).

Royal Burghs, one structure to which minorities could turn was the supposedly impartial legal system. This ability ensured a variety of interests were capable of influencing the exercise and enforcement of authority within an agreed system of rules, even once the ‘majority’ or dominant interest had spoken.

Much work has been done on the law, most famously in Douglas Hay’s essay, ‘Property, Authority and the Criminal Law’, where he argued its procedures should be seen as a ‘ruling-class conspiracy’ against the wider population, being ‘a selective instrument of class judgement’.⁴ The study of crime and criminal justice has seen the most extensive research, but in more recent years historians have turned to civil litigation, with the work of Christopher Brooks and David Lemmings being particularly important in opening up this field, arguably more significant to the maintenance of social relations than the criminal law.⁵

⁴ D. Hay et al, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1976), pp. 48, 52. For an important conflicting view, see E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1977), Chapter 10.

⁵ Debates have been dominated over the extent there was a ‘great litigation decline’ in the eighteenth century, see C. Brooks, ‘Interpersonal Conflict and Social Tension: Civil Litigation in England, 1640-1830’, in A. Beier, D. Cannadine and J. Rosenheim, eds, *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge, 1989); J. Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session, 1687-1808* (Edinburgh, 2012), pp. 9-10; H. Horwitz, ‘Chancery’s “Younger Sister”: The Court of Exchequer and its Equity Jurisdiction, 1649–1841’, *HR*, 72 (1991), pp. 160-82; idem and P. Ploden, ‘Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?’, *JBS*, 35 (1996), pp. 24-57; C. Muldrew, ‘Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community’, *EcHR*, 43 (1993), pp. 23-38; W. Prest, ‘The Experience of Litigation in Eighteenth-Century England’, in D. Lemmings, ed, *The British and Their Laws in the Eighteenth Century* (Woodbridge, 2005), pp. 133-54.

Despite this work, litigation is often ‘carved-off’ from the wider operation of the state, partly reflecting the poor nature of legal records. But there is also the assumption that cases and appeals were overtly personal and reflected the self-interest of individuals, and representative of little more than social distrust or the falling out of opposing parties.

But litigation was, in many respects, similar and as significant in its effects as acts of parliament. Any common agreements or decisions require trade-off and disappointed parties; it is not that litigation is a ‘bad’ form of dispute resolution and policy-making, competing against ‘good’ forms of conflict, such as those found in the thousands of bills and acts of the eighteenth century. Although it may be assumed that many of the appeals were related to dispute landownership or credit relations, these two chapters focus on litigation as an aspect of politics and economics, it being a common part of business life and a clear alternative, and sometimes preference, over pursuing legislation. Litigation should be seen as further means of directing the central state to act over matters of policy, being utilised over a range of policy issues. Litigation could create and reflect the same ‘clash of interests’ that bills and acts did produce. But because it was available at the lower reaches of society in lesser and local courts, the policies and power of elites were challenged and amended far more than is assumed. The nature of the state and the enforcement of its policies were not constructed by a narrow range of parliamentarians. The legal system helped to hinder the monopolisation of power by those in control of parliament or the wider state.

These two chapters argue parliament’s impact and importance to eighteenth-century Britain came not just from its mediating function as a representative body, with the public remotely supervising and judging the decisions of peers and MPs, but through enabling bodies and interests to shape and develop policy. Parliament was firmly rooted in wider society, and because it was a ‘reactive’ institution its activity and influence was based on the actions of interest groups and other outsiders. Parliamentary history is more than a study of

the activities of its members, be they MPs, peers, or bishops, and their selection to sit in the two houses, but rather a wider functioning of society and social relations; the ‘fact [being] that parliament was important for its *legislation*, not for its personnel—for *what it did*, not for who it was’.⁶

These two chapters consider one of the aspects of ‘what it did’, namely parliament’s legal business, and shows the extent decisions made by peers were not determined by kinship or party, but wider societal norms—such as ideas of justice and precedent. Particularly in the judging of law, cultural and intellectual norms such as these ‘locked’ peers into the discourse of law, reducing the scope of their individual agency. This chapter demonstrates the structural aspect to this, in terms of growth of appeals business up to 1720, and considers who used the court and where they came from within the British Isles. Unlike the records for lower courts which have constrained their systematic quantitative study over a long period, the surviving evidence for the Lords is on a scale small and organised enough to provide a range of continuous evidence from the Restoration onwards. Whilst this chapter is necessarily quantitative and concerned with legal structures, the next considers the impact of appeals to the Lords on the forming of policy, particularly in Scotland and England, and its contribution to the ‘deliberative oligarchy’. Non-elites and minority interests had to be both numerous and capable of winning appeals for the Lords to have a significant impact on the nature of oligarchy.

I: A ‘New’ High Court: The House of Lords after the Glorious Revolution.

The House of Lords dealt with a wide variety of legal appeals. It was the ‘supreme jurisdiction in cases of appeals from courts of equity... being the last resort’, though it did not hear original cases after the 1670s or criminal appeals (outside impeachment and criminal

⁶ J. Goodare, ‘Who was the Scottish Parliament?’, *PH*, 14 (1995), pp. 173-8, at p. 176.

trials of peers).⁷ From England and Wales, peers heard cases in error from the Courts of Common Pleas and King's Bench, and appeals from Chancery, Exchequer, and the Palatinate Courts of Lancaster and Durham. Remaining Welsh civil litigation came under the jurisdiction of Westminster King's Bench in the 1770s.⁸ From Ireland, despite constitutional conflicts between the two parliaments in the 1690s and late 1710s, cases from lower courts could be appealed to the Lords, as well as from the Irish House of Lords itself (the Declaratory Act of 1720 merely clarifying an accepted practice). Following the union with Scotland, appeals were heard from the Court of Session and the newly-created Scottish Exchequer, even though there was concern and division over this in the union negotiations. Occasional appeals came from the Highest Court of Justiciary, but by the late eighteenth century the Lords accepted it had no jurisdiction over the court.⁹ The Lords quickly

⁷ R. Atkins, *An Enquiry into the Jurisdiction of Chancery in Cases of Equity* (1695), p. i.

⁸ T. Watkin, *The Legal History of Wales* (Chippenham, 2007), pp. 156-7. Previously Welsh appellants could only appeal to the Great Sessions on subjects later under the King's Bench jurisdiction.

⁹ The House heard one criminal case from Scotland before 1720, that of *Magistrates of Elgin v. Presbyterian Ministers of Elgin* (1713), when the house claimed jurisdiction over the Scottish High Court of Justiciary—see D. Jones, 'The Judicial Role of the House of Lords before 1870', in L. Blom-Cooper, B. Dickinson and G. Drewry, eds, *The Judicial Role of the House of Lords, 1876-2009* (Oxford, 2009), p. 8. The cases of *Bywater v. Lord Advocate* (1781) and his *Majesty's Advocate v. Murdison* (1773) saw the Lords accept the High Court of Justiciary was the last court of resort in Scottish criminal cases, a position agreed to by the English attorney general and lord advocate. An earlier appeal was also rejected in 1754 on a death sentence—see A. MacLean, 'The House of Lords and Appeals from the High Court of Justiciary, 1707-1887', *Juridical Review*, 30 (1985), pp. 192-226; N. Walker, *Final Appellate Jurisdiction in the Scottish Legal System* (Edinburgh, 2010).

established itself as an active policy-maker across the 'British Isles' after 1688 and the union of 1707.

Before examining the scale of litigation it is necessary to provide a short summary of the procedures and development of legal appeals.¹⁰ The House of Lords revived its role as high court in 1621 through the re-introduction of impeachment, an event soon followed by appeals from litigants, but it was not until 1675 that business took the form that was still present after 1689.¹¹ Before the Restoration peers had sought not to 'hear the case in the House itself', instead referring cases to the courts below, working as an 'administrative tribunal'.¹² It also heard original appeals until the late 1660s, with *Skinner v. The East India Company* (1667-1670) the most infamous case, but the furore meant that only two more original appeals were heard. During the Restoration, two significant developments occurred. The first was that peers began to reverse Chancery decrees, the first in 1667, rather than merely referring them to courts below for rehearing, making it a more attractive avenue for litigants and important as a policy-maker.¹³ The second development was that the Lords was affirmed to be the final court in matters of equity in *Shirley v. Fagg* (1675), securing appeals from Chancery. The scope of the Lords' business (at least from England and Wales) was

¹⁰ Procedures are discussed in Horstman, Justice and Peers; C. Jones and G. Holmes, eds, *The London Diaries of William Nicolson, Bishop of Carlisle: 1702-1718* (Oxford, 1985), pp. 100-5; A. Rees, *The Practice and Procedure of the House of Lords, 1714-1784* (PhD, Aberystwyth University, 1987), Chapter 4; Swatland, *The House of Lords*, Chapter 5.

¹¹ Parliament had not completely abandoned its judicature, with the passage of acts of attainder and some sporadic appeals, see W. Stacy, 'Impeachment, Attainder, and the "Revival" of Parliamentary Judicature Under the Early Stuarts', *PH*, 11 (1992), pp. 40-56.

¹² Hart, 'Judicial Review in the House of Lords', pp. 76-7; idem, 'The House of Lords, and the Appellate Jurisdiction in Equity', *PH*, 2 (1983), pp. 49-70.

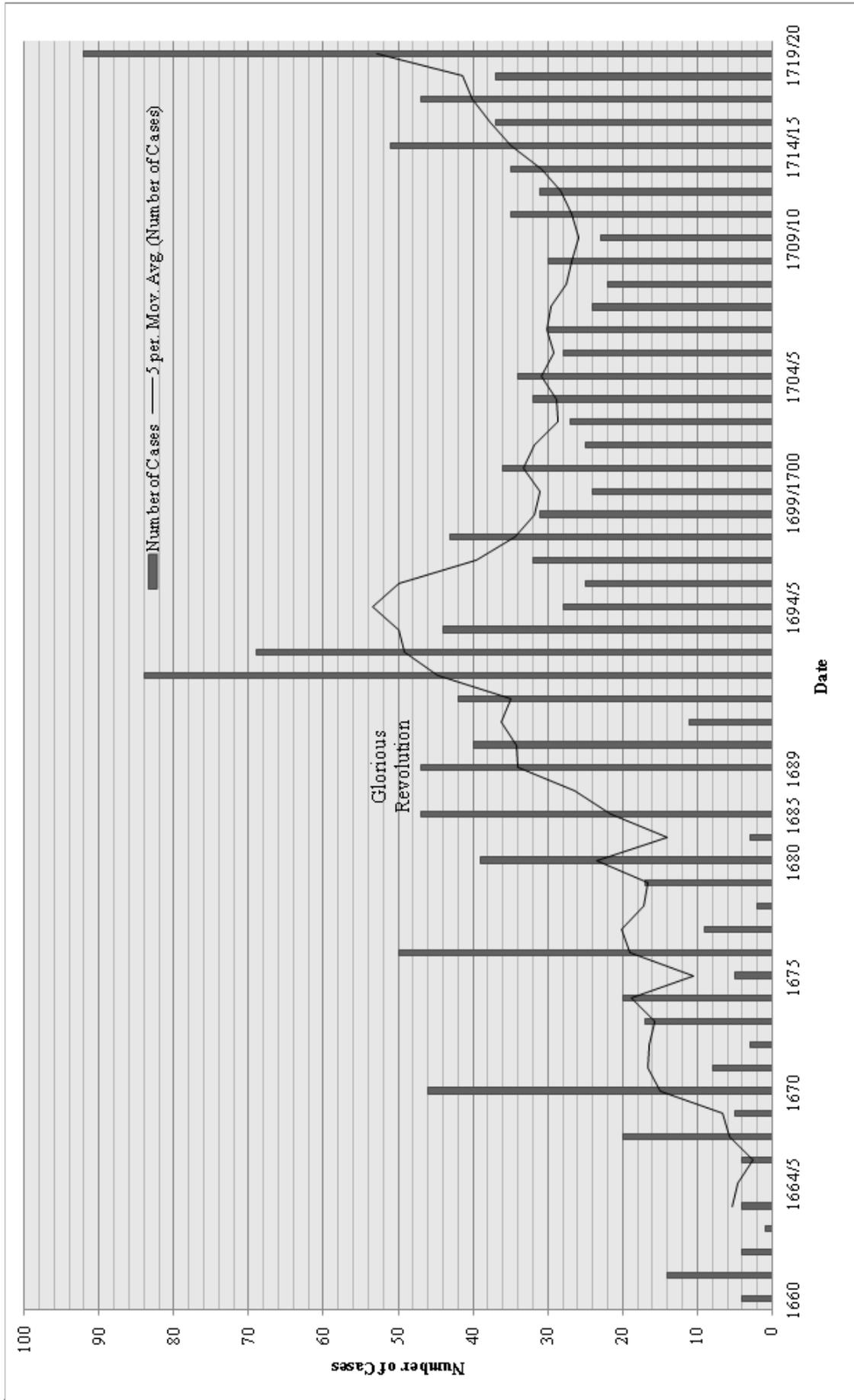
¹³ Swatland, *House of Lords*, p. 73; *Journals of the House of Lords*, xii, pp. 134, 206, 212.

largely settled in the period under study. In terms of procedures, two mechanisms could be utilised to bring an appeal to the house. Cases would be presented either through a petition, which detailed the facts of the case and took a similar form to those presented to lower courts and primarily drafted by counsel; or through writ of error by a judge. In both forms, cases were likely to be answered by a petition from the opposing party before a hearing in the house as a whole with two counsel on each side. Peers would then resolve to reverse, vary, or affirm the appeals, occasionally with the assistance of judges, once the parties and counsel had withdrawn.

Using the journals and manuscript records of the house, systematic evidence about the growth of the Lords' role after the Glorious Revolution can be produced. The chronological trend of these appeals is shown in graph one. The trend is of uneven but increased activity during the Restoration, with a spike immediately after the Glorious Revolution settling into a steadier pattern of around thirty cases a session between 1694 and 1714, partly reflecting the similar lengths of these sessions. This meant the house dealt with an average of thirty-four appeals each session after 1689, more than double the fourteen received each session during the Restoration (though only eight sessions during the Restoration actually reached this figure).¹⁴ These figures show the Glorious Revolution, in effect, created a new standing high

¹⁴ Figures from *LJ*, xi-xxi. Original appeals, received largely in the 1660s (only two being heard after 1670), are not included in these figures, the majority being referred by the committee of petitions to lower courts—see Swatland, *House of Lords*, p. 72. The lack of appeals in 1660 reflects the fact that almost 900 petitions were presented asking for provisos to be added to the Acts for the Restoration of Ecclesiastical Benefices or Confirmation of Legal Proceedings, examined in Hart, *Justice Upon Petition*, pp. 231, 233, 237, 240.

Graph 1: Appeals Presented to the House of Lords, 1660-1720.



Source: *LJ*, xi-xxi. A 'case' has been defined as the first petition or writ of error presented which began a legal action. This avoids the double-counting of appeals .

court. The shift is stark, with 322 appeals presented between 1660 and the Revolution, expanding to 1072 cases between 1689 and 1720.

This was not just significant for the English and Welsh polity after 1689, but also for the British Isles as a whole, the union having a similarly transformative effect on the Scottish judicial landscape. Whilst the pre-union Scots Parliament determined only nine of the fifty-three appeals presented to it between 1689 and 1707, the House of Lords between 1707 and 1720 judged more than eighty-five percent of the 129 cases Scottish litigants brought.¹⁵ Not only was the quantity larger, but the range of business was wider. Because peers sought to expand its jurisdiction when given the opportunity by litigants, the impact was an appeal court at Westminster that considered a wider range of subjects than the Edinburgh parliament had. The Greenshields case of 1710 on the practising of English liturgy in Scotland did see the question raised of whether ‘a parliament now sitting in Scotland would receive it’; being an ecclesiastical case, but it was resolved sixty-eight votes to thirty-two to allow it.¹⁶ An appeal on the matter of tithes from Haddington was said to ‘alarm our ministers’, with no previous appeal to the Scottish parliament on the subject, though four other tithe cases came to the Lords from Scotland before 1720.¹⁷ Appeals against the costs of a legal appeal from the Court of Session were allowed, as were appeals from the new Scottish Exchequer Court.¹⁸ A

¹⁵ J. Ford, ‘Protestations to Parliament for Remeid of Law’, *SHR*, 88 (2007), pp. 57-107, at p. 95.

Some legal business heard by the Scottish parliament is explored in G. Iredell, *The Law, Custom and Practice of the Parliament of Scotland* (PhD, London, 1966), pp. 249-67.

¹⁶ PA, HL/PO/JO/5/1/46, Manuscript Minutes, 16 February and 1 March 1710.

¹⁷ Historical Manuscript Commission, *The Manuscripts of His Grace the Duke of Portland* (10 volumes, London, 1891-1931), Volume 10, p. 294.

¹⁸ The first appeal being *Brand v. McKenzie* in 1709, see PA, HL/PO/JO/10/6/190/2565, Sir Alexander Brand, 10 February 1709.

dispute over the farming of taxes in Edinburgh, which would have gone to Scottish privy council before the union, found its way to Westminster as a result of the council's abolition in 1707, which had allowed the Lords of Session to come into its place.¹⁹ Appeals to the Westminster Parliament were also more certain than the 'protestations' that came to the Scottish parliament. A case of 1690 saw the Edinburgh parliament rescind a decision of the Court of Session after 'much debate how far the protestation for remeid of law should be regular to prevent unnecessary and too frequent protestations'.²⁰ This uncertainty perhaps resulted in the low numbers of judgements of the Scottish Parliament during the 1690s. The effect of the union of 1707 was a British parliament capable, if litigants wished it, to be far more intrusive into the Scottish legal system and all parts of society touched by it than the pre-union Scottish parliament had been, widening the scope and efficiency of Scotland's 'high court'.

For Ireland, despite the lack of a legislative union, a rising number of appeals after 1708 ensured that the effects of 1688/89 were felt across the British Isles, with a significant shift in the power and scope of its 'high court'. One hundred and forty appeals came from an Irish court to Westminster, far exceeding the activity of the Irish House of Lords that had heard only two appeal cases in 1695 and one in 1697. This pattern continued after the Declaratory Act of 1720, the Dublin parliament only receiving ten appeals in 1727.²¹ Less affected by the revolution of 1688/89 were appeals from the colonies to Westminster. There were rare appeals from North America—one came in 1694 between Dutton and Howell, over

¹⁹ *Decisions of the Court of Session from June 6th 1678 to July 30th 1712, Collected by the Honourable*

Sir John Lauder of Fountainhall (2 volumes, Edinburgh, 1761), Volume 2, pp. 625-6.

²⁰ A. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden, 2009), pp. 36-7.

²¹ F. James, *Lords of the Ascendancy: The Irish House of Lords, 1600-1800* (Dublin, 1995), pp. 83-4.

whether Barbados was a conquered territory, and so not having the privileges of English law (it was determined it did not), brought because of the arbitrary rule of its governor.²² It was not until 1727 that another appeal from the colonies was heard, on the proprietorship of Carolina.²³ Despite an estimated 250 appeals to the privy council between 1680 and 1776, peers at Westminster did not become a regular point of appeal for colonies across the Atlantic.²⁴ The passage of an act in 1696 that allowed the setting up of local admiralty courts, rather than appealing to the courts at Westminster Hall, may have ensured there was a growing divide between legal structures.²⁵ But within the British Isles, the Glorious Revolution not only transformed parliament as a legislative body but also as a judicial one, creating two great moments of disjuncture in the legal system in 1689 and 1707.

There are several explanations for the changing volume of legal business. Firstly, it was subject to factors that also resulted in the rise of legislative activity. The greater predictability and length of parliamentary sessions after the Glorious Revolution can be seen as the primary factors in the increase of appeals, after the position of the Lords in relation to lower English courts was resolved in the Restoration.²⁶ Between 1660 and 1685 the average session length had been seventy days; whereas between 1689 and 1714 the average length

²² PA, HL/PO/JO/10/1/461/775, Dutton v. Howell Writ of Error, 8 January 1694; B. Shower, *Cases in Parliament Resolved and Adjudged* (1698), pp. 31-44.

²³ PA, HL/PO/JO/10/6/358, Petition and Answers of Danson and Trott, 1 February-27 March 1727.

²⁴ S. O'Connor and M. Bilder, 'Appeals to the Privy Council Before American Independence: An Annotated Digital Catalogue', *Law Library Journal*, 104 (2012), pp. 83-97, at p. 86.

²⁵ M. Hall, 'The House of Lords, Edward Randolph, and the Navigation Act of 1696', *William and Mary Quarterly*, 14 (1957), pp. 494-515, at p. 503.

²⁶ These arguments are advanced in Hoppit, ed, *Failed Legislation*, Introduction.

was nearer 110.²⁷ As a result, only 162 cases after the Glorious Revolution took more than one session to be determined and only thirty-three of these took more than two.²⁸ The pattern of parliamentary sessions was particularly conducive to efficient judicial work. By assembling in winter and rising in early spring, litigants could expect their appeal to be heard in a single session, whilst peers could expect judges to support this function of the house before beginning their circuits in March, ordering them ‘not to go away until the rising of this House’.²⁹ For Scots, the hearing of sixty-five percent of their cases between February and April in the period from 1709 to 1800 allowed advocates to ‘come to London every spring for appeals’, as it coincided with the rising of the Court of Session.³⁰

Administrative reforms by the house also meant appeals were dealt with more efficiently, reflecting awareness by peers of the need to respond to the growing weight of business they faced. Graph one shows that there was a period of fluctuation immediately after the Glorious Revolution as the house experimented with the management of its business. Paralleling developments in the standing orders governing legislation, orders controlling appeals were largely settled in 1693 and 1698. Through the ordering of the printing of appeals, with a continuous record from 1702, their signing by counsel, presentation by a peer,

²⁷ *idem*, ‘Patterns of Parliamentary Legislation, 1660-1800’, *HJ*, 39 (1996), pp. 109-31, at p. 113.

²⁸ *LJ*, xiv-xxi. The exact breakdown is: Cases requiring 2 sessions: 129; 3 sessions: 19; 4 sessions: 8; 5 sessions: 3; 6 sessions: 3.

²⁹ For complaints on the impact of longer parliamentary sessions on the ability of judges to go on their usual circuits, see The National Archives, T 1/86, Gilbert Dolben to Duke of Ormond, 8 June 1703, T 1/92, Gilbert Dolben to the Lord Treasurer, 18 November 1704, p. 225; *LJ*, xv, pp. 362, 438; Nicolson, *Diaries*, 21 February 1702, p. 382. At least one judge had been required to attend since November 1693, see *LJ*, xv, p. 307.

³⁰ J. Finlay, ‘Scots Lawyers and House of Lords Appeals in Eighteenth-Century Britain’, *JLH*, 32 (2011), pp. 249-77, at p. 255.

and the banning of counsel from practising in parliament if they failed to attend, vexatious litigation was reduced.³¹ Appeals vied with legislation and other business for time, but were aided by the decision of peers to pass a standing order that ‘forbids the reading of private bills before the hearing of causes’.³² The 1690s saw the stricter adherence by peers to a 1678 order that appeals should be presented within fourteen days of the start of a session.³³ This meant that appeals business was mostly completed before bills came up from the Commons in early spring. Peers also gave warnings that the end of the session was soon expected, creating a skeleton of business for potential litigants.³⁴ As a result there was a greater efficiency of appeals after 1689, with more than ninety percent of appeals receiving a judgement (and those that did not were focused in the two sessions of 1691-2 and 1692-3). This was far higher than the fifty percent of writs of error and sixty percent of Chancery appeals to the Lords that received judgement between 1660 and 1681.³⁵ In other words, there was a fivefold increase in the number of judgements made by peers as a result of parliament’s ‘coming of age’ after 1689. These rates are higher than the success rate of legislation, with nearly fifty percent of bills failing between 1689 and 1714, including nearly twenty percent of personal legislation. This made an appeal to the Lords for redress, rather than to parliament as a whole for a statute, a more certain path for a decision (though, significantly, not necessarily the

³¹ Printed appeals have been catalogued from 1702 in PA, HL/PO/JU/4/1-3, Appeal Cases; *LJ*, xiv, p. 582, xv, p. 242, xvi, pp. 224, 268.

³² *LJ*, xx, pp. 451-2.

³³ *LJ*, xiii, p. 286; xv, p. 389; xvii, p. 569; xviii, pp. 12, 99, 104-6. Further references are also found in the manuscript minutes, see PA, HL/PO/JO/5/1/26, 27 March and 6 October 1690; HL/PO/JO/5/1/29, 8 March 1694; HL/PO/JO/5/1/35, 16 November 1699.

³⁴ *LJ*, xiv, p. 273; xv, pp. 62, 702; xvi, pp. 111, 713; xvii, pp. 72, 251, 636.

³⁵ *LJ*, xiv-xxi; Swatland, *House of Lords*, p. 87. After 1689, 124 appeals received no judgement, but 23 of these were later rejected, leaving 101 appeals out of the 1072 without any decision.

desired one).³⁶ This reflected the transformation of the Lords into a standing high court, becoming a permanent and efficient feature in the legal calendar.

However, because judicial activity was ‘consumer led’, being driven largely by the whims and strengths of individuals (though the executive did take an interest in some cases), wider external factors would have determined the trends in appeals.³⁷ For example, the spike of cases in 1719 was solely the result of a large number of appeals from the commissioners of forfeited estates. Attempts were also made to resolve disputes before they went to the Lords, and some would have succeeded. Negotiation with creditors failed to stop proceedings in George Lockhart’s appeal in 1714, whilst an ‘agreement’ between William Morison and Cornelius Kennedy did not succeed in halting a ‘further attack’ on the land title.³⁸ The decline of litigation in the eighteenth century is likely to have been the result of developments in the localities rather than the central courts, and variations in the rate of appeal to the Lords would have reflected this, in addition to the capacity of individuals, institutions and interests to negotiate a settlement.³⁹ In any case, the growth of appeals meant there was a more intensive interaction of outside interests with parliament, and a stronger intervention of parliament across the British Isles.

³⁶ Hoppit, ed, *Failed Legislation*, pp. 4, Table 1; 7, Table 5.

³⁷ J. Hoppit, J. Innes and J. Styles, ‘Towards a History of Parliamentary Legislation’, *PH*, 13 (1994), pp. 312-21, at p. 319.

³⁸ National Records of Scotland, GD5/230, Gilbert Kennedy to George Kennedy, 15 March 1714. The appeal may be found in PA, HL/PO/JO/10/6/238/3050(a-d) 5 March 1714; GD27/3/7/2, William Scott to Cornelius Kennedy, 15 June 1715, fol. 1.

³⁹ Horwitz and Polden, ‘Continuity or Change in the Court of Chancery’, p. 57.

II: A Shared Transformation: The House of Lords as a ‘British’ House

Although the Glorious Revolution had transformative effects on both the volume of legislation and litigation, the data outlined above shows the profile and ‘constituency’ of each was different. Whilst the union with Scotland in 1707 saw little interaction between English and Scots on the pursuit of legislation in the first decades of union, suggesting Scots largely retreated into domestic institutions after 1707, the Westminster-based court did see litigation from across the British Isles, in spite of English procedures, lawyers, law, and the dominance of English peers and presence of bishops. Unlike legislation, where Scots were largely unwilling to use the British parliament to advance their interests in the early eighteenth century, they were willing to move outside their forms of self-government (such as the General Assembly or the Convention of Royal Burghs), risk the development of Scots private law (contrary to article eighteen in the Treaty of Union) and appeal to the House of Lords (which had been left open and unclear in article nineteen). Equally, Irish appeals were present at Westminster throughout this period. The result was that peers were able to play a significant role in integrating the British Isles into a single civil-legal framework.

Table one shows the extent the Lords’ business was ‘British’. The table shows the relative weight of appeals, broken down into the period before and after the union (though these are uneven, with twenty-one sessions before 1707 and twelve after). This suggests English appeals were dominant in the immediate period after the Glorious Revolution, before declining significantly both as a proportion and number, with an increasing proportion of judicial business taken up with Scottish and Irish appeals. The causes of the decline in English and Welsh appeals is examined in the next chapter, but at this stage it should be noted that the rising number of Scottish and Irish appeals suggests the decline in English appeals was not due to internal procedural changes in the Lords. Historians have shown there

Table 1: Geographic Distribution of Active House of Lords Appeals, 1685-1720

Date	England	Wales	England and Wales	Ireland	Scotland	Total
1685-1707 (Number)	541	41	678	49	n/a	727
1685-1707 (Percent)	74	5.6	93	6.8	n/a	
Average per session	25.8	2	32.7	2	n/a	
<hr/>						
1707-1720 (Number)	150	3	171	92	129	392
1707-1720 (Percent)	38	0.8	43.6	23.6	32.9	
Average per session	12.5	0.3	14	7.6	10.8	
<hr/>						
1685-1720 Total						1119

Sources: *LJ*, xiv-xxi; PA, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments). These figures are higher than those quoted above, as these include the figures for 1685. Note: The total for 'England and Wales' includes cases with unknown location, but through the originating court it is clear they came from either England or Wales.

was a general decline in the amount of litigation in the English localities, and this is likely to have been reflected in higher courts. This was particularly true for litigation involving estate settlements and debt, with the average number of cases concerned with estate and land titles falling from an average of thirteen to ten each session before and after 1707. This pattern of British appeals continued for the remainder of the eighteenth century, with an average of twenty Scottish appeals presented each session between 1756 and 1793, and constituted fifty-four percent of appeals between 1813 and 1823.⁴⁰ Of the 501 appeals presented to the house between 1794 and 1807, 419 came from Scotland.⁴¹ This was in contrast to their legislative activity, where only fifty bills and acts may be classified as relating to Scotland between 1707

⁴⁰ *Report of the Commissioners Appointed...for the Enquiring into the Forms of Process in the Courts of Law in Scotland, and the Course of Appeals...to the House of Lords* (London, 1824), Appendix B, Table 1. Printed collections of appeal cases underestimate the number of appeals. John Finlay estimates there were 552 Scots cases between 1709 and 1800, but there were at least 740 Scottish appeals between 1756 and 1793 according to the *Report of the Commissioners*—see Finlay, 'Scots Lawyers and House of Lords Appeals', p. 253.

⁴¹ Jones, 'The Judicial Role of the House of Lords', p. 282.

and 1727.⁴² Just over one percent of appeals to the Court of Session between 1756 and 1793 found their way to the Lords in that period, making the Lords an important feature of the Scottish legal system.⁴³ This suggests peers had an important role managing in Anglo-Scottish relations with Westminster during the eighteenth century, with their judgements able to influence a broad range of issues across Scotland.

But why were Scots willing to appeal to the Lords, if they were largely unwilling to legislate at Westminster? Did they not withdraw into their ‘national’ institutions, like the General Assembly and Convention of Royal Burghs, sharing only the British empire with the English? The continuing of the pattern of appeals to the pre-union Scottish parliament, and the silence over the question of appeals to the Lords in the union negotiations, suggests that many Scots did not wish for the Court of Session to be their final court of appeal.⁴⁴

Protections for the Admiralty Court, Scots private law, to which ‘no alteration [may] be made’, and banning appeals to the courts of Westminster Hall, were all included in the treaty, but references to the House of Lords were absent.⁴⁵ As John MacClearn has argued, Scottish commissioners were not intent on excluding appeals to the House of Lords, leaving it instead

⁴² J. Innes, ‘Legislating for Three Kingdoms’, in J. Hoppit, ed, *Parliaments, Nations and Identities* (Manchester, 2003), p. 28, Figure 2.7.

⁴³ *Report of the Commissioners Appointed...for the Enquiring into the Forms of Process in the Courts of Law*, p. 347.

⁴⁴ C. Jackson and P. Glennie, ‘Restoration Politics and the Advocates’ Secession, 1674-1676’, *SHR*, 91 (2012), pp. 76-105, at pp. 77, 104-5.

⁴⁵ J. Cairns, ‘Attitudes to Codification and the Scottish Science of Legislation, 1600-1800’, *Tulane European and Civil Law Forum*, 22 (2007), pp. 1-78, at pp. 26-8.

to the ‘will of the people of Scotland.’⁴⁶ In this respect, it is significant that Scots did not necessarily have positive views of their pre-union institutions, especially the Court of Session. As a legacy of the conflict between the court and the Scottish parliament before 1707 for judicial supremacy, there was support in Scotland for appeals to a ‘parliament’.⁴⁷ A pamphlet of 1675 argued that ‘best qualified for the main and ultimate tuition of these common and great concerns’ were parliamentarians; believing that justice should not be left to rest on ‘fifteen lords precariously depending...on his majesty’s pleasure’, as the Lords of Session was perceived to be.⁴⁸ George Mackenzie, the Lord Chief Justice and advocate of union with England agreed with this, arguing although the

greater part of that parliament [at Westminster] will be absolutely ignorant of, and strangers of our laws... I am not for giving an absolute and uncontrollable power to our judges...I still think they ought to be accountable.⁴⁹

In the 1690s litigants had complained that they had been ‘enormously leased and highly prejudiced’ by the Court of Session.⁵⁰ This continued to be the case in the mid-1730s, with James Erskine, Lord Grange, believing that:

our judges acted very unequally and that politics rather than the law determined the bench and [those] that are thought to be of the country party could hardly expect justice.... I believe your friend may be get better justice among them [The House of

⁴⁶ A. MacLean, ‘The 1707 Union: Scots Law and the House of Lords’, *JLH*, 4 (1984), pp. 50-75, at p. 50; J. Ford, ‘The Legal Provisions in the Acts of Union’, *Cambridge Law Journal*, 66 (2007), pp. 106-43, at p. 124.

⁴⁷ Jackson and Glennie, ‘Restoration Politics and the Advocates’ Secession’.

⁴⁸ Quoted from *Ibid*, p. 97. These feelings were echoed later, with Thomas Spence arguing that ‘to allow no appeals from that court is to constitute fifteen tyrants’ in the Court of Session—see *Testamentary Duty of the Parliament of Scotland* (Edinburgh, 1707), p. 9.

⁴⁹ G. Mackenzie, *A Letter to a Member of Parliament Upon the Nineteenth Article of the Treaty of Union* (Edinburgh, 1706), p. 5.

⁵⁰ Ford, ‘Legal Provisions’, p. 123.

Lords] than here [in Edinburgh]. .. I cannot think your friend has reason to fear the House of Lords..

The reasons for this were clear, in that:

a judicatory so illustrious must take care at least of their reputation which I see some inferior court have learned to neglect...I must let my opinion [be known] which is that it is indefinitely better for him to depend on the law and justice of his cause than to make any transactions whatsoever.⁵¹

The House of Lords could potentially offer distance from Scottish politics and the hostile influence of the crown, other interests or patrons.

In addition to attitudes towards national institutions, litigation ultimately reflects a failure of negotiation, with national bodies of Scotland unable to provide satisfactory answers for minorities, and this may be seen in a number of appeals to the Lords.⁵² The Presbyterian church were challenged by an Episcopal church in Elgin and by James Greenshields to create toleration for their church, and whose appeals south of the border could rely on tory support and overcome the fact that ‘all the Scotch lords’ supposedly opposed Greenshields.⁵³ Edinburgh magistrates were also challenged on economic regulation, firstly by candlemakers

⁵¹ HMC, *Report on the Manuscripts of Lord Polwarth* (5 volumes, London, 1911-1961), Volume 5, pp. 95-6.

⁵² The material benefit of appealing is often outweighed by its cost. Appeals are frequently a demand for litigants to be treated fairly. In this sense, it is about ensuring a just process has been followed. For Habermas, legitimate law and state power is created by deliberative procedures, in which law plays an important role; appeals are not solely because ‘everyone prefers winning to losing’— S. Barclay, *An Appealing Act: Why People Appeal in Civil Cases* (Evanston, 1999); idem, ‘Appealing (But not Necessarily Winning) to Improve Your Social Status’, *Law & Policy*, 21 (1999), pp. 427-43. The latter may have had the opposite effect on status, as explored further below, pp. 109-10; 307, note 230.

⁵³ S. Matsuzono, *The House of Lords and the Godolphin Ministry 1702-1710* (PhD, Leeds, 1990), p. 174.

over the setting of prices; then by William Paterson who had lost out from farming the tax on ale and beer brewed in the city; and later the Scottish college of justice itself, defending their exemption from city taxes.⁵⁴ In the case of the candlemakers of Edinburgh, who were excluded from the Edinburgh convenery of incorporated crafts and whose appeal to the Convention of Royal Burghs was unsuccessful, an appeal to the Court of Session and the Lords was an available mechanism to solve disputes with other companies.⁵⁵ This pattern echoed the activity of London companies who commonly fought disputes through the common council and court of aldermen before pursuing acts of parliament. The forty appeals from the English-dominated forfeited estate commission from the Court of Session also reflected their wish to use the English dominated and anti-jacobite House of Lords to maintain their influence in Scotland. An appeal in 1663 also came to the Westminster Lords from the Court of Session, the appellant being an Englishman. He brought his appeal after the Lords of the Articles claimed the reversing of ‘a decision of the court of session was never done by any parliament’, but was rejected by English peers on a tied vote at Westminster because it came from a Scottish court.⁵⁶ These were cases that some Scots or others operating there wished to take out the hands of Scottish institutions, if they were found to be unsupportive to their causes.

⁵⁴ PA, HL/PO/JO/10/3/201/13, Petition of Alexander Paterson, 2 February 1712; Finlay, *The Community of the College of Justice*, p. 8.

⁵⁵ W. Forbes-Gray, ‘The Incorporation of Candlemakers of Edinburgh, 1517-1884’, *Book of the Old Edinburgh Club*, 17 (1930), pp. 91-146, at pp. 93, 98; W. Paterson, ed, *Extracts from the Records of the Convention of the Royal Burghs of Scotland, 1711-1738* (5 volumes, Edinburgh, 1815), Volume 4, p. 62.

⁵⁶ C. Jackson, *Restoration Scotland, 1660-1690: Royalist Politics, Religion and Ideas* (Woodbridge, 2003), pp. 84-5.

Closely aligned with this was the desire of Scots to use English institutions to advance schemes to create a more commercial society.⁵⁷ To some in Scotland, English law was more attractive than Scots and seen as a means of overcoming the perceived feudal nature of Scottish institutions. Significantly, contemporaries saw less of a division between English and Scots law than we do today.⁵⁸ Both the Court of Session and litigants cited ‘British’ cases before the union with England, reflecting a desire to use English law to advance trading interests and accelerate Scotland’s moves towards a commercial society.⁵⁹ Englishmen in Scotland attempted to use the Lords to import English convention, as was the case in *Gray v. Duke of Hamilton* (1708) where the appellant argued that English law should be applied.⁶⁰ Given these motivations it was not the case, as has sometimes been assumed, that Scots appealed for narrow reasons. The belief that the rise in the number of Scottish appeals was the result of a standing order of 1709 which allowed the presentation of appeals to prevent the execution of the orders of the lower court, limits the meaning and significance of litigation.

⁵⁷ C. Kidd, ‘North Britishness and the Nature of Eighteenth-Century British Patriotisms’, *HJ*, 39 (1996), pp. 361-82.

⁵⁸ Kidd argues that some Scots increasingly emphasised shared legal thought and heritage with England, see his *Union and Unionisms: Political Thought in Scotland, 1500-2000* (Cambridge, 2008), pp. 180-9.

⁵⁹ D. Scullion, ‘The Union of 1707 and its Impact on Scots Law’, *Aberdeen Student Law Review*, 1 (2010), pp. 111-18, at pp. 113-14; A. Forte, ‘“Calculated to our Meridian?” The *Ius Commune*, *Lex Mercatoria* and Scots Commercial Law in the Seventeenth and Eighteenth Centuries’, in D. Carey-Miller and E. Reid, eds, *A Mixed Legal System in Transition: TB Smith and the Progress of Scots Law* (Edinburgh, 2005), p. 132.

⁶⁰ PA, HL/PO/JO/10/3/107/11-12, Petition of James Gray, 14 December 1708.

The standing order is unlikely to have acted as a significant factor, as only twenty-two Scottish appeals did not receive judgement in this period (and all were rejected in 1720).⁶¹

Neither were Scottish litigants appealing in practice to an English dominated institution where ‘strangers’ would be deciding on Scottish law, easing the challenges of appealing. The sixteen Scots peers could impact on proceedings in a proportion greater than their size and reflects their ability to act as effective lobbyists for their fellow Scots, and not just a reliable ‘ministerial bloc’.⁶² The recorded divisions of the Lords suggest an average attendance of forty-six peers, though the number of peers voting ranges from twelve to ninety-two. Although divisions are unrepresentative of the ‘typical’ appeal (occurring only sixty-six times out the 1076 cases heard) and so reflect interest in particularly contentious issues, they suggest only a small number of peers were involved in judging appeals. In terms of Scottish cases, there were only three divisions up to 1720. The case of *Don v. Don* in 1713 had only twenty peers voting, and there were no more divisions on Scots appeals until the forfeiting of jacobite estates in 1719 and 1720, which saw larger divisions involving sixty-six and forty-four peers.⁶³

The work of the Lords in its judicial role followed a similar pattern to that identified by TK Moore and Henry Hortwitz for the Commons, where a small core of MPs carried out business and many chose to specialise in certain forms of legislation.⁶⁴ As the fictional peer

⁶¹ Nicolson, *Diaries*, pp. 100-1.

⁶² B. Harris, ‘The Scots, the Westminster Parliament, and the British State in the Eighteenth Century’, in Hoppit, ed, *Parliaments, Nations and Identities*, pp. 126-7.

⁶³ PA, HL/PO/JO/5/48, Manuscript Minutes, 14 June 1713; HL/PO/JO/5/61, Manuscript Minutes, 4 April 1719; HL/PO/JO/5/63, Manuscript Minutes, 11 May 1720.

⁶⁴ T. Moore and H. Horwitz, ‘Who Runs the House? Aspects of Parliamentary Organisation in the Later Seventeenth Century’, *The Journal of Modern History*, 43 (1971), pp. 205-27.

Lord Foppington in the 1696 play, *The Relapse*, put it: ‘as to weighty affairs—I leave them to weighty men’, preferring drunkenness and adultery to attending to affairs of state.⁶⁵ The sixteen Scottish peers could be extremely significant in these appeals, as the account of a French visitor to the House in 1720 suggests:

[On] Friday last one Monsieur Pleineouf, a foreign minister, was brought into the House of Lords whilst a cause [was being heard] ...trying to satisfy his curiosity, [he] talked to Lord Sunderland, pray my Lord where are the judges? Why says my lord, we the peers are the judges. Hela! Mon dieu, cries the Frenchman. You the judges! There is not one lord in the house that minds the least morsel of the cause. You are all talking to one another or to me: it’s no matter for that answers the peer. There are three or four lords in the house who understand the laws very well and give attention and the house always gives in to their opinion. Very well, says Pleineouf, then you [and] the rest of the lords take it upon your conscience and honour, not that the cause is just or unjust... but that the lords who listen are good lawyers and just judges.⁶⁶

Scottish peers could be assiduous in their attendance, enabling them to be the ‘three or four lords’ that Pleineouf was told of. They were the ‘few that stayed’ for an appeal concerning the case of an Edinburgh businessman, William Morrison, whilst Lord Balmerino was clear he had ‘taken more part than well fell to my share’ in appeals business.⁶⁷ Several peers had the legal training that Pleineouf was told was so important. Argyll was a lord of session between 1704 and 1708; Archibald Campbell, the first Earl of Ilay and an extraordinary lord of the session from 1708 and lord justice general, was present from 1710 to aid the House.⁶⁸ Similarly, William Johnstone, Marquess of Annandale, had served as an extraordinary lord of session in 1693 and was a representative peer from 1709 to 1713. When the Earl of Findlater

⁶⁵ A. Turberville, *The House of Lords in the Reign of William III* (Oxford, 1913), pp. 33-4.

⁶⁶ NRS, GD 124/15/1197/33, Duncan Forbes to Lord Grange, 1 April 1720. Pleineoeuf was a Parisian financier and office-holder—see Prest ‘Ordinary Court of Justice’, p. 32.

⁶⁷ NRS, GD6/2156(h)1/3, Papers on William Morison’s Appeal, 18 February 1720; C. Jones, ed, *Letters of Lord Balmerino to Harry Maule, 1710-1713, 1721-22* (Miscellany of the Scottish History Society 12, Fifth Series, Edinburgh, 1994), pp. 99-168, at p. 132.

⁶⁸ Nicolson, *Diaries*, pp. 102-3.

was elected to the Lords, George Lockhart believed him to be ‘well acquainted with the laws and constitution of Scotland’, he being a member of the faculty of advocates and previously solicitor general in Scotland.⁶⁹

Scots peers and MPs were actively involved in appeals, with a lack of a Scottish ‘block’ that was uniformly hostile to decisions being made at Westminster. This meant that some could be used to lobby and explain legal matters to the English peers present. This was the case with the appeal of James Greenshields. The Earls of Eglinton and Balmerino (who was ‘violently for’ Greenshields) ‘buoyed up Mr Greenshields and prevailed with him to stand his ground’.⁷⁰ Eglinton went with Bishop Nicolson of Carlisle to encourage him to ‘consider the Act of Uniformity and that against intruding [a reference to a 1693 Act for Settling the Quiet and Peace of the Church]’.⁷¹ Scots MPs were also involved, some supplying Greenshields with money and ‘encouraged him not to submit or yield’.⁷² Although Argyll and Ilay ‘walked out on the appeal’ of Greenshields, though perhaps Ilay only ‘after the appeal was sustained, knowing there was nothing to be said worthy of his staying’, others had been more supportive.⁷³ Lockhart reported that ‘Scots commoners supplied Mr Greenshields with money to defray the charges’, whilst he ‘and others of my country

⁶⁹ A. Aufrere, ed, *The Lockhart Papers* (2 volumes, London, 1817), Volume 1, p. 400.

⁷⁰ *Letters of Lord Balmerino to Harry Maule*, p. 109; T. Clarke, *The Scottish Episcopalians, 1688-1720* (PhD, Edinburgh, 1987), p. 243.

⁷¹ *Letters of Lord Balmerino to Harry Maule*, pp. 123-4.

⁷² Clarke, *Scottish Episcopalians*, p. 243.

⁷³ D. Szechi, ‘Politics of Persecution: Scots Episcopal Toleration and the Harley Ministry’, in W. Shiels, ed, *Toleration and Persecution: Studies in Church History*, 11 (1984), pp. 275–87, at p. 281; *Letters of Lord Balmerino to Harry Maule*, p. 127.

were...violent in pushing' the appeal and divided into 'several classes' to wait upon peers. He claimed to have 'baffled' ministerial opponents by this campaign.⁷⁴

It was also the case that on litigation linked to their constituency Scottish MPs would take an interest. George Warrender, MP for Edinburgh in 1715, followed closely the cases involving the Herriot Hospital and the butchers and candle makers, both of which involved Edinburgh magistrates. He had written to the Lord Provost of Edinburgh that when the case of the hospital came to the Lords, he:

wait[ed] on all the Scots members...and as many of the English lords as I knew and delivered them the printed case and information. I attended the members also at their entering the door of the house and stood by the lawyers all the time.

Afterwards he and 'our friends present...drank prosperity to the magistrates' to celebrate their victory.⁷⁵ The case of the butchers also saw him 'in compliance with your [the magistrates] desire, concur with the candle makers attorney here and stood by the counsel' during the appeal.⁷⁶ Edinburgh magistrates also employed attorneys and clerks of the college of justice to attend Westminster 'to negotiate the town's affairs'.⁷⁷ Scottish appeals were brought by Scots and given support by Scottish interests at Westminster, in order to resolve disputes amongst their fellow countrymen, just as the English did with legislation; Scots did not just withdraw from Westminster into national institutions in the early period of union.⁷⁸

⁷⁴ *Lockhart Papers*, Volume 1, pp. 346-8.

⁷⁵ W. Dickinson and M. Wood, eds, *Warrender Letters: Correspondence of Sir George Warrender Bt, 1715* (Scottish Record Society 25, Third Series, Edinburgh, 1935), pp. 36-7.

⁷⁶ *Ibid*, pp. 49-50.

⁷⁷ Finlay, *The Community of the College of Justice*, pp. 67, 76.

⁷⁸ Scottish legislative and petitioning activity is demonstrated in B. Harris, 'The Scots, the Westminster Parliament and the British State', in Hoppit, ed, *Parliaments, Nations, Identities*. A recent study of a Scottish MP at Westminster is W. Fortescue, 'James Ker, Member of

English peers, in the most part, recognised that they should defer to Scottish peers and law; otherwise they would weaken their legitimacy as a court of law and threaten the survival of the union. Peers were explained Scottish law by English lawyers. Philip Yorke, later Earl Hardwicke and solicitor general from 1719, told peers they had ‘been informed... [of the] laws of Scotland... [and should] take notice of Scotch law’, quoting cases heard in Scottish courts and earlier acts of the Edinburgh parliament.⁷⁹ Discussions also occurred with English judges before appeals were heard.⁸⁰

This is not to say there was universal acclamation for appeals to Westminster from Scotland, but there was a trend of interaction, rather than a complete withdrawal into domestic institutions. The presence of bishops in the House of Lords was clearly not amenable to Presbyterian Scots, with Colonel John Erskine, defending his estate from expropriation by the forfeited estates commission in 1719, writing he could not ‘in conscience’ address the bishops as judges.⁸¹ Robert Dundas, a Scots lawyer appearing before the Lords in 1720, found ‘his language was less understood... [and] several lords ceased to listen’.⁸² Cases over the forfeited estates commission in 1719/20 were most likely to attract English hostility, reflecting the Jacobite threat, though even in six of the forty appeals peers protected estates from expropriation. Lord Grange noted the opinion of twelve English judges over these appeals was taken, but only a written account represented the Lords of Session. Grange believed peers were solely concerned with the broader importance of the cases, with

Parliament For Edinburgh, 1747-1754’, *The Book of the Old Edinburgh Club*, New Series, 10 (Edinburgh, 2014), pp. 17-44.

⁷⁹ British Library, Add MSS 36147, First Earl Hardwicke, fol. 21.

⁸⁰ NRS, GD124/15/1197/19, Lord Grange to Duncan Forbes, 27 February 1720.

⁸¹ NRS, GD124/6/193, Memorial of Colonel John Erskine of Carnock, 1 December 1719.

⁸² NRS, GD124/15/1197/9, Lord Grange to Duncan Forbes, 4 February 1720, fol. 1

‘not one word spoke[n] on either side concerning the merits of the cause’.⁸³ The treatment of these appeals should not be taken as representative, however, these being specific in their focus and constituting less than a third of Scottish appeals heard between 1707 and 1720. Despite occasional tensions, the idea Scots should ‘keep peace amongst ourselves...keeping within our own sphere’ did not become the practice after the union.⁸⁴

Even if some Scots were unsympathetic to these appeals opponents were content to leave the question unstated in the union articles, ‘supposing that the inconveniences of pursuing an appeal to England would incline people rather to acquiesce, and make the judgement of the [Court of] Session more definite’.⁸⁵ But we should also look towards English politics to explain why appeals to the House of Lords were left an open question in the articles of union. The reason the articles in this area were a ‘botched job’ was not because they were an attempt to preserve the independence of the Scottish legal system, but rather to avoid a re-opening of the conflict between the two Westminster houses caused by the case of *Ashby v. White*. This case over a disputed Buckinghamshire election, presented to the Lords in 1704, challenged the right of the Commons to determine its own membership. This resulted in the Commons complaining the Lords’ judicature was a ‘bottomless and insatiable gulf...which would swallow up both the prerogative of the crown and the rights and liberties of the people’.⁸⁶ This debate was occurring in the background to the union negotiations and neither Westminster house wished to open up again the question of the scope of the Lords powers to risk the union. The absence of express provision in the articles was therefore acceptable to Scots on both sides of the union debate, those that supported either the Court of

⁸³ NRS, GD124/15/1197/14, Same to Same, 16 February 1720, fol. 1.

⁸⁴ HMC, *Manuscripts of the Duke of Portland*, Volume 10, p. 294.

⁸⁵ D. Defoe, *The History of Union Between England and Scotland* (1786), p. 161.

⁸⁶ *Commons Journals*, xiv, p. 563.

Session or the Scottish parliament on the question of the jurisdiction of parliaments, and both houses at Westminster.

The relative power of British parliaments was an important cause of appeals from Ireland. These formed a growing proportion of cases in this period, with a continuous line of appeals from 1697 and some sporadic appeals previous to this. The practicalities of appeals from Ireland posed less of a challenge in being appealed to Westminster as both largely followed the English common law, but the rights of appeal were far more disputed. The conflict between Westminster and Dublin peers began in 1698 in the case of *Derry v. Irish Society*. The appeal came from the Irish House of Lords and saw English peers determine that appeals from the Irish Chancery should go to England. This was followed the year after by the case of *Ward v. Meath*, when English peers overruled their Irish counterparts on a Chancery case.⁸⁷ The absence of an Irish Parliament until 1703 and the Earl of Meath coming to a private agreement, meant the conflict went unresolved.⁸⁸ Further conflict between the two parliaments was postponed until the case of *Annesley v. Sherlock* (1717-1720). The estate dispute that began in the Irish Exchequer saw Mrs Sherlock appeal to the Irish Lords and was followed by an appeal by Maurice Annesley to Westminster, before a counter-petition by Mrs Sherlock to the Irish House. The conflict saw Westminster overrule its Irish counterpart and led to the Declaratory Act of 1720, which determined that the Irish House of Lords was subject to the Westminster Lords in matters of appeal. Despite the conflict with the English Commons over *Ashby v. White* in 1704, and occurring in the context of the Peerage

⁸⁷ D. Hayton, 'The Stanhope/Sunderland Ministry and the Repudiation of Irish Parliamentary Independence', *EHR*, 113 (1998), pp. 610-35, at p. 611.

⁸⁸ I. Victory, 'The Making of the Declaratory Act of 1720', in G. O'Brien, ed, *Parliament, Politics and People: Essays in Eighteenth-Century Irish History* (Dublin, 1989), pp. 12-13.

Bill, designed to strengthen the power of the peerage, the Lords was able to secure in statute its judicial power over the Irish House.⁸⁹

This constitutional shift made litigation to Westminster acceptable, but does not explain why litigants in Ireland appealed either before or after these disputes. Irish appeals were initially concentrated in the years surrounding the case of *Derry v. The Irish Society* between 1698 and 1701, but this was only one of three cases presented in 1698, and was followed by a further seven appeals in the next. The largest spike in appeals began from 1715 when fourteen cases were presented, all but three of which dealt with the settlement of estates (the others dealing with debts), and this activity continued until at least 1720. Only towards the end of this period did the clash between parliaments of *Annesley v. Sherlock* occur and any encouragement of appeals to the Westminster Lords this case may have resulted in. The greater stability of the Westminster parliament compared to its Dublin counterpart (even though it also sat far more frequently and routinely after the Glorious Revolution) encouraged these appeals to Westminster. Whilst the Westminster parliament sat for nearly 3600 days between 1690 and 1720, the Irish one sat for less than 900, or a quarter of the time.⁹⁰ The absence of an Irish parliament from 1699 to 1703, in 1718 and 1720, and the earlier sittings of Westminster between 1715 and 1717 meant the Westminster Lords provided a more stable forum that was present for longer lengths of time.⁹¹

The subject matter of Irish appeals suggests a further factor that encouraged litigation to Westminster. Disputed land titles and estate settlements were responsible for seventy

⁸⁹ Hayton, 'Repudiation of Irish Parliamentary Independence', pp. 623-4.

⁹⁰ idem, 'Patriots and Legislators: Irishmen and Their Parliaments, c.1689-1740', in Hoppit, ed, *Parliaments, Nations and Identities*, p. 114; Table 6.3.

⁹¹ Session dates from Hoppit, ed, *Failed Legislation*, pp. 27-8, and the Irish Legislation Database at <http://www.qub.ac.uk/ild/?func=browse&area=regnal>, accessed 24/07/2013.

percent of Irish cases, higher than the other areas of the ‘British Isles’. This meant the Lords impacted most in England and Scotland, whilst its intervention in Ireland was limited to small groups of individual landowners and patterns of landownership. Unlike English landowners who were increasingly attracted to estate acts to confirm their titles and settlements, the majority of Irish litigants concerned with land do not appear to have attempted to pass estate acts in the Irish parliament. This placed them on a path which could result in an appeal to Westminster as constitutional arrangements between the two houses altered or if the patterns of parliamentary sessions were favourable. Only two appeals were a response to a failure to pass an estate act in the Irish parliament—that of John Eyre, whose failed attempt in 1697 caused him to begin legal proceedings that led him to Westminster in 1720, and a long dispute of the Earl of Clanricarde and his sons.⁹² The Earl and his sons failed to pass an estate bill in 1698 and 1699, resulting in four cases in the House of Lords. The presence of English-based Irish litigants in several appeals may have influenced their decision to avoid the Irish parliament, and appeal to an English court instead of the Irish privy council and parliament.⁹³ Actions in the Westminster house also fed back into legislative activity at Dublin, with two cases leading to attempts to put legal proceedings at Westminster into statutory form through the Irish Parliament. The defeat of Sir Maurice Eustace in an appeal of 1700 resulted in his

⁹² The information comes from a search for ‘estate’ on the Irish Legislation Database.

http://www.qub.ac.uk/ild/?func=simple_search&search=true&search_string=estate&search_string_type=ALL&search_type=any&session_from=1692&session_to=1719&submit.x=68&submit.y=3, accessed on 25/07/2013, and includes both bills and acts.

⁹³ For example, *Amory v. Luttrell* (1709), with an army officer, Colonel Luttrell; *Arthur v. Arthur* (1719), by Daniel Arthur, a London merchant; *Birmingham v. Shelburn* (1718), by soldiers settled under William Petty’s Down Survey of the Interregnum period; *Carroll v. Eustace* (1700), by William Temple of the City of London.

lobbying an Irish bill for the relief of his creditors, eventually passing in 1719. The successors to James Hamilton amended a judgement made by the Lords on a jointure in 1702 thirteen years later.⁹⁴

If the House of Lords was able to draw in appeals from the geographical peripheries of the British Isles, the same was true of England. The distribution of cases per thousand people in England is shown in map one. The map, necessarily, considers all appeals as equal, overlooking the county-wide nature of some subject of litigation. In northern England appeals dealing with tolls in Cumberland or river navigation in Newcastle would have had a wider reach than an appeal, for example, over a disputed will from Surrey. Nonetheless, there were twice as many appeals from Cambridgeshire than Yorkshire, despite their respective populations and economic importance. London and Middlesex were responsible for 186 of the 850 cases heard by the Lords from England, representing twenty-two percent of English and Welsh cases, a similar proportion to the cases presented to the Exchequer and Chancery in 1685.⁹⁵ Hertfordshire had a similar number of appeals to London per thousand people, at 0.32 compared to London's 0.36. The Lords were not dominated by appeals from London, acting as an effective point of appeal for a range of interests across south east England, northwards into Cheshire.

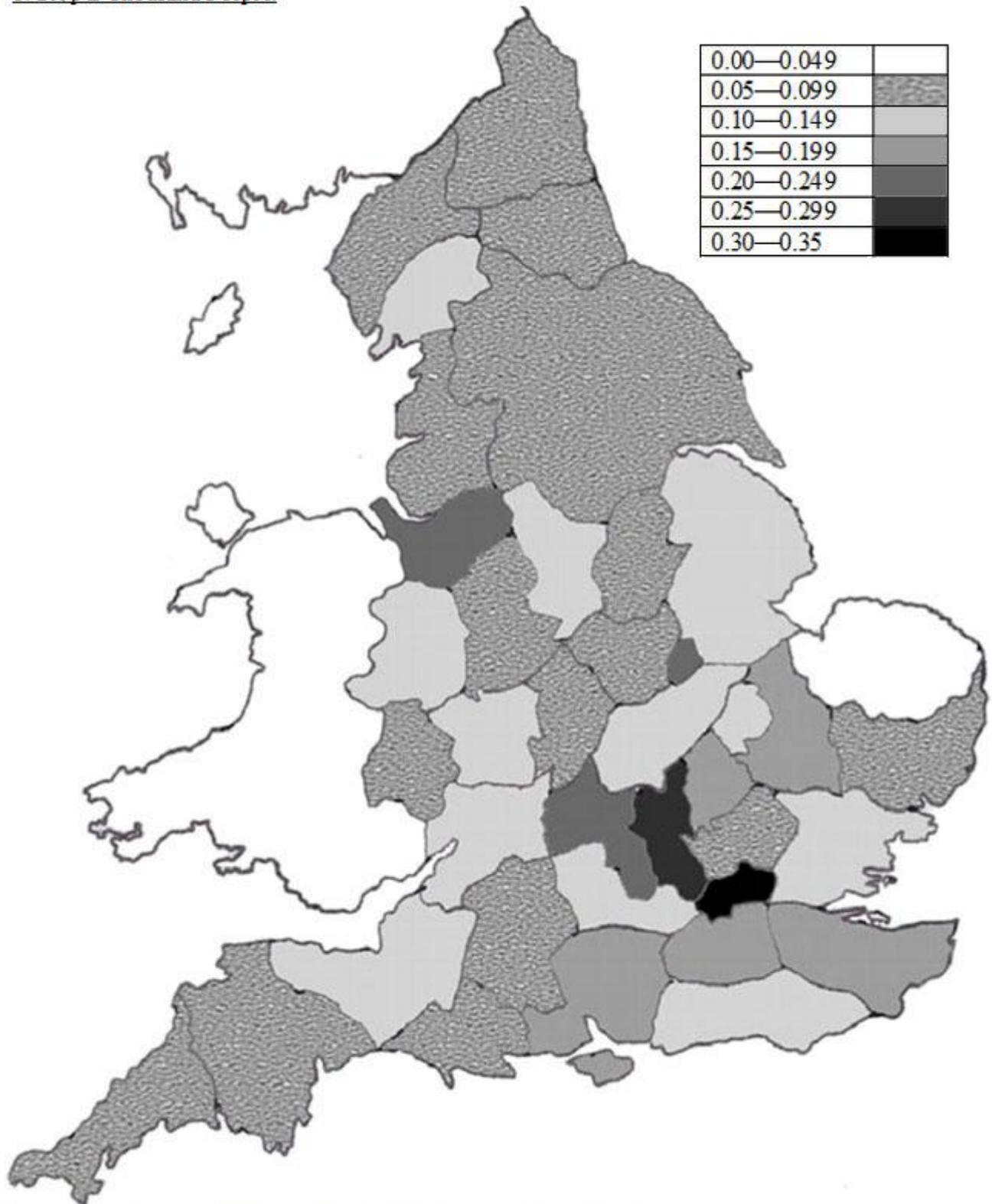
Despite declining rates of litigation in the English localities throughout the eighteenth century, the absence of union with Ireland until 1801, and the lack of wider engagement of Scots with Westminster, the Lords channelled litigation from across the British Isles into a centralised national framework, tying together their policy and law, and extending webs of

⁹⁴ For Eustace, Act 6 George I c.3 (Ireland, Private). For Hamilton's appeal, see PA,

HL/PO/JO/10/3/190/34-35; HL/PO/JO/10/6/20/1710. The Act was 2 George I c.4 (Ireland, Private).

⁹⁵ Horwitz, 'Exchequer and its Equity Jurisdiction', p. 171; Table 3.

Map 1: Geographic Distribution of English Appeals to the House of Lords between 1685 and 1720, per Thousand People.



Sources: *LJ*, xiv-xxi; PA, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments). Population figures for each county are from E. Wrigley, 'Rickman Revisited: The Population Growth Rates of English Counties in the Early Modern Period', *EcHR*, 62 (2009), pp. 711-35.

British patronage. The warnings of the first Scottish respondent to the Lords, Sir John Inglis, that ‘no alterations be made in the laws used in Scotland that concerns private rights’ were not repeated in any petitions.⁹⁶ The scale and geographical breadth of its business means that because of its functional role as high court, the House of Lords was becoming a more important arena for local communities to contest national, local and personal issues. The Lords could act as another branch to the developing ‘structural urbanism’ of the eighteenth century, concentrating activities at one shared location in London.⁹⁷

III: Who Came to the Lords: The Social Depth of Litigants

The impact of the House of Lords on the wider legal system and the identification of peers with the law was greater because its use was not limited to social elites. Historians have shown the extent there was an ability and willingness for all ranks of society and non-established interests to pursue their social superiors through litigation, and the Lords were no different to this.⁹⁸

The social descriptions of litigants, taken from their own descriptions in the appeals submitted, are shown in table two. The data includes all members who were party to the appeal, not just those first named in appeals. The effect of this is to increase the proportion of women and minors, but not to adopt this would be to underestimate the numbers that had a stake in the judgements of peers. A total of 2554 individuals were involved in legal proceedings that reached the House of Lords between 1685 and 1720. Cases could involve

⁹⁶ Ford, ‘Protestations to Parliament for Remeid of Law’, pp. 100-1; PA, HL/PO/JO/10/3/197/22,

Petition of Earl of Rosebery, 16 February 1708; HL/PO/JO/10/6/144/2450(a-c), Petitions of Same and John Inglis, March 1708.

⁹⁷ P. Withington, ‘Two Renaissances: Urban Political Culture in Post-Reformation England Reconsidered’, *HJ*, 44 (2001), pp. 246-67, at pp. 246-9, 254.

⁹⁸ See above, p.46, note 5.

Table 2: Social Descriptions of all Litigants Named in Appeals to House of Lords, 1685-1720

	Description	Raw Number	Percentage	Percentage Total for Category	Percentage in Chancery (1627)
Category 1	Temporal Peers	136	3.6	37	31
	Spiritual Peers	14	0.4		
	Knights	242	6.4		
	Esquires	578	15.3		
	Gentleman	280	7.4		
	Wives to above	150	3.9		
Category 2	Members of Corporations	43	1.1	14	[Professionals] 4.8
	Officeholders	40	1.1		
	Merchants	101	2.7		
	Persons in Law	24	0.6		
	Clergy	96	2.6		
	Sciences and Liberal Arts	27	0.7		
	Freeholders	23	0.6		
	Farmers	116	3.1		
	Shopkeepers, Tradesmen	19	0.5		
	Artisans	25	0.7		
	Military Officers	20	0.5		
Category 3	Wives	250	6.6	24	13.5
	Spinsters and Widows	196	5.7		0.9
	Common Seamen	1	0.02		
	Labouring People	18	0.5		
	Paupers	48	1.3		
	Creditors	160	4.2		
	Minors	219	5.8		15
Category 4	Undesignated Males	898	23.4	24	4
	Undesignated Females	53	1.4		5.4

Source: *LJ*, xiv-xxi; *PA*, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments). Data for the Court of Chancery is from Horwitz, 'Continuity or Change in the Court of Chancery', p. 44. This sample totals 446 litigants, compared to 2554 for the Lords.

large numbers—a disputed estate settlement had sixteen parties to it, a case over common land had fifty-four tenants involved, whilst credit cases also drew large numbers, seventeen

being involved in a long-running fraud case of *Sedgwick v. Hitchcock*.⁹⁹ Direct comparison with the pattern in lower courts is difficult as studies focus on earlier periods, but an attempt is included in table two with Horwitz's study of plaintiffs in Chancery in 1627. It may be seen the portion of those ranked gentlemen and above is greater in the Lords, but sixty to seventy percent of litigants in both courts were from the middling sorts and below. The members of the peerage, the titled gentry and their wives formed thirty-seven percent of the litigants, meaning that legal business in the house was not dominated by its own members, but was used by a wide range of interests. The large number of undesignated males and females—at twenty-four percent—are unlikely to add to the total of the first category, it being safe to assume titles would be used in such a context. The distribution of capital sums involved in cases supports this assertion, with nearly a third of cases dealing with sums of less than £600.¹⁰⁰ The smallest sum in dispute in an appeal to the Lords was ten pounds of rent arrears, with the defendant arguing it was 'beneath the dignity of the house to consider so small a matter', though peers proceeded to do so.¹⁰¹ These cases over small sums were either brought as test cases, or as conflicts that raised broader issues of status, policy, trust, and perceptions of a 'good' society. This made law a levelling force, with the use of credit, customary and contract law utilised by all levels of society.

The financial means of litigants were clearly important in determining their ability to appeal, but an appeal involving a particular interest or locality could draw upon the resources of a community. When he was involved in a tithe dispute, the minister of Haddington was

⁹⁹ PA, HL/PO/JO/10/6/118/2400, Petition of Earl of Bindon, 21 November 1707;

HL/PO/JO/10/1/422/250, Petition of Andrew Huddleston and Others, 8 April 1690;

HL/PO/JO/10/1/429/349, Petitions of *Sedgwick v. Hitchcock*, November 1690-January 1707.

¹⁰⁰ See Graph two, p. 89. Overall, fifty-six percent of appeals dealt with sums of less than £2000.

¹⁰¹ PA, HL/PO/JO/10/1/476/949(a), Answer of Philip Cecil North, 13 December 1696.

given fifty pounds ‘to defray the charges of this process....before the House of Peers’.¹⁰² ‘All the inhabitants’ of the town of Chatham, in dispute with its neighbour the City of Rochester over the holding of a market, ‘were ready to join a purse to defend themselves’, claiming to be able to raise ten times more than the city.¹⁰³ The Scottish appeal over the church at Elgin was financed by voluntary subscription organised by the Bishop of Edinburgh.¹⁰⁴ In addition, fourteen people were admitted as *informa pauperis*, meaning their representation by legal counsel and their costs were paid, and included five Irishmen, a Welshman, a Scot, and three women.¹⁰⁵

It is also notable that a high proportion of women were involved in disputes, constituting around twenty percent of litigants. This means that some travelled to London, challenging notions of restricted domesticity. Although this may be taken as a sign of the extent women knew of their legal rights and were relatively free to exercise them, their participation was narrowly based. The issues they were involved in were largely restricted to estate settlements, disputed wills and jointures, and credit relations. It seems reasonable to assume the law acted as a leveller for their participation, in that there were few references to their gender in the appeals submitted, and instead being able to use the discourse of law to advance their cases (in so far as the law itself was heavily gendered).

This data suggests middling sorts did use the Lords to advance their interests through litigation. The wider population recognised they could use the apparatus of the British state to

¹⁰² T. McCrie, ed, *Correspondence of Reverend Robert Wodrow* (2 volumes, Edinburgh, 1842),
Volume 1, p. 459.

¹⁰³ Centre for Kentish Studies, U38/Z/1, Weller Notebook, pp. 4-5.

¹⁰⁴ *HP 1690-1715*, Volume 2, pp. 913-14.

¹⁰⁵ *LJ*, xiv, pp. 368, 444, 653; xv, pp. 437, 689; xvii, p. 380; xviii, pp. 364, 662; xx, pp. 274, 277, 418, 564, 571, 592.

further their own interests, contributing to the decentralised nature of policy making. They were not politically isolated from the elites, their relations built solely on deference or patronage, but rather on negotiating and contesting the state through the law and legal discourse. Without their presence, litigation in the Lords would not have contributed to a pluralistic and deliberative politics to the extent it did.

IV: Conclusion

The scale and experience of litigation in the Lords by a variety of interests meant peers were becoming identifiable with legal redress across the ‘British Isles’. The title of ‘high court’ remained contested though, still being used to refer to parliament as whole or the lower courts, such as Chancery or Admiralty.¹⁰⁶ Petitions to the Commons continued to refer to it as the ‘high court of parliament’ into the 1710s.¹⁰⁷ The language of the ‘supreme’ court was more established, in referring to the process of impeachment that both chambers of parliament shared.¹⁰⁸ Contemporaries did not recognise a supreme judicial court, defining such a body as requiring ‘absolute and unlimited power’ in all cases—including criminal cases, and the ‘making’ as well as executing of laws.¹⁰⁹ But clearly the House of Lords in the civil legal system was the ‘supreme court of justice that can set the true and legal bounds and limits to the jurisdiction of inferior courts.’¹¹⁰ Lemuel Gulliver, when describing the English

¹⁰⁶ *An Account of the Principal Officers, Civil and Military, of England in the Year 1699* (1699).

¹⁰⁷ F. Bugg, *Considerations on the Quakers Solemn Affirmation* (n.p., 1715), p. 1.

¹⁰⁸ *Advice to the Gentlemen, Freeholders, Citizens and Burgesses, and All Others That Have a Just Right to Send Representatives to Parliament in South-Britain* (n.p., 1710), p. 1; Earl of Anglesey, *The Earl of Anglesey's State of the Government and Kingdom Prepared and Intended For His Majesty, King Charles II in the Year 1682* (1694), p. 19.

¹⁰⁹ R. Atkins, *An Enquiry into the Jurisdiction of the Chancery in Causes of Equity* (1695), p. 27.

¹¹⁰ *idem*, *A Treatise of the True and Ancient Jurisdiction of the House of Peers*, p. 1.

constitution to the King of Brobdingnag in his *Travels*, made sure to tell him the House of Lords was the ‘highest court of judicature, from whence there could be no appeal’.¹¹¹ In this respect, the Lords had an explicit function very different to the Commons, and one that was of growing importance in the eighteenth century.

The weakening of central authorities and the power of elites implicit in the functioning of the legal system and the presence of multiple-sites of decision making ensured that a plurality of interests was a clear feature of eighteenth-century society. Litigation was part of broader multi-institutional lobbying effort, making it harder for any interest to consolidate ‘victories’ in other parts of the state. Not all laws, judges, and peers were supportive of deliberation and a rule of law, but the difficulties of maintaining control through several layers of the legal system and the legislative process were increased after 1688. Middling sorts from England and Scotland were able to participate in the Lords as an unintended consequence of the Glorious Revolution, and perhaps as an intended result of the union in the case of Scotland. For the three or four dozen cases heard by the Lords each session, there were many more heard by lower courts, multiplying the participants and subjects involved in policy-making and its enforcement. The activity of these courts and the impact of the ‘great litigation decline’ on oligarchy must be examined elsewhere. Now we turn to consider the consequences of the ability of groups across the British Isles to pursue litigation to the House of Lords, particularly with regard to the relationship between litigation and state formation, the functioning of the British state, and its impact on the nature of oligarchy.

¹¹¹ J. Swift, *Gulliver’s Travels* (Oxford, 1986), p. 116. This can be construed as an attack on the

Declaratory Act of 1720, which Swift argued raised the question of whether ‘people ought to be slaves or no’, see Jonathan Swift to Charles Ford, 4 April 1720, in H. Williams, ed, *The Correspondence of Jonathan Swift* (4 volumes, Oxford, 1963), Volume 2, pp. 342-3.

CHAPTER TWO

Constructing the British State: Litigation, Union, and Oligarchy

The Lords command your words by *scandalum magnatum*, and your estates by judicial authority, and I hope you will not make them bigger than the crown, by this way of trial.

Sir Christopher Musgrave, 31 December 1691, in A. Grey, *Debates of the House of Commons* (10 volumes, 1769), Volume 10, pp. 223-4.¹

For two or three reigns have we not had warning that the government would be destroyed in Westminster-Hall? We have had learned judges and ignorant, and yet all have conspired our ruin.

Sir Henry Capel, 15 June 1689, in *Grey's Debates*, Volume 9, p. 323.

The previous chapter demonstrated the range of British involvement in the House of Lords through litigation. This chapter considers the ends to which their participation was put—namely the challenging and amending of law and policy, negotiation of social relationships and determining the nature of union after 1707. The decisions of peers helped to destabilise prerogative forms of property rights—particularly crown patents and charters—and the decisions of lower courts, encouraging the shift towards statute law. Through this, the Lords ensured the governing of mainland Britain occurred under a multi-layered institutional framework that limited the power of elites and ‘locked’ them into a process of negotiation and a rule of law. The ‘reactive state’ was not only present in legislation, but litigation as well.

As demonstrated in the previous chapter, the presence of Scots as appellants at Westminster was one of the most notable aspects of the Lords’ role. Whilst legislative activity was overwhelmingly an English phenomenon, Scottish and Irish appeals were heard in increasing numbers. Despite the separate Irish parliament and the apparent protection of

¹ These comments are also attributed to Charles Montagu, see H. Horwitz, *Parliament, Policy and Politics in the Reign of William III* (Manchester, 1977), p. 74. The debate was over a bill to create a new court for the trial of peers in times when parliament was not sitting.

many Scottish institutions in the union articles, some steps were taken towards a more integrative union. Scottish interests pursued litigation with the aim of amending previous acts of the Scottish parliament and the decisions of the institutions that dominated Scotland after 1707. The British state was not solely based on shared access to empire, but also a culture of ‘North Britishness’ that Colin Kidd has identified, with some interests seeking to move towards greater commonality between the two nations. Litigation was also significant for English and Welsh interests in strengthening the capacity for localities and interests groups to influence policy, aiding the construction of political stability by the 1720s within a pluralistic framework of negotiation. Eighteenth-century political stability rested, in part, on the autonomy of local communities from central government; something the legal system helped provide and protect.

Being able to challenge ‘state’ policy had implications for the nature of the state and the political culture in which elites, dominant interests and ordinary Britons debated and enforced them. It ensured the institutions of the state were drawn upon by a wide range of social and geographical interests. People from all ranks and interest used the law, although unequal in their social distribution. In this respect, the law offered a means for non-state or elite groups to shape the state or local structures, participating in the ‘discourse on government’ and reflects the wider participatory culture of late seventeenth-century England.² Like bills and acts, legal appeals reflected disputes between two persons,

² M. Braddick and J. Walter, eds, *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001); M. Goldie, ‘The Unacknowledged Republic’, in T. Harris, ed, *The Politics of the Excluded, 1500-1850* (Basingstoke, 2001); S. Hindle, *The State and Social Change in Early Modern England, 1550-1640* (Basingstoke, 2000); D. Lemmings, *Law and Government in England in the Long Eighteenth Century: From Consent to Command* (Basingstoke, 2011), p. 77.

companies, corporations and communities that could have general importance.

Contemporaries saw the judgements of the Lords as ‘no way inferior...to the express positive text of an act of parliament’ and used them for the same ends.³ As a result, conflicts over the regulation of water rights, overseas trade, public finance, land ownership and credit relations were fought out in the courts, rather than resolved by an act of parliament.

These two features of extensive participation and the ability to amend policy through litigation lead us to consider the nature of the eighteenth-century oligarchy. Unlike the interpretation of the law offered by the Warwick School in *Albion’s Fatal Tree*, where it was one of the tools used by the oligarchy to maintain its control, this chapter argues the law was a fundamental part of negotiating oligarchy. The legal system multiplied the avenues and difficulties of monopolising power and provided a set of ‘rules’ to ensure deliberative engagement with ‘facts’ and alternative perspectives did occur.

This chapter first considers the use of litigation as an alternative to legislation, particularly in relation to England and Scotland. It then examines the disruptive impact of litigation on property rights, encouraging a shift of propertied English interests towards legislation, before concluding by setting out the implications of litigation on the nature of oligarchy. Ultimately, the legal system helped negotiate and limit the power of both dominant and minority interests during the eighteenth century with the minimum of force.

I: Parliamentary Intrusion: Litigation and Governing in England and Scotland.

Policy was not just created or amended through parliamentary statute in the eighteenth century. Litigation frequently acted as a forerunner, cause or challenge to legislation, and was capable of reflecting the same clash of interests and communities. This ensured there was a

³ E. Wynne, *Eunomus, or Dialogues Concerning the Law and Constitution of England* (4 volumes, 1785), Volume 3, p. 193.

circular model of law creation, with no absolute supremacy of legislators or judges. Instead, litigation created a process of dialogue and communication between different parties, beginning with the initial decision to pursue a policy in a community, and continuing through parliament, courts, and ultimately into the wider public sphere.⁴

The subjects of appeals to the House of Lords were many and varied. Table three shows the subjects of cases from different parts of the British Isles, in order of the commonality of the subject appealed. Reflecting the limited nature of appeals from Ireland and Wales—with 130 of the 141 Irish appeals and thirty of the forty-four Welsh appeals concerned with estate or credit issues—this chapter focuses on appeals from England and Scotland, though English litigation had a stronger relationship with legislation, creating a stronger deliberative system.⁵ In both scale and breadth, appeals to the Lords had the most substantive impact on the shape of their states and society. Compared to the lower courts, the Lords heard more cases that can be classified in a ‘miscellaneous’ subject category. Whilst land and estate titles were responsible for around sixty-five percent of the cases heard by Chancery and Exchequer in 1685 and 1735, they made up only forty-four percent of the cases heard by the Lords. Debt cases, the second largest category of litigation in the two courts, contributing between sixteen and twenty percent of their cases, provided just over twenty

⁴ See M. Van Hoecke, ‘Judicial Review and Deliberative Democracy: A Circular Model of Law Creation and Legitimation’, *Ratio Juris*, 14 (2001), pp. 415-23, at pp. 420-1. For recent studies of policy in the round, see W. Pettigrew, ‘Constitutional Change in England and the Diffusion of Regulatory Initiative, 1660-1714’, *History*, 99 (2014), pp. 839-63; P. Gauci, ed, *Regulating the British Economy, 1660-1850* (Farnham, 2011), esp. Chapters 1, 4, 7, 10.

⁵ The subjects of other Welsh cases are: 7 tithe, 3 privilege, 3 office-holding and 1 business dispute.

Table 3: Subjects of Appeals to the House of Lords, 1685-1720.

Subject	Number of Appeals		
	England and Wales	Scotland (From 1707)	Ireland
Land titles			
Estate Settlement	268	25	51
Land Title and Rents	150	12	44
Fortified Estates		42	2
Business and Credit			
Business and Market Regulation	104	14	
Debt	185	24	33
Communications	3		
'Government'			
Corporation Powers and Privileges	2		
Elections	2		
Poor Relief	10		
Public Finance	7	2	4
Office-holding	29	2	
Privilege	30		
Treason and Riot	2		
Religion			
Liturgy	1	2	1
Tithes	29	4	
'Personal'			
Family Dispute	2		
Unknown			
Unknown	19		

Sources: PA, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments); HL/PO/JU/4/1-3, Appeal Cases. Those listed under England and Wales include cases with no known location, but from the originating court it is clear that they came from either England or Wales.

percent of peers.⁶ The third largest category was dealing with business relations and the operation of markets, and provided around twelve percent of the total cases heard the Lords. The house reflected the interests of those capable of mobilising the resources to take a case there, encouraging a larger proportion of what could be termed 'miscellaneous' subjects, rather than being dominated by the disputes between individuals of lower propertied ranks that reached the lower courts in greater numbers.

⁶ H. Horwitz, 'Chancery's "Younger Sister": The Court of Exchequer and its Equity Jurisdiction, 1649-1841', *HR*, 72 (1991), pp. 160-82, at p. 171, Table 2.

Litigation is also an understudied means of how property and capital was distributed. From the details provided by petitions, an estimated income of £100,000 each year and a capital sum totalling £2.9m was adjudicated by the House of Lords between 1689 and 1720.⁷ The distribution of capital is shown in graph two. This was the equivalent of raising an additional land tax at the rate of six shillings in the pound for one year. If these two figures are combined by ‘converting’ income to capital at a rate of eighteen years purchase, the total is £4.7m, or more than two land taxes.⁸ This means an average of £156,000 was subject to the threat of re-settlement or direction by peers annually between 1689 and 1720. The Lords heard only a tiny minority of cases—Henry Horwitz estimated around 90,000 bills of complaint were heard by the Exchequer between 1649 and 1819, with Chancery perhaps experiencing levels four times as high. Whilst the Lords saw an average of thirty-four appeals introduced each session, the Exchequer heard an average of 740 bills each year during William’s reign.⁹ The economic impact of litigation was potentially huge—a simple (and flawed) estimate would be £3.3m was subject annually to the Exchequer court, if it simply copied the pattern in the Lords during William’s reign. This can be compared with annual tax receipts of between two and five million in the same period (around six to nine percent of national income).¹⁰ As a further comparison, around £400,000 was estimated by the board of

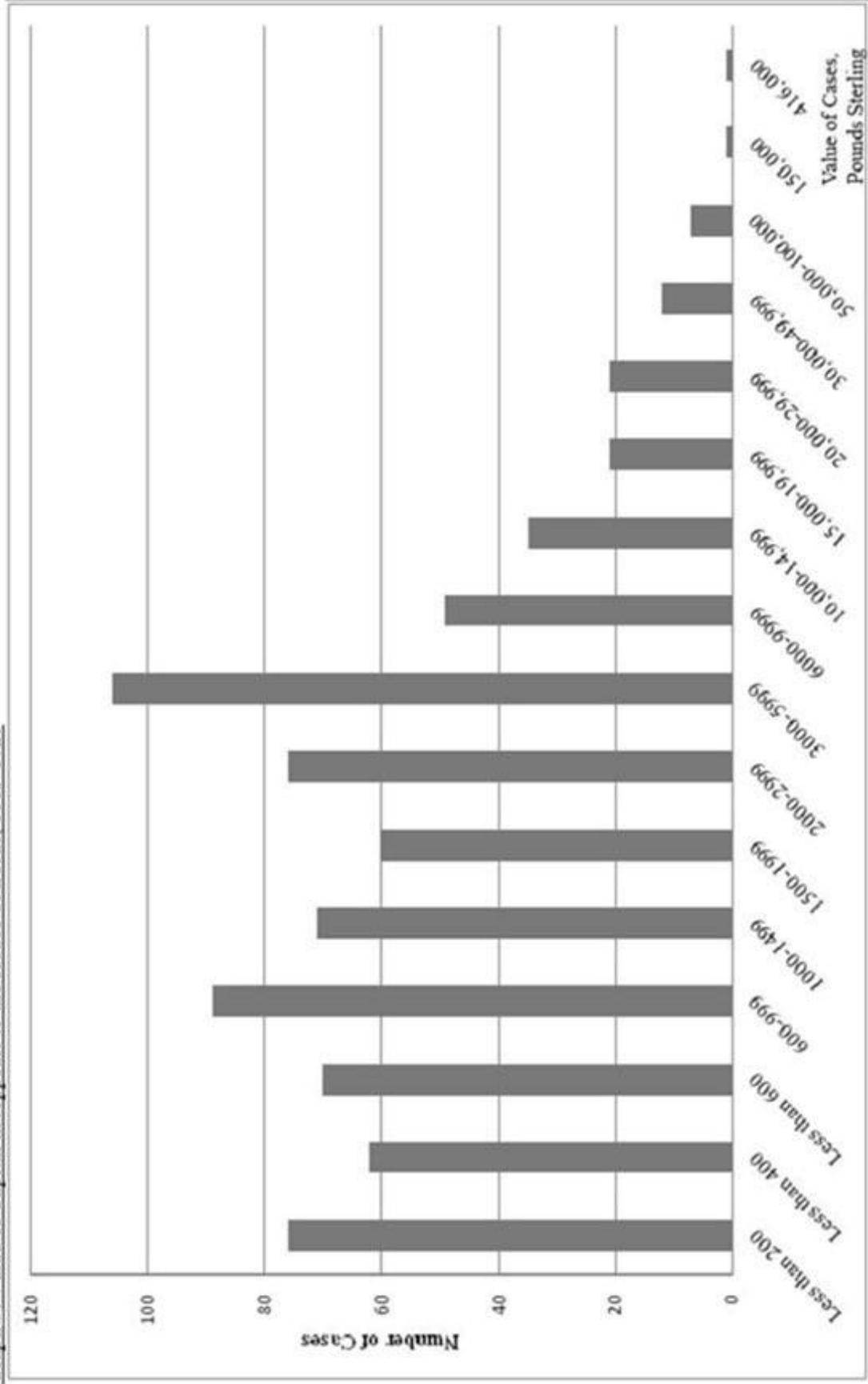
⁷ For around a tenth of cases, the values are unknown. For cases where the sum was in dispute, an average figure has been taken.

⁸ Land was commonly sold at a rate of eighteen years purchase in the 1690s, see C. Clay, ‘The Price of Freehold Land in the Later Seventeenth and Eighteenth Centuries’, *EcHR*, 27 (1974), pp. 173-89. The land tax was usually raised at the rate of four shillings in the pound.

⁹ Horwitz, ‘Exchequer and its Equity Jurisdiction’, pp. 168-9. The annual totals for the Court of Chancery are more difficult to establish, see *Ibid*, pp. 166-7.

¹⁰ P. O’Brien, ‘The Political Economy of Taxation, 1660-1815’, *EcHR*, 41 (1988), pp. 1-32, at p. 4, Table 2.

Graph 2: Value of Capital in Appeals to the House of Lords, 1685-1720



Source: *LJ*, xi-xii; *PA*, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments), and HL/PO/JU/4/1-3, Appeal Cases.

trade to be spent annually on poor relief in 1696, rising to £700,000 in 1750, redistributing around one percent of national income.¹¹ Litigation is likely to have been a far more important means of redistributing national income—or at least threatening to do so. Access to the law, custom and pre-statutory legal conventions were potentially more significant as taxes set by parliament. When it came to ruling Britain, the legal system played an important role in negotiating political and economic life, and the statutes passed in parliament.

The remainder of this section focuses on specific appeals to the Lords. Because of the relatively small amount of Scottish legislation in the first decades of union, these remarks focus on Scotland in the first instance before turning to the nature and significance of English appeals. In both kingdoms, litigation was an effective avenue for interests and minorities to seek redress.

A. Negotiating Scotland: Scottish Appeals after the Union.

Accounts of Scottish attitudes towards Westminster have tended to focus on what divided Scots from Britain in the eighteenth century. Protection for Scots law, the Presbyterian Church and Convention of Royal Burghs suggest a relationship built, at best, on mutual disengagement, with empire the site where a British identity was created. But the presence of appeals to the Lords offers a further explanation for the survival of union, one not based on the autonomy of Scottish domestic institutions. Scottish appeals were significant not only for the number, in the absence of much legislation originating from the county, but also because they impacted on the articles of union. Attitudes from English and Scottish appellants

¹¹ P. Slack, *The Invention of Improvement: Information and Material Progress in Seventeenth-Century England* (Oxford, 2015), pp. 63, 176.

towards these articles suggest these were perceived as far from ‘fundamental’ laws and did not necessarily protect Scottish interests and institutions from intervention and alteration.¹²

Striking at the heart of the articles was the appeal the Episcopal minister James Greenshields brought to the Lords in 1710. He had been imprisoned in 1709 for conducting worship without the authority of the Presbyterian church, who suppressed his reading of the English prayer book, occurring provocatively opposite the General Assembly in Edinburgh.¹³ Greenshields was part of a wider movement, reflecting the suppression of Episcopacy that occurred after the Glorious Revolution in Scotland.¹⁴ By 1709, the English service was being set up ‘very busily in the north’ at Inverness, Elgin and Montrose.¹⁵ His appeal was a clear ‘test case’ for the Episcopal interest. An Episcopal minister from Angus was also put forward to appeal to the Lords, being ‘put upon it by others’, though the timing was not right, with the Presbyterian Robert Wodrow believing the appeal ‘at this juncture I hope...would be thrown over the bar with contempt’.¹⁶ A Fife minister in 1713 also considered a later appeal to the Lords but did not pursue it, having ‘scandals he is charged with’.¹⁷ William Dunbar and John Skinner also made attempts before Greenshields; Skinner having ‘pretended to appeal to

¹² Bob Harris shows the treaty could be used to protect Scottish interests from British intervention in his ‘Scots, the Westminster Parliament, and the British State’, in J. Hoppit, ed, *Parliaments, Nations, and Identities* (Manchester, 2003), pp. 130-2; 136-7.

¹³ PA, HL/PO/JU/4/1, James Greenshields, Appellant; The Magistrates of Edinburgh, Respondents, p. 1.

¹⁴ The wider Scottish context can be found in T. Clarke, *The Scottish Episcopalians, 1688-1720* (PhD, Edinburgh, 1987).

¹⁵ T. McCrie, ed, *Correspondence of Reverend Robert Wodrow* (2 volumes, Edinburgh, 1842), Volume 1, pp. 30-1.

¹⁶ *Ibid*, Volume 1, p. 82.

¹⁷ *Ibid*, Volume 1, pp. 457-8.

the queen and the House of Lords'.¹⁸ Although none of these appeals reached the Lords, they show the extent of division in Scotland over the issues raised by the case Greenshields brought. Echoing the English practice on legislation there was already an agent for the Episcopalians at Westminster, James Gray, one of whose roles it was to answer attacks in the press on the broader campaign.¹⁹ Opponents mobilised 'addresses' in Edinburgh which were claimed to have been 'subscribed by some thousands of hands' against the case.²⁰

The Lords eventually heard the appeal, having delayed it because of proceedings against Henry Sacheverell and the slow response of the Edinburgh magistrates, peers ultimately deciding to reverse the judgement of the Lords of Session. The end result of the appeal of 1710 was legislative action, litigation having highlighted an issue requiring redress. Following further lobbying by Greenshields and the publication of fourteen pamphlets surrounding the case, the Episcopal Communion Bill of 1712 was introduced, one of the few Scots acts of the period.²¹ Episcopalians could now meet unhindered to use the English liturgy if their clergyman had taken the oath of allegiance. The bill relied on English support, with Bishop Nicolson writing to Archbishop Tenison that 'they shall...be able to procure for them an act of toleration in the very next session of parliament'.²² Significantly, the related Patronage Bill found support from all sides, with only three Scottish peers voting against at the third reading.²³ The stakes in the bill were clear with Mr Dod, an English lawyer arguing

¹⁸ Clarke, *Scottish Episcopalians*, p. 492.

¹⁹ Bodleian Library, Ballard MSS 36, James Greenshields to Arthur Charlett, 27 December 1712, fol. 48.

²⁰ *Wodrow Correspondence*, Volume 1, pp. 30-1.

²¹ Nicolson, *Diaries*, p. 573. The figures come from the *English Short Title Catalogue*.

²² BL, Add MSS 6116, Bishop Nicolson to Archbishop Tenison, 13 October 1709, fol. 17.

²³ Bodl., Ballard MSS 36, James Greenshields to Arthur Charlett, 13 April 1712, fol. 126.

against it in committee, stating ‘this is a mighty alteration from the Church of Scotland’ which ‘was to continue as before the union’.²⁴ It was a significant act, being seen as ‘preventing the disturbing those of the Episcopal communion in Scotland...weakening at least, if not altering...the laws made for its preservation and securing’.²⁵

But the ‘circular-process’ of decision-making did not end with these two acts. The appeal ruling and the subsequent legislation were strengthened by a later appeal to the Lords, involving a dispute over the church at Elgin. The Lords determined Episcopalians were free to use the church that they had begun to do ‘soon after the late act for tolerating that communion’.²⁶ Greenshields saw the case as being ‘of mighty use to us’.²⁷ Like his case, the appeal divided Scots peers, but not above ten peers from any nation were for the Presbyterian cause in the case, Greenshields was told by a peer.²⁸ The jurisdiction of the Presbyterian Church had been weakened by an appeal to English peers at Westminster, given authority in statute, and strengthened by further appeal. The toleration did not violate completely the union because Presbyterianism remained the established church; but it lost many of its privileges and its monopoly on tolerated faith in Scotland, clearly breaking from acts passed before 1707 to secure its position. These decisions further divided Scotland into two

²⁴ PA, HL/PO/JO/5/1/48, Manuscript Minutes, 13 February 1712.

²⁵ PA, HL/PO/JO/10/6/221/2896, Petition of William Carstares and Others, 11 April 1712.

²⁶ PA, HL/PO/JO/10/3/203/11, Petition of George Innes and the Bailiffs of Burgh of Elgin, 17 April 1713.

²⁷ Bodl., Ballard MSS 36, James Greenshields to Arthur Charlett, 15 July 1713, fol. 153.

²⁸ Bodl., Ballard MSS 36, Same to Same, 15 July 1713, fol. 153.

confessional groups, but after the 1715 rising the tory and jacobite climate declined to create a more stable, but still divided, religious culture in Scotland.²⁹

These appeals formed two of several that impacted on the articles of union, being a ‘prize’ of integrative union for some interests in Scotland. Economic issues were also commonly dealt with through litigation, and altered the articles relating to the power of the Convention of Royal Burghs. Article 11 of the Treaty of Union stated ‘that the rights and privileges of the Royal Burghs in Scotland as they are, do remain entire after the union’, but through interest groups bringing appeals challenging local magistrates and their attempts to resolve disputes in the convention, the Westminster Lords did alter its decisions. The case of the Edinburgh *Butchers v. Candlemakers* (1715) covered similar issues to acts of parliament, such as an *Act for Making Billingsgate a Free Market for the Sale of Fish* (1698), both dealing with authorities not being allowed to set the price of a certain good.³⁰ By arguing the ‘old laws’ of the 1540s and 1550s ‘are much altered by increase of trade’ and ‘inconsistent even with the British acts since the union’, the butchers’ counsel persuaded peers to reverse the judgement of the Court of Session and the decision the Convention had supported.³¹ The case of the butchers lay on an act of 1695 that meant they could not sell their tallow ‘until the candle makers and burgesses of Edinburgh had been served’, and it was this that was

²⁹ A. Raffé, ‘Presbyterians and Episcopalians: The Formation of Confessional Cultures in Scotland, 1660-1715’, *EHR*, 125 (2010), pp. 570-98.

³⁰ PA, HL/PO/JO/10/3/206/29, Petition of Members of the Company of Butchers of the Burgh of Edinburgh, 11 May 1715; HL/PO/JO/10/6/254/3880(b)(c), Petitions of Butchers and Tallow Chandlers of Edinburgh, 19 May and 9 June 1715.

³¹ *Corporation of Butchers in Edinburgh: The Appellants Case* (Edinburgh, 1715), pp. 1-2; *Mayor, City Council, and Corporation of Tallow Chandlers: The Respondents Case* (n.p., 1715), p. 3.

overturned.³² The Court of Session had enforced this act previously, ruling in a similar case in 1698 that magistrates could set the price of wine, and the decision of the Lords meant the price-setting policy of the Edinburgh magistracy was temporarily halted until the 1730s, when again the candle makers returned to the Court of Session and lost over the question of profit margins.³³ The Lords had for the medium-term altered the direction of Scottish political economy, as it had been set and regulated by the convention.

Challenging the power of the Convention of Royal Burghs was also the case in a later appeal in 1758 to the Lords, one of many that subjected their decisions to British legal oversight and challenge. It was held to be the privilege of freemen of the burghs to undertake foreign trade in Scotland, which had been confirmed by Scottish acts of 1672 and 1693, and by the Lords of Session on several occasions.³⁴ There were persistent attempts by unfree traders to challenge this from the Restoration onwards, but their attempts to abolish their monopoly on the export of salt and leather were defeated in the late 1670s, and the Glorious Revolution saw the restoring of the privileges of the burghs.³⁵ As in England, smuggling would have undermined their effectiveness, but the legal situation went unamended until the late 1750s. A dispute between the Burgh of Kirkwall and 110 inhabitants of Stromness, led

³² PA, HL/PO/JO/10/3/205/29(a), Petition and Appeal of Company of Butchers of Edinburgh, 11 May 1715.

³³ W. Gray, 'The Incorporation of Candlemakers of Edinburgh, 1517-1884', *The Book of the Old Edinburgh Club*, 17 (1930), pp. 91-142, at p. 103; R. Houston, *Social Change in the Age of Enlightenment: Edinburgh 1660-1760* (Oxford, 1994), pp. 364-5.

³⁴ *Decisions of the Court of Session from February 1752 to the end of the Year 1756, Collected by Mr Thomas Miller* (1760), p. 279; *The Petition of Thomas Loutit of Tenston, Merchant in Kirkwall to the Lords of Council and Session* (Edinburgh, 1758), p. 1.

³⁵ T. Keith, 'The Trading Privileges of the Royal Burghs of Scotland (Continued)', *EHR*, 28 (1913), pp. 678-90, at pp. 681-2.

by John Johnson and Alexander Graham, had seen the Orkney Islands dividing into two parties.³⁶ The unfree merchants of the town of Stromness sought to challenge the monopoly of Kirkwall Burgh, and the Lords determined the burgh could not confiscate their goods, enabling Stromness to legally trade overseas. A legal appeal to Westminster, therefore, challenged the interpretation of the acts of the Scottish Parliament and the established powers of burghs.

There was a second reason why the case was a question of ‘high interest to the state of the burghs’, who spent more than £400 defending their rights.³⁷ This sum was second only to the sum expended on procuring a linen act in the same decade, being its most substantial spending between the 1730s and the late 1760s. The impact of the appeal was not only to overturn the monopoly of freemen of the Royal Burghs of overseas trade, but also the collection of taxation in Scotland, the merchants of Stromness exempting themselves from taxes collected through the burgesses of Kirkwall. The situation before the union was that the land tax was collected from the Royal Burghs in return for their legal monopoly on trade, and this remained unaffected by the union of 1707. Lower court cases regarding the payment of customary taxes to the burgh had also been fought in the mid-1740s, but failed.³⁸ The result of the appeal to the Lords was that around sixty unfree burghs went untaxed, with no means to seize their goods or limit their economic activity. This remained the case well into the 1790s, with failed attempts to address the inequality of the tax burden between free and

³⁶ *Decisions of the Court of Session for the Year 1752 to the Year 1768, Collected by a Member of the Court* (Edinburgh, 1780), pp. 123-4.

³⁷ J. Marwick, *Convention of the Royal Burghs of Scotland* (7 volumes, Edinburgh, 1870-1918), Volume 6, p. 523; *Municipal Corporations (Scotland) Appendix* (London, 1836), p. 16.

³⁸ *Information for John Johnston and Others, Inhabitants of Stromness in Orkney* (n.p., 1744).

unfree burghs in legislation throughout the century.³⁹ Their legal victory helps to explain the low yields of taxation in Scotland in the eighteenth century, and another power of Scottish institutions altered after 1707 by Scottish interests engaged at Westminster.

Edinburgh was one of the common points from which Scottish appeals came, with litigants seeking to challenge the decisions of the local magistracy over economic regulation. William Paterson, a businessman also involved in the Darien scheme, sued the magistrates over the farming of the city's tax on beer and ale.⁴⁰ This was a fund used to finance the building of harbours and roads.⁴¹ The appeal resulted from tensions in Edinburgh that were unable to be resolved through negotiation with the magistrates; Paterson having 'repeatedly [visited] all the members of council...at the doors of the council chamber' and their houses, arguing his loss of the right was 'illegal'.⁴² The lease to farm the debt had instead been offered to Sir William Johnson. Magistrates petitioned for an act at Westminster in 1717, but the struggle continued into the 1720s between the 'opposite interests' of 'Mr. City and Mr. Two-Penny Duty'.⁴³ The Lords of Session were appealed to again in 1721 regarding the collection and use of the duty, the dispute continuing to threaten the viability of Edinburgh's finances and its social policy.⁴⁴

³⁹ W. Ward, 'The Land Tax in Scotland, 1707-1798', *Bulletin of the John Rylands Library*, 37 (1954-5), pp. 288-308, at pp. 292-3; Keith, 'The Trading Privileges of the Royal Burghs', p. 688.

⁴⁰ PA, HL/PO/JO/10/3/201/13, Petition of Alexander Paterson, 2 February 1712.

⁴¹ PA, HL/PO/JO/10/6/217/2851(b)(c), Petition of Alexander Paterson and Answer of Magistrates, 1712.

⁴² A. Chambers, *Part of the Sequel of the Historical Account of the City of Edinburgh's Duty on Ale* (Edinburgh, 1752), pp. 5-7.

⁴³ *CJ*, xviii, p. 546; *A Historical Account of the City of Edinburgh's Duty upon Ale and the Management of Thereof* (Edinburgh, 1752), pp. 18-19.

⁴⁴ *Account of the City of Edinburgh's Duty*, pp. 8, 19.

Another appeal from Edinburgh dealt with the interpretation of the acts of union in terms of free trade to England on the implementation of a crown patent regulating printing in Scotland.⁴⁵ The dispute over the monopoly of printing had its origins in the Restoration, with the patent renewed at the death of each monarch. It was established during the reign of Queen Anne that the licence to import paper and print official bibles, acts of parliament and other government papers, would be shared amongst three printers.⁴⁶ This had only been established after a long period of litigation, but the uneasy truce was broken by the removal of James Watson from the shared patent at the accession of George I. Watson's case was upheld by the Court of Session and the House of Lords in 1718, being part of a process of achieving greater liberty of trade and competition in the Scottish printing industry, and illustrating the weaknesses of crown patents in this period. It was held the patentees had the sole right to print books, particularly bibles, making English imports into Scotland illegal, but 'all this [was] to be waved, the treaty of union has undoubtedly superseded the patent', with a 'free intercourse of trade' meant to be occurring as a result of the fourth article of union.⁴⁷ It was seen as a test case of whether 'Edinburgh is now a much a part of Great Britain, as Oxford was a part of England', seeking to move towards an English model of printing.⁴⁸ Peers decided the words of the patent that enabled Watson to 'sell and dispose them in any part of

⁴⁵ A useful background to the dispute is A. Mann, *The Book Trade and Public Policy in Early Modern Scotland, c. 1500-c.1720* (PhD, 2 volumes, Stirling, 1997), Volume 1, pp. 214-15.

⁴⁶ *idem*, 'Book Commerce, Litigation and the Art of Monopoly: The Case of Agnes Campbell, Royal Printer, 1676-1712', *Scottish Economic and Social History*, 18 (1998), pp. 132-56, at pp. 140-1.

⁴⁷ *A Previous View of the Case Between John Baskett...and Henry Parson* (Edinburgh, 1720), p. 11.

⁴⁸ *Ibid*, p. 30.

his majesty's United Kingdom or elsewhere' would be struck out, enforcing the union articles.⁴⁹

Scottish appeals throughout the eighteenth century involved communities, not just individuals, and complicates the picture of a Scottish identity relying, in part, on a separate legal system. In contrast to the English union with Wales, Scotland retained some of the aspects of a sovereign state, but not as far as has been stressed.⁵⁰ Forms of integration were sought. The perusal of Scottish aims and interests occurred within a British framework, being far from a situation dominated by 'mutual neglect'. This pace of interaction was unprovoked from England, rather advanced by communities and interests in Scotland and ensured the institutions that dominated Scotland after 1707 could be challenged, aiding the maintenance of a pluralistic politics. But, this was a system that retained a respect for national differences, and the pace and nature of change reflected the strength of interests in different kingdoms.

B. English Interests, the 'County Community' and Litigation.

In England the 'circle' of deliberation was most complete, appellants being able to take policy issues from their establishment as customary rights, to the courts, and into statute. Like Scottish appeals, local and interest-group rivalries resulted in many of these appeals against dominant elites and interests south of the border. The nature of litigation, being demand led, meant local or regional identities remained a powerful force in shaping and giving meaning to disputes, maintaining political pluralism despite the relative decline of party. Local jealousies continued to be a key cause of conflict during this period, and as will be shown in later chapters, interacted with petitioning to ensure those 'out of doors' could influence politics and the state. As Keith Snell has written, this 'culture of local xenophobia' is likely to

⁴⁹ *LJ*, xx, p. 610.

⁵⁰ H. MacQueen, 'Regiam Majestatem, Scots Law, and National Identity', *SHR*, 74 (1995), pp. 1-25.

have been on the increase during the eighteenth century, with state structures conducive to the representation of such communities.⁵¹

Many cases originated in the desire to move from relations dependent upon custom and convention to written law. Counsel in one case stated they had gone to Chancery to ‘establish customs by decree’, and many of these cases were attempts to move these practices from customs existing only in mind, to something that would survive and be enforceable in law through the institutional record of the court.⁵² These cases over small sums were often about social standing, and a means of highlighting social differentiation based on influence over tenants. Andrew Huddleston in Cumberland was one such landowner who attempted to maintain his ‘feudal’ rights through several disputes with his tenants. He successfully defended his right to collect fines from 400 tenants who had ‘infringed the ancient customs’, but his enclosure of lands to compound his cattle was struck down by the House of Lords.⁵³ The appeal had been brought by fifty-four tenants, only two of whom were literate, successfully maintaining the access they and their predecessors had ‘from time out of mind’.⁵⁴ Huddlestone also lost a case against another of his tenants, William Todhunter, when he attempted to enforce fines and ‘ancient rents and [the] perform[ance] [of] such services...

⁵¹ K. Snell, ‘The Culture of Local Xenophobia’, *Social History*, 28 (2003), pp. 1-30.

⁵² PA, HL/PO/JO/5/1/27, Manuscript Minutes, 29 January 1692. These arguments were also made in an earlier period—see J. Potvin, *Peers Waging Law: Reconsidering ‘Crisis’ at the Tudor-Stuart Transition* (PhD, Brandeis University, 2012), pp. 187-8.

⁵³ PA, HL/PO/JO/10/3/184/12, Answer of Joseph Huddlestone and Others, 24 October 1691.

⁵⁴ Cumbria Archives, D HUD 1/221, Huddlestone v. Mounsey Agreement (1680s), p. 2; D HUD 1/21a, Huddleston v. Mounsey and Tenants, 1683?; PA, HL/PO/JO/10/1/422/250, Petition of Andrew Huddlestone, 8 April 1690; HL/PO/JO/10/3/184/1, Answer of William Mounsey and Others, 30 April 1690.

[as the] custom' dictated.⁵⁵ The landowner, therefore, largely failed to continue patron-client relations and paternalist mode of labour, with the law forming a means to negotiate their terms of relations.⁵⁶ The sums at stake were insignificant, and the case was rather about authority, with John Mounsey writing that Huddleston was 'wonderfully offended at it and threatens that Mr Huddleston shall yet spend £500 in revenge before the suit rests', having already spent £700.⁵⁷ These disputes were occurring elsewhere in the country. Graziers sued Thomas Joyce for 'damages' to 123 sheep, who had been confiscated for three days to underline their claims to grazing.⁵⁸ The case between Herbert and Le Brune revolved on the question of whether duties demanded by the lord of the manor on every tenant were valid, arguing they were 'singled out of the whole lordship' and the majority of the duties were 'acts of kindness done by some tenants...and not obligatory'.⁵⁹ The respondent's counsel in a case in Yorkshire where the inhabitants were forced to ground their corn in one mill, argued 'these poor people are run through the expense by a rich lord'.⁶⁰ Peers did defend the rights of landowners in the case of *Ranger v. Ashmead* (1702), reversing, but only by eleven votes to ten, the decision of the Exchequer that tenants could hold the Lord for trespass if timber was cut down on their property, making the tenant subservient to the Lord.⁶¹ The same trend was

⁵⁵ PA, HL/PO/JO/10/3/194/3, Petition of Andrew Huddlestone, 11 November 1703.

⁵⁶ E.P. Thompson, 'Patrician Society, Plebeian Culture', *Social History*, 7 (1974), pp. 328-405.

⁵⁷ Cumb., D HG/182, John Mousney to Penrith, 1689.

⁵⁸ PA, HL/PO/JO/10/1/434/422(a), Answer of Richard Fowkes and Others, 14 November 1691.

⁵⁹ PA, HL/PO/JO/10/1/41/497, Petition of Charles Herbert and Bartholomew Evans, 22 December 1691.

⁶⁰ PA, HL/PO/JO/5/1/38, Manuscript Minutes, 20 February 1703.

⁶¹ PA, HL/PO/JO/5/1/37, Manuscript Minutes, 27 April 1702.

present in Scotland, where James Haliday seized the property of David Keltie in lieu of local duties, but through the tenants never submitting an answer, no judgement was possible.⁶²

This was also echoed in the large number of tithe cases peers heard. By clergy suing over tithes, the gentry were reminded to support the established church. The case of *Goodridge v. Crossmann* (1689) saw William Goodridge appealing a payment of forty-eight pounds, having already spent sixty in costs.⁶³ Thomas Dent, a vicar in Lincolnshire, successfully defended his right to the ‘ancient modus’ his predecessor had, worth eleven pounds a year.⁶⁴ The parson Tench in Sussex unsuccessfully attempted to recover tithes that had been ‘quietly enjoyed’ from the vicar on land worth twenty-six pounds each year.⁶⁵ This enforcing of paternalism was also seen in relation to charity and poor relief. The attorney general sued Thomas Arnold to ensure all profits from a Northampton estate were sent to charity, holding Arnold to his father’s will of 1675.⁶⁶ A similar attempt was made on the behalf of the poor of Harlington. The defendant, Francis Wingate, argued the five pounds paid annually was ‘a voluntary gift, and had been employed for mending the clock... [and] catching moles’, but his appeal was dismissed and found liable to pay charity.⁶⁷

The collection of tithes in Scotland also reflected the trend in England. The division of tithes after establishing a new parish in East Lothian led to the minister attempting to

⁶² PA, HL/PO/JO/10/3/206/25, Petition of James Haliday, 13 August 1715.

⁶³ PA, HL/PO/JO/10/1/417/165, Petition of William Goodridge, 12 November 1689;

HL/PO/JO/5/1/29, Manuscript Minutes, 10 December 1689.

⁶⁴ PA, HL/PO/JO/10/6/26/1750, Petition of Thomas Dent, 3 March 1702.

⁶⁵ PA, HL/PO/JO/10/3/195/2236, Petition of Timothy Luff, 14 February 1706.

⁶⁶ PA, HL/PO/JO/10/3/189/3, Petition of Thomas Arnold, 19 April 1698; HL/PO/JO/10/1/506/1265, Answer of Attorney General and Others, 6 May 1698.

⁶⁷ PA, HL/PO/JO/10/1/398/422 and 422(a), Petition of Francis Wingate and Lettice Wingate, 23 May 1685 and Answer of James Astry and Churchwardens, 2 June 1685.

recover his original stipend, and he succeeded in ensuring local elites continued to honour their commitments.⁶⁸ These cases could create serious disputes at a local level, just as cases concerned with liturgy or the status of the established church. Disagreements over tithes to the value of three pounds in Montrose found the attorney general arguing ‘the peace and quiet of Scotland depends upon [its] determination’.⁶⁹ The magistrates saw John Scott as pursuing his ‘unjust design of lessening the said tithes’, but they were ‘for the sake of peace... willing to acquiesce’, the case perhaps reflecting the growth of the English service in the town.⁷⁰ Litigation was about maintaining a proactive or responsible landholding class. It was perceived by some, including the attorney generals who brought these cases, that the gentry must live up to their obligations and act in a trustworthy manner— and it was the Lords, as the high court that could defend these conventions. This was reflected in the fact peers themselves were sued. The Duke of Devonshire found a mason, Benjamin Jackson, suing him ‘for payment...[the lack of being] to [the] utter ruin of himself...and of many families dependent upon him’, though no further action was taken after it was sent to committee.⁷¹

Several English appeals illustrate the importance of local rivalries to mobilising communities to pursue litigation on economic issues. The dispute over the right to hold a market between the two Kentish towns of Rochester and Chatham offers an example of how peers influenced the wider economy, and that the same local rivalries that motivated legislation were also part and parcel of litigation. The case began when Sir Oliver Butler was awarded a patent to hold a market which was successfully challenged in Chancery, but he appealed to the Lords in 1685. The City of Rochester, particularly its butchers, were afraid

⁶⁸ PA, HL/PO/JO/10/3/203/17, Walter Lord Blantyre and George Seaton, 24 April 1713.

⁶⁹ PA, HL/PO/JO/5/1/49, Manuscript Minutes, 5 June 1714.

⁷⁰ *Magistrates and Town Council of the Town of Montrose: Respondents* (n.p., 1714), pp. 1-5.

⁷¹ PA, HL/PO/JO/10/6/6/1531, Petition of Benjamin Jackson, 11 March 1700.

the loss of the market would ‘certainly ruin one of the most ancient and loyal city of all England’, sending their mayor to wait on peers in support of their cause.⁷² Others argued that 20,000 people were forced to get provisions from Rochester, and this would continue if no market at Chatham was allowed.⁷³ The House of Lords confirmed the judgement given by the Lord Chancellor ‘and so that grant was destroyed before any market kept...’⁷⁴ Neither party sought an act to resolve the dispute, and it was only the exhausting of the financial resources of Rochester in 1710 that meant they eventually surrendered their cause.⁷⁵ This dispute over the holding of markets was also present in an appeal from Hampshire. Ewelme Hospital and the Borough of Andover fought over the right to hold Weyhill Fair, to the result ‘the fair...one of the most considerable trading fairs in England, will be...diminished’.⁷⁶ Daniel Defoe believed it to be the ‘greatest’ fair kept, with 500,000 sheep sold in one alone.⁷⁷ This local dispute had resulted in ‘tumults’ and counter-petitioning during the Restoration and was not resolved before 1689, despite appeals to the crown.⁷⁸ The affair was complicated by Andover gaining a new charter under Charles II allowing it to change the site of the fair, resulting in a lawsuit in which the hospital and Queen’s College in Oxford, being a patron of the land, took

⁷² CKS, U269/C121, Clerke to Dorset, 1 December 1680, fol. 65.

⁷³ CKS, U269/c121, Same to Same, 1 December 1680, fol. 65; PA, HL/PO/JO/10/1/390/242(b), Petition of Inhabitants of Chatham, 6 December 1680; TNA, State Papers 44/73, Earl of Nottingham to Sir John Banks, 9 March 1689, fol. 3.

⁷⁴ CKS, U38/Z/1, Weller Notebook, p. 16.

⁷⁵ CKS, U38/Z/1, Weller Notebook, pp. 4-5.

⁷⁶ PA, HL/PO/JO/10/3/184/22, Petition of Ewelme Hospital, 6 November 1691.

⁷⁷ D. Defoe, *A Tour Through the Whole Island of Great Britain* (London, 1971), p. 268.

⁷⁸ R. Clutterbuck, *Notes on the Parishes of Fyfield, Kimpton, Penton Mewsey, Weyhill and Wherwell in the County of Hampshire* (Salisbury, 1898), pp. 122-50; TNA, SP 29/314, Petition of William Drake and Others, August 1672, fol. 164.

an interest.⁷⁹ Legal disputes occurred at the local assize and Exchequer that found the town had no right to move the market.⁸⁰ Once coming to the Lords, peers judged the hospital, ‘who during the late wars, infringed the respondent’s rights’, had the right to hold the fair on its land and ‘all profits’ from it.⁸¹

A dispute between Carlisle and merchants in Cumberland over the level of tolls set by the city also reflected the ability of regions to divide into hostile camps. The appeal eventually led to violence, with ‘a beating’ of litigants as the legal proceedings continued.⁸² Pressure on the case continued to grow and Sir John Lowther believed the ‘resolving of relations with Carlisle’ would have to occur before the impending election in order to maintain his control of the parliamentary seat against the farmer of the tolls, Mr Haddock, a member of the corporation.⁸³ The tolls, raised historically for the defence of traders against hostile incursions by the Scots, were attacked as ‘a toll for going on the king’s highway’, but both the Exchequer and the Lords upheld the right of the corporation to collect the duty.⁸⁴ None of these three cases came to legislative ends in this period—they were resolved and fought within the legal system, and mobilised the same ‘clash of interests’ as those bills that came to parliament.

⁷⁹ TNA, SP 29/420, Timothy Halton to Leoline Jenkins, 10 September 1682, fol. 81.

⁸⁰ TNA, SP 29/438, Same and John Luffe, to Charles II, January 1685, fol. 245.

⁸¹ PA, HL/PO/JO/10/1/434/415, Answer of Corporation of Andover, 23 November 1691.

⁸² D. Hainsworth, ed, *The Correspondence of Sir John Lowther of Whitehaven 1693-1698* (Oxford, 1983), p. 181.

⁸³ *Ibid*, p. 153.

⁸⁴ PA, HL/PO/JO/10/1/464/807, Petition of Thomas Addison and Henry Inman, 23 February 1694; HL/PO/JO/5/1/29, Manuscript Minutes, 9 April 1694; Cumb., D LONS/W1/33, Summary of Court Proceedings, p. 59.

Legal appeals, therefore, covered a wide range of issues. Public and private acts were capable of being replaced by litigation, and were.⁸⁵ This allowed the wide range of groups engaged in litigation to affect the policies being advanced by social and political elites. Their origins meant appeals were an important part of political culture too, capable of creating divisions in wider society. But this was not a constantly growing process, but one that fluctuated overtime. It is likely that litigation against the central state was strongest in the 1690s, for two reasons—the relative weakness of the treasury, and that the growth in statutes that characterised the eighteenth century was only beginning.

Attempts by merchants in the lower courts to challenge the policy of the treasury were aided by a crisis after 1689 in the lack of personnel to manage and undertake litigation. The excise office complained that

penalties have not been duly adjudged, levied, nor accounted for, [and] nor [has] the king had the benefit of the laws from time to time... [with causes] not [being] hear[ed] until two or three years after such information [had been] brought [to court].⁸⁶

Even in December 1690, a report on the state of cases in the Exchequer expressed the ‘difficulty, and disappointment, and so little encouragement’, to litigate on the part of the treasury and its agents.⁸⁷ As a result of ‘Mr. Guy [the solicitor for prosecuting suits of law] absent[ing] himself’ after 1688, ‘there [were] many and unaccountable delays in the prosecution of suits at law’, meaning treasury policy (and the acts behind them) was not enforced.⁸⁸ This meant the ban on vessels trading with France was not enforced in the courts,

⁸⁵ For a short exploration of policy issues raised in Exchequer cases, see J. Milhous and R. Hume,

‘Eighteenth-Century Equity Lawsuits in the Court of Exchequer as a Source for Historical Research’, *HR*, 70 (1997), pp. 231-45, at pp. 238-44.

⁸⁶ TNA, T 1/49, Excise Office to the Lords of the Treasury, 20 October 1697, p. 124.

⁸⁷ TNA, T 1/11, William Carter to Same, 9 December 1690, pp. 97-8.

⁸⁸ TNA, T 1/49, Excise Office to Same, 20 July 1697, p. 112.

with it being ‘apparent all the customs house officers in England for ten years did not condemn five’.⁸⁹ Equally, there were around forty cases dealing with excise duties that still awaited judgment in the courts.⁹⁰ The failure to pursue these cases were said to be the result of ‘great neglects and miscarriages, to the prejudice of the revenue’.⁹¹ The state of the treasury and its weak capacity to litigate meant many policies went unenforced. The lack of treasury control over the voting of finance in the Commons during the 1690s, encouraging a wider range of projecting schemes and innovations, was paralleled in the law courts.

Ultimately, the significance of litigation, at least in England and Wales, is likely to have decreased, given the ‘great litigation decline’ of the eighteenth century.⁹² John Brewer has shown appeals over the valuation of the excise tax avoided the traditional legal system,

⁸⁹ TNA, T 1/6, William Carter to Same, November 1689, pp. 23-5.

⁹⁰ TNA, T 1/49, Excise Office to Same, 20 October 1697, p. 124.

⁹¹ TNA, T 1/49, Excise Office to the Same, 20 July 1689, p. 114.

⁹² Wilfred Prest offers reasons to be cautious on the extent of decline in ‘The Experience of Litigation’, in D. Lemmings, ed, *The British and Their Laws in the Eighteenth Century* (Woodbridge, 2005), pp. 137-44. Decline may have been a European phenomenon—see C. Kaiser, ‘The Deflation in the Volume of Litigation at Paris in the Eighteenth Century and the Waning of the Old Judicial Order’, *European History Quarterly*, 10 (1980), pp. 309-36, which suggests the workload of four French courts declined from the 1720s, and C. Wollschläger, ‘Civil Litigation and Modernization: The Work of the Municipal Courts of Bremen, Germany, in Five Centuries, 1549-1984’, *Law and Society Review*, 24 (1990), pp. 261-82, at p. 268, Table 1, which shows a period of stagnation and decline of litigation rates occurred in Bremen during the eighteenth-century. The decline of ‘legal pluralism’ may have been the cause, with more efficient and streamlined legal structures, see below, note 230, p. 307.

and this practice may well have increased as other statutory bodies were created in the century—though more research is needed to establish the extent this occurred.⁹³

II: The Decline of English Litigation

On an institutional level, the presence of an active high court had a disruptive impact on the lower courts across the ‘British Isles’, for it added another court to which litigants could appeal and continue legal disputes. A standing high court meant more legal avenues to appeal, but with no streamlining of the lower court system only added to the destabilising effects of litigation, both real and threatened, on property rights. This is likely to have influenced the decline of litigation and the rise of legislation during this period, as interests sought certainty in statute.

The increased and stable presence of the Lords necessarily lengthened disputes. The uncertainty added by the presence of the Lords meant John and Francis Deye were ‘unable to find purchasers, while the order for a new trial hangs over their title’ to lands in Essex, eight years after their appeal to the House of Lords.⁹⁴ A dispute over lands in Derbyshire saw the house judge the case in 1685, on which landowners acted, only to see the dispute return again after the Glorious Revolution.⁹⁵ The case dealt with around 15,000 acres of land in Derbyshire and the 1685 ruling had encouraged ‘many persons, hearing that the said decree was affirmed by the supreme and definite judgment of this grand judicature...[to] purchase... divers quantities of said ground [and] made good improvements thereof.’⁹⁶ The case returned

⁹³ J. Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (London, 1989), pp. 92-3.

⁹⁴ PA, HL/PO/JO/10/1/417/182(f), Petition of John Deye and Francis Deye and Others, 8 April 1698.

⁹⁵ PA, HL/PO/JO/10/1/398/430, Petition of Thomas Eyre and Inhabitants, 26 May 1685.

⁹⁶ PA, HL/PO/JO/10/1/404/27, Petition of Attorney General of Duchy of Lancaster and Thomas Eyre, 7 March 1689.

in 1689, and despite winning the appeal, uncertainty had been created. Christine Churches has shown the Lowthers of Cumberland were unable to improve disputed lands of the Wybergs, another landed family, as a result of competing claimants and creditors acting as ‘stalking horses’ on the property throughout the seventeenth century. The case was finally heard by the Lords in 1699, with ‘the exercise involv[ing] at least sixteen Chancery and twelve Exchequer cases’, and despite this, the Wybergs were still in debt.⁹⁷ This was not the case with the longest history, with an appeal brought from Chancery that ran from 1647 to 1690. The Lords rejected the appeal, so as not to disrupt the ‘several settlements made since the decree and marriage’, despite arguments by counsel that ‘redemptions have been [made] after a longer time than this’.⁹⁸ The presence of the Lords necessarily lengthened disputes, but it should be emphasised that once a case reached the house it was generally quickly dealt with. As shown in the previous chapter, only 162 cases took more than one session to be resolved, with ninety percent of cases determined within 100 days and ninety-seven percent within two sessions. Lowther’s case was resolved in nine weeks. The House was by early modern standards, an efficient court, dealing quickly with appeals in all but the most complex of cases, such as those involving fraud, disputed wills, or the jurisdiction of courts, that necessarily required time to understand and settle.

Through cases coming to centre on questions of authority and social standing, rather than the property or point of law involved, disputes were lengthened and negative perceptions of litigation were strengthened. We have seen above the hostility between the tenant

⁹⁷ C. Churches, ‘Equity Against a Purchaser Shall Not Be:’ A Seventeenth-Century Case Study in Landholding and Indebtedness’, *Parergon*, 11 (1993), pp. 69-87, esp. pp. 86-7; PA, HL/PO/JO/10/1/511/1354, Petition of Thomas Wyberg, 27 January 1699; HL/PO/JO/10/3/27-28, Petition of Thomas Wyberg and Answer of John Lowther, 27 January-27 March 1699.

⁹⁸ PA, HL/PO/JO/5/1/26, Manuscript Minutes, 29 October 1690.

Mounsey and the landowner Huddleston. Sir Edward Blackett reckoned if he took a case to the Lords it would cost his opponent twenty times the value of the disputed case, using the presence of the house as a further layer of the legal system as a threat against proceedings in lower courts.⁹⁹ The criticisms of Thomas Baston, a tory printer writing in 1716, that ‘it is endless to tell the astonishing instances of the ruin of families for trifles’ taken through the ‘labyrinth’ of courts, would have fitted the perceptions of many.¹⁰⁰ In the manner of *Bleak House*, legal cases could continue for so long as to ensure that lands could not be improved out of fear of loss, or costs to run so high as to eliminate all profit. Henry Cary, Viscount Falkland, even though he won his case against James Bertie before the Lords, found himself ‘left in such circumstances that he has nothing.’¹⁰¹ Baldwin Leighton, who appealed to the House of Lords in three separate cases for his claim of the office of the fleet, believed one case had cost him £2400 for an office with an income of £1000 a year.¹⁰² Philip Burton was harassed by Henry Muschamp for sixteen years in Chancery at the expense of £2000, for a debt of the same amount.¹⁰³

These problems were recognised by peers. From 1693, English and Welsh appeals to the house could no longer halt proceedings in lower courts when parliament was not sitting, and from 1726 a time limit of five years for appeals being brought up from all courts under the Lords jurisdiction was introduced.¹⁰⁴ A bill was proposed to protect mortgagers against redemption ‘often twenty or thirty years after they had been in possession’ and instead for

⁹⁹ Northumberland Record Office, ZBL 189, Edward Blackett to Mr Ward, 18 May 1710.

¹⁰⁰ T. Baston, *Thoughts on Trade and a Public Spirit* (1716), pp. 71-4.

¹⁰¹ TNA, T 1/74, Petition of Viscount Falkland, 14 May 1701, p. 63.

¹⁰² TNA, T 1/48, Report to the Treasury, 10 November 1697, p. 294.

¹⁰³ PA, HL/PO/JO/10/1/446/589(c), Answer of Philip Burton, 22 December 1692.

¹⁰⁴ *LJ*, xv, p. 220; xxii, p. 622.

suits to be brought within two years, but the bill was opposed by the judges.¹⁰⁵ Similar proposals had been suggested in Scotland during the 1690s, but also encountered opposition.¹⁰⁶ Despite these reforms and the relative efficiency of the Lords, issues of uncertainty, cost and length of appeals continued into the mid-eighteenth century. When one of his opponents considered an appeal to the Lords in 1747, John Lowther thought ‘such proceedings...will make him so detestable; nobody will have anything to do with him’, and that an appeal of his own would only reduce his own standing. Appeals were said to have been ‘practised by very few,’ and those that had ‘were looked upon as bad as bankrupts’.¹⁰⁷ William Blackstone in his commentaries on English law also criticised the Lords, citing a case from Scotland that ran from 1745 to 1749 in the house, believing that ‘no pique or spirit could have made such a case in the Court of King’s Bench or Commons Pleas have lasted a tenth of that time or have cost a twentieth part of this expense’.¹⁰⁸ The case centred on an ox worth three guineas. The destroying of both financial and social credit by appealing to the Lords created a more hostile attitude to litigation, and is likely to have encouraged the search for alternative means of resolution.

The extent the Lords impacted on the legal system is shown by the high proportion of cases it reversed the judgement of lower courts, shown in table four. A reversal rate of between twenty-four and forty percent for different parts of the ‘British Isles’ shows a house

¹⁰⁵ PA, HL/PO/JO/10/1/426/304, Court of Chancery (Reform of Abuses) Bill, 20 October 1690.

¹⁰⁶ A. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden, 2009), pp. 36-7.

¹⁰⁷ Quoted from C. Churches, ‘Business at Law: Retrieving Commercial Disputes from Eighteenth-Century Chancery’, *HJ*, 43 (2000), pp. 937-54, at p. 948.

¹⁰⁸ W. Blackstone, *Commentaries on the Law of England* (2 volumes, Philadelphia, 1860), Volume 2, p. 391.

Table 4: Variation in Reversal Rate of Appeals, 1685-1720

	‘British Isles’	England and Wales	Scotland	Ireland
‘No Action’ (Withdrawn/No Report/To Lower Court)	193	141	17	35
Rejected	662	525	60	77
Reversed	264	184	52	28
Percentage Reversed (Excluding no Action Cases)	28.5	25.6	46	26.6

Source: *LJ*, xi-xii.

far more active in the legal system than had been the case in the seventeenth century, certainly given the lack of reversals before 1667. Although the high rate of reversal in Scottish appeals may be explained by use of Scots law and little aid for Scottish litigants, with only one instance between 1707 and the 1740s of all counsel being Scots, it is not a great deal higher than cases where the judges had decided the case in the courts at Westminster Hall and who were sitting as judges in support of the business of the house.¹⁰⁹ Equally, once the forty cases from the forfeited estates commission presented in 1719 and 1720 are taken out, the proportion of reversal in Scottish cases falls to twenty-three percent, similar to the proportion of English cases. Only sixty-six cases were determined by division, suggesting the reasons for these reversals must have been shared by the house as a whole, and presumably not dissented to by the judges or reflecting the lobbying of a particular group or individual. This pattern of judgements in Scottish cases remained, with nearly a third of

¹⁰⁹ J. Finlay, ‘Scots Lawyers and House of Lords Appeals in Eighteenth-Century Britain’, *JLH*, 32 (2011), pp. 249-77, at p. 257.

appeals reversed between 1756 and 1793.¹¹⁰ I know of no comparative data for the lower courts at this time, but a comparison with the House of Lords in the late twentieth century, where around a third of cases were reversed between the 1970s and 2000, suggests this rate of reversal is not high for the highest court.¹¹¹

However, the early modern rate of reversal would have been more unusual by modern standards because appeals to the Lords in the modern period were chosen because they were likely to be wrong or controversial. No mechanism existed for eighteenth-century peers or lower courts to select cases other than the writ of error, which provided only twenty-two percent of the reversals. Even this was ineffective at restricting business, as the Lords declared that ‘a writ of error is not a writ of grace, but of right’ and to refuse one was ‘contrary to magna carta’.¹¹² The committee for petitions, which could be used to sift appeals, also fell into disuse as a tool for managing legal business in the 1690s.¹¹³

This meant that in the early modern period peers were reversing cases that later Law Lords would not hear, pushing their reach further into the staple subjects of litigation than would later be the case. By reversing such a high proportion of cases, the Lords was active as high court, differentiating its functions against the other central courts. In this, they had support from judges and litigants. Chief Baron Atkins argued it ‘was work proper for a

¹¹⁰ *Report of the Commissioners Appointed...For the Enquiring into the Forms of Process in the Courts of Law in Scotland, and the Course of Appeals...to the House of Lords* (London, 1824), p. 344.

¹¹¹ L. Blom-Cooper, B. Dickinson and G. Drewry, eds, *The Judicial Role of the House of Lords, 1876-2009* (Oxford, 2009), p. 50. There are problems with judicial statistics, where consolidated cases are counted multiple times, see B. Dickinson, ed, *The House of Lords: Its Parliamentary and Judicial Roles* (London, 1998), p. 116.

¹¹² *LJ*, xvii, p. 678.

¹¹³ Prest, ‘An Ordinary Court of Justice?’, p. 29.

parliament’ and that the Lords’ role as high court ‘was a legal remedy having been long disused and laid asleep and wants a revival.’¹¹⁴ In the case of *Smith v. Coleby* (1685) counsel said the ‘Lords...have a most proper jurisdiction to rectify the mistakes of the judges...in Chancery’.¹¹⁵ The effect of this, however, was to reduce the ‘certainty of expectations’ that property rights required by the house reversing such a high proportion of cases on the wide range of appeals it heard—but, in turn, ensured appeal to the Lords was an effective mechanism in encouraging political pluralism under a system of agreed rules and procedures.¹¹⁶

Peers also increased uncertainty through the specific judgements they came to, encouraging a shift towards statute in England. Disputes along rivers reflected local and interest-group tensions, given the complex nature of property rights along them. Any disruption to the flow of water could disrupt established interests lower down a river—and hence peers tended to strike down improvements that potentially impacted on those downstream. In the case of *Smith v. Welch* (1693), Edmund Smith was challenged on his right to fish in a stream which he claimed to have enjoyed ‘from time out of mind’. The respondent alleged his engine for catching fish obstructed the stream, affecting the functioning of their mills downstream. The issue ‘was tried by a special jury of gentleman of quality’ who determined they ‘could not grind so much by at least seven [hundredweight] of

¹¹⁴ R. Atkins, *An Enquiry into the Jurisdiction of Chancery in Cases of Equity* (1695), p. 48.

¹¹⁵ PA, HL/PO/JO/10/1/399/436, Petition of Alexander Smith, Anthony Fothergill and Thomas Lambert, 1 June 1685.

¹¹⁶ J. Getzler, ‘Theories of Property and Economic Development’, *Journal of Interdisciplinary History*, 26 (1996), pp. 639-69, at p. 642.

log wood a week'.¹¹⁷ A case between a creditor and merchant in Surrey saw mills converted for 'working iron hoops which required more water than corn, copper [and] brass', but the law did not support this change of use.¹¹⁸ Corporations were also involved in these conflicts, with the Dean and Chapter of Durham being sued by the Corporation of Newcastle about the right to build wharfs on the river to advance the salt trade.¹¹⁹ The dispute was tried in the Exchequer in 1697 and was later confirmed in the Lords. Like other cases, the dispute had a long history, beginning in the 1640s and reaching the Exchequer once before in the 1670s.¹²⁰ Because the intention of the law was to defend the immemorial flow of water, the decisions of peers were not conducive to river improvement.

This was one of the factors that forced a shift of projectors from prerogative-based improvements to seeking legislative resolution. As will be shown in chapter five in relation to petitioning, the numerous land rights and economic activities on a river and the lack of definition of 'water rights' meant negotiation with a range of interests was a necessary part of any attempt to improve navigation. River improvement schemes were further complicated by peers weakening the ability to use prerogative powers to pursue them, forcing projectors into parliament and the deliberative processes that involved. The need for legislation was not final until letters patents were seen as void in a 1694 case, and the powers of the commissioners of sewers were defined as insufficient to make rivers more navigable 'beyond what it was

¹¹⁷ PA, HL/PO/JO/10/3/186/8, Petition of Sir Edmund Smith and Others, 14 February 1693;

HL/PO/JO/10/1/454a/698(a), Answer of Jonathan and Joseph Welch, 21 February 1693.

¹¹⁸ PA, HL/PO/JO/10/3/206/2, Petition of Shem Bridges, 11 May 1715.

¹¹⁹ PA, HL/PO/JO/10/3/188/10-11, Petition of Dean and Chapter of Durham and Samuel Sheppard, 17 March 1698; Answer of the Mayor and Burgesses of Newcastle-upon-Tyne, 15 April 1698.

¹²⁰ E. Mackenzie, *A Descriptive and Historical Account of the Town and County of Newcastle-upon-Tyne* (Newcastle, 1827), Volume 1, pp. 738-9.

before' in a lower court case in 1714.¹²¹ The rise in legislation after the Glorious Revolution was not just because of the increased capacity of parliament, but the legal uncertainty of prerogative-based rights. The ruling in *Ashley v. Jemmat* (1694) encouraged interested parties to shift towards statutes. The case, dealing with a patent of 1638 regulating the navigation of the Great Ouse came to the Lords twice, once in the 1670s, and again in 1694, with the counsel for the appellant successfully arguing that the 'patent was condemned by the passing of an act of parliament...this act has damned and destroyed the patent in 1674'.¹²² Investors would not wish to 'sink' funds into river navigation projects if they could not be certain their rights would be protected, and the Lords aided the creation of this uncertainty.

This attitude towards non-statutory means of improvement was not only found in appeals relating to river navigation. The monopoly of groups to undertake overseas trade based on royal charters was struck down in *Nightingale v. Bridges* of 1689, which forced the African Company to rely on an act for its monopoly from 1690.¹²³ The case between the college of physicians and the apothecaries of London in 1704 also offers an illustration of the tension over letters patent and older acts of parliament after the Glorious Revolution. The case was brought against the monopoly of the physicians to practice 'physic', challenging letters patents and statutes passed shortly after their granting in the reign of Henry VIII.¹²⁴

¹²¹ F. Sharman, 'River Improvement Law in the Early Seventeenth Century', *JLH*, 3 (1982), pp. 222-45, at pp. 224, 227, 238, 244.

¹²² PA, HL/PO/JO/10/1/457/758, Petition of Henry Ashley, 28 November 1693; HL/PO/JO/5/1/29, Manuscript Minutes, 17 January 1694.

¹²³ K. Davies, *The Royal Africa Company* (London, 1957), pp. 123-4; W. Darrell Stump, 'An Economic Consequence of 1688', *Albion*, 6 (1974), pp. 26-35.

¹²⁴ *The Case of the College of Physicians of London...in a Writ of Error Returned to Parliament* (n.p., 1704), p. 1.

The apothecaries had been ‘growing very numerous’ in the 1680s, leading them to demand new legal privileges.¹²⁵ Their campaign formally began in 1694 when apothecaries went to the City of London to demand recognition of their role, which was followed by lobbying peers on a bill. This successfully exempted them from serving in several offices, achieved by arguing that apothecaries ‘were more necessary than physicians’ and should be treated as equal medical professionals.¹²⁶ This was restated in an act of 1702, but the letters patent took precedent until 1704 when peers overturned the decision, allowing an equal right to practice ‘physic’.

These three factors of a further court of standing appeal, its high rate of reversal, and the weakening of prerogative powers, introduced incentives to pursue a legislative solution or avoid litigation (especially if the financial or social resources of the defendant were perceived to be sufficiently greater than the appellants). This could have been a cause of the decline in the number of English and Welsh appeals, shown in table five. The decline was found across all regions, including London. By 1701, fifty-six percent of English appeals to the Lords presented between 1689 and 1720 had already been heard. The increasing number of appeals from Scotland and Ireland suggest that English interests shifted to legislation, rather than their decline being the result of internal factors of the House as a court, such as cost or distance. As the average case in the Chancery lasted eleven terms in both 1685 and 1785 if depositions were taken (as sixty percent of cases did), the prospect of further litigation in the Lords was off-putting.¹²⁷

Some of the appeals to the House of Lords did end up in legislative form, as we have

¹²⁵ *The Necessity of the Dispensary Asserted by the College of Physicians* (1702), p. 1.

¹²⁶ H. Cook, ‘The Rose Case Reconsidered: Physicians, Apothecaries, and the Law in Augustan England’, *History of Medicine and Allied Sciences*, 45 (1990), pp. 527-55, at p. 533.

¹²⁷ Horwitz, ‘Exchequer and its Equity Jurisdiction’, pp. 176, 178.

Table 5: The Decline in the Number of English and Welsh Appeals to the House of Lords: Geographical Distribution of Appeals Across Three Decades, 1689-1720

	1689-1700	1701-1710	1711-1720
Unknown Location	70	46	7
Wales	32	14	3
Midlands	33	13	16
Norfolk	38	13	11
North	23	22	6
Oxford	34	32	11
West	63	23	17
London	96	44	20
Home Counties	48	22	10
Lancashire Cheshire, Durham	22	13	13

Sources: *LJ*, xi-xii; PA, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments); HL/PO/JU/4/1-3, Appeal Cases. Definitions of each region are in brackets: Midlands (Derby, Leicester, Lincoln, Northampton, Nottinghamshire, Rutland, Warwick); Norfolk (Bedford, Buckingham, Cambridge, Huntingdon, Norfolk, Suffolk); North (Cumberland, Northumberland, Westmorland, York); Oxford (Berkshire, Gloucester, Hereford, Monmouth, Oxford, Shropshire, Stafford, Worcester); West (Cornwall, Devon, Dorset, Hampshire, Somerset, Wiltshire); London (London, Middlesex, Westminster); Home Counties (Essex, Kent, Surrey, Sussex). This data can be compared with C. Brooks, 'Interpersonal Conflict and Social Tensions: Civil Litigation in England, 1640-1830', in A. Beier, D. Cannadine and J. Rosenheim, eds, *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge, 1989), p. 370, Table 10.3, showing the regional decline of litigation in King's Bench and Common Pleas.

seen in relation to two Irish cases in the previous chapter, ensuring policy did go through several stages of negotiation and challenge. A case brought between the old and new governors of Birmingham School in 1691 regarding a new charter for the school and its revenue was reversed by the Lords, and was sought to be altered by bill in 1692. Its operation was questioned in a further case in late 1692 after 'respondents petitioned for a bill in parliament... [but] were left to proceed [to a] court of equity', being kept out of possession.¹²⁸ Colonel Leighton, who brought three appeals over the office of the fleet, was also petitioning the house on bills which dealt with the question of the inheritance of the

¹²⁸ PA, HL/PO/JO/10/1/437/457, Petition of Old Governors of Birmingham Free Grammar School, 2 December 1691; HL/PO/JO/10/3/184/29 and HL/PO/JO/10/1/437/457(c), Petition of Old Governors of Birmingham Free School, 22 February 1692.

office, arguing that the office had already been ‘legally and judicially determined’.¹²⁹ The Borough of Malmesbury, after an appeal against the king, offered a proviso to a bill that removed leases made under the burgess who had been excluded from office.¹³⁰ The Irish case between the Bishop of Derry and the Irish Society was also put into an act, ‘to confirm and settle an agreement that had been arrived at between them’.¹³¹

The greater legal certainty offered by statutes looked even more attractive than Chancery decrees after 1689, resulting in the decline of English appeals to the House of Lords as propertied society shifted towards acts to settle their estates.¹³² The patent boom of the 1690s was short-lived and limited to invention, rather than grander schemes.¹³³ The opportunity offered by the increased presence of parliament did not automatically result in legislative initiatives—non-statutory means to make policy had to be made unattractive, and this was a process the Lords performed. The Lords was not unwilling to interpret statutes, with physicians complaining the ruling of peers in *Rose v. College of Physicians* (1704) was tantamount to a ‘break in upon [the act]’ that maintained their monopoly of practising physic.¹³⁴ However, as statute law became more positivist and parliament claimed greater

¹²⁹ PA, HL/PO/JO/10/1/450/629(a), Petition of Colonel Baldwin Leighton, 19 December 1692;

HL/PO/JO/10/1/450/629(f), Petition of Same, 28 January 1693.

¹³⁰ PA, HL/PO/JO/10/1/419/298(a), Petition of John Wayte and the Borough of Malmesbury, c. 1689;

HL/PO/JO/10/1/419/201, Malmesbury Town v. The King Writ of Error, 11 December 1688.

¹³¹ PA, HL/PO/JO/10/6/67/2026, Bishop of Derry and Irish Society Act, 7 November 1704.

¹³² J. Hoppit, ‘The Landed Interest and the National Interest’, in idem, ed, *Parliaments, Nations,*

Identities p. 87, Table 5.2.

¹³³ C. MacLeod, ‘The 1690s Patents Boom: Invention or Stock-Jobbing?’, *EcHR*, 39 (1986), pp. 549-71.

¹³⁴ Cook, ‘The Rose Case Reconsidered’, p. 548.

sovereignty, the likelihood of reversal (particularly in lower courts) is likely to have become rarer.¹³⁵

III: Peers and the Rule of Law

The extent of litigation and its importance meant the peerage was in a central position. This meant there was the potential that a ‘common sense’ or bias of the ‘landed interest’ could dominate interpretations of the law. If this was the case, then the law would simply become another tool of oligarchy and not conducive to meaningful participation and deliberation.

This threat was certainly present. Edinburgh butchers did appeal to the ‘landed interest’, warning that the setting of prices ‘prejudice[d] the gentleman of landed property, since it might in a great measure lessen the value of the their estates’.¹³⁶ Amongst the reasons put forward to support physicians over apothecaries was social stability, with ‘many thousand poor patients...every year receiv[ing] charitable relief from the college of physicians’.¹³⁷

Thomas Brown, in his response to Daniel Defoe’s pamphlet on the case of *Ashby v. White*, which he claimed ‘would persuade the people of England to leave the Commons and depend upon the Lords’ saw the peerage as manipulating their dominant position, even in public impeachment trials:

To fact and long experience I appeal,
How fairly themselves they justice deal...
It’s true, a most magnificence parade
Of law, to please the gaping mob is made,
Scaffolds are raised in the litigious hall,
The maces glitter, and the sergeant bawl.
So long they wrangle, and so off they stop,
The wearied ladies do their moisture drop.
This is the court (they say) keeps all in awe,
Gives life to justice, vigour to the law.

¹³⁵ Lemmings, *Law and Government*, pp. 131-5; 185.

¹³⁶ D. Robertson, *Reports of Cases on Appeal from Scotland Decided in the House of Peers, 1707-1727* (London, 1807), p. 127.

¹³⁷ *Case of the College of Physicians*, p. 2.

True, they quote law, and they do prattle on her,
What's the result? *Not guilty upon honour*.¹³⁸

The King of Brobdingnag showed a similar concern once Gulliver had described the English constitution to him, asking him to explain

What share of knowledge these lords had in the laws of their country, and how they came by it, so as to enable them to decide the properties of their fellow subjects in the last resort? Whether they were always so free from avarice, partialities, or want, that of bribe, or some other sinister view, could have no place amongst them?¹³⁹

The developments over the last centuries where peers had increasingly gone to law to solve disputes under a rule of law were threatened by the fact they themselves now stood in judgement as the highest court on an increasing number of cases. One of the fears Scottish judges had of litigants appealing to a parliament was that ‘parliaments may seem more subject to passion and factions than the [Court of] Session, [as] great men have too much influence there’.¹⁴⁰ Peers certainly did use their legal business to aid their interest and patrons. Peers were brought into the dispute between Chatham and Rochester even before instructions to MPs were given in the 1710s, with Edward Clark, rector of Chevening, asking the Duke of Dorset to ‘engage...as many of [his] friends as are members of that noble house’.¹⁴¹ Although Bishop Atterbury was crippled with rheumatism, he promised in 1721 to attend in support of an appeal on the debts accumulated during the building of Blenheim Palace, ‘provided I have strength enough to be carried to the House in a Chair’.¹⁴² In an Irish

¹³⁸ T. Brown, *The Works of Mr Thomas Brown, Serious and Comical in Prose and Verse* (4 volumes, 1719), Volume 1, pp. 147-8.

¹³⁹ J. Swift, *Gulliver's Travels* (Oxford, 1986), p. 118.

¹⁴⁰ C. Jackson and P. Glennie, ‘Restoration Politics and the Advocates’ Secession, 1674-1676’, *SHR*, 91 (2012), pp. 76-105, at p. 105.

¹⁴¹ CKS, Sackville U269/c12, Clerk to Dorset, 1 December 1680, fol. 69.

¹⁴² F. Harris, ‘Parliament and Blenheim Palace: The House of Lords Appeal of 1721’, *PH*, 8 (1989), pp. 43-62, at p. 53.

appeal of 1706, Lord Digby desired Dartmouth's attendance at a cause, 'wherein your bearer Mr. Marden is concerned'.¹⁴³ In the case of the Borough of Andover, their solicitor spent one pound 'attend[ing] some Lords' during their case.¹⁴⁴ Lowther requested the Duke of Portland's support over his case in the House of Lords, asking him to 'honour my cause with your presence, and then I doubt not but it will appear to your lordships as just as it did to my Lord Chancellor, and I shall be delivered from a most vexatious man.'¹⁴⁵ William Houghton recalled that 'my Lord Halifax by your cousin's interest was serviceable upon the last occasion, but if you have acquaintance with any other you may think fit to make use of him.'¹⁴⁶ Scottish peers performed a similar role. Cornelius Kennedy asked William Scott to gain assistance from 'peers of your acquaintance', especially the Duke of Argyll, 'my neighbour at Kelso', but eventually writing to all Scots peers and reminding them of their undertakings of support closer to the day the appeal was heard.¹⁴⁷ The costs of appeal also opened up opportunities for direct patronage. Bishop Nicolson aided a landowner in his county, Andrew Huddleston, to appeal against his tenants, who gave 'thanks to mitigating his costs in the House of Lords'.¹⁴⁸ Both as individuals and as a collective, peers were able to

¹⁴³ Staffordshire and Stoke Archives, D(W)1778/I/ii/76, Lord Digby to Lord Dartmouth, 15 January 1706.

¹⁴⁴ Clutterbuck, *Notes on the Parishes*, p. 149.

¹⁴⁵ Nottingham University Library, Portland Collection PwA 831, Lowther to Portland, 13 February 1699, fol. 3.

¹⁴⁶ NUL, Mellish Collection MeC 6/7, William Houghton to Edward Mellish, 4 March 1690, fol. 2.

¹⁴⁷ NRS, GD27/3/7/2, Cornelius Kennedy from Sir William Scott, 6 January 1715, fols. 1, 3; GD27/3/7/2, Same to Same, 15 June 1715, fol. 2.

¹⁴⁸ Bishop of Barrow in Furness, ed, *Bishop Nicolson's Diaries: Part III* (Transactions of the Cumberland and Westmorland Archaeological Society 3, New Series, Kendal, 1903), pp. 1-59, at p. 1.

forge links with interests and extend a web of patronage across Britain—but potentially at the cost of the rule of law.

Cases also served as proxy-party debates. A case concerned with the lands of a protestant heir to a catholic estate in May 1714 swayed in the protestant favour, having

made some noise because it seemed to be a party matter... [with] the whigs who were very zealous to show their abhorrence of popery attend[ing] to a man, and several [others]... in prudence did not to care to appear for papists upon any account, and did endeavour to prevent a division.¹⁴⁹

A case was lost by the tory Bishop of Durham as a result of party allegiances, with his opponent ‘Sir Harry [Lyddale] [being] zealous for the government’.¹⁵⁰ Additionally, the appeal of the jacobite Bishop of St Davids saw the House divide over his petition in 1704, with tories entering a protest on the rejecting of it and whig peers arguing the Lords had no jurisdiction over the issue.¹⁵¹ The appeal regarding the lands of the Edinburgh Herriot hospital had a physician who was a ‘violent jacobite’, being an Episcopalian critical of the Presbyterian church.¹⁵² Appeals from the forfeited estates commission should also be put in this category, but it is important to note both English and Scots appeals were subject to the intervention of party strife.

However, if peers used law for their own interests, being ‘evidently partial and unjust, then it will mask nothing, [and] legitimise nothing’, as E.P. Thompson wrote in the conclusion to his study of the Black Act.¹⁵³ It is notable that the surviving division lists

¹⁴⁹ J. Cartwright, ed, *The Wentworth Papers, 1705-1739* (London, 1883), pp. 380-1.

¹⁵⁰ J. Hodgson, ed, *Diary of Reverend John Thomlinson*, in *Six North Country Diaries* (Surtees Society 118, 1910), p. 105.

¹⁵¹ *LJ*, xvii, p. 628; Nicolson, *Diaries*, p. 259.

¹⁵² R. Roger, *The Transformation of Edinburgh: Land, Property and Trust in the Nineteenth Century* (Cambridge, 2004), p. 51.

¹⁵³ E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1977), p. 263.

suggest most peers were not swayed by party or kinship, even in cases when other peers were involved.¹⁵⁴ Several elements limited the capacity or desire of peers or interest groups from manipulating the law systematically. One was the diffused nature of enforcement and the number of institutions necessary to influence or control interpretation of the law. If an ‘interest’ wished to dominate the law it was necessary to dominate the process through parliament and its committees for an act, then to the lower courts and the House of Lords in order to ‘capture’ property rights or a policy.¹⁵⁵ The multi-faceted means needed to create and enforce a law meant it was more necessary to negotiate after 1688, increasing the likelihood of success of other interests and the need to woo them through print and other means. These other stages form the remaining chapters of this thesis.

Structures existed that allowed a desire by one interest group to be opposed by another. However, this was not a sufficient condition to maintain a rule of law. As Douglas Allen has written, the role of trust was key for the aristocracy to gain consent to rule, they having more to lose by cheating than cooperating. Peers invested their income in estates as ‘sunk capital’ which was protected from expropriation by the rule of law—and to undermine

¹⁵⁴ The case of *Montagu v. Bath* (1694) saw whigs and tories vote on both sides, as did Montagu’s two brothers in law; Marlborough’s defeat on the funding of Blenheim Palace in 1721 does seem to reflect the manoeuvrings by Earl of Sunderland, though it is notable relatives of Marlborough did not vote; Francis Atterbury’s appeal of 1721 saw whigs, tories and those identifiable as jacobites vote on both sides, despite the jacobitism of Bishop Atterbury—see E. Cruickshanks, D. Hayton and C. Jones, ‘Divisions in the House of Lords on the Transfer of the Crown and Other Issues: Ten New Lists’, in C. Jones and D. Jones, eds, *Peers, Politics and Power: The House of Lords, 1603-1911* (London, 1986), pp. 98-9; Harris, ‘Blenheim Palace’, pp. 57-8; C. Jones, ‘Jacobites Under the Beds: Bishop Francis Atterbury, The Earl of Sunderland and the Westminster School Dormitory Case of 1721’, *EBLJ* (1999), pp. 35-54.

¹⁵⁵ Getzler, ‘Theories of Property and Economic Development’, p. 665.

it in the case of tenants or the lowly meant undermining it in theirs too, for if they breached their trust in one case, what was the law worth in another?¹⁵⁶ Their estates, credit relations and customary claims to land or profits rested upon legal judgements and precedents, just as the lower orders. One of the commissioners for the Hatfield level was alleged to have said he ‘did not care for the House of Lords’ and its judgement, and had gone against it.¹⁵⁷ Such sentiments would only have multiplied if local courts and magistrates began to perceive this too, as such attitudes would affect their social standing and local power. The House of Lords’ role as high court being the ‘life and soul of the dignity of the peerage of England’, meant what they did their affected broader perceptions of their role.¹⁵⁸

When they were challenged, both parties appealed to the law as an ideology of equity and logic, based on precedent and past experience. Through tying their estates to this logic, peers were ‘prisoners’ of the law and their own rhetoric if they wished the law to stand and were unwilling to rely on greater forms of force or coercion to maintain their hegemony, as this risked increasing the power of the crown.¹⁵⁹ The discourse of the law and a sense of ‘justice’ were not closed, with peers judged on the extent they maintained the impartiality of the law, and lower courts were criticised in appeals for failing to do so. Litigants appealed to the ‘well known rule of law’ and the need to ‘establish and confirm the same in all such cases... [otherwise it] will tend to the ruin of many great families’.¹⁶⁰ The printing of appeals

¹⁵⁶ D. Allen, ‘A Theory of the Pre-Modern British Aristocracy’, *Explorations in Economic History*, 46 (2009), pp. 299-313, at p. 303.

¹⁵⁷ PA, HL/PO/JO/10/1/378(p), Petition of Nathaniel Reading, 22 November 1689.

¹⁵⁸ *Two Speeches* (Amsterdam, 1675), p. 4.

¹⁵⁹ Thompson, *Whigs and Hunters*, pp. 258-69.

¹⁶⁰ *Holborne v. Babington: The Defendant’s Case* (n.p., 1718), p. 3; PA, HL/PO/JO/10/3/183/27,

Answer of Richard Berney, 3 December 1689.

to the Lords and reports of their proceedings and those of the lower courts, had led to a ‘commoning’ of the law that meant it was known and understood by wider society who could hold some ownership of it.¹⁶¹ Precedents ‘locked’ in peers and judges, as their overlooking would be to undermine the legitimacy of the judgements of peers. Judges argued ‘precedents are very necessary and useful [and it would be] strange and ill, if we should...set aside what hath been the course’.¹⁶² Precedent was deemed sufficiently important to form part of an attack on ‘modern whigs’, they being accused through the alteration of laws on bankruptcy of breaking the ‘maxim of heathen Romans that justice ought to be administered in the face of sun’. Through their ‘arbitrary will’, it was claimed, whigs had shown ‘no manner of regard...to the fundamental rules of equity’.¹⁶³ When peers decided on cases, precedents had to be interacted with even if they were dismissed, as they acted as an ‘authority’ whose existence framed decisions. They caused actors to proceed differently than they otherwise would have done, creating a degree of constraint through discourse, but not an absolute one.¹⁶⁴ A similar process can be seen with the role of political arithmetic in political discourse, examined in chapter four.

The division between ‘matters of fact’ and ‘matters of law’ further constrained peers. Writs of error resulted in cases centring on the question of whether certain ‘facts’ occurred, as

¹⁶¹ R. Ross, ‘The Commoning of the Common Law: The Renaissance Debate Over Printing English Law, 1520-1640’, *University of Pennsylvania Law Review*, 146 (1998), pp. 323-461.

¹⁶² D. Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (London, 2010), pp. 222, 224, 226, 254, 272; R. and E. Atkins, *Reports of Cases Taken and Adjudged in the Court of Chancery* (1693), pp. ii-iii.

¹⁶³ S.R., *An Essay Upon Trade and Public Credit, Showing the Advantages of the East-India Prohibition, Bankrupts Affidavits* (1714), pp. 23-6.

¹⁶⁴ N. Duxbury, *The Nature and Authority of Precedent* (Cambridge, 2008), pp. 112, 182-3.

was the case in an appeal that was concerned with which parliament Mr Howe had made ‘scandalous words’ against.¹⁶⁵ This meant that when peers judged cases, they were deciding whether a certain ‘fact’ was true, rather than the law of the matter. The Lords overturned the charter of the college of physicians, because peers defined the nature of ‘physic’ in such a way.¹⁶⁶ The same was true of establishing the existence of customs. Peers had to determine whether customs out of mind were actually true and a ‘fact’. These cases would involve examination of whether the custom existed, and peers had to determine which set of facts was true, not the law of the matter.¹⁶⁷ The concept of ‘facts’ was well known to participants in courts, but also readers of history and literature, and this meant there existed a known and understood process of decision-making that was above aristocratic power.¹⁶⁸ This rhetoric was found in appeals from Chancery too, and only very rarely do petitions contain details on the precise legal issue at stake, and rather focus on the facts, history and circumstance of the case, despite being written by counsel and with judges present to aid peers on the interpretation of the law. It was the perception that ‘facts’ were what peers judged the case upon, and manuscript records of debates suggest this was the case. In the trial of Lord Mohun, Halifax told the house ‘the law is not always to be...equity must be admitted’, suggesting there were other determining factors to make the judgement other than the letter of

¹⁶⁵ Nicolson, *Diaries*, p. 278. This was John Grobham Howe, MP for Cirencester (1689-1698) and Gloucestershire (1698-1701, 1702-1705).

¹⁶⁶ Cook, ‘The Rose Case Reconsidered’, pp. 544-9.

¹⁶⁷ For example, PA, HL/PO/JO/10/3/188/18, Petition of William Smallman and Thomas Gregory, 20 December 1698; HL/PO/JO/10/3/191/17, Petition of William Pierson, 27 November 1702.

¹⁶⁸ B. Shapiro, ‘The Concept “Fact”’: Legal Origins and Cultural Diffusion’, *Albion*, 26 (1994), pp. 227-52.

the law.¹⁶⁹ In *Tooke v. Atkins* (1692), the house ‘debate[d]... the points of fact, not [having] agreed [to] how it was stated by counsel’, believing them to be central to the case.¹⁷⁰

The law was not mechanical, in being applied regardless of circumstance, and often peers were judging the facts of an event rather than the law. This was important, for the rule of law did potentially conflict with the culture of ‘particular improvements’ which avoided raising more general or principled questions in general acts, and was important in avoiding ‘parliamentary absolutism’.¹⁷¹ Whilst acts of parliament provided ‘improvements’ to limited geographical areas in order to avoid raising general questions, legal judgements established general principles for future cases. Contemporaries certainly saw the threat, with counsel in the case of *Macclesfield v. Fitton* (1685) arguing the ‘judgement of your lordships is of a universal concern, being to introduce a new law to make...havoc of mortgagers’ estates’.¹⁷² But through considering circumstance as well as law, peers avoided the threat of ‘scientific’ law and ‘parliamentary absolutism’, but neither were they able deviate too often from the discourse of the rule of law and expected outcomes of cases with similar circumstances.

IV: Conclusion

Studies of the House of Lords have argued that it performed a declining role as the early modern period continued, sidelining the peerage to become manipulators of elections and an economic, rather than a political, force. This chapter shows the Glorious Revolution and the subsequent union with Scotland transformed the Lords’ role as high court from an occasional point of redress for a small number of litigants, to a standing court with a great geographic and social depth to its activity and impact. The Lords made significant interventions in the

¹⁶⁹ NUL, PwA 2384, Pencil Notes for Use in Parliament, 1692.

¹⁷⁰ PA, HL/PO/JO/5/1/27, Manuscript Minutes, 15 February 1692.

¹⁷¹ P. Langford, *Public Life and the Propertied Englishman, 1689-1798* (Oxford, 1991), pp. 156-75.

¹⁷² PA, HL/PO/JO/10/1/398/424(a), Answer of Earl of Macclesfield, 3 June 1685.

structures of governing, integrating all parts of the 'British Isles' into a multi-layered process of decision-making that limited the power of elites and dominant interests.

This means that legal historians have overlooked a significant disjunction in legal structures, with the effective creation of a new court after 1688 that met annually and determined cases like the lower courts of Chancery or Court of Session. The presence of a high court with a high level of efficiency increased the standing of peers and the extent they could influence policy and stability, but increased the 'cost' and uncertainty of the enforcement and application of the law. There was now a longer, more expensive and uncertain legal process, with the Lords reversing more than a quarter of the appeals presented to it. If peers and lower courts had not struck down letters patent, charters or customary law, making these uncertain means to protect property, individuals and groups would have seen no reason to rely on parliamentary, rather than prerogative power. Direct participation in law making did not disappear as a result, rather shifting to a different form. As will be explored in the following chapters, as legal decisions struck down or limited powers based on these non-statutory means, those seeking to affect change were encouraged to make policy through statute in parliament, strengthening a different form of political culture and ensuring there was a circulation of power through different layers of the state.

Apart from its significance for legal history, this chapter has also explored the role of the high court in the functioning of Britain as a composite state. There have been unionist 'moments' in Scottish historiography, though many have stressed the botched, unequal, and steamroller nature of the union on Scottish interests.¹⁷³ This chapter demonstrates that some

¹⁷³ W. Ferguson, 'The Union of 1707 as an Episode in English Politics', *EHR*, 84 (1969), pp. 498-527;

P. Riley, 'The Making of the Treaty of Union of 1707', *SHR*, 43 (1964), pp. 89-110; idem, *The Union of England and Scotland: A Study in Anglo-Scottish Politics of the Eighteenth-Century* (Manchester, 1978).

Scots were attempting to place their institutions and society on the same path as those in England, and many more who saw appealing to Westminster as a worthwhile act. Support and legitimacy for the union were reinforced by a greater number of avenues to advance the interests of minorities, and the opportunity for whiggish-minded Scots to overturn the perceived feudal nature of Scottish institutions.¹⁷⁴ This questions the importance of ‘legal nationalism’ to Scottish identity, as Scottish law and institutions did not exist in their own separate sphere of autonomy after 1707. This sphere was compromised by Scots in the eighteenth century through their interaction with British institutions after 1707.

Litigation in the Westminster House of Lords was an important tool in enabling those outside the political and social elite to be effective actors in the political process, able to challenge their superiors and the nature and direction of policy—though far more for men than women, and English and Scots more than the Irish and Welsh. Legal disputes were imbedded in the ‘clash of interests’ and provincial rivalries of this period, reflecting the extent the state was ‘porous’ and could be shaped by outside interests. The fact that all groups were locked into this system and its discourse created more a reasoned and deliberative policy-making process. Partisans could ‘misrepresent’ arguments and others during elections, but when it came to the functioning of the state they had to adhere to legal norms of reasoning and justification.

This means the nature of the eighteenth-century state needs to be reconsidered. The interpretation of a statute in a court could be radically different from what a reading of that act suggests, providing evidence as to the intention and reception of acts that are otherwise lost. Once acts had gone through the process of arbitration in parliament between interests, a further negotiation occurred as it was enforced. To understand the true totality of what a

¹⁷⁴ C. Kidd, ‘North Britishness and the Nature of Eighteenth-Century British Patriotisms’, *HJ*, 39 (1996), pp. 361-82, at pp. 373-4.

policy or law meant in reality, necessarily requires a consideration of litigation. Acts of parliament were ‘reserve’ powers—they put limits on what could be done, but the extent they were actually enforced and used on the ground in practice could vary significantly from what a reading of the act would suggest (as has been shown in relation to the ‘bloody code’).

This meant there was a national culture of involvement and engagement with policy-making. The authority and policies of elites were continually at stake, with the negotiation between rulers and ruled a constant feature in society. The Lords was a ‘public’ institution that, due to the consequences of the Glorious Revolution and the wars that followed it, was ‘captured’ and limited by its legal role and legal discourse that ‘checked’ the dominance of the landed elite. It was possible for economic resources to be redistributed to the detriment of elites, reflecting the presence of a rule of law. The decentralised nature of the eighteenth-century state meant that no interest group can be argued to control ‘policy’. This was primarily not the result of the law itself, but rather the institutional framework which created and enforced it. Oligarchic dominance was not complete, but something that could be repeatedly challenged and negotiated with, locking those that participated in institutions—parliamentarians, interest groups and the public—into a structure of law and legal precedent, from which they could not easily dominate over other competing voices. Legislation was as porous, completing this circle necessary for deliberation—something to which we know turn.

CHAPTER THREE

Spectators or Participants? 'Popular' Access and Engagement with Parliament.

Nothing is more usual than to print and present to them [parliamentarians] proposals of revenue, matters of trade, or anything of public convenience, and sometimes cases and petitions.

Andrew Marvell, MP for Hull 1661-1678, in A. Patterson and M. Dzelzainis, eds, *The Prose Works of Andrew Marvell* (2 Volumes, New Haven, 2003), Volume 2, pp. 50-1.

This would be against the known rules of all public shows; where the spectators are always more in number than those that make the spectacle.

Lord Poulet on the creation of the Lords Gallery in 1704, in C. Jones, 'Seating Problems in the House of Lords in the Early Eighteenth Century: The Evidence of the Manuscript Minutes', *HR*, 51 (1978), pp. 132-45, at p. 135.

The British state in the eighteenth century was one that was heavily decentralised, where considerable initiative lay with those who did not hold political power, and the crown was only one of the interests active in policy-making and the enforcement of law. Michael Braddick, Phil Withington and others have shown the extent that the growth of the state rested upon actors in the localities, whilst historians of the eighteenth century have shown the dynamism of local communities, with changes to 'social policy' achieved through local acts of parliament.¹ The idea of the late Stuart and Georgian period being dominated by the middling sorts and 'propertied Englishman' has been well established. In addition, litigation

¹ M. Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge, 2000); idem and J. Walter, eds, *Negotiating Power in Early Modern Society* (Cambridge, 2001), esp. Chapters 4 and 8; M. Goldie, 'The Unacknowledged Republic: Political Participation in Early Modern England', in T. Harris, ed, *The Politics of the Excluded* (Basingstoke, 2001); J. Innes, 'Parliament and the Shaping of Eighteenth-Century English Social Policy', *TRHS*, Fifth Series, 40 (1990), pp. 63-92, idem, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford, 2009); P. Langford, *Public Life and the Propertied Englishman* (Oxford, 1991), passim; P. Withington, 'Public Discourse, Corporate Citizenship and State-Formation in Early Modern England', *AHR*, 112 (2007), pp. 1016-38.

awarded initiative to a wide range of social groups over the power of the state and its direction. The participative nature of politics away from the centre has also been established. Frank O’Gorman has demonstrated the participative nature of parliamentary elections during the ‘age of oligarchy’, whilst many others have explored the growing regularity of commentary in politics occurring in coffee houses and print after the Glorious Revolution.² Early modern Britain had a relatively open political culture, with a substantial ‘public sphere’.

The historiography of parliament, however, sits uneasily apart from this. Our mental images of the institution remain dominated by the closed, static, and ordered world portrayed in the images of parliament by Peter Tillemans in the reign of Queen Anne—and less of that shown in the woodcut of parliament shown in figure four. The occasional actions against those who printed records of parliamentary debates and the attempts of parliamentarians to maintain ‘confidentiality’ in their affairs have also marked them out from the wider participative culture of the state, though historians have increasingly shown the porous nature of parliamentary business.³ The authority and legitimacy of parliament, it is argued, was constructed through elections. Clearly, representative ideas were important to parliament

² F. O’Gorman, *Voters, Patrons and Parties: The Unreformed Electorate of Hanoverian England, 1734-1832* (Oxford, 1989); M. Knights, *Representation and Misrepresentation in Later Stuart Britain* (Oxford, 2005); B. Cowan, ‘The Rise of the Coffeehouse Reconsidered’, *HJ*, 47 (2004), pp. 21-46; S. Pincus, ‘Coffee Politicians Does Create: Coffee-Houses and Restoration Political Culture’, *JMH*, 67 (1995), pp. 807-34.

³ L. Schwoerer, ‘Press and Parliament in the Revolution of 1689’, *HJ*, 20 (1977), pp. 545-67, at p. 546. A survey of the printing of parliamentary debates is in M. Ransome, ‘The Reliability of Contemporary Reporting of the Debates of the House of Commons, 1727-1741’, *Bulletin of the Institute of Historical Research*, 19 (1942), pp. 67-79 and J. Black, ‘Parliamentary Reporting in England in the Early Eighteenth Century: An Abortive Attempt to Influence the

Figure 4: *The Happy Return, or Parliament's Welcome to Westminster* (November 1685). The image was reused in 1689 in *Great Britain's Glory, or the Protestants Confidence in a Free Parliament* (1689). The woodcut shows a figure addressing parliamentarians, with a public audience in the foreground.

and print culture, with MPs and peers acting on behalf of constituents or interests, but participatory mechanisms are an important and underexplored means of how parliament and

Magazines in 1744', *Parliaments, Estates and Representation*, 7 (1987), pp. 61-9. Some sources are explored in idem, 'Archival Sources for the Parliamentary History of Britain in the 1740s', *Archives*, 19 (1991), pp. 404-22. David Hayton surveys the situation for the Commons in *HP 1690-1715*, Volume 1, pp. 367-74. For a later period, see P. Thomas, 'The Beginning of Parliamentary Reporting in Newspapers, 1768-1774', *EHR*, 74 (1959), pp. 623-36; idem, 'John Wilkes and the Freedom of the Press (1771)', *HR*, 33 (1960), pp. 86-98.

the central state functioned.

Considering participatory methods in parliament highlights three important features of politics in this period. Firstly, it demonstrates the legacy of the revolution of the 1640s on everyday participation in parliament, through print, physical access and lobbying.⁴ Secondly, considering the reasons why parliamentarians welcomed the involvement of outside forces gives new force to the concept of ‘interest’ to the functioning of the state, not only being a means of explaining and imagining society, but also having a direct impact on policy-making and encouraging the search for the true ‘public interest’ amongst competing groups. This ‘clash of interests’ maintained many of the partisan features of the ‘rage of party’, which would be built on by the later ‘political’ campaigns of John Wilkes and parliamentary reformers. Thirdly, it allows us to examine the extent and means that the wider ‘informal’ public sphere interacted with ‘formal’ deliberative political institutions, and show how important deliberative institutions were to encouraging wider adherence to impartial and ‘rational’ norms in political discourse.

Whether to give greater emphasis to representative or participative modes of politics is an issue of particular importance to the Lords, given the absence of the negotiation found in the election and selection of MPs to sit in the lower house. The lack of printed material compared to the Commons, particularly the absence of printed votes, has meant historians have tended to echo contemporaries in implying the Lords ‘do nothing at all’ during parliamentary sessions, being isolated from broader political culture.⁵ The effect of these two concerns has been to mask the role of the peerage in policy-making and their ability to act as a ‘point of contact’ for outside interests. Through focusing on this, this chapter seeks to address the question of the autonomy and separateness of ‘high politics’ from broader

⁴ J. Peacey, *Print and Public Politics in the English Revolution* (Cambridge, 2013), Conclusion.

⁵ *Truth and Honesty in Plain English* (1679), Chapter 2, p. 4.

political culture, and is, in part, an attempt to ‘bring parliament back in’ to accounts of political and print culture.⁶ Parliament has not featured prominently in accounts of political culture, which has suggested the audience of print was the broader public; this chapter suggests parliamentarians were an important audience and stimulators of such material. Print and participation were part and parcel of the everyday functioning of parliament, with the increased presence of parliament after 1688 proving a decisive intervention in the nature, rhythm and language of politics, and the role of the public in the making of policy.

In order to redress this imbalance, the primary focus of this chapter is on direct engagement with parliament and its business. It considers this via a rising spectrum of participation—beginning with physical access to parliament and information coming out of the chamber, towards the ability of those ‘out of doors’ to lobby and inform parliament, and concluding with formal access to the legislative process through the presence of witnesses and lobbyists at committees. These features were not necessarily new—indeed, the intensive use of print had a strong precursor in the civil war period, and some, such as committees and the use of witnesses, can be traced back the late Tudor period. But their scale, intensity and regularity were greater when parliament met annually after the Glorious Revolution, marking out a distinct period when parliamentarians and elites sought to ‘manage’ and direct the public into deliberative processes and procedures to create stability and resolve partisan disputes.⁷

⁶ As Braddick advanced in relation to the state in his *State Formation in Early Modern England*, p. 8.

⁷ For earlier print culture, see Peacey, *Print and Public Politics*, especially Parts 2 and 3, and his ‘Print Culture and Political Lobbying During the English Civil Wars’, *PH*, 26 (2007), pp. 30-48. For committees and witnesses in the late Tudor period, see D. Dean, *Law Making and Society in Early Modern England* (Cambridge, 1996), pp. 137, 148, 151. For the development of committees in the Tudor period, see M. Graves, “[B]y Committing of a Bill of the Howse

These processes may strike us as unsurprising aspects of parliamentary business, parliament being a forum where external parties could pursue argument and policy, but the social groups present, the arguments they made, and their ability to be participants as well as spectators, was not inevitable—and is still not, with concerns about the ‘fall of the public man’ and the heavy regulation of access to the Palace of Westminster today.⁸ The explosion of legislative activity and the greater predictability of parliamentary sessions after 1688 increased the frequency and regularity of access, whilst the intrusion of the language of ‘interest’ from the mid-seventeenth century meant the nature of political debate was different on a qualitative level. Reflecting the tolerant attitude and needs of parliamentarians, the role of participants as credible witnesses and lobbyists increased, and their engagement regularised during this period. Together these issues highlight the extent that parliament, like the state, was a recourse ‘for all social groups...to be used by one class against another’.⁹ The control of knowledge of events within it was not limited, rather growing outside the boundaries of government and parliamentarians, with an increasing ‘lay’ audience for its proceedings—who significantly became more than just spectators, but active participants. The effect was a lack of division between state and society, with the activity of the state a combination of the efforts of office-holders, projectors, and interest groups as part of a culture of shared ‘governance’, rather than directed from a defined ‘government’.

Allowed of the Bodie Thereof’ Tudor Parliamentary Legislative Committees’, in C. Kyle and Peacey, eds, *Parliament at Work: Parliamentary Committees, Political Power and Public Access in Early Modern England* (Woodbridge, 2002), pp. 25-42.

⁸ R. Sennett, *The Fall of the Public Man* (Cambridge, 1977).

⁹ M. Braddick, ‘State Formation and the Historiography of Early Modern England’, *History Compass*, 2 (2004), pp. 1-17, at p. 14.

Richard Ross in his ‘Commoning of the Common Law’ asked who knew, could know, and was supposed to know the reasons, fictions and judgment of the law?¹⁰ This chapter is designed to ask these questions in relation to parliament, in order to show it ‘belonged’ to a wide part of the political nation. This meant that policymaking was relatively open and responsive, and those that attended could come from a range of social groups.

I: Creating an Audience: Physical Access to Parliament and the Recording of News

One means to examine the form that increasing public access and activism took is to explore the possibilities of physical access to the Palace of Westminster. Although Chris Kyle and Jason Peacey have shown that between the early Stuart period and the Restoration public access was possible, little has been written on the physical presence of the public to parliament during the ‘long eighteenth century’, despite its centrality to lobbying and the diffusion of knowledge of its proceedings.¹¹ Many of the features present in the 1640s were

¹⁰ R. Ross, ‘The Commoning of the Common Law: The Renaissance Debate over Printing English Law, 1520-1640’, *University of Pennsylvania Law Review*, 146 (1998), pp. 323-461, at p. 450.

¹¹ C. Kyle and J. Peacey, ‘“Under Cover of so Much Coming and Going”: Public Access to Parliament and the Political Process in Early Modern England’, in their *Parliament at Work*, pp. 1-24. A short exploration for the eighteenth century is in P.D.G. Thomas, *The House of Commons in Eighteenth Century* (Oxford, 1971), pp. 140-4. Another relevant study is B. Weiser, *Charles II and the Politics of Access* (Woodbridge, 2003), esp. Chapter 1; idem, ‘Access and Petitioning During the Reign of Charles II’, in E. Cruickshanks, ed, *The Stuart Courts* (Sutton, 2000). P. Croft, ‘Capital Life: Members of Parliament Outside the House’, in T. Cogswell, R. Cust, P. Lake, eds, *Politics, Religion and Popularity in Early Stuart Britain* (Cambridge, 2002) has useful elements on the role MPs performed whilst in London.

continued and public access was increasingly regularised and adopted into the procedures of parliament, parliamentarians seeing participation as an inevitable part of their business.

It is perhaps tempting to read back the current inaccessibility of parliament, assuming that peers and MPs in the pre-democratic age were more restrictive than their modern equivalents. However, the ‘historicization’ of the Palace of Westminster is a modern phenomenon and has removed the extent in the early modern period it was a living building, part of the rhythm of daily life and accessible to all.¹² Since the late nineteenth century the senior law courts have been removed, committee rooms and offices moved to a purpose-built office building at Portcullis House, the use of Westminster Hall restricted to ceremonial occasions, and security barriers erected. Despite the standing orders of the eighteenth century that banned all but peers and their servants from entering the lobby and the chambers of the two houses, the attitudes of parliamentarians to the presence of ‘strangers’ were far more open in practice. Far from the Restoration settlement, in particular the Tumultuous Petitioning Act of 1661 or the later Riot Act of 1715 resulting in a closing down of access to lawmaking, either with regard to petitioning or knowledge of events in parliament, physical access to Westminster was a growing trend.

The commonality of access to the Palace of Westminster is important not only for Habermasian notions of the ‘public sphere’, in terms of providing a space for the ‘public’s use of their reason’, but also the role spaces have in the creation of civic activism and their enabling of participatory processes of policy making.¹³ The ability of citizens and interest

¹² J. Parkinson, ‘How Legislatures Work—and Should Work—in Practice’, *Democratisation*, 20 (2013), pp. 438-55; R. Wilson, ‘The Historicization of the US Capitol and the Office of the Architect, 1954-1996’, in D. Kennon, ed, *The United States Capitol: Designing and Decorating a National Icon* (Ohio, 2000) pp. 134-68.

¹³ J. Habermas, *The Structural Transformation of the Public Sphere* (Cambridge, Mass., 1989), p. 27.

groups to influence politics was reliant on their easy and free access to sites of decision-making, such as Westminster Hall.¹⁴ This was of particular significance for citizens of London, who through public access to the hall had a significant point of contact with parliamentarians. But as Tony Wrigley estimated, a sixth of adults had direct experience of London at some point in their life, suggesting this was important far beyond those who inhabited the metropolis, not to mention those who arrived for the opening of parliament or the ‘London season’.¹⁵ Although it is not the intention of this chapter to argue the ‘spatial turn’ needs to be more widely applied to the study of history, it nonetheless highlights issues of significance for the functioning of politics, namely the need for such spaces for the diffusion of ideas and interaction with parliamentarians, and reflective of changing expectations about accessibility and participation in governing.¹⁶

This section will consider the possibilities of public access of the areas around parliament, beginning with Westminster Hall, and gradually moving up and into the chambers themselves. A map of the Palace of Westminster may be seen below. The majority of the public would have entered parliament through Westminster Hall, an expressly public space. The hall played a crucial role as the ‘cockpit’ for political culture, being a physical space in which many could congregate, comment and collaborate on policy-making. It was

¹⁴ J. Parkinson, *Democracy and Public Space: The Physical Sites of Democratic Performance*

(Oxford, 2012). It should be noted that I am not arguing accessibility creates democracy or leads to democratization, rather that it enabled elements of negotiation and active spectatorship to occur, significantly whilst debates were occurring, and that this could potentially be present in any system—including at the parish level or ‘executive’ institutions like the board of trade.

¹⁵ E. Wrigley, ‘A Simple Model of London's Importance in Changing English Society and Economy 1650-1750’, *P&P*, 37 (1967), pp. 44-70, at p. 50.

¹⁶ Parkinson, *Democracy and Public Space*, pp. 6-8.

Map 2: Plan of the Palace of Westminster in the 1640s

From J. Adamson, *The Noble Revolt: The Overthrow of Charles I* (London, 2007), p. xxi. This is only a conjectural plan for the early modern period, with no reliable plans existing. A more detailed plan of the Palace can be seen in Nicolson, *Diaries*, pp. 70, 82.

the site of public spectacle, with the trials of Henry Sacheverell and Lord Derwentwater and parading of Titus Oates occurring in the hall. During the trial of the Seven Bishops in 1687, the hall ‘thronged with an infinite number of people’ who gave ‘loud shouts and joyful acclamation’ to them.¹⁷ By 1712, 160 battle standards from the War of the Spanish Succession were displayed in it, whilst heads of the regicides were placed on spikes within it, being blown down in the great storm of 1703.¹⁸ It was impractical to ban public access in this space—Westminster Hall being the site of the courts of Chancery, Exchequer, Common Pleas, and King’s Bench, which meant there was a constant throng of lawyers and litigants. A dispute between Reginald Marriot and Lord Wharton saw more than seventy witnesses appearing one day, with the Court sitting late into the night.¹⁹ Large numbers attended the trial of the plotters against William III in 1696, shown in figure five.

The Hall was also part of the rhythm of daily London life. Its forty-two shops—some of which can be seen in figures six to seven—sold a variety of ‘knickknacks’, including prints, books, hats and toys, to women and men alike.²⁰ Grubstreet books were also sold and

¹⁷ G. Burnet, *Revolution Politicks: Being A Complete Collection Of All the Reports, Lies, And Stories, Which Were the Fore-Runners of the Great Revolution in 1688* (1733), p. 35; J. Reresby, *The Memoirs of the Honourable Sir John Reresby* (1734), p. 264.

¹⁸ J. Swift, *The Conduct of the Allies* (1711), p. 82; P. Holden, ‘Westminster in 1712: A Description by Samuel Molyneux’, *PH*, 29 (2010), pp. 452-9, at p. 458; H. Bohn, ed, *The Novels and Miscellaneous Works of Daniel Defoe* (20 volumes, London, 1855), Volume 6, p. 292.

¹⁹ N. Luttrell, *A Brief Relation of State Affairs from September 1678 to April 1714* (6 volumes, Oxford, 1857), Volume 6, pp. 300-1.

²⁰ W. Baer, ‘Early Retailing: London’s Shopping Exchanges, 1550-1700’, *Business History*, 49 (2007), pp. 29-51, at p. 42; T. Brown, *The Works of Mr Thomas Brown: Amusements, Serious and Comical* (1720), p. 43; E. Hatton, *A New View of London* (2 volumes, 1708), Volume 1, p. 638; Holden, ‘Westminster in 1712’, p. 458.

Figure 5, above: Extract from the *Triumphs of Providence over Hell, France and Rome* (1696)
Figure 6, below: *The First Day of Term: Westminster Hall* (1758, republished 1797/8)

Figure 7, above: *From One House to Another* (18 February 1742), BM Number 1868, 0808.3691. In the background are two stalls—‘Deards from St. Dunstons’ selling trinkets and ‘Dent's Snuff Shop’.
 Figure 8, below: Extract from *The Merry Campaign, or the Westminster and Green Park Scuffle, A New Court Ballad* (1732)

God prosper long our noble peers,
 And eke our Commons all,
 A woeful scuffle late there was,
 Near litigation hall.

....

The peer enraged, returned the same
 Full fraught with fury dire,
 His breast glowed with indigent shame,
 To be drubbed by a squire.

Then thwick thwack fell the blows like hail,
 On head, back, sides, and all
 Good lord: how echoed then the rooms,
 Near litigation hall.

shared.²¹ This was an old practice, with a boy ‘that sold papers and printed books’ killed in 1556 after being hit ‘under the ear with a stone’ in the hall.²² ‘Gaming’ also occurred there.²³ An Indian man was said to have been ‘surprised to see in the same place...baubles and toys, and the other [side] taken with the fear of judgement’.²⁴ The fact the Palace of Westminster had multiple uses aided accessibility, as the shops and courts made parliament seem more approachable and less isolated from wider society. The hall was clearly ‘open to the entire world’ and attempts to add guards to police addressers were refused by the Commons, being ‘not the way to make friends for the king’.²⁵

As a result of this ease of access, the hall was a site of news-mongering and political lobbying, with information flowing quickly out of the two houses. Lobbyists, including catholics, clothiers and fishmongers, paced the hall whilst waiting for committees. Occasionally tensions between witnesses were raised, with one witness ‘threaten[ing] to stab’ others and fights broke out between members of both houses in the hall, illustrated in figure eight.²⁶ It was also a site for more radical groups seeking to influence events. During the Convention of 1688 republicans ‘dispersed papers for establishing a commonwealth’ in the

²¹ R. Steele, *The Lucubration's of Isaac Bickerstaff* (6 volumes, 1768), Volume 4, p. 229.

²² J. Gough, ed, *The Diary of Henry Machyn Citizen and Merchant-Taylor of London, from AD 1550 to AD1563* (Camden Society 42, Old Series, Cambridge, 1848), p. 121.

²³ *CJ*, xvi, p. 339.

²⁴ Brown, *Works*, Volume 3, p. 43.

²⁵ *Ibid*, p. 43; *Grey's Debates*, Volume 9, p. 513.

²⁶ PA, HL/PO/JO/10/1/430/360, Petition of Thomas Burdet, 15 December 1690; HL/PO/JO/5/1/49, Manuscript Minutes, 7 July 1714.

painted chamber.²⁷ Pamphlets over the Bangorian Controversy on the nature of church government could also ‘be found in Westminster Hall’, with a ‘loud and successful’ debate occurring there during the late 1710s.²⁸ It was one of the ‘four cardinal corners’ of news in London where the ‘best news was made’, though Charles Davenant did describe the ‘false news invented there’ in 1701.²⁹ A little further from the chamber, the court of requests was also an important point of news gathering. The *Countryman* was able to gain information from people there at the time of debates on the union, whilst the *Observer* ‘heard the same thing from other hands’.³⁰ Ralph Bridges ‘with much difficulty, screw[ed] out of Sir Gibert Dolben’ proceedings in the House of Commons on the public accounts in the same place.³¹

The hall eventually lost these functions. Coffee houses and public houses were removed to New Palace Yard in 1806, having been ‘long complained [of]...as defacing and disgracing the great north entrance to Westminster Hall’, the space being taken up with the records of the Court of Exchequer.³² Excluding the temporary removal of shops for

²⁷ M. Goldie et al, eds, *The Entering Book of Roger Morrice* (7 volumes, Woodbridge, 2007-2009), Volume 4, p. 506. In the late 1710s, a Scot was found carrying a treasonable paper in the hall, see *Weekly Journal*, 22 February 1718, Issue 63.

²⁸ W. Nicolson, A. Snape, B. Hoadly, *A Collection of Papers Scattered Lately About the Town in the Daily Courant* (1717), p. 4; T. Gordon, *A Modest Apology for Parson Alberoni, Governor to King Philip* (1719), p. 3

²⁹ D. Winter, ed, *The Staple of News, by Ben Jonson* (New Haven, 1905), p. 14. The play was performed in 1625; C. Davenant, *Tom Double, Returned out of the Country* (1701), p. 79.

³⁰ *Observer*, 15-19 May 1708, Issue 27.

³¹ C. Jones, ‘Party Rage and Faction’—The View from Fulham, Scotland Yard and the Temple: Parliament in the Letters of Thomas Bateman and John and Ralph Bridges to Sir William Trumbull, 1710-1714’, *EBLJ* (1993), pp. 148-80, at p. 160.

³² *Reports from Committees, Session 1 November-24 July 1810-1811* (1811), Volume 2, p. 6.

coronations and trials throughout the medieval and early modern period, booksellers seem to have become absent from the hall by the 1780s, whilst the law courts were gone by the 1880s.³³ In 1884, the tradition of open public access was ended as a result of the Fenian bombing campaign. Under pressure in 1894—with some MPs echoing the ancient demand to allow the public to present ‘monster petitions’—the public were allowed in for six hours on Saturday and at other times when the houses were not sitting, but the free and unrestricted access of the early modern period was gone.³⁴

In the early modern period the public could penetrate further into parliament itself, though the ‘seasonal’ nature of their attendance should be noted here. Forming ‘bookends’ to parliamentary sessions were the speeches delivered by monarchs, an event which drew great crowds. Bishop Nicolson noted the house was ‘so crowded with ladies and other strangers, it was indifferent in what we appeared’, when Queen Anne addressed both houses in 1702.³⁵ After a great number of people attended the Lords when the Queen was present in 1703, peers asked Christopher Wren to design a scheme to ‘prevent the great inconveniences of crowds’, not choosing to simply ban their presence.³⁶

Parliamentarians increasingly formalised the ability of lobbyists and petitioners to come to their lobbies, reflecting the expectation that large flows of people to both houses was

³³ J. Raven, ‘London and the Central Sites of the English Book Trade’, in M. Suarez and M. Turner, *The Cambridge History of Book in Britain* (6 volumes, Cambridge, 2009), Volume 5, pp. 295-6.

³⁴ *Report from the Select Committee on Westminster Hall Restoration* (London, 1885). For debates, see Hansard *HC Deb 20 March 1890 Volume 342 cc1291-6*; *HC Deb 21 May 1896 Volume 41 cc68-70*; *HC Deb 22 February 1897 Volume 46 c864*; *HC Deb 17 May 1906 Volume 157 cc668-739*. Available at <http://hansard.millbanksystems.com/index.html>

³⁵ Nicolson, *Diaries*, p. 151.

³⁶ *LJ*, xvii, p. 334.

an inevitable result of its business. Parliamentarians provided a ‘skeleton’ of future business, most notably through the Commons printing its votes, but also gave advance notice to petitioners. The Commons ordered that ‘no petitions be received after ten o’clock in the forenoon’, establishing a ‘petitioning time’ each day.³⁷ Appeals were also to be heard ‘as the first business after twelve of the clock, and no other matter [was] to intervene’.³⁸ These developments made participation easier and highlights important changes in the attitude of parliamentarians towards informing and fostering the involvement of outside interests. Both houses informed petitioners of its orders by displaying them on their own doors or those of the courts of Westminster Hall, underling its closeness to the two houses and the acceptability of the public in the lobbies.³⁹

This process was not new in the 1690s, with these orders also present during the Restoration, but there was a more intensive attempt to organise and inform participation after 1689.⁴⁰ The orders of the Lords that all legal appeals should be introduced within fourteen days of a start of a session, most likely in November and first ordered in 1678, was applied more strictly after the revolution.⁴¹ This meant those appearing for legislative business came to the Lords in February and March when legislation came up from the Commons, helping to control both levels of business and influence the profile of participants present at different times of year. Scots would come to London towards April after the Court of Session had

³⁷ *CJ*, xii, p. 83. Warnings were also given on specific bills. See, for example, on the River Avon Navigation Bill, *CJ*, xvi, p. 144.

³⁸ *LJ*, xvi, p. 392.

³⁹ *LJ*, xi, p. 36; xvi, p. 268; PA, HL/PO/CO/1/5, Committee Book, 26 February 1694.

⁴⁰ *LJ*, xi, p. 362.

⁴¹ See p. 57, above.

risen.⁴² Appeals were also restricted to three days of the week.⁴³ Partly these changes were about increasing the efficiency of the two houses, but in doing so they made parliament more useful to a wider range of interests and increased opportunities for public involvement. What this meant was hostile reaction to the presence of the public near both houses was primarily limited to moments when their participation became violent—something that will be explored further in relation to the Tumultuous Petitioning Act of 1661 in chapter five.

It was also possible for lobbyists and visitors to hear debates in the chambers. The committee on the London Orphans Bill of 1691 saw ‘enquiry [being] made at the door whether any attend to be heard’, suggesting it was normal to listen.⁴⁴ Philip Floyd, who did not appear formally at the committee on the Popish Plot in 1679, did hear some of the letters relating to it being read.⁴⁵ The events of 1688/89 drew considerable interest. John Evelyn heard the debate in January 1689 on the succession by placing himself ‘by the prince’s lodgings at the door of the lobby to the house’.⁴⁶ The dissenter Roger Morrice was also able to watch proceedings the next month.⁴⁷ His references to Lord Delamere ‘who always spoke

⁴² J. Finlay, ‘Scots Lawyers and House of Lords Appeals in Eighteenth-Century Britain’, *JLH*, 32 (2011), pp. 249-77, at p. 255; *LJ*, xiii, p. 286, xv, p. 389, xvii, p. 569, xviii, pp. 12, 99, 104-106. Further references are also found in the manuscript minutes, see PA, HL/PO/JO/5/1/26, 27 March and 6 October 1690; HL/PO/JO/5/1/29, 8 March 1694, HL/PO/JO/5/1/35, 16 November 1699.

⁴³ W. Prest, ‘An “Ordinary Court of Justice?” The Appellate Jurisdiction of the House of Lords, 1689-1760’, p. 30.

⁴⁴ PA, HL/PO/CO/1/4, Committee Book, 18 November 1690.

⁴⁵ E. Coleman, *The Trial of Edward Coleman, Gentleman, For Conspiring the Death of the King* (1678), p. 66.

⁴⁶ E. De Beer, ed, *The Diary of John Evelyn* (6 volumes, London, 1955), Volume 5, p. 619.

⁴⁷ *Entring Book of Roger Morrice*, Volume 4, pp. 502, 509-11.

with great vigour' and the Earl of Lincoln, who 'also spoke (who does not use to do so)', suggests he was a regular viewer of proceedings and was knowledgeable of the habits of individual peers. Spectators were common in more ordinary matters too, with an appeal witnessed by Samuel Pepys in May 1664 seeing a 'great crowd, from ten o'clock till almost three' listen to a case in the Lords.⁴⁸ A Norfolk squire was also able to 'place himself so well at the door of the House of Lords' in 1714.⁴⁹ Women were also present. Sarah, Duchess of Marlborough, followed debates in 1739 when she 'bore the buffets of the stinking crowd from half an hour after ten till five in the afternoon'.⁵⁰ The trial of Lord Oxford in 1717 also saw 'some of the great ladies come to the bar of [the] Lords to hear the debates', and there was a 'great attendance' of 'ladies in distress' to petition in support of the jacobite Earl of Derwentwater in the same year.⁵¹ Not all were impressed by what they saw, however. The author of *The Interest of England as it Stands in Relation to Ireland* (1698) wrote that he had 'come into the House of Lords....when your Lordships were hearing counsel', motivating him to write his pamphlet to improve the quality of debate.⁵² A west country squire who also visited the House of Lords 'neither heard nor saw anything remarkable, but some folks in odd habits'.⁵³

⁴⁸ R. Latham and D. Matthews, eds, *The Diary of Samuel Pepys* (11 volumes, London, 1976), Volume 3, p. 658.

⁴⁹ Nicolson, *Diaries*, p. 85.

⁵⁰ C. Jones and F. Harris, "A Question...Carried by Bishops, Pensioners, Place-Men, Idiots": Sarah, Duchess of Marlborough and the Lords' Division Over the Spanish Convention, 1 March 1739', *PH*, 11 (1992), pp. 254-77, at p. 258.

⁵¹ G. Ditchfield, D. Hayton and C. Jones, *British Parliamentary Lists, 1660-1800* (London, 1995), p. 17; A. Boyer, *The Political State of Great Britain* (1716), Volume 11, p. 229.

⁵² S. Clement, *The Interest of England as it Stands in Relation to Ireland* (1698), p. 1.

⁵³ *A Collection of All the Humorous Letters in the London Journal* (1721), p. 49.

Access to the chamber of the Lords was for a brief time regularised in this period, increasing opportunities for formal access. Wren's solution to the 'great concourse and crowds of persons' who arrived to see Queen Anne was the construction of a gallery that consisted of four benches, and was present between 1704 and 1711.⁵⁴ Although created in response to demand to view the monarch, it was used throughout parliamentary sessions to view debates, and occasionally to drop papers into the chamber.⁵⁵ Access was relatively free, with Peter Wentworth, the brother of Lord Stafford, writing 'I knew I could get in with them [MPs] without troubling any Lord'.⁵⁶ The writer Abel Boyer also used the gallery and had been sent debates and speeches by others who had been there, sometimes written by 'three hands'.⁵⁷ During the debate on Spanish affairs in 1711, Boyer had the 'happiness' to be one who stayed to watch the 'remarkable debates'.⁵⁸

The pattern in the attitudes of peers towards public access to the chamber is an uneven one and could change several times during the same session; strangers being excluded and included in the same week, presumably reflecting the sensitivity of the issues being discussed and relations between the two houses. Whilst Peter Wentworth had been able to hear the Queen in January 1712, when 'the Lords and we intruders waited', later the same month he wrote 'they have much a stricter order....there's no getting into the House of Lords to hear their debates'.⁵⁹ By February he was able to be 'an eavesdropper at the door...and have stayed

⁵⁴ *LJ*, xvii, pp. 579, 696.

⁵⁵ Nicolson, *Diaries*, p. 85.

⁵⁶ J. Cartwright, ed, *The Wentworth Papers, 1705-1739* (London, 1883), p. 170.

⁵⁷ A. Boyer, *The Political State of Great Britain* (1717), Volume 14, pp. 11, 23; PA,

HL/PO/JO/5/1/46, Manuscript Minutes, 10 March 1711.

⁵⁸ A. Boyer, *Political State of Great Britain* (1711), Volume 1, p. 77.

⁵⁹ Cartwright, *Wentworth Papers*, pp. 251, 256-7.

so long to hear how matters went there that I cannot post you the particulars I have gathered'.⁶⁰ Ralph Bridges had the same issue in May 1712 when he was not able to get into debates that he usually expected to view.⁶¹ But even when 'the Lords won't admit any body to hear their debates', news still came out. Wentworth 'gathered it from the third and fourth hands' with the problem being that 'one tells it one way, another another way', rather than silence.⁶² Neither were these restrictive actions necessarily against 'strangers'. One order that 'nobody should come into the house but lords' was a response to the 'great many' MPs there, whilst the removal of the gallery may be linked to complaints it made the house dark.⁶³ The fact that it was briefly resurrected between 1737 and 1741 also suggests a lack of a general principled objection.⁶⁴ Nonetheless, whilst it was present the gallery proved useful to outsiders through increasing ease of access, but its removal was not fatal—at least to non-political reporting and knowledge of proceedings.

Although getting into parliament to view proceedings or to lobby was relatively unhindered, the flow of more politically-explicit material out of the house was more restricted.⁶⁵ The reporting of parliamentary debates was explicitly banned, resulting in the famous 'printers case' of 1771, but blanket secrecy was not the practice. The access to the

⁶⁰ Ibid, p. 368.

⁶¹ Jones, 'Party Rage and Faction', pp. 162-3.

⁶² Cartwright, *Wentworth Papers*, pp. 260, 305.

⁶³ Ibid, p. 223; Nicolson, *Diaries*, p. 84.

⁶⁴ Ditchfield, Hayton and Jones, *Parliamentary Lists*, p. 17.

⁶⁵ When judging the openness of eighteenth-century parliaments, it is worth considering that until

1957 the BBC had a self-imposed rule prohibiting the discussion of any matters to be debated before parliament within a fourteen day period, forcing interested citizens to sit in the public gallery, read Hansard or detailed extracts in broadsheet newspapers, see P. Norton, *Parliament in British Politics* (Basingstoke, 2013), p. 264.

lobbies and chambers meant printers and lobbyists could react to events in parliament. The printing of some speeches was possible, if relatively rare before 1720. The conference of February 1689 was reported by 'Mr. Blaney [who was] in a private place to take down all that was said.'⁶⁶ He had earlier recorded the trial of the Seven Bishops.⁶⁷ The notes of a peer in 1688 found their way to Laurence Echard, John Oldmixon, Matthew Tindal, James Ralph and James Macpherson, who used them to write accounts of the period.⁶⁸ Abel Boyer, whose *Political State of Great Britain* published many speeches of peers (though with names redacted), met with others in the 'lobby of the House of Lords' to 'produce a few written lines' for his books there.⁶⁹ He had also been in the Commons lobby, where an MP 'beat him I suppose for some of his old faults'.⁷⁰ This was not just the case for the main chambers, but also at committees, with Bishop Nicolson noting a 'newsmonger' was detected at one.⁷¹

At the centre of the debate over parliament's relationship with print culture is the absence of printed votes from the Lords. Whilst the Commons printed its votes continuously from 1689, the Lords were far slower in this respect, not beginning to print its journals until the late 1760s. We should not ignore manuscript circulation, however. In 1707 a committee of peers uncovered the circulation of its manuscript minutes. The testimony of witnesses shows at least seven coffee houses in London sold or made available manuscript copies of the

⁶⁶ A. Simpson, 'Notes of a Noble Lord, 22 January to 12 February 1688/9', *EHR*, 52 (1937), pp. 87-98.

⁶⁷ J. Gutch, *Collectanea Curiosa, or Miscellaneous Tracts, Relating to the History and Antiquities of England and Ireland* (2 volumes, Oxford, 1781), Volume 2, p. 378.

⁶⁸ Simpson, 'Notes of a Noble Lord', p. 88.

⁶⁹ Boyer, *The Political State of Great Britain*, Volume 14, pp. 11, 23.

⁷⁰ Bodl., Ballard MSS 20, Clarke to Charlett, 10 April 1712, fols. 45-6.

⁷¹ Nicolson, *Diaries*, p. 417.

Lords minutes for two pence, for ‘every day the house has sat this session’.⁷² It was also available to individual subscribers. The activity had been going on for some time, as one of the several writers had made it his livelihood, getting fifteen or sixteen shillings a week during sessions of parliament.⁷³ Even without this activity the manuscript journals themselves were also circulated and accessible, well before their printing in the 1760s, though they do underline the importance of the interested party having a physical presence or contact in London. The Earl of Orrery ‘bequeathed to Oxford all his library, except the journals of the House of Lords...which he left to the present earl his son’ when he died in 1731.⁷⁴ Humphrey Wanley noted in his diary in 1724 that he ‘has a completed set of the journals of the House of Peers...to the dissolution of the last parliament, all fairly and regularly written in one hundred volumes’.⁷⁵ Samuel Molyneux saw the ‘journals of both Houses of Parliament’, which were owned by Mr. Dale, a London clothier, as early as 1712.⁷⁶ A book catalogue printed in 1764 recorded that between two reverends, the accounter-general, a surgeon, and ‘many others lately deceased’, were a journal series of the Lords from 1660 to 1740 and one from the 1540s to the 1740s.⁷⁷ By the ‘interest of Mr S-, a bencher at the Temple’, one writer was able to carry the journals held in the Temple library to his own house, whilst the author of the

⁷² PA, HL/PO/CO/1/7, Committee Book, 10 and 12 February 1707.

⁷³ PA, HL/PO/CO/1/7, Committee Book, 28 March 1707.

⁷⁴ J. Bernard, T. Birch and J. Lockman, *A General Dictionary, Historical and Critical* (10 volumes, London, 1734-1741), Volume 10, p. 541.

⁷⁵ S. Lambert, *Bills and Acts: Legislative Procedure in Eighteenth-Century England* (Cambridge, 1971), p. 23.

⁷⁶ Holden, ‘Westminster in 1712’, p. 459.

⁷⁷ T. Osborne, *The Catalogue for the Year 1764* (1764), pp. 12, 14.

opposing tract had ‘only pursued [them] by snatches at the library hours’, suggesting law libraries had good collections of the journals.⁷⁸

The historical availability of Lords journals was certain, and it is likely contemporary availability was also possible. In 1722 the City of London said it was ‘by the inspection of the journals of this House [of Lords]’, that they had resolved to petition.⁷⁹ Clothiers and gentlemen of Chard in Somerset wished to be heard at the same time as others they learned had petitioned.⁸⁰ The references to the learning of events in parliament by lobbyists or petitioners were generally indirect references to the journals and votes, being ‘informed’, ‘hearing’ or ‘finding the bill’ in the Lords, but are nonetheless signs they were learning and reacting to events in the Lords as they occurred.⁸¹ The local nature of much legislation would have supported greatly this process, the initiators and opponents of bills being found in the same locality, aiding the understanding and knowledge of any policy proposals and how far advanced they were.

Public understanding of the progress of bills and litigation was also improved by the increasing use of print in their passage. Whilst early Stuart parliaments had, at least in theory, banned the printing of petitions, the legacy of the print revolution of the 1640s can be found in the use of print in everyday parliamentary activity.⁸² In 1705 the Commons ordered that all

⁷⁸ T. Carte, *A Full and Clear Vindication of the Full Answer to a Letter From a Bystander* (1743), p. 54.

⁷⁹ *A Historical Register, Containing an Impartial Relation of All Transactions, Foreign and Domestic* (1722), Volume 7, p. 29.

⁸⁰ PA, HL/PO/JO/10/3/189(m), Petition of Gentlemen, Clothiers and Traders in Chard, 16 March 1698.

⁸¹ PA, HL/PO/JO/10/3/204/1, Petition of Mayor, Aldermen, Baymakers and Inhabitants of Colchester, 1713; HL/PO/JO/10/3/201/29, Petition of Merchants and Traders of Exeter, 13 March 1711.

⁸² *CJ*, i, p. 419.

private bills had to be printed before their first reading, later made a standing order in 1722 for both houses.⁸³ The Lords, meanwhile, had ordered that petitions on legal appeals should be ‘published in print, to the end that all persons concerned may take notice thereof’.⁸⁴ But neither house specified how many copies were required, allowing lobbyists and litigants to include an appeal to the public in their campaigns for redress. The legal dispute between the physicians and the apothecaries of London saw the physicians printing 500 copies of their case.⁸⁵ Another case saw 460 sheets delivered, both being more than the membership of the House of Lords.⁸⁶ This was also the practice with legislation. The Duke of Rutland’s bill of 1717 had 500 copies printed, and London carriers printed 300 *Cases*, then 850 copies of their *Reasons* for getting a drawback on leather duty.⁸⁷ In order to support its petition, the Russia Company ordered 300 cases to be printed for presentation to peers.⁸⁸ Commissioners undertaking the navigation of the River Weaver printed 400 copies of their case to give to the doorkeepers of the Lords.⁸⁹ These developments echoed the practice of the 1640s when the Commons had ordered cloth workers to print their petition because the ‘business [was] of a

⁸³ *LJ*, xvii, p. 20; Lambert, *Bills and Acts*, p. 13.

⁸⁴ *LJ*, xiii, pp. 286-8.

⁸⁵ H. Cook, ‘The Rose Case Reconsidered’, *Journal of the History of Medicine and Allied Sciences*, 46 (1990), pp. 527-55, at p. 545.

⁸⁶ NRS, GD6/2156h/1, William Scott to William Nisbet, 12 March 1719, fol. 2.

⁸⁷ Lambert, *Bills and Acts*, p. 106; London Metropolitan Archives, CLC/L/CK/B/002/MS06113/001, Carriers Court Minutes, p. 206(r).

⁸⁸ LMA, CLC/B/195/MS11741/002, Russia Company Court Minutes, 15 May 1698. Its petition to the Lords had been presented the previous day—*LJ*, xvi, p. 284.

⁸⁹ T. Willan, *River Navigation in England 1600-1750* (Oxford, 1936), p. 31.

general concernment'.⁹⁰ This legitimisation of a parliamentary-centred print culture did create some tensions—the MPs John Milward and Andrew Marvell both complained the presentation of papers was 'too frequently done', but in 1667 a motion to ban the presentation of such papers at the door of the Commons was defeated, and print remained an important everyday feature of parliament.⁹¹

This printing of appeals as single sheet also aided the promulgation of the decisions the Lords made as a high court. Historians have argued that the absence of printed collections of Scots appeals 'allowed the Court of Session to ignore the Lords decisions as precedents'.⁹² However, four aspects suggest the house was less 'closed' than argued. The first was the small number of lawyers active in the house. Relevant information could be distributed quickly, with the number of counsel actually falling from twenty-four to twenty-one between 1680 and 1720, despite the explosion of business after 1689.⁹³

The second factor was the order of peers that appeals should be printed when they were presented. This meant there was a potential for them to be collected and sold to outsiders. Robert Wodrow wrote to the MP Sir Robert Pollock for papers relating to the Greenshields appeal, asking him 'to pick them up in the streets for me'.⁹⁴ By the 1760s, one

⁹⁰ *CJ*, ix, p. 719; D. Hirst, 'Making Contact: Petitions and the English Republic', *JBS*, 45 (2006), pp. 26-50, at p. 40, note 63.

⁹¹ *CJ*, ix, p. 29; Dzelzanis and Patterson, eds, *Works of Andrew Marvell*, Volume 2, p. 51; C. Robbins, ed, *The Diary of John Milward* (Cambridge, 1938), p. 152.

⁹² J. Cairns, 'Attitudes to Codification and the Scottish Science of Legislation, 1600-1800', *Tulane European and Civil Law*, 22 (2007), pp. 1-78, at p. 29.

⁹³ D. Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar, 1680-1720* (Oxford, 1990), p. 118.

⁹⁴ T. McCrie, ed, *Correspondence of Reverend Robert Wodrow* (2 volumes, Edinburgh, 1842), Volume 1, p. 195.

of the doorkeepers had collected ‘a set of private acts, in ten large volumes’.⁹⁵ The extra copies were collected by house officials ‘who sell them in lots every session’.⁹⁶ The Duchess of Marlborough in 1739 used ‘an officer who belongs to the House of Lords’ to bring her papers, suggesting those with contacts could follow these proceedings in detail.⁹⁷ Single sheets of appeals could be brought, with a continuous run between 1729 and 1753 being sold in the 1760s.⁹⁸ In the 1740s, another catalogue advertised bundles of appeals, with several sets running from 1716 to 1742, one of which had been owned by one of the masters in Chancery.⁹⁹ Abridgements and alphabetical accounts of Lords appeals were produced.¹⁰⁰ Scottish appeal cases were also part of this circulation. The library of the Scottish Faculty of Advocates in 1744 had records of cases heard before the Lords between 1734 and 1739, ‘with a full and proper index’ to earlier manuscript cases.¹⁰¹ The library also had a table of cases heard by the Lords since 1701 in two volumes, and a five volume work detailing appeals between 1772 and 1785, acquired later in the century.¹⁰² Standing orders relating to appeals were also printed in Edinburgh and London in the late 1720s.¹⁰³

⁹⁵ Osborne, *The Catalogue for the Year 1764*, p. 82.

⁹⁶ *Method of Proceeding in Order to Obtain a Private Act of Parliament* (1767), p. 21.

⁹⁷ Jones and Harris, ‘Sarah Duchess of Marlborough’, p. 259.

⁹⁸ Osborne, *The Catalogue for the Year 1764*, p. 420.

⁹⁹ idem, *A Catalogue of Thirty Thousand Volumes of Several Libraries Just Purchased* (1749), p. 20.

¹⁰⁰ idem, *The Catalogue for the Year 1764*, pp. 83-4, 290.

¹⁰¹ J. Pinkerton, ed, *Minute Book of the Faculty of Advocates, Volume 2: 1713-1750* (Stair Society 32, Edinburgh, 1980), p. 198.

¹⁰² *Appendix to the Catalogue of the Advocates Library* (Edinburgh, 1787), p. 5.

¹⁰³ *Orders Relating to the Bringing and Proceedings on Writs of Error and Appeals in the House of Lords* (1728). This was reprinted in 1734 and 1739 in London and Edinburgh respectively.

Thirdly, members did see a purpose in printing cases, especially those relating to the law. Chief Baron Atkins feared the consequences of ‘having few or no reports of cases adjudged in the supreme court, since those that are printed by Ryley’ in 1698.¹⁰⁴ These collections were actively used by peers to aid their judgements, with Bishop Nicolson discussing with Dr Gibson ‘Sir Bartholomew Shower’s reports from the House of Lords’.¹⁰⁵ Shower’s work was not the only account, with cases appealed to the Lords from the Court of Chancery printed in 1701 ‘with a variety of useful precedents throughout,’ whilst *Praxis Alma Curia Cancellaria*, a selection of ‘cases of great difficulty’ heard by Chancery and the House of Lords ‘for more than thirty years past’, was printed four times between 1704 and 1725.¹⁰⁶

The establishment of the provincial press during this period and the local origins and context of much legislation also aided the diffusion of knowledge of events in parliament. Newspapers such as the *Ludlow Postman* gave advance warning that the house was to ‘hear others on Saturday’ on the Weaver Navigation, allowing other groups to organise in advance.¹⁰⁷ Committee meetings were also reported. The same paper in 1720 reported on ‘John Gurney, a Quaker, [appearing] for those of Norwich’ alongside others in a committee examining the state of manufactures, providing for its readers ‘an account of what was said at

¹⁰⁴ R. Atkins, *A Treatise of the True and Ancient Jurisdiction of the House of Peers* (1699), p. 36. This

is a reference to *Cases in Parliament Resolved and Adjudged upon Petitions, and Writs of Error* (1698), by Bartholomew Shower.

¹⁰⁵ Bishop of Barrow in Furness, ed, *Bishop Nicolson’s Diaries: Part III* (Transactions of the Cumberland and Westmorland Archaeological Society 3, New Series, Kendal, 1903), pp. 1-59, at p. 40.

¹⁰⁶ W. Bohun, *Course of Proceedings in the High Court of Chancery...Also [The Practice of] Appeals to the House of Lords* (1723); idem, *Cursus Cancellari* (Multiple dates, 2 volumes).

¹⁰⁷ *Ludlow Postman*, 4 March 1720, Issue 22.

the bar of the House of Commons'.¹⁰⁸ The role of provincial newspapers in encouraging petitioning will be examined in greater depth in chapter five, but they were an effective means of supporting participation in debates on the many local bills of the period.

The Lords should be seen as 'half-closed' in this period. What peers and MPs feared from print was its use to distribute parliamentary debates, which would turn them into 'delegates' and increase personal accountability, weakening their own ability to deliberate. This is why parliamentarians attempted to restrict printing of events in parliament, in order to maintain the 'freedom...for his free voting in parliament'.¹⁰⁹ A desire for collective or institutional 'accountability' meant that action against printers was focused against those printing proceedings and lists of votes, such as a list of peers 'fit for the pocket' on the Sacheverell case.¹¹⁰ This echoed the practice in committees, with witnesses withdrawing when the act of voting occurred and only told the decision of the committee as a whole.

This situation meant that the reporting of parliamentary debates remained an uncommon and controversial feature in this period. However, parliamentary deliberations on legislation could be accessed by a wide range of interests in a relatively low-cost manner. Although many of the changes outlined above can be interpreted as attempts by

¹⁰⁸ Ibid, 29 January 1720, Issue 17.

¹⁰⁹ PA, HL/PO/JO/10/1/401/461, Petition of Earl of Anglesey, 19 June 1685.

¹¹⁰ *Evening Post*, 7-9 December 1710; Knights, *Politics and Opinion in Crisis, 1678-1681*

(Cambridge, 1994), p. 182. For examples of action taken against printers, see *Orange Gazette*, 1-5 February, 5-8 February; 8-12 February 1689; PA, HL/PO/JO/10/1/403/10(d), The Names of the Lords Spiritual and Temporal, Who Deserted (Not Protested) Against the Vote in the House of Peers, 11 February 1689; *LJ*, xiv, p. 123; *The Names of the Lords Spiritual and Temporal Who Deserted (Not Protested) Against the Vote in the House of Lords ...Against the Word Abdicated* (1689); *A List of the Lords That Entered Their Protests Against the Vacancy of the Throne, February 7 1688* (1689), was also published.

parliamentarians to manage their business and the demands of ministers, or the inevitable consequence of parliament being a ‘legislative marketplace’, the way that print or physical access was managed suggests that there was an expectation that all groups were entitled to a voice or presence at Westminster. Seemingly low-level participation and the use of print enabled the public not just to spectate, but participate in the business of parliament. Further reasons for this will be explored in the second half of this chapter, but now we must turn to consider some of the ways that people became active participants in governing.

II: From Spectators to Fellow-Legislators: Lobbying Parliament

The explosion of print in the late Stuart period was not solely result of the lapsing of the Licensing Act in 1695, but changing political structures.¹¹¹ Due to the presence of parliament, the need to lobby and convince a larger public audience, rather than a court centred polity, was increased. The use of print affected the political process, helping to alter the shape and pattern of political engagement, and provided a lost-cost means for individuals and disenfranchised groups to put pressure on parliament.

Beyond the official and semi-official documents which were ordered to be created at the behest of the house and then circulated more openly, were documents presented to the Lords that served to comment on or influence events occurring within the house. An important focal point and motivator of print-culture after 1689 was the business of the two Houses of Parliament, print being a means to inform and convince parliamentarians and other participants. Many pamphlets were printed with the aim of reaching the widest possible audience within parliament, not the wider public. Pamphlets on economic issues were presented to committees, whilst copies of petitions and proposals were ordered by peers to be

¹¹¹ This act, in force between 1662 and 1695, restricted printing to a small number of printers and enabled pre-publication censorship by licensing authorities, see R. Astbury, ‘The Renewal of the Licensing Act in 1693, and its Lapse in 1695’, *Library*, 33 (1978), pp. 296-322.

spread amongst the counsel present at the leather bill committee in 1689.¹¹² Parliament was the primary determinant in the appearance of these papers. When Bishop Nicolson printed his case on the cathedral bill, he did so only the day before the bill was introduced, and on the same day his opponent printed his ‘pretended reasons against the church bill.’ He printed a fresh batch for the Commons when the time came.¹¹³ When the Russia Company drew up a printed paper, they chose not distribute it, such was the nature of proceedings in the Lords.¹¹⁴ The primary aim of these pamphlets was to open up dialogue with a larger number of peers, and give lobbyists a more permanent voice in proceedings than oral communication in the hall or lobby could achieve. William Hodges, a financier of government during the 1690s, used these methods to protect his interests.¹¹⁵ He printed 600 sheets on the ‘ruin and destruction of our money’ when reform of the coinage was proposed in 1694.¹¹⁶ He also distributed a further 400 books in the same year. Another William Hodges, a mariner on a campaign to improve naval wages, ‘gave away’ 500 printed accounts on the fate of the seamen in 1698.¹¹⁷ Both Hodges gave the sheets ‘to a great number’ of parliamentarians, but sold none. These non-commercial and projecting documents addressed ‘national’ issues, highlighting and advancing ideas and ideology, but were produced in support of specific bills in particular sessions of parliament.

¹¹² PA, HL/PO/JO/10/1/383/42, Proposals of Francis Pontz, 3 December 1678; HL/PO/CO/1/4, Committee Book, 10 June, 4 and 6 July 1689.

¹¹³ Nicolson, *Diaries*, pp. 47-8; 453; 455-6, 458-9.

¹¹⁴ LMA, CLC/B/195/MS11741/002, Russia Company Court Minutes, 3 June 1698.

¹¹⁵ D. Hayton, ‘William Hodges’ Oxford Dictionary of National Biography, from <http://www.oxforddnb.com/view/article/13424>, accessed 24/2/2014.

¹¹⁶ W. Hodges, *The Groans of the Poor, the Misery of Traders, and the Calamity of the Public* (1696), p. 3.

¹¹⁷ W. Hodges, *Ruin to Ruin, After Misery to Misery* (1699), p. 11.

The importance of events in parliament as a context for the production of texts may be seen with the writings of leading economic thinkers. Charles Davenant printed his *Essay on Ways and Means of Supplying the War* (1695) and *Discourses on the Public Revenues* (1698) to coincide with changes to the land tax, and his *Essay on the East India Trade* (1696) to influence the amending of the East India Company charter.¹¹⁸ His *Discourse on Grants and Resumptions* (1700) matched the chronology of parliamentary criticism of William's land grants, whilst the *Reflections on the Constitution and Management of Trade with Africa* (1709) was to correct 'points of facts' that the 'wisest of council, even parliaments...have been mistaken in' during proceedings regarding the African Company's monopoly.¹¹⁹ His unpublished works, such as on coin in 1695 and on the council of trade, were also produced to coincide with crown and opposition manoeuvres.¹²⁰ This was also true of Nicholas Barbon, the speculative builder and economic writer. His *Apology for the Builder*, defending the growth of London, was published in 1678 and republished in 1685, both being reactions to a parliamentary debate on taxing new foundations in London. In 1685 Barbon was present in the Commons on the day MPs decided to investigate the tax, whilst a fellow speculative builder, Mr Parsons, sat on the bill committee.¹²¹ The economic writer Edward Chamberlayne was also prepared to 'contribute his utmost service, and to be ready [to] be called by any

¹¹⁸ P. Loft, 'Political Arithmetic and the English Land Tax in the Reign of William III', *HJ*, 56 (2013), pp. 321-43, at pp. 339-42. Other details are from D. Waddell, 'The Writings of Charles Davenant (1656-1714)', *Library*, 5 (1956), pp. 206-12.

¹¹⁹ C. Davenant, *Reflections Upon the Constitution and Management of the Trade to Africa* (1709), p. 1.

¹²⁰ R. Lees, 'Parliament and the Proposal for a Council of Trade in 1695-6', *EHR*, 54 (1939), pp. 38-66, at pp. 42-3.

¹²¹ *CJ*, ix, pp. 738, 740.

committee appointed to debate or consider any of the...proposals' he had suggested in his pamphlet.¹²² John Locke was also part of this culture, circulating 'advantageously in the House [of Commons]' a tract against a bill for lowering the statutory rate of interest.¹²³

These were practical, projecting documents produced for a parliamentary audience, imagined to have a short shelf-life. By printing them whilst parliament was sitting, lobbyists aimed to maximise their impact, with a group of Quakers in 1698 avoiding times when minds were 'cooled' and instead publishing as an 'open provocation' to the bills undergoing debate.¹²⁴ The *Ballad of the Weavers Complaint* was printed 'on doomsday' alongside *The Manufacture*, also on the case of the weavers, around 9 November 1719 to coincide with the Calico Bill of that session.¹²⁵ Many printed works were not intended to be read by a wider 'public' audience. They instead sought to convince a far smaller audience, namely parliamentarians and the interest groups campaigning there, and are a sign of individual agency in the legislative process.

This is further suggested by the fact that the lobbies of the two chambers of parliament were clearly used for 'lobbying' purposes, and acted as the end-point for many printed papers. Bishop Nicolson was given a paper on the East India Company whilst there.¹²⁶ One sheet referred to an 'account of the African Company's exports given out in the lobby two years ago', when there had been allegations 'hired writers' were behind the

¹²² E. Chamberlayne, *England's Wants* (1685), p. 37.

¹²³ L. Davidson and T. Keirn, 'John Locke, Edward Clarke and the 1696 Guineas Legislation', *PH*, 7 (1988), pp. 228-40, at p. 230.

¹²⁴ Bodl., Ballard MSS 5, Bishop Gibson to Dr Charlett, 10 May 1698, fols. 122-3.

¹²⁵ *Daily Post*, 9 November 1719, Issue 32.

¹²⁶ Nicolson, *Diaries*, pp. 176, 485.

papers.¹²⁷ In 1713 merchants trading to Africa referred to their five ‘printed papers, given out at the door of your house’ during proceedings on the African Company Bill.¹²⁸ The exclusionist Stephen College and others spread their libel in the lobby of the House of Lords on at least two occasions when parliament met at Oxford during the Exclusion Crisis.¹²⁹ Petitions from dissenters in the same period, were said to have ‘never travelled further than from the close committee to the lobby [of the House of Lords]’.¹³⁰ In the midst of the trial of Sacheverell ‘a swarm of pamphlets’ were printed, ‘one [being] sold at the door of the house, with the title of King William’s exorbitant grants’.¹³¹ Printed material was produced for influencing events at Westminster and enabled a greater intensity of lobbying to a wider range of parliamentarians. It allowed interest groups to move beyond petitioning or commentating from afar and actively influence proceedings as they were occurring, something that will be examined further below.

Direct interaction between parliamentarians and lobbyists was the result. In 1699, twelve Quakers ‘every day solicit[ed] the members of both houses’, whilst their opponents waited upon the bishops.¹³² During the Restoration, a female Quaker dispensed ‘scandalous

¹²⁷ *The Case of the Woollen Manufacturers of the Western Counties, Particularly of Cornwall and Devon: As it Relates to the Trade to Africa* (1713); *An Answer to a Paper Called Particulars Against the Bill for an Open Trade to Africa* (1711).

¹²⁸ PA, HL/PO/JO/10/6/237/3019(m), Representation of Merchants Trading to Africa, 29 June 1713.

¹²⁹ Anon, *The Arraignment, Trial and Condemnation of Stephen College for High Treason* (1681), pp. 43, 124.

¹³⁰ E.C and A.C, *Toleration Discussed in Two Dialogues* (1679), p. 169.

¹³¹ *The Bishop of Salisbury His Speech in the House of Lords on the First Article of the Impeachment of Dr Henry Sacheverell* (1710), p. 14. The book cost two pence.

¹³² Bodl., Tanner MSS 22, Topcliffe to Prideaux, 8 March 1699, fol. 186.

libel[s] in the hall and at the door of the Commons'.¹³³ Francis Bugg, a lobbyist against the Quakers, saw a peer 'come out and call for G Whitehead' who had already delivered 100 books to the house. Bugg himself echoed this practice, giving away 100 papers to peers and received one printed testimony in return in the Lords' lobby.¹³⁴ Local legislation also saw similar practices applied. John Clement, a fishmonger, said in committee his fellow witnesses had 'told several lies' in the lobby to peers, and was attested in this fact by Mary Ralph and Elizabeth Briggs who had also been in the lobby on the bill for regulating Billingsgate Market.¹³⁵ Lobbyists on behalf of the Sion library in London were able to wait at the doors of the Commons and ask MPs to 'represent so effectually' their case.¹³⁶ Robert Crossfield also had a peer 'send one of the doorkeepers to me...desiring to send him my petition', having 'attended near a month'.¹³⁷ Through print, these individuals were able to become regular 'voices' in parliamentary events, and through ease of physical access, to deliver papers directly to MPs and peers.

¹³³ B. Henning, ed, *Parliamentary Diary of Sir Edward Dering, 1670-1673* (New Haven, 1940), p. 4.

¹³⁴ F. Bugg, *The Pilgrims Progress, From Quakerism to Christianity* (1698), pp. 94-5. He was far from the only active lobbyist, with Quakers printing *The Case and Reasons of Friends Suffering for Swearing* 800 times in 1694, from E. Kirby, 'The Quaker's Efforts to Secure Civil and Religious Liberty', *JMH*, 7 (1935), pp. 401-21, at p. 418. Their opponents printed 1200 books to distribute against Quakers in 1699, see Bodl., Tanner MSS, 22 Topcliffe to Prideaux, 8 March 1699, fol. 186. For more on this affair, see D. Wykes, 'The Norfolk Controversy: Quakers, Parliament and the Church of England in the 1690s', *PH*, 24 (2005), pp. 27-40.

¹³⁵ PA, HL/PO/JO/10/1/517/1421(b), Affidavit of Andrew Jennings, 14 April 1699.

¹³⁶ W. Reading, *Bibliothecæ Cleri Londinensis in Collegio Sionensi Catalogus* (1724), p. 39.

¹³⁷ PA, HL/PO/JO/10/1/474/920(e), Account of Crossfield's Proceedings in the House of Lords, 22 February 1696.

This process of interaction was becoming more regularised in the late Restoration and late Stuart period. This was reflected in the orders of parliament that bills and petitions presented to it must be printed, but was further established as part of parliamentary practice through the erection of a post box at the door of the Commons. In 1695 the Commons ordered this should be established at the door of their house and suggests any person could drop off a pamphlet or letter to an MP without disturbing the house's proceedings. Although it did result in Richard Fraggat stealing letters addressed to MPs by breaking into 'the boxes at the lobby door...every-post day' in 1698, reflecting the widespread desire for news from parliament, it enabled parliament to act as an efficient recipient of papers from lobbyists and projectors.¹³⁸

Nor was it only the literate who were able to capitalise on this ease of access and knowledge of parliamentary events to influence events in parliament. Popular forces and ideas could also find their way into the Palace of Westminster, enabling those 'out of doors' to be part of the political process and for others to observe this. The speed that Londoners learned of events in parliament is revealed by the publishing of the lists of the names of the opponents of the Exclusion Bill only one day after it was rejected in the Lords.¹³⁹ Popular protest could react immediately to parliamentary events, as a group of weavers did in January 1697. When Gabriel Glover (possibly a London ironmonger) told weavers in New Palace Yard of the state of the Calico Bill, the news quickly spread.¹⁴⁰ Travelling to the Kings Arms

¹³⁸ *CJ*, xii, pp. 287-9; House of Commons Information Office, *The House of Commons Post Office:*

Factsheet G20 (Revised September 2010), pp. 2-3.

¹³⁹ Knights, *Politics and Opinion*, p. 183.

¹⁴⁰ *The List of the Poll for John Ward, Esq; Thomas Scawen, Esq; Aldermen* (1713), p. 21; J. Nicholl, *Some Account of the Worshipful Company of Ironmongers* (1851), p. 489; *CJ*, xi, pp. 667-8, 681-4.

in Covent Garden, the information was passed to another group of weavers, whilst the clerk of one MP told other journeymen in another public house. Women were then ‘hired to a ring a bell...to raise the weavers...’ to petition parliament. Within a day there was a ‘tumultuous crowd of people coming into the Palace Yard and Westminster Hall...and into the lobby’ for the second reading of the bill. This was not the only time such large groups congregated in parliament in this period. In November 1696 ‘some hundreds of weavers’ had petitioned against the East India Company.¹⁴¹ In the same year ‘all the halls, painted chamber, speaker’s chamber, and the lobby and the coffee houses [were] full of people, waiting for the result the house would come to about guineas’.¹⁴² The Toleration Act of 1689 saw a group of ‘common people’ attending in Westminster Hall to follow proceedings.¹⁴³ Sacheverell’s trial saw ‘over a hundred other clergymen throng[ing] the court’ to organise his case, whilst in the 1710s the MP Peter Shakerley reported that ‘thousands of shoemakers, carriers [and] cobblers’ had for several days been ‘shouting against the drawback’, in such large numbers that parliamentarians had to ‘run the gauntlet through them.’¹⁴⁴ MPs whose names had been printed as voting against the declaring of the throne vacant in 1689 also found that they were ‘pointed at in Westminster Hall’ by baying crowds.¹⁴⁵

This use of parliament as a site of pressure and protest is more likely to have impacted on MPs rather than peers, as the latter could ‘escape’ through the prince’s entrance rather

¹⁴¹ Luttrell, *Brief Relation*, Volume 4, p. 144.

¹⁴² HMC, *Lord Kenyon*, Fourteenth Report (1894), p. 403.

¹⁴³ *Grey’s Debates*, Volume 9, p. 262.

¹⁴⁴ G. Holmes, *The Trial of Doctor Sacheverell* (London, 1973), pp. 90, 108-9; R. Gwilliam, *Chester Tanners and Parliament, 1711-1717* (Chester and North Wales Architectural, Archaeological and Historic Society 44, New Series, Chester, 1957), pp. 41-9, at p. 46.

¹⁴⁵ *Grey’s Debates*, Volume 9, p. 90.

than exiting through the hall as MPs had to do. Nonetheless, protest could occur directly next to the site of decision making, and petitioners and protesters gained dignity and prestige by meeting in a widely-known and recognised site such as Westminster Hall. There were limits to what these protesters could do, however, and if they began to intimidate either house their petitions would often be rejected—an issue which will be discussed in greater depth in chapter five.

It was not only parliamentarians who increasingly sought to manage public access in this period but lobbyists themselves, reflecting the heightened importance and status of witnesses. Because of the length and frequency of parliamentary sessions, organisations and interests also became more focused around London. The Borough of Nottingham selected its witnesses who were ‘thought fit to go... to prove’ their petition against the Derwent navigation.¹⁴⁶ The Corporation of Dover selected and paid for its witnesses, and spent ninety pounds getting them to London.¹⁴⁷ Once in London, leading lobbyists would seek to control the witnesses to ensure their presence at the house, paying them to ‘keep the witnesses together all day’ and for ‘dining’.¹⁴⁸ The soliciting of witnesses was done over ‘three dinners’ for the Dover-Rye Harbour Act of 1722.¹⁴⁹ This control reflected the key role witnesses would play in influencing the opinions of peers, with some clearly desperate to avoid the presence of hostile witnesses. The Creditors Relief Act in 1697 saw an attempt to bribe witnesses, with Anne Hancock offered 200 guineas ‘not to come in against Mr. Tilley’.¹⁵⁰

¹⁴⁶ W. Stevenson and W. Baker, eds, *Records of the Borough of Nottingham, 1702-1760* (9 volumes, Nottingham, 1882), Volume 6, p. 16.

¹⁴⁷ CKS, DHB/L1, Charge of the Dover-Rye Harbour Act, 1722, fol. 1.

¹⁴⁸ TNA, T 1/75, Treasury In-Letters, 7 July 1701, pp. 23-6.

¹⁴⁹ CKS, DHB/L1, Charge of the Dover-Rye Harbour Act, 1722, fol. 1.

¹⁵⁰ PA, HL/PO/CO/1/5, Committee Book, 9 March 1697.

The necessity of lobbying parliament over consecutive sessions meant the organisation of witnesses became more closely controlled as legislating became more predictable and intense after the Glorious Revolution. Such was the increase in legislation and associated lobbying after 1689 that the City of London had to reduce the spending of the Remembrancer, who attended parliament on their behalf.¹⁵¹ This control principally occurred through the development of parliamentary agents who did put unspoken limits on who was attending parliament, helping to control and select witnesses sent on the behalf of companies and localities. Other localities were also present, if only on a more intermittent basis. Bristol tanners organised the meeting of their agents and petitioners in coffee houses around St Paul's, whilst the agent for Cardigan was to be found near Chancery Lane, of which 'all ministers, churchwardens and others [were] desired to take notice'.¹⁵² People would also come to parliament to follow proceedings. Supporters of the Don navigation employed an agent to keep sight of proceedings and held a committee at Gill's coffee house in 1722, where papers were sent and collected, and Quakers appointed three men to perform a similar task, basing themselves at a coffee house in New Palace Yard.¹⁵³ London curriers visited eight coffee houses in 1711 whilst lobbying for a bill, and the Russia Company met at coffee houses in February 1699 when the Russia bill was being discussed.¹⁵⁴ The company the previous year had attended the Mermaid Tavern 'to attend sundry lords' and sent letters to

¹⁵¹ LMA, COL/RMD/PA/04/004, Rembrancer Office, fol. 1.

¹⁵² Cheshire Archives, ZG 21/8/32, Letter of Bristol Tanners to Chester Tanners, 18 March 1712;
London Gazette, 11-14 November 1710, Issue 4769.

¹⁵³ T. Willan, *The Early History of the Don Navigation* (Manchester, 1965), pp. 49; 81; 107; Kirby, 'The Quaker's Efforts', pp. 413, 415.

¹⁵⁴ LMA, CLC/L/CK/B/002/MS06113/003, Curriers Accounts Minutes, p. 206(r);
CLC/B/195/MS11741/002, Russia Company Minutes, 25 February 1699.

other peers from there.¹⁵⁵ Clearly the ‘London season’ was more than the provincial gentry arriving for the social season, but also swathes of lobbyists, petitioners, and pamphleteers arriving for the ‘parliamentary season’.

The examining of the accessibility of parliamentary spaces and the flow of information in and out of the house challenges our mental images of parliament in the early modern period and highlights the possibilities of engagement in what was a lively and bustling environment. But it is also important for considering the functioning of the state. Through enabling the open and clear participation of outside interests ‘publically upon the stage’ at a central point of decision-making, parliamentarians contributed to the legitimacy of the eighteenth-century state.¹⁵⁶ The accessibility of parliament meant interest groups, pamphleteers and crowds were meaningful participants, being part of the narrative of a political event. Their use of print and protest meant they were able to balance some of the trends towards a closing of access and the restriction of those appearing formally at parliamentary committees. They too could be ‘fellow members of a political community’.¹⁵⁷

III: The Institutions and Culture of a ‘Deliberative Assembly’: Committees, Interests, and Majoritarian Rhetoric

The physical presence of the public at Westminster reflected, in part, the impracticality of suppressing access at a time when the business of parliament was increasing and courts continued to operate in Westminster Hall. However, parliamentarians also *desired* the presence of the public at Westminster. A consideration of their presence at committees, for which the records survive for the Lords, can offer evidence why openness—both in committees and more widely—was the policy of parliamentarians. Committees were the

¹⁵⁵ LMA, CLC/B/195/MS11741/002, Russia Company Minutes, 23-26 May 1698.

¹⁵⁶ *Weekly Packet*, 24-31 October 1719, Issue 382.

¹⁵⁷ Parkinson, ‘How Legislatures Work’, pp. 442-3.

formal end-point of public participation, in which it had long been the norm for witnesses to be heard. But different forms of committee attracted (and expected) different profiles of participants—the ‘democratisation’ of those attending parliament remained incomplete in this period. After a discussion of the nature of committees, this section then considers the reasons for encouraging participation, in particular the language and concept of ‘interest’, the ‘majority’, and the demand of parliamentarians and participants for ‘facts’.

There were two sorts of committees, each with different attitudes to public participation, though both will not be discussed in detail here. The first were semi-judicial in nature—such as the one investigating the Popish Plot in 1679, the death of the Earl of Essex in 1689, or the conduct of admirals during the Nine Years War. These had the broadest range of participants, taking witnesses from all ranks of society. The second form of committee was legislative, meeting to determine the merits of any given bill, and could either as a ‘committee of the whole’ or as a ‘select’ or ‘bill’ committee, meeting in a room around the chamber. Depending on the nature of the bill, these could range from being, in effect, ‘closed’ (estate bills, where primarily only consents to the settlement were taken, are the prime example of this), to more open ones determining wider ‘public’ issues (even if in the form of private bills), and where the focus in this section will primarily lay.

A brief sketch will first be made of the most open committees, the extraordinary ‘judicial’ committees, before examining legislative committees. These semi-judicial committees were explicitly participatory, with printed notices fixed at ‘public places’ in Westminster and London to encourage ‘any person’ to present themselves at the committee for examining the Popish Plot in 1679.¹⁵⁸ Witnesses drew considerable public interest and were actively reported in print—and on playing cards, as can be seen in figure nine. The *Brief Account of Most Remarkable Transactions of the Last Two Parliaments* saw the role of

¹⁵⁸ PA, HL/PO/JO/10/1/382/8, Popish Plot Draft Order for Examining Witnesses, 28 October 1678.

witnesses and participation of outsiders as essential to the narrative of the exclusion parliaments, with nearly a third of the entries in its index relating to the participation of witnesses and informers.¹⁵⁹ Three silversmiths and four watermen appeared before the committee together, suggesting a workplace-based pattern of participation.¹⁶⁰ Servants ‘that attend[ed] the door’ in the same period were also heard.¹⁶¹ These committees tapped successfully into broader features of the criminal law, resulting in a wider demographic group involved in their business.

The second and more common form of committee was the more open legislative committee, occurring at the second reading of a bill in the house, and immediately after it, in a smaller bill committee, held often in a room near the chamber. In these committees, participation primarily reflected interest groups seeking to influence legislation that affected them or the state’s lack of knowledge of the economy in the localities, witnesses being called to provide information (though there was considerable overlap between these two groups). Francis Bugg, lobbying against Quakers in the 1690s, reflected this express desire for information, recording that:

when a bill for the regulation of the tanning of leather was brought into the Houses of Parliament, one of the peers of the Lords’ house being willing to inform himself in the nature of that affair, he applied himself to a cobbler, discoursed with him about this, that, and the other in leather, and what ways might be found to remedy the abuses thereof, for the public good. The cobbler tells his honour what he knew, by many years experience, and told his lordship how it might with ease be remedied, insomuch, that when the bill came under debate in the house, his lordship was so well skilled, not only in the means to be used, but in terms of the art, that his lordship spoke like some experienced tanner... in other cases it is frequent [for these interactions to occur].¹⁶²

¹⁵⁹ S. Neale, *A Brief Account of the Most Remarkable Transactions of the Last Two Parliament Held and Dissolved at Westminster and Oxford* (1681), pp. 299-302.

¹⁶⁰ HMC, *The Manuscripts of the House of Lords, 1678-1688* (London, 1887), pp. 46-7.

¹⁶¹ *Ibid*, p. 8.

¹⁶² Bugg, *The Pilgrims Progress*, pp. 169-70.

Figure 9: Captain Bedlow examined by the secret committee of the House of Commons during the Popish Plot (c. 1679), from BM, Number 1896,0501.915.1-52

These exchanges may have been frequent, but for the historian are not possible to quantify in any reliable form for the early eighteenth century. Unlike the number of litigants or petitioners it not possible to be systematic about the scale of involvement using the surviving records of the Lords (only later in the century were committee records printed). The

primary sources are the manuscript witness book (a list of sworn witnesses) and the committee records, found in committee books and the manuscript journals. These are unfortunately at odds with one another. The witness books contain a total of 4000 names between 1685 and 1720. However, if a comparison is attempted between the sources, one tobacco bill has no witness recorded in the witness book, but has eight listed in the manuscript minutes. Neither is it the case the witness book can be taken as an underestimate, for one calico bill has twenty-seven sworn witnesses, which only appear as ‘several’ in the committee book.¹⁶³ Equally, the remarks by witnesses can vary enormously, running from single words to many pages, with some speeches on the French Commercial Bill of 1713 running to around 4000 words in length.¹⁶⁴ These sources can only offer a very partial record, dependent on the whims and attitudes of clerks of the time.

Nonetheless, the hearing of such large numbers of individuals, the receiving of pamphlets and the viewing of crowds, raises the question of why parliamentarians desired and tolerated such a large number of people attending. There are three main reasons—wider societal practice, the importance of the ‘culture of fact’, and the language of interest and an imagining of a society organised by it.

Parliament was accessible because it reflected how wider society and the state functioned, gaining its legitimacy from sharing the practices of society. The demand and

¹⁶³ PA, HL/PO/JO/5/1/53, Manuscript Minutes, 6 June 1715; HL/PO/PB/24/14, Calico Bill, 22, 27 and 29 April 1720; HL/PO/JO/5/1/62, Calico Bill, 26 April 1720.

¹⁶⁴ PA, HL/PO/JO/10/6/235/3001(c), Speech of Mr Cooke, 4 June 1713; HL/PO/JO/10/3/204/2, Mr Torriano’s Speech, 8 June 1713. The limited nature of recording keeping is shown by considering the printed *Report From the Committee To Whom the Petition of the Churchwardens, Overseers of the Poor and...Inhabitants...of Middlesex* (1737), which has seventeen pages of witness evidence alone, compared to few lines in the manuscript evidence.

necessity of the participation of outside interests and individuals was present across a range of state bodies. The board of trade opened its doors twice a week, with advance notice given to interest groups. In 1711, 175 members of the Virginia trade were able to attend in single session.¹⁶⁵ As part of debates on the Calico Bill of 1719, the same board sent for merchants, members of London companies and dyeing interests.¹⁶⁶ In 1685, the treasury had also been subject to such pressure. The merchant Ralph Hardwick told its ministers he ‘had done his majesty a great service’ with his proposals for taxes on calicoes in 1685.¹⁶⁷ The treasury was also ‘directed’ to hear Thomson Hutchinson’s proposal on a revenue on spirits in October 1685, with taxes on wines suggested when parliament reassembled in November.¹⁶⁸ Outside the ‘executive’ sphere, London’s common council was also subject to outside influence, receiving a petition from cheesemongers against navigation schemes in 1720 and ‘inhabitants’ attended it in support of a bill in 1707. In 1717, 120 men attended the council to support their petition.¹⁶⁹ These participatory elements were a means for influencing and shaping policy, and common to several areas of the wider state. Parliamentarians, having experience in local assizes, corporations, courts and parish government, had no reason to act

¹⁶⁵ A. Olson, *Making the Empire Work: London and American Interest Groups, 1690-1790*

(Cambridge, Mass., 1992), p. 59; idem, ‘Parliament, the London Lobbies, and Provincial Interests in England and America,’ *Historical Reflections*, 6 (1979), pp. 367-86.

¹⁶⁶ *Weekly Packet*, 24-31 October 1719, Issue 382.

¹⁶⁷ J. Raithby, ed, *Statutes of the Realm* (11 volumes, London, 1810-1828), Volume 6, pp. 7-9; W.

Shaw, ed, *Calendar of Treasury Books* (32 volumes, London, 1904-1962), Volume 8, p. 257.

¹⁶⁸ TNA, T/27/9, Treasury Out-Letter Books, p. 171; *CJ*, ix, p. 759.

¹⁶⁹ LMA, COL/CA/02/02/9, Court of Aldermen Minutes, 21 April 1707; COL/CA/02/02/12, Court of Aldermen Minutes, April 1717; COL/CC/03/01/2, Court of Common Council Minutes, January 1720.

any differently when it came to their sitting at Westminster, all these institutions being reliant on a wide range of social groups to function effectively and consensually.

Whatever the precise scale, the nature of the state and the need for information and ‘facts’ to inform legislative action formed a key pillar to enabling, justifying and shaping participation.¹⁷⁰ The period after the Glorious Revolution, as is well known, did experience an expansion in the fiscal-military state. The inspector general of customs or the treasury are significant examples of new or empowered offices that impacted directly on the process of legislation. The lack of financial innovation after the land tax was settled in the late 1690s would have further reduced the ability of outside interests to influence the central state. But it is important to stress the limited extent of this growth and the few areas of social and economic life the state had readily available knowledge of, but which interest groups still demanded parliament legislate on. The professionalization of some witnesses, especially from the mid-1690s did occur, but this did not mean that the house was ‘closed’ from wider advice and pressures. Because local offices were held by the middling sorts and below, and there were no offices that would have readily available knowledge of, for example, the Turkey trade, woollen manufactures in Devon, or the state of Parton harbour in Cumberland, merchants, manufacturers (with at least one woman attending in this role) and local surveyors were used to fill this knowledge gap.¹⁷¹ Several surveyors of highways were called on the Kensington and Brentford Road Act in 1717 in this role.¹⁷² Their participation on this basis was quite explicit—being called to ‘make out the facts’ relating to industries and society,

¹⁷⁰ An argument advanced in relation to petitioning in J. Brewer, ‘The Politics of Information’, in his *The Sinews of Power, 1688-1783* (London, 1990).

¹⁷¹ Elizabeth Hughes appeared as a witness on the Calico Bill of 1696, saying that she employed 19 people at any one time—see PA, HL/PO/JO/5/1/31, Manuscript Minutes, 7 April 1696.

¹⁷² PA, HL/PO/JO/5/1/58, Manuscript Minutes, 5 July 1717.

Figure 10: William Hogarth, *The Gaols Committee of the House of Commons* (c. 1729). This was one of the rare ‘social’ inquiries launched by parliament, this one dealing with imprisoned creditors, and met between 1729 and 1730. Thomas Bambridge, Warden of Fleet Prison, is shown on the far left.

although committees themselves were rarely set up solely to inquire; these questions being raised in the context of a specific bill.¹⁷³

The informative and fact-finding role of participants took two forms. The first is data that commissioners of customs, the navy, or clerks from the board of trade were able to present to parliament, generally using central records from London and presented formally as papers. The second was evidence provided by witnesses, which was either ‘international’ (frequently relating to Ireland or Holland) or local, perhaps even limited to their business or personal experience. This was also frequently numerical and could detail the local production of certain goods or prices. If current information was required, it was often these witnesses

¹⁷³ PA, HL/PO/CO/1/5, Committee Book, 21 March 1694.

who could provide information parliamentarians required. The Salt Prize Act of 1691 saw ‘discourses with several merchants and agents’ who informed peers of the number of salt-ships in the Thames, rather than customs commissioners.¹⁷⁴ Such groups were able to answer questions government simply had no knowledge of, such as the numbers of throwsters, the quantity of raw silk production, and the length of time people remained in work.¹⁷⁵ Clothiers were able to provide details of cloth manufacture in Bristol, Norwich and Salisbury.¹⁷⁶ This was because they had access to local and specific records, with the carriers able to provide data on the leather duty from work that they had done in tax offices.¹⁷⁷ Shoemakers in Southwark presented to one committee the customs receipts of leather duty in 1685 for the 1670s.¹⁷⁸ In 1704, the Russia Company had written to the Governor of Newcastle to gain a regular account of convoys coming and going from the port, whilst the bill for the Dunn navigation saw reports from shipmasters based on their examination of custom books at Hull to demonstrate the importance of the project.¹⁷⁹

This activity reflected the wider participative culture of the state and the culture of information collection. Even when customs commissioners or a similar body presented information, it was often based on the participation of outside groups in non-parliamentary

¹⁷⁴ PA, HL/PO/CO/1/5, Committee Book, 14 December 1691.

¹⁷⁵ PA, HL/PO/CO/1/5, Committee Book, 13 January 1694.

¹⁷⁶ PA, HL/PO/CO/1/5, Committee Book, 20 February 1692.

¹⁷⁷ LMA, CLC/L/CK/B/002/MS06113/001, Curriers Court Minutes, p. 206(r).

¹⁷⁸ PA, HL/PO/CO/1/3, Committee Book, 17 June 1685.

¹⁷⁹ LMA, COL/CA/02/02/7, Court of Aldermen Minutes, 2 May 1704; NUL, Mellish 162/46, in

Willan, *Don Navigation*, p. 133.

bodies, which was then combined and presented to peers.¹⁸⁰ This pattern was echoed in the Commons, though its committee records for this period are now lost (some of the records for the committees of the whole house are in its printed journals). In March 1698 a bill on the export of wool saw the attendance of cloth workers and locals, who were able to discuss the importation of wool through Romney Marsh.¹⁸¹ In an inquiry of 1702, Judith Pacheca, ‘a Jew and slave’ appeared before the Commons, whilst the Aire and Calder navigation also saw witnesses who ‘know the river’ attend in order to describe its flow and the possible impacts of sluices.¹⁸² This was also true for finance matters, for when a bill for the imposition on sugar and tobacco was read a second time in 1685, the Commons thought it was necessary for

...the merchants who petitioned...to [be] hear[d] [for] what [they] could offer. Alderman Jefferys, Mr Levett and Mr Cary were called in and gave their reasons why the imposition on tobacco would be prejudicial to his majesty’s customs and the traders in tobacco. Sir Peter Clinton and others were heard particularly concerning the sugar. Aldermen Knight and other merchants of Bristol offered reasons against the bill. All which took up several hours and after a very long debate of the committee they returned into a house...¹⁸³

The significant role ‘experts’ could play in parliament was also echoed at a local level. A draft petition of the Corporation of Great Yarmouth to the Commons had advice attached from a range of people, including the collector of customs and a master at sea who provided

¹⁸⁰ *LJ*, xx, p. 72, xxi, p. 304. Papers relating to the South Sea Company and Spanish Trade from various sources were presented in June 1714—see PA, HL/PO/JO/10/6/251, and on the French Commercial Bill in 1713 PA, HL/PO/JO/10/6/232-234.

¹⁸¹ O. Williams, ed, *The Minute Book of James Courthope* (Camden Miscellany 20, Third Series, London, 1953), pp. 43-4.

¹⁸² R. Paley, C. Malcolmson and M. Hunter, ‘Parliament and Slavery, 1660-c.1710’, *Slavery and Abolition*, 31 (2010), pp. 257-81, at p. 259; ‘Minute Book of James Courthope’, p. 66.

¹⁸³ E. Timings, ed, *Calendar of State Papers (Domestic)* (3 volumes, London, 1960), Volume 1, p. 195.

figures the mayor and corporation could not provide.¹⁸⁴ In Bristol, the merchant venturers sought to ‘invite...all other merchants and traders of this city and adjacent counties’ to contribute to the writing of their petition.¹⁸⁵ There was recognition at all levels of state structures that advice and expertise from those beyond formal office-holders was a necessary part of policy-making.

In addition to the role of fact-finding as providing an impetus for parliamentarians to actively involve the public in their proceedings, was the idea of ‘interest’. Those who attended the committees of the House of Lords were not limited to a fixed set of established institutions and corporations, but also included groups that nominated themselves. This language of ‘interest’ was a new intervention in political discourse during the mid-seventeenth century, and helped to increase the significance of petitioning from non-elite groups.¹⁸⁶

The importance of the language of interest can be divided into three parts. The first role it performed was to increase the anxieties and reality of partisanship, by expanding the numbers who could claim to have a ‘legitimate’ interest in any bill or policy. Central to the intrusion of the language of interest from the mid-seventeenth century was the belief that the

¹⁸⁴ Norfolk Record Office, Y/C36/6/35, The Case of the Pier of Great Yarmouth, 1685.

¹⁸⁵ P. McGrath, ed, *Records Relating to the Society of Merchant Venturers of the City of Bristol in the Seventeenth Century* (Bristol Record Society 17, Bristol, 1952), pp. 228-9; 253.

¹⁸⁶ A. Houston and S. Pincus, ed, *A Nation Transformed: England After the Restoration* (Cambridge, 2001), pp. 275-7; J. McElligott, ed, *Fear, Exclusion, and Revolution: Roger Morrice and Britain in the 1680s* (Aldershot, 2006), p. 208. Other important works are J. Gunn, *Politics and the Public Interest in the Seventeenth Century* (London, 1969) and A. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before its Triumph* (Princeton, 1977).

use of self-interest would contribute to the public good.¹⁸⁷ By arguing that this was in the ‘national interest’, meant it was a necessity for policy-makers actively to seek interests out and allow them to influence change. This required seeking out ‘the whole’, which William Penn argued ‘takes in all parts’, within which ‘each person...has a claim to be secure in his rights and properties’.¹⁸⁸ As a result, peers declared in relation to witnesses on the commercial bill of 1713, that they would ‘enquire who they are and then...move for a day for hearing of them’.¹⁸⁹ The allowing of the expression of a diverse range of interests and attitudes, and acknowledging the crown was only one interest amongst many created a plural conception of society, in which conflict was an inbuilt feature of political and economic life. The means for stability in this model would be by ‘preserv[ing] industrious men in a peaceable way of improving their own interest’, allowing a plural politics.¹⁹⁰ This balancing of wider interests would ‘make the chief magistrate strong, while he keeps his interest in all of them’, requiring those in power to seek out, identify, and quantify those interests who were of significance to the matter at hand.¹⁹¹

Because elections did not provide the best means for this due to the restrictive franchise, parliament itself had to provide the mechanism for this through direct participation in committees or petitioning. The limited and partial franchise meant that the citizenship that was expected was not a passive one that deferred to representatives, but rather one that relied on and expected outside involvement. Therefore, peers identified participants on the basis of

¹⁸⁷ Gunn, *Politics and the Public Interest*, p. 316.

¹⁸⁸ Ibid, p. 173; T. Burnett, *An Essay Upon Government* (1716), p. 43.

¹⁸⁹ *LJ*, xx, p. 568.

¹⁹⁰ J. Owen, *Truth and Innocence Vindicated in a Survey of a Discourse Concerning Ecclesiastical Polity* (1669), pp. 77, 297-8.

¹⁹¹ J. Humphrey, *A Defence of the Proposition* (1668), pp. 99-100.

interests they were perceived to represent. Peers gave advance warning to shoemakers and other leather manufactures in order to hear what they ‘have to object against the said act.’¹⁹² The clerk in 1694 was ordered to let merchants and throwsters know they were expected two days before they were eventually heard and to bring relevant evidence, whilst on other occasions notices were fixed to the door of the chambers of the two houses.¹⁹³ As a result, participants were self-defining, and parliamentarians encouraged private citizens to consult their own interests to decide the ‘public interest’. Because interest was the perceived means of how society functioned, it was believed that the enforcement of the law needed to have support of these interests, otherwise ‘it has not root enough upon the public utility to maintain itself against private encroachments’.¹⁹⁴ Laws were recognised as requiring the support of private men in their own interest—legitimising the reality of the origins of many bills in the private and self-interested motivations of a locality or economic group.

Closely linked to the recognition of the existence of interests was the increasing use of ‘interest’ as a social identity, as an alternative to ‘class’ or ‘rank’. This will be discussed in more depth in the chapter on petitioning, the signing of petitions by large numbers being key to the process. The use of the language of interest in the pamphlets and papers issued and distributed by lobbyists meant the readers of these texts outside parliament could see the participants as representing their views and situation. The sharing of descriptive features with outsiders assured them the ‘correct’ groups had been able to influence ‘binding collective decisions’, awarding greater legitimacy to parliament’s decisions.

Because the public participated within the framework of ‘interest’, parliamentarians had means of establishing whether what was claimed by petitioners was true. By arguing that

¹⁹² *LJ*, xiii, pp. 582-3.

¹⁹³ PA, HL/PO/CO/1/5, Committee Book, 13 January and 24 February 1694.

¹⁹⁴ J.H., *The Obligation of Human Laws Discussed* (1671), pp. 111-12.

petitioner's claims were based on their own self interest, rather than the public one, it was possible to dismiss their views and claims, controlling the pluralistic political culture the language of 'interest' had helped to justify.¹⁹⁵ This was particularly useful in the context of a more diverse range of witnesses, who would not have shared the common conventions that William Temple noted existed between parliament and coffee houses.¹⁹⁶ Shoemakers petitioned against the revival of an act for the transportation of leather, arguing that it sought to serve 'the interest of some particular persons'.¹⁹⁷ It was to 'interest' that counsel looked to legitimise their positions, unmasking opponents for pursuing self-interest and portraying them as undermining the 'public interest'.¹⁹⁸ Shoemakers petitioned against the revival of a leather act, blaming it for the decay of trade, done in order to serve 'the interest of some particular persons'. On the Deeping Fens Bill in 1685 counsel argued 'all the lords of the manor in the fens were for the bill', whilst their opponents claimed the 'bill was opposed by the gentlemen of the county'.¹⁹⁹ Francis Winnington claimed that 'they argue from private interest...they say nothing for the king in this' in debates on the collection of alnage duties.²⁰⁰ Opponents of the woollen manufactures bill in 1698 believed it to have been 'calculated wholly for Exeter', at the cost of the wider West Country.²⁰¹ Meanwhile, opponents of the Aire and Calder navigation argued the scheme was 'only to the private advantage of the

¹⁹⁵ McElligott, ed, *Fear, Exclusion, and Revolution*, 209.

¹⁹⁶ W. Temple, *Miscellanea*, in *Four Essays* (1690), p. 74.

¹⁹⁷ *Reasons Humbly Offered by the Poor Journey-Men Shoemaker...For Preventing.... the Act For Transportation of Leather* (n.p., 1685).

¹⁹⁸ PA, HL/PO/JO/10/1/404, Petition of London and Westminster Shoemakers, 1 June 1689.

¹⁹⁹ PA, HL/PO/JO/5/1/23, Manuscript Minutes, 22 June 1685; HL/PO/CO/1/3, Committee Book, 24 June 1685.

²⁰⁰ PA, HL/PO/JO/5/1/28, Manuscript Minutes, 8 February 1692.

²⁰¹ PA, HL/PO/JO/5/1/33, Manuscript Minutes, 30 March 1698.

undertakers', and the projectors of the River Dunn navigation believed they were opposed by 'private interests and views'.²⁰²

The language of interest also encouraged the use of rhetoric that stressed the importance of the 'majority opinion' to judging the merits of policy. In the case of the Silk Importation Act in 1694 there were complaints that the 'petition is brought in by a few throwsters [and] their main body disown it'.²⁰³ Supporters of the bill for weighing butter and cheese claimed 'only twenty-two of the cheesemongers oppose the bill'.²⁰⁴ These calls for judging on a majority basis clearly have a whiggish hue about them, advancing a notion of the 'general sense of this nation'.²⁰⁵ This language certainly marks the abandoning of any notion of unity within society and the recognition of the need for negotiation. Even with the restrictive membership of parliament and the limited electorate, individual judgement and active citizenry had its place when determining the merits of a bill. Like the language of interest, the language of the majority offered the possibility of certainty—the majority could be (relatively) easily discerned and justified, whilst those who had the right credentials to judge based on merit or wisdom, were harder to establish and more easily contested.²⁰⁶ The declining confidence in the 'people' from the 1710s was perhaps 'checked' by the language of interest and the alternative means of establishing consent. The language of interest was

²⁰² *Reasons Against the Bill For Making the Rivers Ayre and Calder in the West Riding of Yorkshire Navigable* (n.p., 1699); *The Methods Proposed For Making the River Dunn Navigable* (1723), p. 3.

²⁰³ PA, HL/PO/CO/1/5, Committee Book, 13 January 1694.

²⁰⁴ PA, HL/PO/CO/1/5, Committee Book, 29 November 1692.

²⁰⁵ PA, HL/PO/JO/10/6/235, Speech of James Milner, 28 May 1713.

²⁰⁶ Knights, *Representation and Misrepresentation*, pp. 353-4.

more than a language of pamphlets and writers, but an everyday language used to imagine and discuss politics and helped to legitimise a dispersed state model.

This is not to say that interests implied equality, just as participation did not equal power. Deference towards peers was still shown, and lobbyists and witnesses sought to play on older concerns and ideas during negotiations in committee. Social stability formed a key language of negotiation. Arguing for paper makers in 1690, their counsel warned if ‘these mills cannot work as usual, the several families in the town must starve’, arguing a clause would force fifty families to become ‘chargeable upon said parish’ of Chipping Wycombe.²⁰⁷ The woollen bill of 1698 was seen as ‘falling on the poor’ and those who dealt in lace reported a ‘great decay of trading and of the manufacture itself’ in 1685.²⁰⁸ Mr Cooke, the treasurer of the Levant Company, said in the context of debates on the 1713 trade bill that peers had provided ‘many examples...of your ancestors’ patronage and protection’ and if they did not act, the ‘misery [of the poor] must be unspeakable’.²⁰⁹ The self-interest of peers was also appealed to. Supporters argued the right to export leather should be renewed in 1685, as it had been to the ‘great discouragement [to] the breeding and feeding of cattle and [resulting in the] fall of rents and value of land’, when its exportation had been banned.²¹⁰ Alongside a newer language of ‘interest’, there continued an older discourse focusing on social stability as a means to set policy direction and interpret its success.

²⁰⁷ PA, HL/PO/JO/10/1/423, Petition of the Mayor, Aldermen and Inhabitants of Chipping Wycombe, 15 May 1690; HL/PO/JO/5/1/26, Manuscript Minutes, 17 May 1690.

²⁰⁸ PA, HL/PO/JO/5/1/33, Manuscript Minutes, 30 March 1698; *CTB*, Volume 8, p. 98.

²⁰⁹ PA, HL/PO/JO/10/6/235/3001(c), Speech of Mr Cooke, 4 June 1713.

²¹⁰ L. Clarkson, ‘English Economic Policy in the Sixteenth and Seventeenth Century: The Case of the Leather Industry’, *HR*, 38 (1965), pp. 149-62, at p. 156.

Legal languages also played a significant role in warning against innovation and disruption of property rights, as well as enabling popular legalism to be stated in parliament. With regard to the former, Justice Dolben informed one committee that questions raised in one bill on the regulation of corporations had already been raised in Westminster Hall, and should not be raised again by parliament.²¹¹ The committee on the alnage duty in 1692 saw reference to a ‘trial whether crapes were to pay the duty’, helping to determine the shape of legislation. The farmers of the alnage duty had obtained a decree in the Exchequer under James II, but claims that Norwich worsted goods were liable to the duty led to complaints it had proved ‘extremely grievous to all dealers’.²¹² A committee on leather exports heard it was a ‘judged case [that] leather is no made ware’, meaning that the curriers should not be allowed to buy and sell it.²¹³ A bill for the fens in 1685 was an attempt to resolve the problems of the undertakers, arguing that they ‘brought in the bill to avoid filing the adjudication’ to allow the drainage to continue.²¹⁴ Popular legalism was a common feature in larger enclosure acts, such as in the New Forest Act of 1698, where allegations were made that the felling of trees was being done against customary ‘fuel law’ to the detriment of tenants.²¹⁵ ‘Immemorial’ water rights were also invoked during debates on river navigation.²¹⁶

²¹¹ PA, HL/PO/CO/1/4, Committee Book, 31 May 1689.

²¹² PA, HL/PO/CO/1/5, Committee Book, 24 February 1692; HL/PO/JO/10/1/444(c), Petition of Norwich Dealers of Worsted Manufactures, 18 February 1692.

²¹³ PA, HL/PO/CO/1/4, Committee Book, 25 June 1689.

²¹⁴ PA, HL/PO/CO/1/3, Committee Book, 24 June 1685.

²¹⁵ PA, HL/PO/JO/10/1/506/1255(j), Report of Lords Commissioners, 25 May 1698.

²¹⁶ PA, HL/PO/JO/10/1/507/1272, Mayor and Commonality of York, 3 May 1698.

The participation of a wide range of groups and the language they employed helped to define a framework of corporate, political and economic discourse, and suggests what was believed to ‘matter’ in policy-making. There were several rhetorical tools that weaker groups could use to influence parliament, and shows how far events within it were subject to a number of assumptions that did not have their origins in politics. This enabled political pluralism and participation to be a valued, rather than simply tolerated, part of the parliamentary process.

IV: Parliamentary ‘Governance’: Deliberation, Negotiation, and Interest-Group Politics

‘What good has your petitioning done you, have you got your money by it, let you and I kiss it out’.

John Tilley’s attack on Elizabeth Leave, owed debt on a bond, from PA HL/PO/JO/101/509/1301 Petition of Elizabeth Leave, 1 July 1698. This is the same Tilley referred to in note 149, p. 168.

The presence of lobbyists, printed works and the possibilities of physical access to parliament raises the question John Tilley aggressively asked of Elizabeth Leave during the passage of the Creditors Relief Bill of 1698, namely their significance and impact on the policies that resulted from the legislative process. As Leslie Clarkson showed in relation to Tudor and Stuart legislation on leather, bills and acts that appear to be official measures can rather reflect the manoeuvrings of one interest group who were attempting to use statutes to gain advantage over their rivals.²¹⁷ This conclusion was echoed by David Dean for the Elizabethan period and Joanna Innes in terms of eighteenth-century social policy, both arguing that the public-private division between bills is unhelpful.²¹⁸ Much legislation cannot be seen as reflecting the views the crown or ministers had regarding political economy, and divisions between whigs and tories do not provide the dominant framework for providing or reflecting

²¹⁷ Clarkson, ‘English Economic Policy’, p. 149.

²¹⁸ D. Dean, ‘Public or Private? London, Leather and Legislation in Elizabethan England’, *HJ*, 31 (1988), pp. 525-48; Innes, ‘English Social Policy’, pp. 90-2.

such debates.²¹⁹ Rather, it was common for public bills to reflect the victory of one private interest over another.

The conflict between London companies on the regulation of the leather industry during the 1690s offers an opportunity to view the role and significance of interest groups. Leather was an important industry, being seen as providing the employment of ‘many thousand[s] [of] families...whose whole dependency is in manufacturing of leather’ and which claimed to support ‘twenty-six different trades’.²²⁰ With the exception of the leather committee of 1679 which was interrupted by the end of the parliamentary session, all committees dealing with this issue between 1679 and 1720 were subject to the influence of interest groups, with the Leather Act of 1689 resolved outside the committee by counsel, whilst peers accepted a clause from the curriers in 1685.²²¹ Curriers on this bill paid the door keeper of the Lords more than five pounds to listen to the Lords’ committees on the days they or counsel attended the committee.²²² Curriers spent around a fifth of their income in 1685 lobbying the Lords on the apparently public bill. This activity was explicitly an attempt to weaken rivals. In 1693, the curriers wanted the ‘court tanners, shoemakers and others...to procure an act of parliament, to prevent the butchers, fliers, [and] skinners’ from cutting leather without penalties, and collected subscriptions of thirty pounds to do it.²²³ The

²¹⁹ As has been argued in S. Pincus, *1688: The First Modern Revolution* (New Haven, 2009).

²²⁰ *Reasons Humbly Offered by the Poor Journeymen Shoemakers* (1685); PA, HL/PO/JO/5/1/23, Manuscript Minutes, 22 June 1685; PA, HL/PO/CO/1/3, Committee Book, 24 June 1685.

²²¹ HMC, *The Manuscripts of the House of Lords*, p. 144; PA, HL/PO/JO/5/1/23, Manuscript Minutes, 22 June 1685; HL/PO/CO/1/3, Committee Book, 24 June 1685; HL/PO/CO/1/4, Committee Book, 10 June, 4 and 6 July 1689.

²²² LMA, CLC/L/CK/D/001, Currier Annual Accounts, p. 146.

²²³ LMA, CLC/L/CK/B/002/MS06113/001, Curriers Court Minutes, pp. 45(r), 204(l).

cordwainers also had a similar desire, spending ten pounds to ‘insert a clause in a bill for selling live cattle’ the same year.²²⁴

In addition to influencing acts of parliament, interested parties were also able to use a combination of litigation, legislating and lobbying of state offices to amend or influence state policy. The career of John Gardiner, who can fairly be described as a ‘serial lobbyist’ for the mercantile interest, offers one such example in his campaigns against the monopoly of the African Company, though he was far from alone in pursuing the company. His opening was created by the judgement in *Nightingale v. Bridges* of 1689 which challenged the legal basis of monopolies, forcing the company to rely on acts of parliament to maintain its control.²²⁵ Gardiner was active in the courts, the Lords and parliamentary committees throughout the 1690s. He sued the African Company (unsuccessfully) in the Lords in 1693 when his ships had been seized by the company, who claimed to have ‘sole trade...and refused to let them trade for negroes, unless they paid thirty or forty percent for permission money’, his attempt striking at the heart of their monopoly.²²⁶ He was also involved in lobbying on the bills regulating the company. In 1698, he appeared before a committee alongside Peter Paggen, a tobacco trader, to argue against its monopoly.²²⁷ Gardiner was described by John Olmixon as having

been their [the inhabitants of Barbados] constant and indefatigable solicitor for many years, and...[it] was in great measure to him they owed the state they found

²²⁴ LMA, CLC/L/CJ/D/001/MS07353/003, Cordwainer Annual Master and Warden’s Accounts, 16 November 1693.

²²⁵ K. Davies, *The Royal Africa Company* (London, 1957), pp. 123-4; W. Darrell Stump, ‘An Economic Consequence of 1688’, *Albion*, 6 (1974), pp. 26-35.

²²⁶ PA, HL/PO/JO/10/3/185/44, Petition of John Gardner and Dame Letitia Bawdon, 23 January 1693; HL/PO/JO/10/1/453/669(a), Answer of the Royal Africa Company, 1 February 1693.

²²⁷ PA, HL/PO/JO/10/6/237/3019(c), Africa Company, 9 June 1698.

the African trade after the revolution; he having so fully proved the oppression of the royal company at that time, in parliament and elsewhere.²²⁸

The decision in 1698 to pass the Africa Trade Act, which opened up the Africa trade for those who were willing to pay a ten-percent duty, and the failure to renew it in 1712 was heavily influenced by the extensive campaigns by men like Gardiner, fought using the power of the state. Other merchants such as Richard Harris were also important, he attending the board of trade and presenting petitions to the Lords in 1712, where he ‘spoke a long time in general’ on the bill.²²⁹ Another merchant, William Dockwra, in 1704 had called into question the legality of the company’s charter through an appeal to the Lords, having lost two ships to them in the same vein as Gardiner.²³⁰

Gardiner and the multiple methods he employed to undermine the African Company was not an isolated case. Some litigants used the Lords frequently to maintain their interests, as they would have the lower courts. Around 130 litigants appealed to the Lords as high court

²²⁸ J. Oldmixon, *The British Empire in the Americas, Containing the History of the Discovery,*

Settlement, Progress and Present State of All the British Colonies (2 volumes, London, 1708), Volume 2, p. 47.

²²⁹ PA, HL/PO/JO/5/1/48, Manuscript Minutes, 23 June 1713.

²³⁰ PA, HL/PO/JO/10/3/192/18, Petition of Royal Africa Company, 20 January 1704. The wider activity of Richard Harris can be found in J. Rawley, ‘Richard Harris, Slave Trader Spokesman’, *Albion*, 23 (1991), pp. 439-58, whilst his *London: Metropolis of the Slave Trade* (Missouri, 2003), Chapter 3 covers the role of Henry Morrice. For the wider role of interlopers, see W. Pettigrew, ‘Free to Enslave: Politics and the Escalation of Britain’s Transatlantic Slave Trade, 1688-1714’, *W&MQ*, 64 (2007), pp. 3-38; idem and G. Van Cleve, ‘Parting Companies: The Glorious Revolution, Company Power, and Imperial Mercantilism’, *HJ*, 57 (2014), pp. 617-38, explores some of the attempts to undermine monopolies through litigation; idem, ‘Regulatory Inertia and National Economic Growth: An African Trade Case Study, 1660-1714’, in Gauci, ed, *Regulating*, pp. 25-40, esp. pp. 30-37.

more than once. Peers were a significant proportion of these, constituting thirty-four of this number, but around sixty-eight gentlemen and knights, seven merchants, and some companies and corporations also appealed the Lords on more than one occasion, as well a pauper, tenants, and a linen draper.²³¹ This meant for some, the law was a means to manage their business and would have come on top of wider activity in lower courts and campaigns pursued there. Many of these traders were never members of institutions other than mercantile companies, yet were able to be familiar and important figures to policy-makers and sustain battles with established institutions across multiple platforms. They were able to take opposition from protest and print to appearing before parliament on legislative committees, and to further amend policy through litigation.

Also active, but on behalf of a specific locality on a wider range of issues, was the economic writer John Cary. Originally a linen draper, by the time he started lobbying parliament was a whig and member of the Bristol Society of Merchant Venturers, being provided with up to £100 a session to finance his role as their agent.²³² Cary sought to bring Bristol's influence to a range of national issues, but also used his presence at Westminster to influence Bristol's MPs, sidestepping local leaders. His *Essay on State of the England* in 1695, which argued against the monopoly of the African Company, had been reprinted by the 'managers' on the East India Bill and 'delivered to both houses'.²³³ Cary had been ordered in 1690 and late 1694 to consider a petition to parliament on the Africa bill by the company of

²³¹ See table two, p. 78, above for sources.

²³² K. Morgan, 'John Cary' in Oxford Dictionary of National Biography, from

www.oxforddnb.com/view/article/4840?docPos=3. Figure from McGrath, ed, *Merchant Venturers*, p. 250.

²³³ T. Keirn, 'Monopoly, Economic Thought, and the Royal African Company', in J. Brewer and S. Staves, eds, *Early Modern Conceptions of Property* (London, 1995), p. 446.

merchant venturers, perhaps motivating him to write his pamphlet in 1695.²³⁴ He was active lobbying Bristol's own MPs, drafting instructions to MPs in the same year to encourage them to act against the Irish trade.²³⁵ In the instructions, he recommended to Bristol's MPs 'to do what I say on that head of my essay on trade, page 139' on the creation of a council of trade in 1695.²³⁶ Cary had also been active on the Silk and East Indies Bill of 1696, speaking 'only for Bristol' during the committee (having been in contact with the local merchants leading up to this), and in the same year had he lobbied for a workhouse bill for Bristol that he had drawn up and presented to the corporation.²³⁷ The board of trade had also taken evidence from him on this issue, his actions influencing policies on poor relief elsewhere.²³⁸ Cary was also involved in the woollen bill of 1698, having attended a Commons committee on it. He published his *Vindication of the Parliament of England* in response to Molyneux's *Case of Ireland Being Bound by Acts of Parliament in England* only five days after the Commons had judged Molyneux's pamphlet to be libellous.²³⁹

Earlier, Cary had lobbied against tobacco duties in the Commons in 1685. Copies of the bill were 'brought in and read and went abroad, and from then on the tax continued to be

²³⁴ McGrath, ed, *Merchant Venturers*, pp. 231-2.

²³⁵ idem, ed, *Merchants and Merchandise in Eighteenth-Century Bristol* (Bristol Record Society 19, Bristol, 1955), p. 16.

²³⁶ Ibid, p. 164.

²³⁷ PA, HL/PO/JO/5/1/31, Manuscript Minutes, 7 April 1696; McGrath, ed, *Merchant Venturers*, pp. 166-7; J. Johnson, *Transactions of the Corporation of the Poor in the City of Bristol* (Bristol, 1826), pp. 4, 7.

²³⁸ T. Hitchcock, ed, *Richard Hutton's Complaints Book: The Notebook of the Steward of the Quaker Workhouse at Clerkenwell, 1711-1735* (London Record Society 24, London, 1987), p. xii.

²³⁹ *Minute Book of James Courthope*, pp. 60-1; *CJ*, xii, pp. 336-7. Its availability was announced in the *Post Boy*, 5-7 July 1698, Issue 495.

undermined, with a rebate of fourteen percent if tobacco was classed as ‘waste’, introduced in July and August 1685.²⁴⁰ This proposal came from several importers of tobacco who had been present in the Commons in June, eventually managing to gain the concession of paying duties over eighteen months.²⁴¹ Again, Cary did this at the behest of the Bristol merchants.²⁴² Cary, Jefferys and nine others had continued to lobby with Virginia tobacco merchants during the summer of 1685, using the treasury as a forum to pursue their aims.²⁴³ Ultimately, Lord Rochester’s decision would mean that around a quarter of imported tobacco was marked as damaged in the 1680s, with legal imports stagnating between the 1680s and 1730s, weakening the impact of these new taxes.²⁴⁴ Despite the public and national nature of these bills, localities constantly attempted to influence and initiate policy in a way that was advantageous to them.

The ability of these interests and individuals to influence the state and its policy was a key feature of Britain in the early modern period. The roles of Gardiner and Cary echo the life of William Payne, a protestant carpenter active between the 1760s and 1780s studied by Joanna Innes.²⁴⁵ Payne had been influencing public policy through engagement in policing, giving evidence to a House of Lords committee, petitioning, pamphleteering, and initiating

²⁴⁰ A. Jessopp, ed, *The Lives of the Norths* (3 volumes, London, 1890), Volume 3, p. 210; *CSPD*,

Volume 1, pp. 149-50, 216-7, 246-8; J. Fortescue, ed, *Calendar of State Papers, America and the West Indies, 1681-1685* (London, 1899), Volume 12, pp. 70-1, 98-9.

²⁴¹ *CTB*, Volume 8, p. 357.

²⁴² McGrath, ed, *Merchant Venturers*, pp. 251-2.

²⁴³ Fortescue, ed, *Calendar of State Papers, America and the West Indies*, Volume 12, pp. 98-9.

²⁴⁴ P. Clemens, ‘The Rise of Liverpool, 1665-1750’, *EcHR*, 29 (1976), pp. 211-35, at p. 215; R. Nash, ‘The English and Scottish Tobacco Trades in the Seventeenth and Eighteenth Centuries: Legal and Illegal Trades’, *EcHR*, 35 (1982), pp. 354-72, at pp. 355, 357.

²⁴⁵ ‘The Protestant Carpenter—William Payne of Bell Yard’, in Innes, *Inferior Politics*.

prosecutions, just as Cary and Gardiner had been a half-century earlier. The ‘clash of interests’ between communities on legislation was a fundamental part of political life. The competition for legislative protections and the desire to ‘capture’ economic activity only multiplied after an avenue for the advancement of local and interest-based groups was greatly expanded after parliament’s ‘coming of age’ after 1689. At a local and national level, decision-making and enforcement was diffused and open to a range of individuals and interests.

V: Conclusion

The efforts of Paul Langford and the work it has inspired over the last two decades has shown the extent propertied society in the eighteenth-century was active in ‘public life’, with a significant role played by associations, voluntary organisations and other non-statutory bodies and individuals, in what used to be characterised as the ‘aristocratic century’. This chapter has sought to show the extent that even at the centre elements of the local participatory state and the legacy of the print revolution of the 1640s could be found.

Parliament was more than an institution or an event, but an active functioning and interacting of different groups in society. Parliament and the peerage were embedded in and part of the wider social fabric, and its power legitimised by reference to practices and the languages of society outside parliament—focusing on the law, interest, stability, and participation.²⁴⁶

Parliamentarians recognised the positive role those ‘out of doors’ could play as peaceful participants, seeking to regulate public participation in this direction, rather than eliminating it.

This chapter has also addressed the operation and nature of the state. In the account advanced here, the state appears less autonomous and ‘modern’ than others have

²⁴⁶ Braddick, ‘State Formation and Historiography’, p. 9.

characterised it. Interests were not separable from the state and the ‘government sphere’; instead they were central to the development of the state and its coercive powers on economic regulation throughout this period. Rather than following Jürgen Habermas’s theory that mercantile and commercial groups and the private mode of production were strictly separate from the ‘public’ state institution, this chapter shows that they were very much intertwined.²⁴⁷ These interest-based manoeuvres and decisions means we should see parliamentary politics occurring on the basis of compromises adapted to interests. The state as defined by statute was not regarded as ‘other’, but an extension of society.

This meant the ‘state’ was constituted of legislation that was the result of decisions of a range of interests, each of which claimed to represent sectors of wider society. Historians have highlighted the difficulties of the enforcement of law in the past, such as the growth of smuggling and, as explored in this thesis, the importance of litigation. This conclusion stresses the existence of a state functioning through a culture of ‘governance’, rather than by a defined ‘government’. Binding decisions were made, formed and inspired outside the legislature by networks combining bureaucracies, politicians, corporate and interest groups, with the lack of the ability (and desire) of the central state to ‘steer’ policy.²⁴⁸ This reiterates the extent the governance of the early modern state was dispersed, and ensured much of its activity and perceptions of it were locally conditioned and arose from local circumstances.

The reality of participation and the importance of interest groups in legislating and creating divisions means it would be wrong to describe parliament as a ‘theatre’ or ‘pre-eminently a place of performance’ as it has been in recently, even if this is part of

²⁴⁷ P. Hohendahl and M. Silberman, ‘Critical Theory, Public Sphere and Culture: Jürgen Habermas and His Critics’, *New German Critique*, 16 (1979), pp. 89-118, at p. 96.

²⁴⁸ R. Rhodes, ‘Governance: Governing Without Government’, *Political Studies*, 44 (1996), pp. 652-67.

rehabilitating parliament's centrality to political culture.²⁴⁹ A 'theatre' suggests that MPs and peers were a 'spectacle'; something people viewed as individuals within a crowd rather than participating as a group and interacting with other lobbyists, petitioners, and parliamentarians.²⁵⁰ There were set piece trials and speeches—Lord Haversham printed his speeches of the early 1700s and impeachments drew huge crowds, but this is not the sum of what parliament did, or perhaps the most significant in terms of participation and the meaning of parliament to wider society.²⁵¹ To focus on these moments of theatre is to overlook the nature of the day to day business of the house. In a theatre environment, people may feel that they are part of a greater collective, but rarely do they encounter and interact with one another. Neither do the actors respond—they stick to the script, perhaps altering the tone of its delivery, but the play is already written. A theatre play focuses on the actors, but governing early modern Britain required less differentiation between parliamentarians and 'spectators'. To see people as 'spectators' rather than participants is to overlook the role that people and outside interests did play as co-creators of legislation; related with one another and parliamentarians through a shared activity, rather than solely through the shared consumption of an event or its representation in print.²⁵² They engaged with the functions of parliament, as well as its symbolism and its performances. These were not, in the main, tourists, but fellow members of the political community. Those excluded from formal presence at committees could resort to protest, petition and print as alternative modes of

²⁴⁹ C. Kyle, *Parliament: A Theatre of State* (Stamford, 2012), quote from pp. 2; 9.

²⁵⁰ M. Kohn, 'Homo Spectator: Public Space in the Age of the Spectacle', *Philosophy Social Criticism*, 34 (2008), pp. 467-86.

²⁵¹ *Memoirs of Lord John Haversham...To Which are Added All His Speeches in Parliament* (1711).

²⁵² Kohn, 'Homo Spectator', pp. 469-70; Parkinson, 'How Legislatures Work', p. 442.

participation that were directed to policy-making itself, not just providing broader commentary.

This has consequences for the history of parliament and the nature of politics in the early modern period. That the oligarchy was less strong and complete than used to be assumed is well established, with parliament functioning as a 'legislative marketplace'. But the nature of this oligarchy and its 'rules of the game' can begin to be sketched out as a result of this chapter. The participation of the public and the terms on which they did so, allows us to suggest that parliament was a deliberative assembly, one that sought, recognised and welcomed the need for the involvement of outside interests. The interaction of these interests and parliamentarians with 'rational' quantitative methods and 'facts' will be shown in the next chapter, this being a further necessity to any deliberative system. Nonetheless, this chapter shows that contemporaries from a range of backgrounds regarded the second chamber as relevant and useful, and one that should be responsive to their grievances and concerns. They found a parliament that shared these expectations.

CHAPTER FOUR

Fact Finding and Political Arithmetic.

Nothing is so important to a noble man, than a true knowledge of the manufactures, trade, wealth and strength of his country.

Charles Davenant to John, Lord Marquis of Normanby, 1697, in C. Davenant, *An Essay on the East India Trade* (1697), p. 6.

By political arithmetic, we mean the art of reasoning, by figures, upon things relating to government.

Charles Davenant, *Discourses on the Public Revenues, and on the Trade of England*, in C. Whitworth, ed, *The Political and Commercial Works of Charles Davenant* (5 volumes, 1771), Volume 1, p. 128.

In order to encourage a political arithmetic all the world over, I am willing....to keep correspondence, and hope my papers will reach [ingenious men].

John Houghton, *Collection for Improvement of Husbandry and Trade* (1696), Issue 207.

Political arithmetic is a subject that has received more attention of late, but it remains true to say its importance, particularly after 1714, is not well understood and many questions remain about its reception, use and chronology.¹ Here it will be examined in relation to the development of the ‘deliberative oligarchy’ during this period, highlighting the importance of parliament to its continuing influence. The diffusion of political arithmetic and its demands for ‘facts’ in the context of the weak information base of the early modern state provided a positive impetus to encourage the participation of those ‘out of doors’ in policy-making.

¹ Recent works include W. Deringer, ‘Finding the Money: Public Accounting, Political Arithmetic, and Probability in the 1690s’, *JBS*, 52 (2013), pp. 638-68; P. Loft, ‘Political Arithmetic and the English Land Tax in the Reign of William III, 1689-1702’, *HJ*, 56 (2013), pp. 321-43; T. McCormick, ‘Political Arithmetic and Sacred History: Population Thought in the English Enlightenment, 1660-1750’, *JBS*, 52 (2013), pp. 829-57; idem, ‘Political Arithmetic's Eighteenth-Century Histories: Quantification in Politics, Religion, and the Public Sphere’, *History Compass*, 12 (2014), pp. 239-51; P. Slack, *England's Improvement: Information and Material Progress in Seventeenth-Century England* (Oxford, 2015).

Important not only for encouraging reasoned policymaking, the method and language of ‘impartially’ associated with political arithmetic also acted as one of the available means to manage and control disputes raised by interest groups and party passions. This enabled pluralism to act alongside, but not dominate, ‘reason’.

The method of political arithmetic had its origins in the Restoration, being a project that sought to place policy-making on a numerical footing.² The term was coined by William Petty in 1672, requiring its practitioners to express themselves ‘in terms of number, weight or measure; to use only arguments of sense... [and to study causes that] have visible foundations in nature’.³ Through the collection, organisation and analysis of data on ‘things relating to government’ such as national wealth, population, taxation, or the balance of trade, it was believed the method would inform discourse on the activities of the state and help eliminate disputes over policy-making.⁴ The art can be traced back to the thought of Francis Bacon and the Royal Society, but the first conscious works of political arithmetic were carried out in the 1660s. John Graunt’s study of the mortality bills of London used his ‘shop-arithmetic’ to estimate the population of London, and Petty attempted to prove the utility of the method to both Restoration monarchs, to whom he hoped to be appointed ‘accounter-general’.⁵ After the

² Important surveys are P. Buck, ‘Seventeenth-Century Political Arithmetic: Civil Strife and Vital Statistics’, *Isis*, 68 (1977), pp. 67-84; J. Hoppit, ‘Political Arithmetic in Eighteenth-Century England’, *EcHR*, 49 (1996), pp. 516-40; J. Innes, ‘Power and Happiness: Empirical Social Enquiry From Political Arithmetic to Moral Statistics’, in her *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford, 2009); P. Slack, ‘Government and Information in Seventeenth-Century England’, *P&P*, 184 (2004), pp. 33-68.

³ W. Petty, *Political Arithmetic* (1691), Preface.

⁴ Davenant, *Public Revenues*, in Whitworth, *Works*, p. 128.

⁵ Marquis of Lansdowne, ed, *The Petty-Southwell Correspondence, 1676-1687* (London, 1928), pp. 234, 242, 248.

death of Petty in 1687, the prime practitioners of the art were Charles Davenant, John Houghton and Gregory King, focusing the fruits of their labours on parliament, instead of the court. Their work primarily focused on issues of state formation and fiscal matters. With the settling of public finance by the 1710s and the decline of the 'projecting age', it used to be assumed that political arithmetic fell into disuse. Although its role over the eighteenth century cannot be discussed to a great extent in the context of the chronological scope of this thesis, what will be suggested here is that the wide range of issues to which the method was applied and institutionalised in parliament meant political arithmetic remained a significant part of policy-making. Its methods and rhetoric was not just employed on issues of public finance and controversies on population, but applied in debates on the myriad of local and regional bills parliament dealt with in the eighteenth century.

One question this chapter seeks to examine about political arithmetic is its use, reception and meaning to non-experts.⁶ As William Deringer has written, Scots during the debates on the equivalent were asked 'to decide whether they were willing to put political faith in something they could not understand, and to believe that the calculations of itinerant financiers and mathematicians could decide what was best for Scotland'.⁷ This issue of reception and understanding has, in part, been answered in relation to MPs determining the nature of the land tax during the 1690s, who were no experts on quantitative matters. We can also look towards wider society and the witnesses heard by the House of Lords to examine this question. An important aspect of this is to consider the interplay between the wider culture of 'facts' and political arithmetic, and the use of such discourse and methods by these

⁶ McCormick, 'Political Arithmetic's Eighteenth-Century Histories'.

⁷ W. Deringer, *Calculated Values: The Politics and Epistemology of Economic Numbers in Britain, 1688-1738* (PhD, Princeton, 2012), p. 144. Deringer examines the appetite of partisans for numerical data during the first decades after the Glorious Revolution.

witnesses. As Barbara Shapiro has argued, the growing use of ‘facts’—seen most clearly in the legal system, of which a large proportion of the population had some experience—created new expectations for the basis of judgment in the seventeenth century.⁸ This legal culture and the shift towards greater reliance on expert evidence during the Restoration (being also a response to the growth of professions) formed a key context in which the methods of political arithmetic were received in, and where it could gain wider significance and a greater audience. This ‘culture of facts’ meant a greater part of the nation did have some understanding and attachment to the possibilities of political arithmetic for policy-making and persuasion. In turn, this raised the status of witnesses and public participation in the legal system and parliament.

Political arithmetic is commonly seen as contributing to the growth of the fiscal-military state. This chapter considers its role in relation to the balance of trade, being a common preoccupation of contemporaries during the Nine Years War and the trade bills of the 1710s, and which peers played an important role in developing a quantitative evidence base.⁹ However, if the sources of quantitative information in parliament are considered, not only for that used during debates on local and specific bills, but general legislation as well, the fiscal-military state appears dependent on wider society and interest groups for its functioning. It was often the central state, not the wider citizenry, who lacked information. Lobbyists and witnesses presented parliament with extracts from customs books, parish records, as well as data from central offices—without being ordered to do so by parliamentarians. The hopes of Petty that political arithmetic would strengthen the central

⁸ B. Shapiro, ‘The Concept “Fact”’: Legal Origins and Cultural Diffusion’, *Albion*, 26 (1994), pp. 227-52; idem, *Culture of Fact: England, 1550-1720* (London, 2003), Chapter 1.

⁹ See P. Gauci, ‘The Politics of Trade: The French Commerce Bill of 1713’, in his *The Politics of Trade: The Overseas Merchant in State and Society, 1660-1720* (Oxford, 2001).

state, with the method providing a means for the court to ‘balance parties and factions both in church and state’, could not be achieved whilst the method relied on witnesses and lobbyists to provide information. Instead, the demand of parliamentarians for ‘facts’ helped to give diverse factions more influence.¹⁰ This reflects the significance of the wider cultural importance of ‘facts’ and the continuing influence of ‘projectors’ on non-fiscal issues, being testament to the importance of the vitality of local politics during the ‘long eighteenth century’.

In being heavily reliant on the participation of a range of interests, parliamentary demands for political arithmetic contributed to the development of the ‘deliberative oligarchy’ during this period. The method and demands for evidence justified the participation of a diverse range of interests, and provided a language and concept to evaluate and influence the actions of elites. As was shown in the previous chapter, the imagining of society as a collection of ‘interests’ meant parliamentarians were wary of the role of self-interest in the making of policy and a need for a transparent means to resolve disputes. This was something that mathematical calculation seemed to provide, offering cold certainty as an antidote to the hot-headed partisanship of the era of the ‘age of party’ and ‘clash of interests’.¹¹ The claims of the rising numbers of interest groups and petitioners influencing policy after 1689 could be tested against ‘facts [that] seldom lie’.¹² In this way, political

¹⁰ Buck, ‘Seventeenth-Century Political Arithmetic’, p. 69; J. Graunt, *Natural and Political*

Observations on the Bills of Mortality (1676), in C. Hull, ed, *The Economic Writings of Sir William Petty* (2 volumes, Cambridge, 1899), Volume 2, pp. 396-7.

¹¹ Argued by Mark Knights in his *Representation and Misrepresentation* (Oxford, 2005), pp. 337-40.

¹² *A Collection of State Tracts Published During the Reign of King William III* (3 volumes, 1707), Volume 3, p. 721.

arithmetic was a means of negotiating a society where demands for consensus, despite the growing trend towards oligarchy, was becoming more difficult to achieve.

Political arithmetic could also be less conducive to this culture of deliberation, however. The American scholar Michael Schudson has projected the rise of a ‘monitory democracy’ in the late twentieth century, where the capacity of the citizen and organisations to ‘fact check’ and scrutinise what politicians and others are claiming has exploded.¹³ Although some have cautiously welcomed this, seeing it as democratising accountability, it may also be seen in a context of increasing cynicism, fitting in with climate of misrepresentation and mistrust that Mark Knights has shown was present during the late Stuart period. Rather than helping to calm the storm, debates over numbers and accountability may well have helped contribute to rising levels of adversarial politics, dominated by allegations of lies and self-interest that permeated into the choice of data used. Not only did political arithmetic not take the path that Petty imagined for it in terms strengthening those holding power and taking the ‘politics’ out of policy-making, it had the potential through its rhetoric and the ‘tainting’ of data and calculation by party and interest, to undermine deliberation. If both ‘sides’ held up their own data and experts presented their ‘truths’ in the context of the (perceived) self-evident truth the other party were ‘lying’ or ‘corrupt’, this did not contribute to reasoned debate. The reconciliation of political arithmetic with pluralism and a culture of competing interests was necessary to ensure a ‘deliberative oligarchy’ was maintained. This made the institutions for deliberation important, as they

¹³ M. Schudson, ‘Changing Concepts of Democracy’, *MIT Communications Forum* (8 May 1998); J. Keane, *Life and Death of Democracy* (London, 2009), pp. xxvii-xxxiii, 736-47; idem, ‘Monitory Democracy and Media-Saturated Societies’, *Griffith Review*, 24 (2009) no pagination.

ensured a dialogue between facts, interest and the law and encouraged a common means of resolution amongst different interests and partisans.

This chapter begins by considering the wider culture of facts that political arithmetic operated in, before considering its use in parliament. It considers the collection of information relating to the balance of trade, and the use of data by partisans, interests and companies. In both cases, it examines the use of political arithmetic by non-experts, and the extent this information was not restricted—it was known and presented by non-peers in an open forum, contributing to the growing pluralism and culture of deliberation on policy-making.

I: The Context for Political Arithmetic

Facts being true, and publically known, the consequences resulting therefrom...are undeniable.

Lord Haversham on proceedings against the Earl of Portland, 1701, to the House of Commons, in *LJ*, xvi, p. 761.

A. ‘A Culture of Facts’

Political arithmetic was not created or received in a vacuum. It was part of a wider culture in which the role of ‘facts’, numerical or otherwise, was increasing in incidence and significance during the seventeenth century, giving the evidence and modes of argument offered by political arithmetic a wider audience and force than it would have had if it existed alone. Just as William Petty saw his policy proposals ‘grounded upon matter of fact and experience’, so did judges, theologians and antiquarians.¹⁴ The wider population, with its experience in the legal system and consuming pamphlets advancing ‘rational’ religion, could have a grasp of this rhetoric, marking a lack of separation between high and low politics, and between the concepts advanced by Petty and societal practice. This contributed to a wide

¹⁴ Hull, *The Economic Writings of Sir William Petty*, Volume 1, p. 308.

search for systematic knowledge across many issues, of which numerical data was one branch.

Barbara Shapiro has shown the seventeenth century experienced a shift in the use of the concept of ‘fact’, moving ‘from a specialised term for a judicially cognizable human act to a general category permeating the whole of English culture’.¹⁵ Although present in many areas of society, its use in the legal system was an important point of the concept’s diffusion into wider society. Whilst ‘matters of law’ were left to judges, ‘matters of fact’ were increasingly reserved to the relatively-ordinary individuals of the jury and witnesses—they being the ones who judged the proofs offered and credibility of the evidence. In the 1680s, juries had been told to reach their verdicts ‘according to reason and the probable evidence of things’.¹⁶ John Hawles, a whig writer of the 1680s, believed that the ‘best judicatures of the world...utterly reject the use of rhetoric’.¹⁷ Not doing so, argued Isaac Burrow, would create the wrong decisions if participants were ‘bribed by profit...charmed by flattery...or by fine speech... [or] seduced by precedents or custom’.¹⁸ This reflected a wider intellectual shift, with William Sprat, the historian of the early Royal Society, writing its members ‘only deal in matters in fact’, preferring their ‘own touch and sight’—or experience—to second-hand evidence. Decisions were made on the ‘concurring testimonies’ of its members—not just using the rhetoric of ‘facts’, but expecting its members to act like a jury.¹⁹ This mode of thought was shared with Petty, who famously spurned the use of ‘comparative and

¹⁵ Shapiro, ‘The Concept “Fact”’, p. 252.

¹⁶ *idem*, ‘Law and Science in Seventeenth-Century England’, *Stanford Law Review*, 21 (1969), pp. 727-66, at p. 760.

¹⁷ *idem*, *A Culture of Fact*, p. 29.

¹⁸ *Ibid*, p. 27.

¹⁹ *Ibid*, p. 113.

superlative words, and intellectual arguments’ for his ‘numbers, weight, or measure’.²⁰

Similarly, Davenant promised to ‘use his utmost endeavours to divest himself of all kinds of passion’.²¹ There were multiple sites of discussion over the nature of evidence across science, law and religion, all of which sought to create and apply ‘useful’ knowledge in a neutral fashion. An expectation that decisions would be taken on firm foundations was beginning to establish a culture that valued impartially and decision-making based on critically-assessed ‘facts’.

This increased use of ‘facts’ was paralleled by the changing use and increased status of witnesses in the legal system. Significant changes were occurring during the Restoration towards a greater role and reliance on expert witnesses. The use of expert witnesses had long origins, with their use as translators going back to the fifteenth century and special juries (typically merchants, but also juries of cooks and fishmongers to try those selling bad food) had been established in the fourteenth century.²² However, even though their origins were not in the seventeenth century, their functions were changing rapidly in this period. Whilst previously expert witnesses had been limited to translation (such as ‘what does this word mean?’), their role was transformed so they themselves were becoming judges, testifying on the nature of ‘things’ and the practice of industry. This practice was beginning to enter the central courts, with the first printed mention of an expert witness in Chancery not being until 1698 in the case of *Foubert v. de Cresson* (later heard in the House of Lords), whilst the first appearance of expert witness in criminal courts occurred in 1678.²³ This reflected a growing

²⁰ Petty, *Political Arithmetic*, Preface.

²¹ C. Davenant, *Essays on Peace at Home, and War Abroad*, in Whitworth, *Works*, Volume 4, p. 275.

²² D. Dwyer, ‘Expert Evidence in English Civil Courts, 1550-1800’, *JLH*, 28 (2007), pp. 93-118, at pp. 98, 100.

²³ *Ibid*, pp. 103, 104, 112.

recognition—aided also by the growth of professions—that when factual issues arose that the judge or jury had no knowledge of, there was a need to defer to others.²⁴ Matthew Hale observed ‘if it be a question touching the custom of merchants...merchants are usually jurors at the request of either party,’ with a belief that expertise or direct experience was needed to understand evidence, not just those qualified by property ownership.²⁵ As a result, members of Trinity House were asked to judge whether pirates were ‘perils of the sea’, and one of the defendants in a case asked for a ‘jury of booksellers and printers, they being the men that only understand our business’.²⁶ In his study of medical witnesses present in Old Bailey trials, Stephen Landsman concluded that during the eighteenth century there was ‘a subtle but perceptible increase in the authority ascribed to medical evidence’.²⁷ These changing legal expectations were increasingly echoed in science, with the Royal Society also seeking out ‘experts’. Edmund Halley’s account of trade winds used navigators who were ‘acquainted with all parts of India, and having lived a considerable time in the tropics’, whilst Henry Stubbe attacked the society for relying on ‘negligent or inaccurate merchants, and seamen... [being] men of no reading’.²⁸ The role of social status and property as a mark of credibility was offered an alternative in experience and expertise within this ‘culture of fact’.

²⁴ G. Holmes, ‘The Professions and Social Change in England, 1680-1730’, in idem, *Politics, Religion and Society in England, 1679-1742* (London, 1986), pp. 309-50.

²⁵ J. Oldham, ‘The Origins of the Special Jury’, *University of Chicago Law Review*, 50 (1983), pp. 137-221, pp. 174-5.

²⁶ *Ibid*, pp. 174-5.

²⁷ S. Landsman, ‘One Hundred Years of Rectitude: Medical Witnesses at the Old Bailey, 1717-1817’, *Law and History Review*, 16 (1998), pp. 445-94, at pp. 449-50.

²⁸ Shapiro, *A Culture of Fact*, pp. 120-1.

Like Petty, those involved in law increasingly sought truth in a scientific way. Just as the history of law is not autonomous, the history of political arithmetic or of how parliamentary procedures and expectations were advanced and inspired should not be either, these intellectual developments being firmly part of both. These developments in the law courts of Westminster Hall were occurring in the same palace as parliament, with lawyers and litigants either experiencing parliament directly through appeals, service as MPs, or as users of the same spaces as parliamentarians. Cross-fertilisation between law and science was occurring, with Sprat noting ‘many judges and councillors of all ages’ were ‘ornaments of the sciences, as well as of the bar’, whilst Francis North, solicitor and attorney general, was seen as an ‘early virtuoso...he became no ordinary connoisseur in the sciences’.²⁹ Members of the peerage who were involved in legal affairs due to the house’s role as high court were also active in the Royal Society. John Somers was the president of the society between 1698 and 1702, having been solicitor general and lord chancellor; Charles Montague, Earl of Halifax, had held the role for the three years before Somers, being a treasury minister and later one of those sitting in judgement on Sacheverell.

This awareness of the importance of deferring to expertise and professions could be shared by parliamentarians. There was a perception that judging on the merits of legislation could only be done with the advice and deliberation of experienced and interested individuals. The pamphleteer James Whiston argued in relation to apparent decline in trade during the Nine Years War,

that if sick, we consult a physician, so when the trade of a nation is to be secured or advanced, the merchants and tradesman’s advice is best able to accomplish the same: it is...impossible for noblemen and gentlemen not educated in trade, ever to arrive at a perfect understanding of the matters of question.³⁰

²⁹ *idem*, *Probability and Certainty*, pp. 170-1.

³⁰ R. Lees, ‘Parliament and the Proposal for a Council of Trade, 1695-6’, *EHR*, 54 (1939), pp. 38-66, at p. 46.

This rhetoric was known to a wider public, and actively used in pamphlets to appeal to the Lords and legitimise their policy demands.³¹ The selection of MPs was subject to this argument, with the *Englishman* arguing in 1713 that ‘none ought to represent her [London] in parliament but traders’ to defend its interests during debates on the trade bills.³² This ‘culture of facts’ strengthened the legitimacy and need for witnesses and public participation in politics. During the debates on the trade bills of the 1710s, Edward Hatton published a guide on commerce for the public which began with two poems, advancing the importance of reason and arithmetic as a means to resolve disputes:

By numbers powerful, and harmonious aid
This stately fabric of the world was made...
But tuneful numbers readily obeyed
And the rude chaos, form and beauty had
Since, to mankind subservient they become.....
By reason’s compass, you have ventured over
And taught us foreign truths unknown before.....

The second poem explained the opportunities for practising ‘reason’ offered by the book:

....and hardly the foundation better know,
Or reason of their working numbers so,
But mimic just as they see others do,
This you my friend, alone, have took away,
This cloud of ignorance, by the bright ray
Of reason’s light, we now can walk and see
Our practiced rules do with our sense agree;
Safely we now on the foundation tread....³³

In his own address to the readers, Hatton promised it was a work constructed in the ‘most rational, plain, and compendious manner... being calculated for the improvement of trade and commerce’, and of particular use for the middling sort of people and ‘not a few of the

³¹ Natasha Glaisyer surveys the growth of manuals explaining mercantile practices to the wider public in her *The Culture of Commerce in England, 1660-1720* (Woodbridge, 2006), Chapter 3.

³² *The Englishman*, 8-10 October 1713, Issue 3.

³³ E. Hatton, *The Merchants Magazine, or Tradesman’s Treasury* (1712), pp. i-ii.

gentry'.³⁴ His work, therefore, proposed a means through the partisan debates between whigs and tories on trade with France.

Shorter pamphlets and printed petitions that were presented to parliament also used this legitimating tactic. *The Supplement to Fault on Both Sides* attacked whigs for continued difficulties during the War of the Spanish Succession, asking 'where is the matter of fact?', of evidence of victory or declining debts.³⁵ The 1712 *Answer of the Generality of Traders to the Royal African Company* justified the 'truth' of the bill, the 'facts' stated in its preamble 'being true'.³⁶ The East India Company argued their opponents needed evidence to support their 'matter of fact[s].... rest[ing] upon them to prove it'.³⁷ Likewise, *The Interest of Great Britain in an Essay Upon Wool, Tin and Leather* aimed to 'prove by instances of fact' the neglect of commerce.³⁸ A pamphlet on the Calico Bill in 1719 announced that 'in order to enter upon this affair with all possible clearness and plainness' it limited itself to 'evidence as to the proof' of claims.³⁹ Another stated that the 'Turkey merchants have annexed no evidence, expecting to be taken upon their words', in contrast to the Italian merchants who 'appeal to the custom house for their proof'.⁴⁰

The importance of witnesses for aiding judgment also led to attempts to increase their credibility through legislation. The 1696 Treason Act and the 1697 Blasphemy Act raised the

³⁴ Ibid, pp. iii, 24.

³⁵ *Supplement to Faults on Both Sides* (1710), p. 57.

³⁶ *The Answer of the Generality of the Creditors of the Royal Africa Company* (n.p., 1712), p. 1.

³⁷ *A Reply on Behalf of the Present East India Company* (1698), p. 1.

³⁸ J.B., *The Interest of Great Britain Considered, in an Essay Upon Wool, Tin and Leather* (1707),

Titlepage.

³⁹ *A Brief State of the Question Between the Printed and Painted Calicoes and the Woollen and Silk Manufacture* (1719), p. 4.

⁴⁰ *The Case Fairly Stated Between the Turkey Company and Italian Merchants* (n.p., 1720), p. 20.

requirement for witness evidence, demanding ‘two credible and lawful witnesses’, in contrast to just ‘lawful witnesses’ of earlier legislation.⁴¹ In parliament, peers asked for evidence that witnesses spoke on behalf of their claimed interest or locality to ensure their claims to representation and hold of information was true.⁴² Although witnesses and experts were not new features in the proceedings of courts or in parliament, the perception of their role and their scope for influence was being enlarged. It is now necessary to turn to this consequence of a culture expecting policy to be based on facts, evidence, and expertise, namely the ordering of reports and papers.

B. Towards More Systematic Knowledge

Given the importance attached to facts for the judging of policy there was a growing need to be as systematic and thorough in their collection as possible, if it was to survive scrutiny from partisans and other arithmeticians. The House of Lords took a lead on this collection, particularly in the realm of the estimation of the balance of trade.

In undertaking the collection of reports and improving state record-keeping, the Lords was part of a wider societal attempt to accumulate and organise knowledge. In law, collections of legal decisions were an innovation of the late Elizabethan and early Stuart period, and continued to gain ground in the early eighteenth century. William Bohun’s *The Law of Tithes* (1730) claimed to be the first to collect ‘all the statutes [and] all such adjudged

⁴¹ Shapiro, ‘Law and Science’, p. 760.

⁴² For example, PA, HL/PO/JO/5/1/31, Manuscript Minutes, 4 April 1696. Peers also did not call those who had signed petitions, presumably so they did not have two ‘voices’—see HL/PO/JO/5/1/58, Manuscript Minutes, 12 March 1718. This meant that mayors, aldermen and the higher ranks who tended to be the lead signatures had to rely on lesser groups to make their case in committee. Those with a direct financial interest were also not supposed to speak—see HL/PO/JO/5/1/54, Manuscript Minutes, 20 May 1717.

cases'. Giles Jacob produced fourteen 'self help' legal manuals between 1713 and 1736 on the law, whilst Sir Geoffrey Gilbert published two collections of reports and fifteen works on different branches of law between 1730 and 1763.⁴³ As shown in the previous chapter, appeals to the Lords were also printed and collected. Importantly, those who collated law reports saw no division between law and science. Matthew Hale's *Digests of Laws of England* was an attempt to organise and systematise knowledge on which to base legal decisions, but he saw no divide between law and wider intellectual inquiry, having produced the *Primitive Organisation of Mankind*. Gilbert Burnet was able to argue that Hale exhibited 'his excellent way of methodising things...whatever he undertook, he would presently cast into so perfect a scheme'.⁴⁴

Interest in accumulating and organising information was a growing feature of parliamentary activity after 1689. Peers were actively pursuing this agenda, leading investigations and reorganisations of legal, mercantile and parliamentary records, with several investigations into archives and records between 1704 and 1728. In 1704, there was an investigation to consider the 'method of keeping records in offices', and which showed many 'archives' had not been explored in recent memory.⁴⁵ Mr Petyt, the keeper of the

⁴³ J. Rudolph, 'That "Blunderbuss of Law": Giles Jacob, Abridgement, and Print Culture', *Studies in Eighteenth-Century Culture*, 37 (2008), pp. 197-215, at p. 209, note 3; A. Simpson, 'The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature', *University of Chicago Law Review*, 48 (1981), pp. 632-79, at p. 654. For wider legal printing, see W. Prest, 'Law Books', in M. Suarez, M. Turner, eds, *The Cambridge History of Book in Britain* (6 volumes, Cambridge, 2009), Volume 5.

⁴⁴ Shapiro, 'Law and Science', p. 743.

⁴⁵ PA, HL/PO/JO/10/6/67/2029, Report of the Lord Treasurer to the House of Lords, 10 November 1704. For more on the general state of archives, see E. Hallam, 'Problems with Record

records in the Tower, described the ‘mountain of broken records... [with] cartloads of them’ rotting in the office. Peers ordered him to carry out the ‘methodising and preserving the records’ of the Court of the Exchequer, to the end of ‘rendering them useful to the public’.⁴⁶ This would be done by Petyt leading the ‘digesting, putting in order, and making calendars’ of Caesar’s chapel and records in the Tower’, with Bishop Nicolson estimating less than a tenth of the records in the Tower had been organised.⁴⁷

In addition to organising and making useful legal records, other state records were of interest. The trade bills of the 1710s caused peers to examine port and customs records for the first time, the deputy rembrancer of the Exchequer reporting to the Lords the books ‘are in great confusion’ and some were in a room ‘which nobody used to go in’.⁴⁸ In their investigations, peers found books detailing overseas trade from the 1660s on ‘the floor... [which] was covered for above two feet up with loose parchment books, bonds, and papers in the utmost confusion’. Books from the outports had been collected, but were ‘heaped together in the greatest disorder, all of which were carefully examined’.⁴⁹ These port books were said to have ‘not [been] looked into for a great while... [the clerk] remember[ing] not that they have been used’.⁵⁰ Peers discovered those books found wanting included substantial ports

Keeping in Early Eighteenth-Century London: Some Pictorial Representations of the State Paper Office, 1705-1706’, *Journal of the Society of Archivists*, 6 (1979), pp. 219-26.

⁴⁶ *LJ*, xvii, pp. 555-6; PA, HL/PO/CO/1/7, Committee Book, 15 November 1704; HL/PO/JO/5/1/39, Manuscript Minutes, 10 December 1703; T. Madox, *Histories and Antiquities of the Exchequer of the Kings of England* (1711), p. ii.

⁴⁷ Nicolson, *Diaries*, p. 226.

⁴⁸ PA, HL/PO/CO/1/8, Committee Book, 27 and 30 June 1713.

⁴⁹ J. Redington, ed, *Calendar of Treasury Papers* (6 volumes, London, 1868-1974), Volume 4, pp. 521-2.

⁵⁰ PA, HL/PO/CO/1/8, Committee Book, 27 June 1713.

like London, Newcastle and Bristol'.⁵¹ Equally, there were no regular reports for the outports, with 'several wanting'.⁵² Significantly, parliamentarians and political arithmeticians looked to companies to fill this information gap, one pamphleteer hoping that the African Company 'by this bill may be obliged to make entries of all their exports and to keep a true account of all their charge' to help make judgements on the trade and its regulation.⁵³ In 1700, a Lords committee wanted the Turkey Company to provide information on the balance of trade and proposed solutions.⁵⁴ Charles Davenant also 'did my utmost to procure a clause in some act of parliament to oblige the merchant to [make] a certain and regular entry' of wool—though this attempt was defeated by merchants in the Commons.⁵⁵ The impact of companies and corporations collecting this information on public participation is examined further below.

The final archive subject to the interest of peers was that of parliament itself.

Although the papers of the House of Lords were kept in the Jewel Tower by 1599 and for the Commons as early as 1552, they were not organised and so were of limited use.⁵⁶ The parliament office itself was investigated in 1717. A report of William Cowper, the clerk of

⁵¹ TNA, T 1/166, Extract From Port Books of the Value of the Exports and Imports with England and France for 1662-3 and 1665-6.

⁵² PA, HL/PO/JO/10/6/231/2991(a), Letter From Commissioners of Customs to the Lords, 21 May 1713.

⁵³ *Considerations Relating to the African Bill Humbly Submitted to the Honourable House of Commons* (1698), p. 2.

⁵⁴ PA, HL/PO/CO/1/6, Committee Book, 24 November 1702.

⁵⁵ C. Davenant, *A Second Report to the Honourable the Commissioners For Putting in Execution...An Act For the Taking, Examining, and Stating the Public Accounts*, in Whitworth, *Works*, Volume 5, p. 443.

⁵⁶ A. Thrush, 'The House of Lords' Records Repository and the Clerk of the Parliaments' House: A Tudor Achievement', *PH*, 21 (2002), pp. 367-73.

the parliament, stated the records were subject to ‘constant resort’ and could not be accessed without ‘great difficulty and danger’. Parliamentarians recognised the ‘records...of later years [had] grown more numerous’ but they had not yet found a ‘methodical [and]...regular’ means of keeping them.⁵⁷ The committee decided they would ‘inspect the keeping of the journals...and to recommend it to the house to direct an index to be made of such books in which there are none already’, making it easier to trace precedents and previous actions.⁵⁸ The journals, except those for the 1640s, had been ‘very disorderly bound’, but it was hoped that a ‘calendar in [a] separate book’ would be constructed.⁵⁹ In a later report in 1725 it was found acts of parliament were also in need of re-organisation in order to stop the ‘scattering’ of records that were ‘lying in a room or rooms near adjoining to this house in great disorder’.⁶⁰ This drive was in part the result of tensions with the Irish parliament during this period, leading to a search for evidence on the supremacy of the Westminster parliament over that of Dublin.⁶¹ However, it occurred as one of a series of innovative projects by peers that sought to make records of state and parliamentary activity ‘useful’.

The incidence in the reports ordered by the Lords on legislative business and their subjects are shown in table six. This is a necessarily partial account, it not being possible to be systematic with the range of papers, both in terms of subject and depth, which were presented informally by witnesses, lobbyists and pamphleteers, and had not been requested by peers. These are not shown in this table. Neither is the incidence of witness evidence

⁵⁷ PA, HL/PO/JO/10/6/264/3997, Petition of William Cowper, 26 February 1717.

⁵⁸ PA, HL/PO/CO/1/8, Committee Book, 4 March 1717.

⁵⁹ PA, HL/PO/CO/1/8, Committee Book, 8 June 1717.

⁶⁰ *LJ*, xxii, pp. 498-512.

⁶¹ C. Davenant, *Essay on the Probable Methods of Making a People Gainers in the Balance of Trade*, in Whitworth, *Works*, Volume 2, pp. 242-5.

Table 6: Reports Ordered by the House of Lords, 1689-1720

Subject	Number
Military	
Army/Navy	42
Army/Navy Debt	6
Treaties	8
Licence to come from France	1
Economic	
Coinage	2
Corn and Wool Exports	6
Internal Communications	8
Irish Manufacture	1
Overseas Trade	22
Taxes	4
Governance	
Governing America	1
Local Courts	4
Public Accounts	12
Jacobitism	
Forfeited Estates	11
Society and Religion	
Poor Relief	1
Riot	1
Religion	3

Source: *LJ*, xiv-xxi; PA, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments).

shown, despite the hearing of witnesses being a commonly used alternative to reports. They were often heard in order for the house to gain an idea of a wide range of local, and sometimes personal, views of a certain situation. This was the case with the bill attacking the Irish woollen industry in 1698, when data presented by the commissioners of customs was returned to them to be ‘perfected’.⁶² The absence of satisfactory ‘hard’ data on Irish industry led to nine witnesses being cross-examined on the nature of the Irish economy and English wool production.⁶³ This was also the case on the more local issue of the Brookfield and

⁶² PA, HL/PO/CO/1/5, Committee Book, 21 April 1698.

⁶³ PA, HL/PO/CO/1/5, Committee Book, 20-21 April 1698.

Newport Market Bill in Middlesex, witnesses being used to estimate the ‘abundance’ of cattle.⁶⁴ This reflected a method Davenant was forced to employ due to lack of evidence, believing ‘in this art [a] variety of speculation[s] are helpful and confirming to each other’, though these individuals were ‘dark and partial’ in their conclusions, requiring additional advice from political arithmeticians or a state body like the commissioners of customs.⁶⁵

Because of the necessity of witness evidence, table six only reflects the knowledge state bodies could provide formally, rather than demonstrating the full range of interests and use of data by the Lords. Equally, this table has been created from counting all reports and it should be noted this does not mean the house ever acted on them. A report on woollen imports was presented to a committee on the protection of privateers in the East Indies in 1707, and was not referred to by peers or witnesses.⁶⁶

In terms of subjects, military reports constituted a third of reports, a similar proportion to the number presented to the Commons in 1715.⁶⁷ These were ordered on convoys and the conduct of admirals as elements of party disputes over the conduct of war and demands from mercantile interests for the better protection of their ships. Economic reports constituted a larger proportion of reports to the Lords than the Commons, peers receiving thirty-seven percent of their reports on these matters, compared to twenty and thirty-three percent in 1715

⁶⁴ PA, HL/PO/CO/1/6, Committee Book, 26 March and 1 April 1701.

⁶⁵ Davenant, *Public Revenues*, in Whitworth, *Works*, Volume 1, p. 146. Davenant used evidence presented to the Commons in his *Reflections Upon the Constitution and Management of the Trade to Africa*, in Whitworth, *Works*, Volume 5, pp. 246, 306-7.

⁶⁶ PA, HL/PO/JO/10/6/128, Papers 2042(a) Proposals for Encouragement of Privateers in the West Indies, 25 November 1707.

⁶⁷ Hoppit, ‘Political Arithmetic’, p. 552, Table 2.

and 1720, respectively, for the Commons.⁶⁸ Formal reports were presented on the prices of coal, iron, corn, wool production in Languedoc and Ireland, and tobacco production in Holland and Virginia. Export and import details were provided for hundreds of individual products, as were their estimated prices, whilst attempts were also made for the colonies on occasion. However, even these economic reports often had their origins in wartime—an investigation into the state of trade in 1707 had its origins in a petition of 200 ‘eminent merchants of the city’ and the losses resulting from lack of convoy protection for their ships.⁶⁹ The prompt for the majority of reports were demands made in the context of specific legislation or in response to specific grievances of petitioners. Despite calls for ‘mercantilist’ policies on population by witnesses and lobbyists, reports presented on bullion exports generally went unused, as peers considered economic schemes through the lens of individual projects in legislative form.⁷⁰

In terms of their incidence, the occurrence of reports follows a peace-war split, with a boom between 1697 and 1704, before rising again in the late 1710s as lobbyists and parliament dealt with a wider range of legislative initiatives. The staple during wartime were military reports and examinations of the state of war rather than economic policy (at least in respect of reports formally ordered by the Lords). Reports were received regularly from the commissioners of public accounts and, from 1696, on the balance of trade. The purpose of these reports was not to provide conclusions for policy, but for ‘the picking out of select particulars in matters of fact as...seemed most worthy of debate’, with one report in 1703

⁶⁸ Ibid, p. 552, Table 2.

⁶⁹ W. Cobbett, *Parliamentary History of England* (36 volumes, London, 1810-1820), Volume 6, Column 597.

⁷⁰ This was also the case for the treasury—see TNA, T 1/34, London Bullion Exports, 1 May 1695 to 17 July 1695.

having to be re-written for ‘drawing inferences and conclusions’.⁷¹ Because many papers were intended to be descriptive and purely ‘matter of fact’, this makes it harder for us to establish their reception and the precise ends that peers put these reports, given the absence of debates and diaries compared to our surviving records for the Commons.

Nonetheless, it may be inferred from the incidence of reports there was an expectation that papers would provide a basis for evaluating policy. When a proposal was rejected in 1721 for ordering papers on British fleets in the Baltic, twenty-two protesting peers claimed ‘because of the want of such authentic papers and instruments’, there was:

no sufficient foundation for any parliamentary inquiry, much less for such a one as tends to approve, excuse, or blame, the measures of those in power....⁷²

This hints at a lack of confidence in individual ministers, but also suggests an expectation for decisions to be based on evidence, rather than partial accounts based on memory. The debates on the partition treaty saw a committee appointed ‘to state matters of fact’.⁷³ When voting against the resolution on the Battle of Almanza in 1711, peers did so because they felt ‘the proofs which have been before the house were not sufficient to warrant the facts as they are stated in the question’.⁷⁴ The house did use the papers it was presented with. In one debate on strengthening convoys, peers referred to the ‘one instance is given in the paper marked (A)’.⁷⁵ In 1703, the Lords undertook an ‘examination of more than two hours’ of the commissioners of public accounts and other officers.⁷⁶ The discourse of ‘facts’ was used justify protests,

⁷¹ Nicolson, *Diaries*, p. 202.

⁷² *LJ*, xxi, pp. 658-68.

⁷³ *LJ*, xvi, p. 625.

⁷⁴ *LJ*, xix, pp. 189-91.

⁷⁵ *LJ*, xviii, pp. 465-72.

⁷⁶ Nicolson, *Diaries*, p. 195.

with ‘no reasons more proper, than ... [those] founded upon matter[s] of fact’.⁷⁷ In a disagreement with the Commons, peers claimed their objections to a bill for preventing the export of corn were ‘ground...chiefly on a matter of fact; which if they are misinformed in, they shall be ready to agree with the Commons.’⁷⁸ Especially when it came to justifying disagreements, the papers and data offered were a key tool in legitimising arguments and justifying disagreements.

It was also the perception by the wider public that peers made policy based on these statements of fact. Simon Clement wrote that having ‘come into the House of Lords’ when counsel were being heard against the bill for prohibiting the exportation of Irish woollen manufacture, he decided to provide his own ‘facts’, fearing the ‘partiality [of the] information’ from which ‘judgment is directed’.⁷⁹ The same fears motivated Davenant, who sought to correct ‘misinformation as to points of fact’ during debates on the Africa trade.⁸⁰ Witnesses were explicitly called to committees to make out a ‘matter of fact’, or to be sworn ‘to prove the fact, as to the merits of such bills’.⁸¹ In the Commons, witnesses ‘spoke...to facts’, with petitioners appealing to appear to ‘prove the said facts’.⁸²

The most substantial ‘project’ the Lords led and undertook in this period was the estimation of the balance of trade.⁸³ It had long been an issue for ‘mercantilists’, but in the

⁷⁷ *LJ*, xvi, pp. 508; 654-6.

⁷⁸ *LJ*, xvi, pp. 369-70, xv, pp. 166-7.

⁷⁹ S. Clement, *The Interest of England* (1698), pp. 1-2.

⁸⁰ Davenant, *Trade to Africa*, in Whitworth, *Works*, Volume 5, p. 77.

⁸¹ PA, HL/PO/JO/5/1/28, Manuscript Minutes, 22 January 1693; *LJ*, xviii, pp. 183-4.

⁸² *CJ*, xii, pp. 105, 533.

⁸³ The treasury was also interested, see TNA, CUST 36/1: Imports and Exports Reported to the

Treasury for Christmas 1698 to 1716, with the Balance of Trade Between England and Other Countries.

context of the Nine Years War and the trade bills of the 1710s, it became part of the clash between the whigs and tories. Its collection and estimation also shows the importance of interest-groups, who peers continued to rely on for information on overseas trade, raising concerns over the role of self-interest and its interplay with ‘objective’ political arithmetic.

The creation of the post of inspector general of customs in 1696 is commonly seen as marking an important moment in the institutionalisation of political arithmetic in the activity of the state, being from this point a continuous series of customs data is available.⁸⁴ The demand to set up this office did not come from the executive but from parliament, reflecting the impact of the growing legislative business on demands for impartial knowledge, as well as being a response to party conflict. The context for the initial investigation into the trade balance in 1695 was the creation of the Scots East India Company, parliamentarians fearing the company would damage English interests.⁸⁵ In response, peers asked the commissioners of customs to ‘make a return of the exports and imports of the trade’ for a three year period. It was at this stage they learnt ‘in 1674 there was a balance made up of what related to France only....this they had by tradition’, being the only account the Commons had had ‘at any time’.⁸⁶ Davenant agreed, with the reports ‘laid before the lords, from the year 1692 to 1695’ the only source for the ‘divers branches’ of trade he could find, having ‘imperfect copies’ of them.⁸⁷ Peers were also told by the commissioners that the state did not have the resources to estimate it, the task requiring ‘twelve able hands’ for both the outports and London for nine

⁸⁴ For example, J. Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (London, 1989), p. 224.

⁸⁵ PA, HL/PO/CO/1/5, Committee Book, 18 December 1695.

⁸⁶ PA, HL/PO/CO/1/5, Committee Book, 16 January 1696.

⁸⁷ C. Davenant, *An Account of the Trade Between Great Britain, France, Holland, Spain, Portugal, Italy, Africa* (1715), pp. 9-10.

Figure 11: Extract from Report on Imports and Exports.

One of the most substantial projects the Lords undertook was an estimate of the balance of trade during the Nine Years War. This required examining twelve books of imports and exports, covering the period from December 1692 to December 1695. This page is from PA, HL/PO/JO/10/5/4, 2 December 1694-December 1695.

months, whilst other officials complained 1300 folios were involved.⁸⁸ The result from this initial attempt to collate this information was a limited one, only producing a specimen

⁸⁸ PA, HL/PO/JO/10/1/476/955(h), Report from the Collectors, Receivers and Examiners of the Port of London to the Commissioners of Customs and Others, 3 January 1696;
HL/PO/JO/10/1/476/955(h)(3), Report From the Five Searchers to the Commissioners of Customs, 3 January 1696; HL/PO/JO/10/1/476/955(h) (4), Report From the Comptroller General of the Accounts of the Customs to the Commissioners of Customs, 3 January 1696.

account of trade to Holland and with warnings it was an approximate result, ‘perhaps not within forty percent of the real balance of trade’.⁸⁹

The judgement of the committee on these proceedings, however, helped to institutionalise the collection of trade data for aiding policy. Peers ordered:

that the commissioners of the customs do make up an account every year of all the branches of the trade of this kingdom, outwards or inwards, to the end a perfect and particular balance of the said trade may appear; and the said account to be ready to be laid before this house when called for.⁹⁰

It was at this point that the commissioners wrote to the treasury, detailing ‘the usefulness of keeping a distinct account of the imports and exports of all commodities... recommending Mr Culliford for this special duty, under the character of inspector general’.⁹¹ Charles Davenant acknowledged the creation of the post was the result of parliamentary pressure when he held the post in 1704, writing that because of the ‘intention proposed by the lords’ a post had to be created in order to ‘serve the frequent orders of parliament’.⁹² He also praised the ‘excellent foundation’ that the House of Lords had in 1695, ‘which we hope some able head and good genius will so improve...to find out the balance of trade.’⁹³

If the balance of trade was first raised in the context of competition with Scotland, the other incidences of its presentation also reflect the use and application of data in specific contexts. Between 1697 and 1702, concerns with smuggling and clandestine trade led to

⁸⁹ PA, HL/PO/JO/10/1/476/955(hi1), Report From the Commissioners to the Lords Committee, 16 January 1696; HL/PO/JO/10/1/476/955(hi3), Searchers Specimen of an Account of Exportation of Three Years, 16 January 1696.

⁹⁰ *LJ*, xv, p. 634.

⁹¹ *CTP*, Volume 1, p. 527.

⁹² TNA, T 1/91, Commissioners of Customs on the Proposition of Dr Davenant, 12 September 1704, pp. 439, 443.

⁹³ Davenant, *Public Revenues*, in Whitworth, *Works*, p. 147.

peers returning to the subject. Peers ordered an account of the balance of trade for 1701, which ‘would be ready in a month’.⁹⁴ This included estimates of the tobacco trade with the American colonies, the report arguing that the current governments were ‘nurseries of illegal trade...to the great prejudice of her majesty’s revenue and of fair traders’, determining an act be drafted for re-uniting the colonies.⁹⁵ This pattern of demand for information in order to inform specific action was repeated again with more limited reports in 1702, when an account of trade since the last session of parliament was presented to the Lords to understand woollen imports between 1699 and 1701, and showing the ‘considerable increase in our exports of woollen manufactures’ compared to the 1660s. Demands for better information were a response to the clandestine trade with the colonies in 1697, Halifax using the report to claim the ‘plantations would eventually ruin us if they get the manufactures amongst them’, and complaining of the extent of smuggling.⁹⁶ The policy result of these reports was improving the ability of government to increase tax yields and inform the deliberations of parliament on specific bills.

When searching for data and information, peers first turned to members of the executive—particularly the treasury and the commissioners of customs. Despite the expansion of the central bureaucracy during this period, there still remained large gaps in the knowledge base of the state, especially in the realm of domestic economics and local conditions.

⁹⁴ PA, HL/PO/CO/1/6, Committee Book, 26 November and 30 November 1702.

⁹⁵ PA, HL/PO/JO/10/6/35/1829, Account of the Trade of this Kingdom Since the Last Session of Parliament, 20 November 1702.

⁹⁶ PA, HL/PO/JO/5/1/32, Manuscript Minutes, 15 and 22 February 1697;

HL/PO/JO/10/1/490/1115(c1), Trade and Plantations, 16 February 1697; Nicolson, *Diaries*, p. 132.

II. Political Arithmetic and Public Participation

One consequence of the need of the state for information was the increased status and extent of public participation in governing. Whilst the nineteenth century saw the development of the modern 'information state' which reduced the need for non-experts and removed a point of contact with policy-makers, in the eighteenth-century parliamentarians and policy-makers were dependent on information provided by those whose only claims to knowledge were based on the locality they lived in or their occupation. This enabled an arena to exist for deliberation between 'matters of facts' and 'interest', and shows how far political arithmetic was a discourse of everyday. Whilst the later restriction of the sources of information to government had the effect of boosting its authority and status, the nature of the early modern state ensured private interests remained influential in the proposing and judging of policy.

This highlights the key shift that Edward Higgs identified in state-sanctioned information gathering. It was not that the nineteenth-century 'information state' represented a new interest of government in statistics, but rather that information once held and known in a locality was transferred to the centre in the modern period.⁹⁷ Knowledge previously found in local court records, papers of companies, parish books and local memory, rather than systematically in a central office or 'database', was transferred to the centre. This process reflected changing legislative practices. Whilst in the eighteenth-century legislation and regulation was based on local or interest-group initiatives, requiring public and interest-group participation, nineteenth-century central state activism was less compatible with extensive participation to the end of informing policy, at least in parliament.

⁹⁷ E. Higgs, 'The Rise of the Information State: The Development of Central State Surveillance of the Citizen in England, 1500-2000', *Historical Sociology*, 14 (2001), pp. 175-97, esp. pp. 176-8.

A. Participation in Committees

The profiles of witnesses and participants legitimised by the demands for facts and evidence can be divided into two parts, reflecting the nature of record keeping in early modern Britain. Whilst this section considers information formally present in committees, the second considers the role print played in enabling a wider demographic to influence parliament through the presentation of information and ‘facts’.

The local dynamic to policymaking meant that in early modern Britain ‘local arithmetic’ was key to the process of fact-finding. Paul Griffiths has shown how local government collected data to inform its decisions from the beginning of the seventeenth century, with catalogues being made of the poor, the arrival of beggars, and the wealth and size of households in localities across England.⁹⁸ Although these sometimes had central impetus—the demands set by the Elizabethan Poor Law, the Restoration Settlement Act or the Births, Marriages, and Burials Act of 1694, would be examples of this—record keeping, collection, and analysis of data would occur at a local level.

This meant that although innovative schemes on public finance were in decline after the 1690s, the period having seen the instigation of the land tax, taxes on overseas trade and the establishment of a funded national debt, most other economic issues continued to rely on outside involvement, allowing political arithmetic to survive the more peaceful environment after 1713. However, much of this information was carefully controlled and regulated at a local level, with the access of the public to it operating on a ‘sliding scale’ of openness. Whilst acts and policies of corporations and companies would be relatively open and details of laws and fees publically displayed and announced, the spaces in which official records of

⁹⁸ P. Griffiths, ‘Local Arithmetic: Information Cultures in Early Modern England’, in S. Hindle, A. Shepard and J. Walter, eds, *Social Relations and Social Change in Early Modern England* (London, 2013), p. 123.

corporations and companies were held were far more restricted, mainly to clerks and principal members of the company or corporation.⁹⁹ This reflected the political stakes of this information in the context of disputes between competing groups, and means that many who attended parliament to ‘make out the facts’ were part of established interests, or at least had good connections with them. As a result, it was the Russia Company who sent ‘copies of Russia goods at the outports for the year’ four times between 1703 and 1713 to parliament.¹⁰⁰ This was also true for legislation that was specific to a certain locality. The passage of an act for the construction of a turnpike road between Kensington and Brentford in 1717 saw the production of the ‘books of the land tax... [to] compute how much money might be raised for the repair of highways’ by three parish clerks, as well as ‘the window tax for Fulham, and other places in order to calculate how much money may be raised for six days work by the inhabitants’.¹⁰¹ When seeking to investigate deficiencies in 1696 duty on births, marriages and deaths, the Commons looked not to central collection as a solution, but ordered JPs to meet to ‘keep an exact register and deliver [it]...to the same petty session’.¹⁰²

The growth of legislative activity after 1689 would only have strengthened this secrecy. John Strype, when updating Stowe’s survey of London, found the bookhouse of the City of London ‘very difficult to obtain’, gaining access only with the help of ‘friends of

⁹⁹ P. Griffiths, ‘Secrecy and Authority in Late Sixteenth- and Seventeenth- Century London’, *HJ*, 40 (1997), pp. 925-51.

¹⁰⁰ LMA, CLC/B/195/MS11893/001, Russia Company Treasurer’s Accounts, August 1706, p. 88, February 1712, p. 193, September 1712, p. 196, 17 September 1713, p. 208.

¹⁰¹ PA, HL/PO/JO/5/1/54, Manuscript Minutes, 5 July 1717; HL/PO/JO/5/1/58, Manuscript Minutes, 5 July 1717.

¹⁰² O. Williams, ed, *The Minute Book of James Courthope* (Camden Miscellany 20, Third Series, London, 1953), pp. 31-2, 35-6.

quality'.¹⁰³ This echoed the experience of Davenant and King. Charles Davenant wrote he had to 'grope in the dark, the common lights being withheld from him [on] some accounts of public revenue', whilst the excise commissioners 'refused any inspection into their books'.¹⁰⁴ This is not to say that the numerical information these books contained were inaccessible, rather that access was closely monitored. Lobbyists were often able to access and interpret state records, performing a role state officials would later perform—though this often required a helpful clerk. Henry Martin complained Daniel Defoe had better access to customs records in 1713, for 'his interest is better...every office in the kingdom has been rummaged to equip him'.¹⁰⁵ Luckily, Davenant had 'recourse to a worthy gentleman of that company [the African Company]... [who] procured me a sight of their books...and accounts' to aid his work on the Africa trade.¹⁰⁶ The leather bill in 1685 saw a certificate detailing the duty on leather taken from the custom house presented on the behalf of a group of leatherworkers to the committee.¹⁰⁷ Meanwhile, the merchants of Exeter provided a list of customs for four years from the 1650s to the 1670s to argue French duties were prohibitive to their business.¹⁰⁸ This practice echoed that of Gregory King, who discovered the produce of the land tax 'from the Exchequer in King Lane'.¹⁰⁹

¹⁰³ Griffith, 'Secrecy and Authority', p. 932.

¹⁰⁴ Davenant, *Balance of Trade*, in Whitworth, *Works*, Volume 2, pp. 85, 168; Davenant, *Public Revenues*, in Whitworth, *Works*, Volume 1, p. 149.

¹⁰⁵ *British Merchant*, 6-10 November 1713, Number 28; 7-11 May 1714, Number 80.

¹⁰⁶ Davenant, *Trade to Africa*, in Whitworth, *Works*, Volume 5, p. 80.

¹⁰⁷ PA, HL/PO/CO/1/3, Committee Book, 17 June 1685.

¹⁰⁸ PA, HL/PO/JO/1/6/232-234(a4), Memorial From Merchants of Exeter, 1 February 1697; HL/PO/JO/1/6/232-234(b6), Copy of a Letter From Mayor of Exeter, 28 May 1709.

¹⁰⁹ G. King, 'Burns Journal', in P. Laslett, ed, *The Earliest Classics: John Graunt and Gregory King* (Farnborough, 1973), p. 754.

Committees on national economic legislation were often supported with evidence that came from established individuals and companies. This meant data became intertwined with interests that were lobbying on bills before parliament. The Earl of Nottingham referred to the ‘confirmation’ offered to the house by ‘William Hodges and thirty other eminent merchants’ on the difficulties of trade after the Spanish trade bill passed.¹¹⁰ Witnesses and lobbyists recognised the gaps in estimating the balance of trade, with Mr Torriano knowing that for data on salt, the customs house ‘could not have it’.¹¹¹ Some of the surviving records for the trade debates of 1713 can be particularly detailed. Mr. Cooke, the treasurer of the Levant Company, quoted the decline in exports of silks from Persia, with ‘whole streets left deserted’ during the 1690s and ‘comput[ed]’ details on the silk industry and the importation of silks into England.¹¹² Mr Torriano’s speech on the trade bill provided the house with detail on brandy exports and the balance of trade, arguing that ‘the moral will still remain that the trade is destructive, unless it be carried on by high duties’.¹¹³

But these companies and established interests could also lack information. This meant that parliamentarians often relied on the calling of witnesses to provide ‘thick descriptions’ of policy issues before it. The house ‘proposed to send for merchants who can inform the house as to the turkey trade... [and] that any merchants that please to come here shall be heard’, in order to understand the ‘state of the turkey trade...and particularly of the silk manufactures between years 1660 and 1678’.¹¹⁴ When searching for information on French trade duties, the commissioners of trade were told they ‘cannot find any English merchants to do so’, having

¹¹⁰ Cobbett, *Parliamentary History*, Volume 6, Column 1361.

¹¹¹ PA, HL/PO/JO/10/3/204/2, Mr Torriano’s Speech, 8 June 1713.

¹¹² PA, HL/PO/JP/10/6/235/3001(c), Speech of Mr Cooke, 4 June 1713.

¹¹³ PA, HL/PO/JO/10/3/204/2, Mr Torriano’s Speech, 8 June 1713.

¹¹⁴ PA, HL/PO/JO/5/1/47, Manuscript Minutes, 9 June 1713.

already failed to find data or printed records.¹¹⁵ An account of the economy of Languedoc was presented by ‘a merchant who has lived about twenty years in that province and constantly dealt in woollen manufacture’, due to the lack of official records or chartered company.¹¹⁶ This practice had occurred earlier on the woollen trade with Ireland. This saw quantitative data offered on the amount of trade with Ireland on wool and a comparison of the costs of woollen manufactures.¹¹⁷ In this case, peers were reliant on correspondence merchants and clothiers had received from others and witness evidence heard by the house itself, who then ‘computed [details] on several sort of woollen goods’, including their prices and local circumstances in Ireland and Holland.¹¹⁸

The absence of chartered companies in the domestic economy enabled more lowly and unestablished groups to participate in deliberations on the majority of the legislation that came before parliament. The Silk Importation Bill of 1694 saw weavers used to estimate the number of throwsters, the quantity of raw silk, and the length of employment in England.¹¹⁹ Turkey merchants—rather than the company—provided the quantity of silk in London at the same time.¹²⁰ The New Forest Act of 1698 ‘for the increase and preservation of timber’, required the attendance of twenty-two witnesses to establish the abuses that occurred there

¹¹⁵ PA, HL/PO/JO/1/6/232-234(b5), Letter from Samuel Eyre to the Earl of Stamford, 27 May 1709.

¹¹⁶ PA, HL/PO/JO/10/3/204/2, An Account of Woollen Manufactures Made in the Province of Languedoc, 8 June 1713.

¹¹⁷ PA, HL/PO/CO/1/5, Committee Book, 21 April 1698; HL/PO/JO/5/1/34, Manuscript Minutes, 30 March 1698.

¹¹⁸ PA, HL/PO/CO/1/5, Committee Book, 6 May 1698.

¹¹⁹ PA, HL/PO/CO/1/5, Committee Book, 13 January 1694.

¹²⁰ PA, HL/PO/JO/10/1/461/777, Account of Silk Industry, 16 January 1694.

and determine whether enclosure was necessary to preserve the woods.¹²¹ The Iron Act in 1694 also saw ‘witnesses to make out the facts’ on the copper industry, whilst the Saltpetre Importation Act saw numerical reasoning occur on the use, trades and costs of saltpetre.¹²² The Apothecaries Act in 1695 saw estimates made on the number of apothecaries, and the Fish Act of 1715 saw ‘Thomas Gosling examined to the price of fish...[and] Simon Kemp senior examined to the price and plenty of cobs and lobsters’. Others were heard on the numbers of ships and ‘even more on lobster prices’.¹²³ As a result of this reliance on witnesses and lobbyists, much of this data was local and personal. During debates on wool from Ireland, a single sheet was presented on the ‘loss our nation sustains by the exportation of our wool’, using one pack of wool as its example.¹²⁴

It is important to note that in relying on witness evidence, peers were acting no differently to the professionalism of King or Davenant. Davenant had to rely on a ‘manuscript written after the battle of Landen’ to estimate the crown revenue of France for his comparisons with the English war effort during the 1690s.¹²⁵ Gregory King also needed data from local parishes in Staffordshire, London and Kent to estimate the national population.¹²⁶ Indeed, the reliance on merchants and others for advice for political arithmetic

¹²¹ PA, HL/PO/JO/5/1/33, Manuscript Minutes, 13 April and 3 May 1698;

HL/PO/JO/10/1/506/1255(j), Report from the Lords Committee Appointed to Examine the Miscarriages in the New Forest, 25 May 1698.

¹²² PA, HL/PO/JO/5/1/29, Manuscript Minutes, 21 and 30 March 1694.

¹²³ PA, HL/PO/JO/5/1/30, Manuscript Minutes, 4 February 1695; HL/PO/JO/5/1/50, Manuscript Minutes, 16 August 1715.

¹²⁴ *A Brief Survey of the Loss Our Nation Sustains by Exportation of Our Wool Modestly Computed by One Pack Thereof* (n.p., c.1700).

¹²⁵ Davenant, *Public Revenues*, in *Whitworth, Works*, Volume 1, p. 239.

¹²⁶ King ‘Burns Journal’, pp. 58-9, 64, 87-97.

seems so widely known that Jonathan Swift satirised it in his *Modest Proposal*, having been ‘assured by our merchants, that a boy or girl...when they come to this age [twelve]...will not yield above three pounds’ if sold.¹²⁷

B. Print and Participation

Print was also an important means of informing parliamentarians of ‘facts’. In 1714, the *Mercator* referred to ‘the calculations and accounts....published by pamphlets and books, whether publically ordered, or privately procured from the customhouse, or from accounts kept in offices’.¹²⁸ Print was an easily available and cheap mechanism for groups to lobby parliament with information, and a means of undermining the secrecy of information held by the state, corporations and companies.

Significantly, print was used to provide a running commentary of debates in the Lords. The writer John Houghton noted that ‘according to the bills of entry, I can tell how much of every sort of goods came to London from each country, and from all countries last year, which perhaps may be useful to several persons who have business in parliament’.¹²⁹ This was repeated on 26 June and 9 October 1696, and 22 January and 5 February 1697, whilst parliament was considering trade issues.¹³⁰ Charles Davenant’s *Essay on the East India Trade* was addressed to the Marquis of Normanby, ‘your lordship [being] pleased...to intimate, that you would willingly know my opinion in general of the East-Indies trade’.¹³¹

¹²⁷ H. Davis, ed, *The Prose Writings of Jonathan Swift* (14 volumes, Oxford, 1939-1968), Volume 12, p. 111.

¹²⁸ *Mercator*, 8-11 May 1714, Issue 151.

¹²⁹ J. Houghton, *Collection For Improvement of Husbandry and Trade*, 26 June 1696; Issue 204.

¹³⁰ *idem*, *Collection*, 9 October 1696, Issue 219; 22 January 1697, Issue 234, and 5 February 1697, Issue 246.

¹³¹ C. Davenant, *An Essay on the East India Trade* (1697), p. 5.

The same peer had also been sent work by Simon Clement on the balance of Irish trade with England in the late 1690s.¹³² The work of Lord Chief Justice Hales in his discourse on provision for the poor was used by the commissioners of trade in 1699 to show that wool and labour were cheaper in Ireland than England.¹³³ Whilst following proceedings, Davenant hoped ‘their lordship[s] would be pleased’ to order more books from the 1670s to aid their work on the balance of trade.¹³⁴ The pro-ministry publication, the *Mercator*, was able to print accounts of exports for debates on the French trade bill in 1713, and the *Observer* the same year was able to provide ‘exports and imports, as copied out of the custom house books in London’.¹³⁵

Fresh printed data was also presented to parliament and the wider public on these occasions, including for ‘local’ and specific acts of parliament. The author of an account of the Irish woollen industry claimed to have seen a

whole discourse [that] takes up many sheets upon the trade of Ireland to all parts, and particular remarks upon every commodity exported and imported into that kingdom...and how it affects England. Some other things he reserved as secrets from me....for it was never seen by any but one beside myself. Out of the whole he has extracted an exact account of the exports and imports for one year in a medium out of six; and then distinguished what related to England, by what ships brought in, and out; then computed the value of each commodity.¹³⁶

¹³² *idem*, *Balance of Trade*, in Whitworth, *Works*, Volume 2, p. 253.

¹³³ PA, HL/PO/JO/10/1/518/1417, Account of the Commissioners For Trade Relating to the Woollen Manufacture in Ireland, 22 March 1699.

¹³⁴ *idem*, *Public Revenues*, in Whitworth, *Works*, Volume 1, p. 148.

¹³⁵ *Mercator*, 3-5 November 1713, Issue 71; *Observer*, 28 June-2 July 1712, Issue 53.

¹³⁶ *The Linen and Woollen Manufactory Discoursed with the Nature of Companies and Trade in General* (1691), pp. 12-13.

Another sheet provided an account of English goods traded with Ireland between 1692 and 1697, and was advertised as being presented to parliament in the press.¹³⁷

In addition to the information from political arithmeticians and newspapers, short papers found their way directly into the hands of parliamentarians which provided them with information on which to deliberate. These could, in turn, flow out into the wider public sphere to inform public discourse. Echoing other uses of print explored in the previous chapter, this did enable a wider range of interests to offer information and ‘facts’ to the house, undermining some of the secrecy that surrounded the data collected by companies and corporations. Like peers, Davenant found himself becoming dependent on these papers for his estimates, referring to ‘a paper printed in November 1675... [and] published...before the parliament’, to estimate the circulation of coin.¹³⁸ He also used petitions from the inhabitants of Barbados and Montserrat to demonstrate computations by merchants in the case of the African Company had been wrong.¹³⁹ He did the same when discussing the East Indies trade, with a paper printed ‘for clearing the debate, then before a committee of the parliament’, and again on the African Company through ‘printed abstracts...dispersed among the members of parliament’.¹⁴⁰ Gregory King had to compare partisan accounts on the paper industry for information, having been ‘informed’ of the custom on paper via a printed paper of 1696.¹⁴¹ The scheme of trade of 1674 was ‘reprinted at this time [1713], given about at the doors of our parliament houses and elsewhere, and made use of as the fundamental test or touchstone

¹³⁷ PA, HL/PO/JO/10/3/189/2(v-y), Account of the Value of Goods Exported From the Port of

London and Outports to Ireland, 1692-1695; *London Post*, 8-11 March 1700, Issue 119.

¹³⁸ Davenant, *Public Revenues*, in Whitworth, *Works*, Volume 1, p. 367.

¹³⁹ *idem*, *Trade to Africa*, in Whitworth, *Works*, Volume 5, p. 103.

¹⁴⁰ *Ibid*, Volume 5, pp. 79-80, 84.

¹⁴¹ King, ‘Burns Journal’, p. 205.

of the French trade'.¹⁴² Even despite the absence of the votes for the House of Lords, pamphleteers and petitioners were able to know when to offer advice and detailed information to the house, and for non-established groups to participate in this discourse on facts.

Davenant recognised the art of political arithmetic was 'a sphere for lower capacities to move in, who can presume no further to find out and prepare materials'.¹⁴³ Due to the rise of print and lobbying parliament after 1688, this proved to be the case. This meant the information produced by political arithmeticians would have been seen in a wider pamphleteering and interest-driven culture, posing a challenge to the trustworthiness of their data and its place within a divided and partisan culture.

III: Political Arithmetic as a Challenge to the 'Deliberative Oligarchy'

If political arithmetic was a widespread discourse and part of partisan debate, then we need to consider its impact and attitude to political culture and how policy was made within its framework. Political arithmetic posed three challenges to the culture of deliberation. The first challenge was whether it became just another feature of the partisan culture of misrepresentation that Mark Knights has described, worsening divides as both 'sides' stood behind their numerical 'truths'. Closely related to this was the second challenge, of whether the data was received in a rational public sphere (as Habermas assumed Britain was, before it 'decayed' in the twentieth century), that would worsen the impact of the first, if it was not. The third challenge was the nature of the project that political arithmetic proposed. As a project, it sought to offer a more systematic and clear form of knowledge to ease decision making. But it was not implemented in that form, and if it had been would have challenged

¹⁴² *Mercator*, 26 May 1713, Issue 1.

¹⁴³ Davenant, *Public Revenues*, in Whitworth, *Works*, Volume 1, p. 143.

the extent Britain was a ‘deliberative oligarchy’ in this period. If it had truly eliminated disagreement in debate and resulted in a ‘tyranny of expertise’, this would have eliminated deliberative politics—which relied on engagement and compromise with a range of interests. Deliberative systems rely on the role of experts being balanced against experience and interest, rather than seen as above it.¹⁴⁴ The failure of political arithmetic in this respect does not necessarily mean the method was completely at odds with the ‘liberal governmentality’ of the eighteenth century as Mary Poovey argued; but it needs to be recognised that apparently ‘technocratic’ choices and arguments of logic are necessarily not neutral decisions, however much Petty believed them to be so.¹⁴⁵ The taking of the ‘politics’ out of them proved harder than he had imagined, with a positive impact on engagement and participation through petitioning and local involvement.¹⁴⁶

In relation to societal attitude to numbers and arithmetic, these could create new disputes in themselves. As has been noted above, Michael Schudson has advanced the notion the late twentieth and early twenty-first century has developed into a ‘monitory democracy’, where unrepresentative bodies have increasingly taken to scrutinising the actions of representative institutions. This form of accountability may be seen in ensuring representatives voted the ‘correct’ way, and the voting lists of the early modern period are a well known element of the ‘rage of party’. But this feature may also be seen in those seeking to hold government and parliamentarians to account, whether this was by members of a

¹⁴⁴J. Parkinson, *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy* (Oxford, 2006), pp. 149, 152, 155.

¹⁴⁵M. Poovey, *The History of the Modern Fact: Problems of Knowledge in the Science of Wealth and Society* (Chicago, 1998), p. 147.

¹⁴⁶M. Flinders, *Defending Politics: Why Democracy Matters in the Twenty-First Century* (Oxford, 2013), pp. 102-4.

formal ‘government’ group, such as the commissioners of public accounts, or interested individuals in ‘crusades’ against corruption. Although the spread of numbers and information could aid accountability, they could also be used to divide and contribute to a more divisive and mistrustful politics. This concern raises the question of whether there existed a self-evident truth that politicians were not trusted, leading to a system of ‘checking-on, goading, and humbling’ those holding power, as part of the culture of cynicism and misrepresentation.¹⁴⁷ The numbers and ‘facts’ that parliamentarians, ministers, and interests produced during parliamentary debates could be seen as the product of their self-interest.

Mechanisms of parliamentary accountability of the state in this period have been well studied, particularly in relation to the public accounts and the persistence of a ‘country’ mentality. Historians have had a more positive interpretation on the work of the commission of public accounts work in recent years, but the perception of contemporaries was more mixed—particularly because the country mentality of contemporaries has been downplayed in recent works.¹⁴⁸ Ideology, principle or party were part of the contemporary imaginings of politics, but interest, kinship, and ‘corruption’ also mattered. As a result, the idea of parliamentarians sitting on judgement on others appeared an injustice. John Toland attacked the ‘assembly of public robbers [who] will sentence one another...’ and questioned ‘whether the public accounts will be faithfully inspected by those who embezzle our money to their

¹⁴⁷ idem, ‘Daring to be a Daniel: The Pathology of Politicised Accountability in a Monitory Democracy’, *Administration and Society*, 43 (2011), pp. 595-619, at pp. 595-6, 607.

¹⁴⁸ For more positive views of the commission for public accounts, see Deringer, ‘Finding the Money’; J. Downie, ‘The Commission of Public Accounts and the Formation of the Country Party’, *EHR*, 91 (1976), pp. 33-51; A. Graham, ‘Auditing Leviathan: Corruption and State Formation in Early Eighteenth-Century Britain’, *EHR*, 128 (2013), pp. 806-38.

own use?’¹⁴⁹ Bishop Burnet said it was a ministerial plot to set up the commission, ‘for the bearing down and silencing all scandalous reports’.¹⁵⁰ These demands for accountability did have the potential to undermine confidence in politics, as parliamentarians could not meet the expected standards of accountability. Toland asked

whether a parliament filled with delinquents will ever call themselves to account, or what account would be given if they should? Whether an assembly of public robbers will sentence one another to be punished, or to make restitution? Whether it is possible our grievances can be redressed, [when they] are committed by persons from whom there is no higher power to appeal? Whether there is any hope of justice where the malefactors are the judges? Whether his majesty can be rightly informed in affairs relating to himself or the public, when they are represented to him only by such persons who design to abuse him? Whether the public accounts will be faithfully inspected by those who embezzle our money for their own use?¹⁵¹

What were the sentiments that lay behind the ‘discoveries’ of facts and allegations of corruption, which the commission and ‘whistleblowers’ investigated?¹⁵² Robert Crossfield, campaigning against abuses in navy victualling, saw his activity as the ‘duty (which every man owes to his native soil) to bring [such] aggressors to open shame’.¹⁵³ The commission of public accounts, far from being public ‘champions’, were seen as ‘by evasions and false allegations, on behalf of the criminals... [as having] delayed and stopped the laying open these grievances’.¹⁵⁴ Crossfield also complained ‘all these enormous crimes were...hushed up the last session of parliament, by these gentlemen’s great ingenuity.’¹⁵⁵ He complained no

¹⁴⁹ J. Toland, *Art of Governing by Partys* (1701), pp. 68-9.

¹⁵⁰ Bishop Burnet, *History of My Own Time* (6 volumes, Oxford, 1833), Volume 4, p. 117.

¹⁵¹ J. Toland, *The Danger of Mercenary Parliaments* (1698), p. 2.

¹⁵² For recent work on whistle blowing, see M. Newfield, ‘Parliament and Some Roots of Whistle Blowing During the Nine Years War’, *HJ*, 57 (2014), pp. 397-420.

¹⁵³ R. Crossfield, *Government Unhinged...to the House of Commons* (1703), p. 4.

¹⁵⁴ S. Baston, *A Dialogue Between a Modern Courtier and an Honest English Gentleman* (1697), p. iv.

¹⁵⁵ R. Crossfield, *An Account of Robert Crossfield's Proceedings in the House of Lords* (1692?), p. 2.

committee was appointed to examine the practices, because there were ‘diverse crafty and scandalous reports...that my design in bringing these complaints was not so much for the public good, as it was to cause heats and feuds in parliament to hinder the king’s affairs’.¹⁵⁶ Even Davenant perceived the work of the commission as picking up ‘only errors of the clerk...there has been no great mismanagement by the public officers’.¹⁵⁷ Demands for accountability reflected cynicism towards parliamentarians, who despite having mechanisms of investigating corruption fell short of increased public expectations. Such mistrust was also possible within parliament, with Lord Haversham refusing to accept copies of letters during the investigation of the military conduct of Sir George Rooke, instead demanding the originals.¹⁵⁸ Parliament was blamed for failing to uncover ‘facts’, with Samuel Baston arguing ‘the facts contained in the dialogue, are not yet examined in parliament’, forcing him to ‘print them again, to remind the parliament of the present miseries’.¹⁵⁹ This suggests the answer to this distrust was to participate, rather than to withdraw from the public sphere. Toland argued the solution was not to blame MPs and peers, but ‘it’s our own fault if effectual care be taken not to manage whatever we given’, encouraging a shift to print to hold those to account; print becoming one means to circumvent and remind parliament of its duties, within a discourse where ‘facts’ helped umpire political passions.¹⁶⁰

The second threat political arithmetic posed was whether it contributed to a rational public sphere which would strengthen a culture of deliberation. Indeed, whether we can hold

¹⁵⁶ Ibid, pp. 4-5.

¹⁵⁷ C. Davenant, *A Dialogue Between a Member of Parliament, a Divine, a Lawyer, a Freeholder, a Shop Keeper and a Country Farmer* (1703), p. 10.

¹⁵⁸ Nicolson, *Diaries*, p. 169.

¹⁵⁹ Baston, *Dialogue*, p. v.

¹⁶⁰ J. Toland, *Paradoxes of State, Relating to the Present Juncture of Affairs in England* (1702), p. 20.

up the public sphere as rational in this period is unlikely, even it was an established ideal.¹⁶¹ Rather, we need to imagine reason and deliberation as existing alongside a culture of misrepresentation. Allegations of arithmetical lying and dubious accounting were part of party debates, particularly in relation to the trade bills of the 1710s. The use of fact was recognised as a useful political tool, contemporaries having found ‘that few particular instances in relation to fact...always makes a greater impression upon the minds of men than a general notion of things’.¹⁶² It was not surprising that party-politics intervened in this area. Because hired writers and interest groups presented such data, there were claims of lying and parliament being misled, ‘politicising’ political arithmetic. During debates on the French Trade Bill of 1713, the *Mercator* attacked the ‘accounts of the custom house’ and stated that it ‘prove[d] those accounts imperfect and false, and capable of giving no true estimate of the trade’, with all the papers presented being ‘amusements [or] appearances without any foundation’.¹⁶³ They also questioned the report from the inspector general and the commissioners of customs, as they ‘are not upon oath, but they give an account which they are sure are right’, arguing the House of Lords ‘had good reason to suspect [them] for an old cheat’.¹⁶⁴ Davenant claimed that merchants had provided ‘fallacious computations’ to influence their thoughts on the monopoly of the Royal African Company, and repeated the same in ‘taverns, coffee houses, and elsewhere...for battering men out of their senses,’

¹⁶¹ A question examined in relation to the trial of Sacheverell in M. Knights, ‘How Rational was the Later Stuart Public Sphere?’, in P. Lake and S. Pincus, eds, *The Politics of the Public Sphere in Early Modern England* (Manchester, 2007), pp. 252-68. The perceived irrationality and fears for public participation were present from the conception of the public sphere.

¹⁶² C. Richards, *England's Misery: or, a Brief Account of the Corrupt Practice of the Law* (1698), p. 1

¹⁶³ *Mercator*, 8-11 May 1714, Issue 151.

¹⁶⁴ *Ibid*, 29-31 December 1713, Issue 95.

highlighting the tension between self-interest and the data on which the executive and parliament relied.¹⁶⁵

These issues and concerns would not have gone away after the decline of party. The dispersed nature of government in Britain, the lack of central knowledge, and the local and interest-group origins of much legislation would only have meant these issues were constant in every bill or project. Even during proceedings on making Billingsgate fish market a free market in 1699, an argument occurred over the price of fish and led to ‘saucy’ remarks, resulting in insult and arrest.¹⁶⁶ Both William Deringer and Perry Gauci concluded computational disputes over the French Trade Bill of 1713 were inconclusive, though the presence of such debates shows that numerical discourse was a common language, helping to govern civil conversation.¹⁶⁷ Instead, the removal of the issue from the political arena removed the heats and tensions arising from the trade debates. The inability of numbers to resolve disputes in other situations when legislation was *actually* passed makes the circulation of power through several institutions more significant, as this would eventually create legitimacy when the policy was adapted to other interests and minorities. A statute passed by a majority (even of MPs and peers) was not enough to legitimise it and contribute to political stability—this required public participation in more extensive processes.

This would mean that instead of fanning tensions, partisanship was worsened—or at least was so far reaching as to make numbers and arithmetic also questionable and weakening their capacity to provide ‘facts’ that both whigs, tories and interest groups could agree on.

¹⁶⁵ Davenant, *Trade to Africa*, in Whitworth, *Works*, Volume 5, pp. 97-8.

¹⁶⁶ PA, HL/PO/JO/10/1/517/1421(b), Billingsgate Fish Market Bill, Affidavit of Andrew Jennings, 14 April 1699.

¹⁶⁷ Deringer, *Calculated Values*, pp. 217-22; P. Gauci, ‘The Clash of Interests: Commerce and the Politics of Trade in the Age of Anne’, *PH*, 28 (2009), pp. 115-25, at p. 124.

What this highlights is the extent (perhaps unsurprisingly, though it did not stop contemporaries trying) that it was not possible to take the ‘politics’ out of arithmetic and the decisions that were to be made. This was a third challenge that political arithmetic made, indeed it was the central claim of Petty—that it was possible to explain and change the world ‘by a very mean piece of science’, of which the greatest example was his plan for transplanting of the population of Ireland.¹⁶⁸ In his *Political Anatomy of Ireland* (1672),

Petty argued:

Sir Francis Bacon, in his *Advancement of Learning*, has made a judicious parallel in many particulars between the body natural and body politics and between the arts of preserving both in health and strength: and it is as reasonable, that as anatomy is the best foundation of one, so also of the other; and that to practice upon the politics, without knowing the symmetry, fabric, and proportion of it, is as casual as the practice of old-women and empirics.¹⁶⁹

This attitude towards politics was echoed by other practitioners. Peter Pett talked of becoming expert in the ‘science of politics’.¹⁷⁰ Graunt desired ‘good, certain, and easy government...to balance parties and factions both in church and state’.¹⁷¹ Davenant hoped ‘each man [would] submit his private interest and concerns to the common good of his country’, attacking those who had ‘more regard [to] the private interest’ rather than ‘the general good in public councils’ that ‘all the laws should tend to’.¹⁷² Davenant also attacked policies being ‘driven into the wrong measures by the majority’, rather than knowledge and experience.¹⁷³ Part of this was a response to the ‘rage of party’, but it was also making a

¹⁶⁸ Petty, *Political Arithmetic*, Dedication.

¹⁶⁹ idem, *The Political Anatomy of Ireland* (1691), Preface.

¹⁷⁰ P. Pett, *Happy Future State of England* (1688), p. 185.

¹⁷¹ Graunt, *Observations*, Conclusion.

¹⁷² Davenant, *Ways and Means*, in Whitworth, *Works*, Volume 1, p. 81; idem, *An Essay on the East India Trade*, in Whitworth, *Works*, Volume 1, p. 89.

¹⁷³ Idem, *Public Revenues*, in Whitworth, *Works*, Volume 1, p. 183.

broader attack on the language of interest and the pluralism involved in policy-making.¹⁷⁴ Each writer believed society was subject to ‘laws’ that could be discovered by inquiry, allowing government to reduce arbitrariness and its incapacity to act due to it being challenged by self-interested groups or those misled by ‘false knowledge’. The status of experts, therefore, would override the demands of interests. Self-interested groups that stopped reform would be relegated outside of decision-making to create ‘rational’ legislation.

The attempt to make politics into a science was not without its critics. In addition to the reality of increased petitioning, pamphleteering, fears for property rights, and election activity that reduced the capacity of the central state to act this way, Jonathan Swift was one such figure who offered a critique of this project.¹⁷⁵ In his *Gulliver’s Travels*, he praised the King of Brobdingnag for ‘not having hereto reduced politics into science, as the most acute wits in Europe have done’, instead ‘relying on common sense and reason’.¹⁷⁶ He took up the subject again in his *Modest Proposal*, providing ‘computations’ to prove the advantages of selling children to ease the Irish economy, arguing, coldly, that the consequences of the calculations ‘are obvious’.¹⁷⁷ By making a link between science and the undermining of religious and political life, he was arguing that the method sought to reduce the need for

¹⁷⁴ Idem, *Balance of Trade*, in Whitworth, *Works*, Volume 2, pp. 318-19.

¹⁷⁵ See also R. Olson, ‘Tory-High Church Opposition to Science and Scientism in the Eighteenth Century’, in J. Burke, ed, *The Uses of Science in the Age of Newton* (Berkeley, California, 1983).

¹⁷⁶ J. Swift, *Gulliver’s Travels* (Oxford, 1986), p. 124.

¹⁷⁷ Swift, *Modest Proposal*, pp. 13-14. For interpretations of the *Modest Proposal* in the context of economic disputes in Ireland, see O. Ferguson, *Swift and Ireland* (Urbana, Illinois, 1962), pp. 170-5; J. Kelly, ‘Jonathan Swift and the Irish Economy in the 1720s’, *Eighteenth-Century Ireland*, 6 (1991), pp. 7-36; P. Kelly, ‘Swift on Money and Economics’, in C. Fox, ed, *The Cambridge Companion to Jonathan Swift* (Cambridge, 2003), pp. 128-45.

wider debate and deliberation by this lack of compromise to interest and particularism. However, despite the ideology behind political arithmetic, the reality of a wider political culture that recognised the important role interest groups could play meant the method did not monopolise policymaking as it sought to do. Instead, it offered a partial means of conducting reasoned debate and judging the success and need for legislation. The rhetoric and methods of ‘facts’ and arithmetic provided an opportunity to balance the language of the ‘majority’ and ‘interest’, and to justify actions that seemed to be against these, but it was not capable of overturning it.

IV: Conclusion

Political arithmetic was an important means of imagining policy options and analysing them in the ‘long eighteenth century’. It may have been an imperfect method, Davenant describing it as ‘an art not yet polished’, but as William Deringer has shown, by ‘balancing probabilities’ the information was likely to be true and a recognition the information was partial, contemporaries were able to use it as one of the tools available to them.¹⁷⁸ It was a language and method expected by peers and lobbyists alike, and if it was believed that others had not employed it, pamphleteers, writers and witnesses were keen to ensure ‘facts’ were evaluated for the service of parliamentarians. This culture shows the importance of the structural shifts in politics that resulted from the Glorious Revolution, the centrality of interest groups in the operation of the state, and the importance of the law and legal system as a force for innovation.

Political arithmetic contributed to the maintenance of a plural political culture into the ‘age of oligarchy’. The demands for information in the context of an early modern state that

¹⁷⁸ Davenant, *Balance of Trade*, in Whitworth, *Works*, Volume 2, p. 170; Deringer, *Calculated Values*, pp. 348, 404.

lacked knowledge, especially on non-fiscal matters, had the opposite consequence of what Petty imagined the information itself would bring—namely a larger reliance on conflicting voices and interests. For parliamentarians to gain information they often had to use local officers and interests, transferring the culture of the participatory local state to Westminster. As has been seen, peers were firmly part of this political culture and showed no desire to use political arithmetic to silence debate or to allow the dominance of ‘professionals’ and ‘experts’, enabling those with local or personal examples to stand alongside those with ‘hard’ data. Witnesses may not have been a new feature of parliamentary business after the Glorious Revolution, but wider cultural changes gave a new authority to groups unrepresented in parliament and a rhetorical tool to tie parliamentarians and participants to ‘facts’. This meant that witnesses, like petitioners, were not necessarily limited to established corporations, the propertied, or the titled—expertise and significantly, lived experienced, offered an alternative to these. The participation beyond those sharing common modes of ‘civility’ and ‘politeness’ that Steve Shapin argued were important to establishing the credibility of those that sought to establish ‘truth’, suggests other languages and concepts were also used to understand and justify their role, especially given their commonality and continuing presence in parliamentary committees.¹⁷⁹

This culture meant arithmetic, especially when spread through print, did aid the moulding of a new political consciousness and created new expectations of parliamentarians and the parliamentary process. It provided a means for judging and evaluating their acts and the proposals of outside interests—even if resulted in an ‘expectations gap’, with complaints that ‘clear’ or ‘scientific’ arguments had not been followed by parliament. Not following these ‘facts’ heightened the awareness that interests, lobbyists, custom, and particularism—

¹⁷⁹ S. Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England*

(Chicago, 1994).

or, in short, ‘politics’—did alter what policies were being made. Political arithmetic was subsumed within certain interests or parties and helped to accentuate division, highlighting inequalities and winners and losers from policies. Data was often caught up in political debates and could be tarnished by the persons and interests from which it originated, weakening the method as a means of reconciliation or deliberation between interests, and flaming divisions instead. Hence, complaints by Davenant, King, and Houghton on the inequality of the proportion of the land tax or their demands to strengthen the excise and its officers, often fell on deaf ears.¹⁸⁰

But political arithmetic did have the potential to ‘close’ this culture down through its raising of numerical data and the arguments of arithmeticians to the level of an unchallengeable ‘truth’. There was a tension between political arithmetic and politics, just as there is between democracy and science—not only because science is meant to be the preserve of the elite, but scientists are meant to offer certainty and a clear path, something not well suited to the form of deliberative oligarchy that Britain was in the eighteenth century.¹⁸¹ Political arithmetic as exposed by Petty had the potential to disrupt and weaken the deliberative discussion of policy, through raising the status of experts and data above those of more ordinary witnesses. In this way, political arithmetic echoed the majoritarian rhetoric of some petitions which also sought to undermine deliberation and politics. But it was the local nature of politics, the weakness of the executive and the lack of effective systematic knowledge that meant this potential went unfulfilled. This ensured participation of a wide range of groups selected by interest and experience, rather than solely ‘expertise’, was

¹⁸⁰ Davenant, *Ways and Means*, in Whitworth, *Works*, Volume 1, pp. 52, 58-9, 62-3, 68; Loft, ‘Land Tax’, p. 333.

¹⁸¹ F. Fischer, ‘Citizens and Experts: Democratizing Policy Deliberation’, in his *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, 2003).

necessary to fill these gaps in a culture that demanded ‘facts’. The lack of ‘hard’ arithmetic meant peers had to continue to balance experience and expertise, ensuring the presence of deliberation and negotiation with interests, helping to maintain political stability and legitimacy.

This attempt at depoliticisation—the adoption of ‘rational’ processes and the dominance of ‘experts’ as conscious attempt to remove the conflicts inherent in open policy-making—did not succeed. Despite the shift from the ‘rage of party’ to ‘age of oligarchy’, and the passage of the Septennial Act as a means of reducing the role of the public and taking some of the heat out of politics, few of these features of depoliticisation (and therefore declining participation and conflict) can be said to have been common after 1715. To sideline these features of political culture, trading them for the views and judgements of ‘expertise’, would have been to undermine the possibilities for meaningful engagement, compromise and the empowerment of disenfranchised groups, which was central to the nature of deliberative politics in this period. Instead, the ‘culture of fact’ acted like precedents in law—not overruling public participation, but something that all partisans mobilised and meant their arguments could be undercut by a discourse that both sides recognised as legitimate and the ‘correct’ way to determine policy. The nature of a deliberative institution set out here suggests the reduction of the distinction between actor and spectator encourages reflective judgment, because deliberative dialogue was strongest in debates on specific matters of policy.¹⁸² An understanding and tolerance of the political system and other interests operating within it was something that active political agents learned and enforced through their

¹⁸² H. Arendt, *The Life of the Mind* (London, 1981), p. 262, quoted from Knights, *Representation and Misrepresentation*, p. 354; L. Bilsky, ‘When Actor and Spectator Meet in the Courtroom: Reflections on Hannah Arendt’s Concept of Judgement’, *History and Memory*, 8 (1996), pp. 137-73.

experience and participation in governing. A critical public sphere required a deliberative political system, and was strongest when applied in such institutional circumstances.

CHAPTER FIVE

Petitioning and Participation, 1688-1720

We should have known the matter of this complaint very soon from other hands, by a just and regular application to those whose right it is to hear the complaints of the people, and whose glory as well as privilege it is to be able to redress them.

The Just Complaint of the Poor Weavers Truly Represented (1719)

They have considered your addresses
Our noble peers could do no less.

The Gentlecraft's Complaint, or, the Jolly Shoemakers Humble Petition to the Queen and Parliament
(n.p., c. 1702-1714)

Petitioning in itself infers an owning of the government.

A Collection of State Tracts Published During the Reign of King William III (3 volumes, 1707),
Volume 3, p. 574.

That early modern Britain had a 'petitioning culture' is well known. Addresses and petitions were gathered to acclaim the accession of monarchs, to raise a grievance, launch legal appeals, and support parliamentary bills. In the 1640s, and again from the 1760s, petitions were signed by thousands in aid of campaigns against the church and crown, and later in support of campaigns for parliamentary reform and abolition of slavery. Petitioning parliament has a long and varied history and conjures up a number of different processes, to both contemporaries and historians.¹ What this chapter examines is a specific form of petition

¹ The petitions of the 1640s are explored in A. Fletcher, *The Outbreak of the English Civil War* (London, 1981), pp. 192, 195, 224. For an overview of petitioning in the eighteenth century, see P. Fraser, 'Public Petitioning and Parliament Before 1832', *History*, 46 (1961), pp. 195-211; J. Innes, 'Legislation and Public Participation', in D. Lemmings, ed, *The British and Their Laws* (Woodbridge, 2005); M. Knights, *Representation and Misrepresentation in Later Stuart Britain* (Oxford, 2005), Chapter 3. For the slave trade, see S. Drescher, 'Whose Abolition? Popular Pressure and the Ending of the British Slave Trade', *P&P*, 143 (1994), pp. 136-66.

that has received less attention, namely those presented to parliament on legislative matters. Due to the records of the Lords surviving the fire of parliament in 1834, these petitions can provide systematic evidence on the extent of popular subscription and participation on matters before parliament, over an extensive time frame.² Although they were not ‘political’ in the sense of demanding alteration to the church or the succession, the majority motivated by economic and social concerns, they were divisive, popular, sometimes part of national campaigns, and willing to claim to represent the ‘majority’ and argue legislation required the ‘consent’ of those affected. These petitions had a significant role, mobilising the ‘politically hyperactive apprentices, articulate townsmen, and other unruly social inferiors’ that did not have a formal voice in parliament, in a period of time when the role of the electorate was being reduced, and most did not have a vote all at.³

It is necessary to first briefly consider the forms of petitioning that existed in the early modern period, and which of them this chapter explores. Joanna Innes in her survey of eighteenth-century petitioning divided them into three forms.⁴ The majority of petitions to parliament were procedural in nature, signed by only a small number. These petitions were not in opposition to any policy, but used to introduce private bills or legal appeals to the

² Some petitions are examined in P. Gauci, *The Politics of Trade: The Overseas Merchant in State and Society, 1660-1720* (Oxford, 2001); M. Knights, ‘Regulation and Rival Interest in the 1690s’, in P. Gauci, ed, *Regulating the British Economy, 1660-1850* (Farnham, 2011); W. Pettigrew, *Freedom’s Debt: The Royal African Company and the Politics of the Atlantic Slave Trade 1672-1752* (Chapel Hill, 2013), Chapter 4.

³ G. De Krey, *Restoration and Revolution in Britain: Political Culture in the Era of Charles II and the Glorious Revolution* (Basingstoke, 2007), pp. 43-4.

⁴ Innes, ‘Legislation and Public Participation’, pp. 114-15.

Lords.⁵ The petitions which are the focus of this chapter are those that were contesting legislation already before parliament on both local and public bills, forming the second form of petitioning. These petitions were not of the procedural or legal type. In total, 56,000 people signed one of the 330 ‘large responsive petitions’ to the Lords that were presented on legislative matters between 1689 and 1720. These large ‘responsive petitions’, I define as having more than twenty signatures.⁶ William Pettigrew estimated only one percent of petitions to parliament in 1660 can be described as ‘counter petitions’, rising to twenty-four percent by 1713, making these large responsive petitions a more important feature of politics after 1689.⁷ ‘Political’ petitioning was the third form, of which the Kentish Petition of 1701 calling on the tory Commons to act against France, the campaigns of the Episcopalian clergy for toleration in Scotland during 1703, or those inspired by John Wilkes in 1769 after his exclusion from the Commons, would be examples. In order to differentiate these 330 petitions from those introducing business to parliament, the ‘adversarial addresses’ of the Episcopalian, the ‘political petitions’ of the Wilkites, and the ‘mass petitions’ of the Chartists, I refer to them as ‘large responsive petitions’ throughout, as they were produced in

⁵ For the role of petitions in relation to private bills, see S. Lambert, *Bills and Acts: Legislative Procedure in Eighteenth-Century England* (Cambridge, 1971), Chapter 5.

⁶ Around 1300 people signed one of ninety-six petitions to the House of Lords in the same time period that had between ten and nineteen signatures. As more than a third of these petitions included bills dealing with estate, relief of creditors or naturalisations, I focus on petitions that have been signed by twenty persons.

⁷ W. Pettigrew, ‘Constitutional Change in England and the Diffusion of Regulatory Initiative, 1660-1714’, *History*, 99 (2014), pp. 839-63, at p. 851; idem, ‘Regulatory Inertia and National Economic Growth: An African Trade Case Study, 1660-1714’, in Gauci, ed, *Regulating*, pp. 25-40, esp. 26-30.

response to legislation and were not introducing issues to the political arena as later ones were.⁸

This chapter examines the effect of the transformation of Parliament's role as a legislative marketplace after 1689 on the pattern of petitioning activity and the extent of public involvement in the signing of petitions.⁹ In his *Public Life and the Propertied Englishman*, Paul Langford showed parliament was an increasingly important forum for middling sorts and communities to regulate their localities through statute, during what used to be seen as the 'aristocratic century'.¹⁰ Stuart Handley has shown communities could petition parliament frequently, whilst Mark Knights has shown the late Stuart period saw an outpouring of addresses and loyalist subscription campaigns.¹¹ Lois Schwoerer has highlighted a petition from London on the succession in 1689.¹² Scott Sowerby, meanwhile, has used addresses to map support for James II's religious policies.¹³ But what has not been possible in these previous accounts is any systematic investigation into the numbers

⁸ For 'Adversarial Addressing', see K. Bowie, *Scottish Public Opinion and the Making of the Union of 1707* (PhD, 2 volumes, Glasgow, 2004), Volume 2, Chapter 5, esp. pp. 196-8.

⁹ J. Hoppit ed, *Failed Legislation, 1660-1800: Extracted From the Commons and Lords Journals* (London, 1997).

¹⁰ J. Cannon, *Aristocratic Century: The Peerage of Eighteenth-Century England* (Cambridge, 1984); P. Langford, *Public Life and the Propertied Englishman, 1689-1798* (Oxford, 1990), Chapter 3.

¹¹ S. Handley, 'Provincial Influence on General Legislation: The Case of Lancashire, 1689-1731', *PH*, 16 (1997), pp. 171-84; Knights, *Representation and Misrepresentation*, Chapter 3.

¹² L. Schwoerer, 'Press and Parliament in the Revolution of 1689', *HJ*, 20 (1977), pp. 545-67, at p. 552.

¹³ S. Sowerby, *Making Toleration: The Repealers and the Glorious Revolution* (Cambridge, Mass., 2013), pp. 145-52, 194-212.

subscribing these petitions, the weight of opinion they reflected, and how petitioners legitimised and imagined their participation. But the archives of the Lords provide systematic evidence of all the petitions presented to it between 1689 and 1720. This allows us to examine who was signing these petitions, their geographic and social profile, and who parliamentarians and lobbyists deemed legitimate participants in the legislative process.

This chapter, therefore, seeks to fill an important gap in our understanding of participation in parliament in a period in which petitioning and addressing can appear tranquil compared that seen during the Exclusion Crisis of 1679-1681, when up to 18,000 Londoners signed a ‘monster petition’, or when 45,000 signatures were gathered before the Gordon Riots of 1780.¹⁴ National (and sometimes, British) campaigns against the leather duty, landed qualifications for MPs, East Indies calicoes, Irish wool, trade bills, and regional campaigns on river and road communication, were collected and sent to the Lords throughout this period. Petitioning mobilised whole communities, divided them from their geographic neighbours or economic competitors, and saw language associated with ‘political petitioning’ mobilised in their defence. Given that most legislation was introduced in the Commons, the trend is suggestive of many tens of thousands more signing petitions that are now lost to the historian as a result of the fire of parliament in 1834. The practices of John Wilkes or the anti-slavery movement would have grown directly from these practices, in which disenfranchised were clearly participating. Contemporaries were able to argue a ‘sense of the

¹⁴ M. Knights, ‘London’s “Monster” Petition of 1680’, *HJ*, 36 (1993), pp. 39-67; idem, ‘London Petitions and Parliamentary Politics in 1679’, *PH*, 12 (1993), pp. 29-46; Idem, ‘The 1780 Protestant Petitions and the Culture of Petitioning’, in I. Haywood and J. Seed, eds, *Politics, Culture and Insurrection in Late Georgian Britain* (Cambridge, 2012), pp. 46-69. For Scotland, see E. Black, ‘The Tumultuous Petitioners: The Protestant Association in Scotland, 1778-1780’, *Review of Politics*, 25 (1963), pp. 183-211, at p. 199.

people' was present and the 'public' was becoming a more significant force in politics, continuing to ignite partisan passions and concerns generated by public participation.¹⁵ There was a high level of engagement with parliament across at least three decades after the Glorious Revolution through petitioning.

The act of petitioning aided the development of a different political consciousness, and kept many of the practices and rhetoric of the 1640s alive. To petition was to make a claim about representation and the right to participate, with petitioners claiming the right to represent an 'interest', locality, or social group.¹⁶ They show that the wider public expected parliamentarians to act on their views and advice, making them aware they had 'constituents'. Parliamentarians accepted this, taking steps to strengthen the status and importance of petitioning in the parliamentary process. The use of the concept of 'interest' to represent the arguments of petitioners and lobbyists in print helped to create 'something called the sense of the nation' and ideas of a 'majority' without democratic ideas, and identity without class.¹⁷ Regardless of the role of elites in the creation of petitions, the nature and act of petitioning did influence how 'ordinary' people did and saw politics.

This chapter begins by demonstrating the extent of large responsive petitioning on parliamentary bills during this period, in terms of its chronological and geographical scope. It then considers the impact of petitioning on political culture and the nature of the oligarchy in early modern Britain, and why parliamentarians had an increasingly tolerant attitude to this participation. This involves a discussion on the basis and justification for petitioning—

¹⁵ Knights, *Representation and Misrepresentation*, pp. 94-108.

¹⁶ *Ibid*, Chapter 3, esp. pp. 112-113.

¹⁷ J. Baker, *Character of the Modern Addresser* (1701), p. 3; Knights, *Representation and Misrepresentation*, p. 352.

particularly the language of interest, the role of social status, and the importance of the local context to politics.

I: ‘Responsive’ Petitioning: Chronological and Geographical Trends

Petitions created in response to parliamentary bills were an annual and expected feature of parliamentary sessions, being a staple part of the process of deliberation on regional and national legislation. Their incidence will be considered here in both a late Stuart and early modern context. Late Stuart and early Georgian petitioning practices and techniques showed significant continuities with those of the 1640s and acted as powerful precedents for the growth of political petitioning in the second half of the eighteenth century.

Between 1689 and 1720, 330 large responsive petitions were presented to the House of Lords. This represented a growing intensity from the Restoration pattern, with the more frequent meeting of parliament and higher rates of legislation after 1689. London’s ‘monster petition’ is likely to have been the apex of petitioning culture during the Restoration, rather than the exception, though as will be explored below, parliament received far fewer petitions during the Restoration than it did after 1689. The chronological incidence of large responsive petitions to the Lords is shown in table seven. There were two main prompts encouraging petitioning. The first were the economic policies pursued in the post-war periods, namely bills dealing with the woollen trade of Ireland in 1697, and trade with France and Spain during the 1710s. The second was the ‘working up [of] a temper’ of parliamentarians into a ‘love of navigation’ after the Treaty of Ryswick in 1697 and again between 1717 and 1722, when projectors funded ‘bubbles’ in river and road communication schemes.¹⁸ The expansion in the number of projecting schemes in the context of the South Sea Bubble and the ‘calico

¹⁸ BL, Add MSS 36914, Ashton Papers, River Weaver Navigation, fol. 84.

Table 7: Chronology of Large Responsive Petitions to the House of Lords, 1689-1720.

Time period of Parliamentary Sessions	Number of Signatures	Average Number of Signatures per Session	Total Number of Responsive Petitions (20 Signatures or more)	Number with Between 50 and 100 Signatures	Number with more than 100 Signatures
1689-1694	19,807	225*	15	3	4
1695-1700	10,935	2187	105	30	35
1701-1706	2926	418	37	21	6
1707-1712	1216	243	20	5	4
1713-1717	4209	1052	38	14	15
1717-1720	16,572	5524	112	23	50

*Note: This average figure excludes a petition from Wales in 1689 signed by 18,000 people, which is further discussed below. There were also two sessions in 1717, the second running into 1718, and so has been counted in the last time bracket. Sources: PA, HL/PO/JO/10/1, Main Papers; HL/PO/JO/10/6, Main Papers; HL/PO/JO/10/3, Main Papers (Large Parchments).

crisis', is likely to have caused this outburst of petitioning, rather than the absence of a general election since 1715.

Knights has suggested that there may have been a shift from 'innovative petitioning to a form of national acclamation' in the late 1710s, threatening the growth of the public sphere and the critical debate this was supposed to entail¹⁹ The signing of addresses as means to represent loyalty and allegiance to the government, meant that the role of the public as a regular, and critical, arbiters of policy was weakened. If this had occurred in isolation, this would suggest that because the public increasingly choose to sign addresses to demonstrate loyalty and allegiance to the government, the public's role as a regular and critical arbiter of policy was weakened. However, table seven suggests extensive public mobilisation continued, expanding participation and negotiation. Large responsive petitions to parliament raised and maintained partisan divisions in periods when addresses were few in number, as they were in the early 1690s and the late 1710s, ensuring 'a civil war [rages] among neighbourhoods and societies', through motivated by a 'clash of interests' rather than the

¹⁹ Knights, *Representation and Misrepresentation*, p. 162.

‘rage of party’.²⁰ The absence of petitions on religious issues in this chronology should be noted here. There may have been petitions sent to the Commons, with a petition from ‘the gentry and clergy of south parts of Lancashire’ presented in 1706 ‘for suppressing profaneness’, but few were sent to the Lords, even if petitions with less than twenty signatures are considered.²¹ It is possible the frequency of general elections provided a more attractive forum for the expression of religious partisanship. Unlike communication projects or economic regulation, where division was based on interest or locality, religion was a clear divide between whigs and tories, and so capable of being a determining factor in any electoral contest. Nonetheless, table seven shows responsive petitioning had become a significant feature of business in the Lords by the mid-1690s, and perhaps earlier in the Commons. There was no great contraction in the number of large responsive petitions during the period to 1720—a year that saw nearly one percent of adult males sign such a petition to the Lords, perhaps expanding closer to four percent if the petitions to the Commons followed the same pattern. The hostile rhetoric against the ‘more violent and lasting heats and animosities among the subjects’ found in the Septennial Act, the Riot Act, or against the Kentish petition of 1701 seems to have had little impact, if any, on the extent of public involvement in petitioning.²²

The pattern represented in table seven can only be taken as suggestive of the general trend of responsive petitioning. As Julian Hoppit has shown, most bills failed in the

²⁰ D. Defoe, *A New Test of the Sense of the Nation* (1710), pp. 82-3; 85-6; M. Knights, ‘Participation and Representation Before Democracy: Petitions and Addresses in Pre-Modern Britain’, in I. Shapiro, S. Stokes, E. Wood and A. Kirschner, eds, *Political Representation* (Cambridge, 2010), pp. 45-6, Table 2.2; idem, *Representation and Misrepresentation*, p. 123.

²¹ Handley, ‘Provincial Influence’, p. 72.

²² 1 Geo 1 st. 2 c. 38.

Commons, suggesting most petitioning would have occurred there, making the wider trend a different one.²³ For example, straw hat makers presented thirteen petitions to the Commons in 1719 when peers received none at all, and the national campaign against the leather duty saw 154 petitions presented in 1697 to the Commons, and none to the Lords.²⁴ Even bills that reached the Lords tended to receive fewer petitions, with the bill for navigating the River Tone in 1699 only resulting in one petition to the Lords, but six to the Commons.²⁵ There could be specific factors why peers were petitioned instead of the Commons. The Commons was not as receptive to the inhabitants of Wales in 1689 as the Lords were, complaining ‘they had several petitions... [and because they] were not well obtained, they did not fit to read them’, causing them to present their petition to the Lords.²⁶ Interests were sometimes willing to rely on one house, with the London Weavers’ Company only petitioning the Lords between 1718 and 1720, presumably reflecting the strength of their interest in that house.²⁷ Neither can the fact that petitioners were simply ‘not informed of the nature of the bill in due time to lodge their petition’ in the Commons, be eliminated as a factor in why petitions ended up being presented to the Lords.²⁸ As a result, the Lords’ data can only reflect a small proportion of overall subscription activity related to parliament.

²³ Hoppit, ed, *Failed Legislation*, pp. 14-15.

²⁴ J. Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (London, 1989), p. 233; *CJ*, xix, pp. 245, 249-52, 273, 276-7, 283.

²⁵ *CJ*, xii, pp. 154, 423-4, 441, 465; *LJ*, xvi, p. 380.

²⁶ *CJ*, x, pp. 103-4.

²⁷ LMA, CLC/L/WC/B/001/MS04655/011, Weavers Court Minute Book, pp. 245(1), 290(1).

²⁸ PA, HL/PO/JO/10/3/203/27, Petition of Several Landowners on or Near the River Douglas, 21 May 1713. This petition was sent by post to ‘Mr Strewell, Attorney at Law in Cliffords Inn’.

The ability to appeal to other parts of the state and resolve issues at a lower level did impact on the incidence of petitioning to parliament—as well as showing the extent elites could be challenged at all levels. London companies and its corporation were subject to petitions, allowing the demands of interest groups to be redressed before parliament was involved. Sixty carriers petitioned the Carriers Company in January 1700, and one month later the company gave them twenty pounds to support their petition to parliament.²⁹ The cheesemongers' petition against the River Weaver navigation went through the common council twice before it was presented to the Lords.³⁰ Parliament, however, received the largest petitions, being clearly perceived as the 'proper' recipient of popular pressure as opposed to the crown or any local bodies. Describing the 'poor man's petitioning at court', Edward Wood described 'how fruitless and empty the requests of the poor have returned at court, whether they have been for justice or mercy'.³¹ The treasury was also petitioned, but the petitions they received were smaller in size. A petition on the regulation of Hackney coaches had nearly 120 signatures, and was the largest it received between 1689 and 1720.³² Neither was it just institutions that were petitioned, but personalities. The landholders of Frome petitioned Viscount Weymouth in 1710 before petitions were introduced into the House of Commons in order to gain his support, and sixty-five men signed the petition to the peer.³³ Parliament served as a more attractive and effective point of contact for petitioners than the court.

²⁹ LMA, CLC/L/CK/B/002/MS06113/001, Carriers Court Minutes, pp. 77, 83. It is not possible to give precise dates for the carriers books, the records being badly damaged.

³⁰ LMA, COL/CC/03/01/2, Common Council Minutes, January and March 1720.

³¹ E. Wood, *Labour in Vain: or, What Signifies Little or Nothing* (1700), p. 3.

³² TNA, T 1/31, Hackney Coachmen Petition, December 1694, p. 59.

³³ PA, PET/1/33, Petition of the Landholders of Frome, 1710/11.

It can be seen that extensive participation in responsive petitioning was firmly part of late Stuart and early Hanoverian political culture. This has wider import than seventeenth- and early eighteenth-century historiography, however. The patterns and practices of petitioning in this earlier period showed a great continuity into the late eighteenth century, with the trends shown in table eight. The high level of petitioning reflects the fact responsive petitioning could be national in scope. Large numbers of petitions were received from across the English nation against the Leather Duty in 1697, with more than 150 petitions sent to the Commons, and the British nation in 1719 when 220 petitions were received by both houses on the Calico Bill.³⁴ Between 1730 and 1732, 109 communities petitioned the Commons against the practices of hawkers and pedlars.³⁵ This compares favourably with the sixty petitions against the Irish propositions of 1785, mainly from the Midlands and North Britain, the thirty-seven presented on economical reform in 1780, or the thirty-eight petitions on the Middlesex election affair in 1769 (though these were on ‘political’ issues).³⁶ It is also at a comparable level to the 1640s, when thirty-eight out of the forty English counties sent a petition to the Commons between December 1641 and August 1642, and sixteen petitions were received against the decay of trade in 1642.³⁷

³⁴ PA, HL/PO/JO/10/3/212/39-68, Petitions on the Calico Bill; *CJ*, xix, pp. 180-391.

³⁵ J. Price, ‘The Excise Affair Revisited’, in S. Baxter, ed, *England’s Rise to Greatness, 1600-1763* (Los Angeles, 1983), p. 293.

³⁶ D. Schweitzer, ‘The Failure of William Pitt’s Irish Propositions 1785’, *PH*, 3 (1984), pp. 129-45, at p. 132; J. Bradley, *Popular Politics and the American Revolution* (Macon, Georgia, 1986), p. 3.

³⁷ B. Kümin and A. Wügler, ‘Petitions, Gravamina and the Early Modern State: Local Influence on Central Legislation in England and Germany (Hesse)’, *Parliaments, Estates and Representation*, 17 (1997), pp. 39-60, at p. 52; Fletcher, *The Outbreak of the Civil War*, pp. 192, 195, 224.

The level of national petitioning reflects a consciousness of a shared grievance and capacity for national organisation, even if petitioners' descriptions of themselves retained their specificity of locality and interest. London carriers requested their clerk to write to others in the country to 'desire their assistance in money and making interest of the members of parliament to promote' the act, and on a further occasion entered correspondence with those in Bristol to draft a petition.³⁸ The London weavers also sent copies of their petition to Norwich in November 1719 to encourage it to follow suit.³⁹ The 'brother' ports of Kent and Sussex were active in coordinating petitions along the southeast coast in the 1710s and 1720s. The Mayor of Folkestone was able to gain the support of Great Yarmouth to act for 'our own common interest', whilst in London he 'hear[d] several petitions will come up on that subject from many places'.⁴⁰ The response of the mayor to the presentation of petitions from the 'western towns' was to 'get a petition from your town with all expedition signed by as many hands as you can get, I hope Hythe, Sandwich, Dover, Rye and Hastings will do the same'.⁴¹ The final petitions were jointly agreed by the ports.⁴² London was an important keystone in this, but petitioning campaigns from across Britain were also organised in the localities. Cheshire tanners showed such a capability. They wrote to 'all the county towns in the north and west of England' on leather issues.⁴³ They planned to 'join our petition with...several

³⁸ LMA, CLC/L/CK/B/002/MS06113/001, Currier Court Minutes, p. 83;

CLC/L/CK/D/001/MS14346/003, Currier Annual Accounts, p. 159.

³⁹ N. Rothstein, 'The Calico Campaign of 1719-1721', *East London Papers*, 7 (1964), pp. 3-21, at p. 9.

⁴⁰ CKS, NR/AZ/79, Mayor of Folkestone to New Romney Borough, 26 March 1716, fol. 1.

⁴¹ CKS, NR/AZ/79, Same to Same, 12 April 1716, fol. 1.

⁴² CKS, NR/AZ/79, Towns of Winchelsea, Rye and Hastings to New Romney Borough, 17-18 April 1716, fol. 3.

⁴³ CA, ZG 21/8/25, Letter from Northern Tanners to Tanners of Chester, 1712?

Table 8: ‘Large Responsive Petitions’ Presented to Parliament, at Select Periods, 1660-1815.

Period	House of Lords	House of Commons (General Bills) ⁴⁴
1660-1665		113
1666-1670		38
1671-1675		19
1676-1681		19
1689-1694	15	
1695-1700	105	136 [1694-5 only] 154 [Leather Duty, 1697]
1701-1706	37	
1707-1712	20	86 [1708-9 only]
1713-1717	38	
1717-1720	112	369 [1719 only]
1779-1784	33	
1784-1789	141	880
1789-1794	-	519 [anti-slavery only]
1800-1805	-	1026
1810-1815	700 [1811 only; Nonconformist Minsters]	4498

Sources: In addition to those listed under table seven; *CJ*, viii- xix, *LJ*, xiv-xxi; *Reports From Committees, 1831-2*, (London, 1832), Volume 5, p. 10; Brewer, *The Sinews of Power*, p. 233; Hoppit, *Failed Legislation*, p. 19; Innes, ‘Legislation and Public Participation’, pp. 117-19, C. Leys, ‘Petitioning in the Nineteenth and Twentieth Centuries’, *Political Studies*, 3 (1955), pp. 45-64, at p. 57; M. Rutz, ‘Politicizing of Evangelical Dissent, 1811-1813’, *PH*, 20 (2001), pp. 187-207.

⁴⁴ Due to the loss of records for the Commons in the fire of parliament in 1834, in order to enable a comparison petitions presented to the Commons on general bills have been counted for the figures before 1720. ‘General’ does not mean governmental, but that the bill reflected more than an individual and had a larger geographic scope. However, not all of these petitions would have been heavily-subscribed—for example PA, HL/PO/JO/10/1/413/140(c), Petition from Divers of the Inhabitants of the Counties of Bedford, Buckingham, and Hertford, 14 August 1689. This had only four signatures despite its suggestive title.

others of the like nature from Bristol, Exeter, Worcester, Gloucester, Sudbury and Shrewsbury and other places'.⁴⁵ They had already written 'to our brethren in the country of Cumberland, to whom was enclosed a copy [of] proposals for additional duties on leather' they had received as intelligence from parliament.⁴⁶ They also received letters from the Bristol tanners on the progress of petitions.⁴⁷ Even dispossessed groups were able to show national co-ordination. *The Cry of the Oppressed* recorded that sixty-five debtors prisons were informed that there was a bill in parliament for their relief, and were advised 'to petition all the members of the several counties... [and] particularly the Fisherton prison in Wiltshire, sent me word they had petitioned thirty-one members of the House of Commons'.⁴⁸

This culture was not solely a feature of London or wider urban society, with extensive subscription campaigns occurring in the localities and more rural regions, although London was a great source of its strength. The geographic distribution of large responsive petitions is shown in table nine. London presented sixty-nine petitions, or twenty percent of the total. The distribution of petitions reflects the nature of the issues that motivated them. River navigation and port improvements resulted in petitions from Yorkshire, Cumberland, and the northern Midlands, whilst the regulation of the cloth and woollen industry inspired petitions from the West Country, and the enclosure of the New Forest created petitions from Hampshire. The largest responsive petition came from Wales, with 18,000 signatures—equivalent to the entire 'voterate' of the province, relating to the abolition of the Council of the Marches. The 'final' union of Wales and England was embraced by the Welsh, and initially in spite of opposition

⁴⁵ CA, ZG 21/8/59, Ralph Doll to Thomas Wilson, 4 April 1717.

⁴⁶ CA, ZG 21/8/30, Letter from William and Thomas Wilson to Edward Croughton, 13 March 1711.

⁴⁷ CA, ZG 21/8/32, Letter from Bristol Tanners to Chester Tanners, 18 March 1712.

⁴⁸ M. Pitt, *The Cry of the Oppressed* (1691), p. v.

Table 9: Geographic Distribution of Large Responsive Petitions and their Signatories to the Lords, 1689-1720

Regions (in Descending Order)	Number of Large Responsive Petitions per Thousand People
London	0.14
North	0.07
Southwest	0.07
Midlands	0.03
Southeast	0.03
East Anglia	0.02
Wales	0.01
Scotland	0.00
Regions (in Descending Order)	Signatures per Thousand People
Wales	45
London	21
Southwest	10
North	8
Midlands	2
Southeast	2
East Anglia	1
Scotland	0

Note: Thirty-six petitions make no reference to their location, and so are not recorded in this table. Sources: see references under table seven. The regions are those used in P. Clarke, ed, *The Cambridge Urban History of Britain, 1540–1840* (3 volumes, Cambridge, 2000), Volume 2, p. 30—apart from London, which is shown separately here. Population figures are from E. Wrigley, ‘Rickman Revisited: The Population Growth Rates of English Counties in the Early Modern Period’, *EcHR*, 62 (2009), pp. 711-35.

from William III.⁴⁹ Significantly, the court had been re-established in 1660 with the support of petitions signed by 3000 people sent to the crown from Worcester, Hereford and Shropshire. The court’s judgements had been frequently subject to prohibitions by other courts, halting the implementation of its judgements.⁵⁰ Petitioners argued the court was ‘oppressive’, ‘useless’, and ‘different to other courts’, and, as such, it was removed as part of

⁴⁹ The ‘voterate’ refers to the number of electors actually voting, as only in a small number of

constituencies is it possible to provide estimates of the ‘electorate’. The figures are from *HP 1690-1715*, Volume 2; H. Foxcroft, ed, *Life and Works of Sir George Savile, First Marquis of Halifax* (2 volumes, London, 1898), Volume 2, p. 210.

⁵⁰ PA, HL/PO/CO/1/5, Committee Book, 11 and 13 June 1689.

the Glorious Revolution, marking out well the significance of the institutional revolution between crown and parliament that resulted from the events of 1688/89.⁵¹

Although no large responsive petitions came from Scotland to the Lords, Scots also had a strong petitioning culture. Forty petitions were sent to the Commons from Scotland on the Calico Bill in 1719 and petitions were part of its Glorious Revolution.⁵² Narcissus Luttrell recorded ‘there is a petition by several thousand hands for the settlement of that kingdom according to the example of England’ in April 1689, and petitions were also collected to dissolve the union in 1713.⁵³ As Karin Bowie has explored, seventy-nine addresses were organised against the Treaty of Union in late 1706 and early 1707, representing the hostility of around 20,000 subscribers, with different communities able to shape the messages of each address.⁵⁴ The lower levels of Scottish legislation at Westminster meant national institutions in Scotland were more common recipients of popular pressure, but petitions were presented to the Commons in defence of Scottish linen interests throughout the 1710s.⁵⁵ In August 1709, the General Assembly received ‘addresses subscribed by some thousands of hands from Edinburgh...against... [the] abuses’ of the Episcopal minister James Greenshields. He had appealed to the Lords from the Court of Session against the suppression of his reading of

⁵¹ C. Skeel, *The Council in the Marches of Wales: A Study of Local Government During the Sixteenth and Seventeenth Centuries* (London, 1904), pp. 167-8; TNA, SP 29/27-39, Petitions on the Council of the Marches, 10 July 1661, fols. 84-131.

⁵² *CJ*, xix, pp. 180-391.

⁵³ N. Luttrell, *A Brief Historical Relation of State Affairs* (6 volumes, Oxford, 1857), Volume 1, p. 518; *Daily Courant*, 22 September 1713, Issue 3726.

⁵⁴ Bowie, *Scottish Public Opinion*, Volume 2, pp. 187-90, 207.

⁵⁵ B. Harris, ‘The Scots, the Westminster Parliament, and the British State in the Eighteenth Century’, in J. Hoppit, ed, *Parliaments, Nations and Identities* (Manchester, 2003), p. 128; Idem, ‘Towards a British Political Economy’, in Gauci, ed, *Regulating*, pp. 83-106, esp. pp.93-7.

the English liturgy in Scotland.⁵⁶ The Convention of the Royal Burghs also served as a significant point of contact for Scottish localities after 1707.⁵⁷

The proportion of the population signing petitions in this early period compares favourably with their later eighteenth-century counterparts, which are shown in table ten. In contrast to the Wilkite petitions which gathered signatures from qualified electors, campaigns in the later Stuart period on legislative issues did involve those from the lowest levels of society and those formally excluded from power.⁵⁸ Wilkite petitions claimed they were signed by ‘electors’ and ‘freeholders’, with over eighty percent of Middlesex petitioners in 1769 having voted the previous year, whilst ninety-percent of petitioners from Northumberland and Hereford had.⁵⁹ Even if this was the case with earlier petitions, their language does not reflect any significance being attached to whether they could vote. Only three of the twenty-six petitions in 1780 referred to ‘inhabitants’ and one of the twelve presented for parliamentary reform in 1783.⁶⁰ From the 330 large responsive petitions presented between 1689 and 1720, it is clear those signed by ‘gentlemen’ were a minority. Whilst ninety-six large responsive petitions included the description of petitioners as

⁵⁶ T. McCrie, ed, *Correspondence of Reverend Robert Wodrow* (2 volumes, Edinburgh, 1842), Volume 1, pp. 30-1.

⁵⁷ The records of the convention are found in J. Marwick, ed, *Convention of the Royal Burghs of Scotland* (7 volumes, Edinburgh, 1870-1918). Some economic business of the Convention before the Glorious Revolution is explored in J. Toller, ‘Now of Little Significancy?’ The Convention of the Royal Burghs of Scotland, 1651-1688 (PhD, Dundee, 2010), especially Chapters 1-2, 5.

⁵⁸ Innes, ‘Public Participation’, p. 116.

⁵⁹ J. Phillips, ‘Popular Politics in Unreformed England’, *JMH*, 52 (1980), pp. 599-625, at p. 605.

⁶⁰ *Ibid*, p. 607.

Table 10: Number of Signatures on Large Responsive Petitions at Select Points, 1695-1780

Parliamentary Session	House of Lords Signatures	Proportion of 'Voterate'	Percentage of Adult Males	House of Commons signatures (pre-1720 Projected)	Percentage of 'Voterate' (incl. Lords pre-1720)	Percentage of Adult Males (incl. Lords pre-1720)
1695/6	2067	0.8	0.1	14,795	6.3	0.9
1696/7	1460	0.5				
1697/8	6493	2.4	0.3	18,954 (leather duty only)	9.5	1.3
1705/6	1743	0.7				
1713/14	1796	0.7				
1719/20	15,706	5.7	0.8	53,170	25.8	3.6
1769				60,000 [Wilkite Petitions]	c.25	
1780				60,000 [Reform Petitions]	c.20	

Note: Figures for the Commons are estimates, with no petitions surviving. Sources: In addition to references listed under table seven; 'voterate' figures from *HP 1690-1720*, Volume 2; Phillips, 'Popular Politics', pp. 602-3 for 1769 and 1780 data. Figures of population are from P. Wallis, 'Labour Markets and Training', in R. Floud, J. Humphries and P. Johnson, eds, *The Cambridge Economic History of Modern Britain, 1700-1870* (2 volumes, Cambridge, 2014), Volume 1, p. 192, Table 6.2. This assumes that a third of the population were under fourteen, and a population of 5.21m in 1701 and 5.5m in 1721. A sex ratio at baptism of 104 males to 100 females has been used, from Wrigley and R. Schofield, *The Population History of England, 1541-1871* (Cambridge, 1989), p. 225, Table 7.13.

'inhabitants', only forty-three included 'gentlemen', and seventeen of these were signed alongside 'inhabitants'. Equally, there were only thirteen occurrences of the use of the terms 'chief' or 'principal' inhabitants, which are likely to reflect the status of petitioners as rulers of a parish and the signatories being firmly of the 'middling sorts' of people.⁶¹ This reflected the attempts of local communities to 'pull together' and represent a unified front—an

⁶¹ H. French, 'The Search for the "Middle Sort of People" in England, 1660-1800', *HJ*, 43 (2000), pp. 277-93; idem, 'Social Status, Localism and the "Middle Sort of People" in England 1620-1750', *P&P*, 166 (2000), pp. 66-99, at pp. 76-7.

‘interest’—to parliament, reflecting the presence of an alternative social perspective to one based on rank and hierarchy. It also reflects the wider opportunities for public participation on non-‘political’ issues.

It is clear that petitioning entered a different phase in the nineteenth century, with petitions from the chartists reaching into the hundreds of thousands, but the pre-democratic age still saw high levels of participation on bills dealing with the everyday functioning of society and the economy. The 1706 bill for building a pier at Parton in Cumberland saw one in twenty adult males of the county petition the House of Lords alone.⁶² The same proportion is likely to have signed a petition in Hereford on the Wye and Lugg navigation of 1696.⁶³ The Welsh petition of 1689 was a larger petition than the ‘monster’ one collected on the streets of London during the Exclusion Crisis.⁶⁴ A number equivalent to a fifth of the ‘voterate’ of Wiltshire was mobilised to petition to the Lords alone on the wool industry and road communication in 1714 and 1717 respectively, whilst subscribers equivalent to half the ‘voterates’ of both Chester and Durham were mobilised against river projects.⁶⁵ If petitions to the Commons had survived, it is likely nearly 11,000 signed a petition on the Night Watch

⁶² PA, HL/PO/JO/10/3/195/10(a), Petitions on Parton Pier and Harbour Act, 1706; Population figures from Wrigley, ‘Rickman Revisited’, p. 721, Table 3.

⁶³ PA, HL/PO/JO/10/3/187/32, Petition of Freeholders of the Hundred of Ewias Lacy, 4 March 1696; HL/PO/JO/10/1/482/1017(a-d), Petitions on the Wye and Lugg Navigation Act, 29 February-4 March 1696 .

⁶⁴ Knights, ‘Monster Petition’; PA, HL/PO/JO/10/1/408/80, Petition of the Inhabitants of Wales, 1689.

⁶⁵ ‘Voterate’ figures from figures from *HP 1690-1715*, Volume 2. Petitions from PA, HL/PO/JO/10/3/205/15-17, Petitions on the Woollen Industry, 1714; HL/PO/JO/10/3/208/19-27, Kensington Road Act, 1717; HL/PO/JO/10/3/212/20-38, River Weaver, 1720; HL/PO/JO/10/6/271/4026 and HL/PO/JO/10/3/208/10-11, River Wear, 1717.

Bill of 1719 from Westminster.⁶⁶ In this context, the gathering of 60,000 signatures in support of Wilkes in 1769 looks far more like a continuation of a late Stuart culture.⁶⁷ The ability to mobilise between one and four percent of the adult male population on occasion after the Glorious Revolution, means that although petitioning was at a lower level of activity compared with the mass-platform and chartist petitions of the nineteenth century, large numbers of petitioners were nonetheless mobilised and a ‘sense of the people’ was present and maintained. Petitioning between 1689 and 1720 was on a scale, at least in terms of petitions to parliament, not seen since the 1640s and offered some early parallels to the collection of thousands of signatures on petitions relating to economic bills in the 1780s.⁶⁸ What changed was less the scale of petitioning across the eighteenth century, but the shift of the public from ‘responding’ to parliamentary bills, to initiating debate.

The number of large responsive petitions suggests public participation in legislating and ruling of Britain was an established feature of political culture in the late Stuart and early Georgian period. The next section considers the conventions and rules governing petitioning in the seventeenth and eighteenth centuries.

⁶⁶ PA, HL/PO/JO/10/3/212/79-85, Petitions on the Night Watch Bill, 12 April 1720;

HL/PO/JO/10/6/307(a-b), Petitions of Westminster on the Night Watch Bill, 28-29 April 1720; *CJ*, xix, pp. 233, 250, 255, 258, 260, 296.

⁶⁷ J. Brewer, *Party, Ideology and Popular Politics at the Accession of George III* (Cambridge, 1981), p. 179.

⁶⁸ J. Innes, ‘People and Power in British Politics to 1850’, in idem and Mark Philp, eds, *Re-Imagining Democracy in the Age of Revolutions: America, France, Britain, Ireland 1750-1850* (Oxford, 2013), p. 140.

II: Parliamentary Attitudes to Petitioners.

The scale and frequency of large responsive petitions after 1689 would have been a fairly novel experience for parliamentarians. As can be seen from table eight, the Commons received only 189 petitions on general bills during the Restoration, many of which would have had fewer than twenty signatures, whilst 154 petitions were presented against the leather duty to the Commons in 1697 alone. Although parliament remained ‘secretive’ in some respects after 1689, with the Lords continuing to refuse printing even a summary of its proceedings, as the Commons did in the form of its votes, everyday participatory practices reflected changing expectations of both parliamentarians and those ‘out of doors’ to public participation. Peers and MPs increasingly saw participation as desirable and necessary for the functioning of legislative business, and took steps to organise and regulate participation through petitioning, rather than seeking to reduce and suppress it. In this form, practices of responsive petitioning and participatory lobbying continued to be informed by the practices advanced in the 1640s.⁶⁹

Parliamentarians did act against petitioners responding to legislation this period—but primarily if they were intimidating either house or threatened to riot when signatures were being collected. Both the ordinance *Against Tumultuous Assemblies Under Pretence of Preparing Petitions* of 1648 and the 1661 act *Against Tumults and Disorders Upon Pretence of Preparing or Presenting Public Petitions or other Addresses*, placed similar limits on petitioning. They both had their origins in concern for ‘political petitioning’, but they also contained clauses that helped to regulate the numbers of petitioners appearing at Westminster. The 1661 act is often interpreted alongside the Licensing Act of 1662 as attempts to ‘prevent the more effective involvement’ of the public in politics, discouraging petitions signed by more than twenty people and the use of print to publicise them. However,

⁶⁹ J. Peacey, *Print and Public Politics in the English Revolution* (Cambridge, 2013), Conclusion.

the aim of the 1661 act was to hinder the creation of ‘political petitions’ and suppress the violent presentation or creation of all petitions.⁷⁰

As Norman Smith noted, the 1661 act restored the ordinance on petitioning of 1648 almost verbatim, reflecting the common attitude of parliamentarian and Restoration regimes to petitioners.⁷¹ The 1661 act may be seen as restoring an ordinance declared void as part of a wider practice of Restoration, in the same vein as the Navigation Acts. The primary difference between the limits in 1648 and 1661 lay in their definitions of the number of presenters required to threaten intimidation. Although there was a reduction from twenty to ten between 1648 and 1661, suggesting more restrictive attitudes, this echoed the practice of the City of London throughout the 1650s. The requirement that presenters delivered their petition to an MP or peer as a ‘buffer’ between parliament and petitioners, was absent from the act of 1661.⁷² Both laws identified the same remedy, having identified the same target of petitioners who had caused ‘mischief...and bloodshed’ in the view of the ordinance, or the ‘late unhappy confusions and calamities’ that created ‘like mischief’ for the act.

⁷⁰ Knights, *Representation and Misrepresentation*, pp. 126-7; P. Seaward, *The Cavalier Parliament and Reconstruction of the Old Regime, 1661- 1667* (Cambridge, 1989), pp. 72-3; J. Scott, *England’s Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge, 2000), pp. 408-9. The act was sometimes perceived as prohibiting petitions with more than twenty signatures, as was the case in forty-six petitions supporting parliamentary reform from Bristol in 1818—see *Parliamentary Debates* (1818), Volume 37, pp. 752-3.

⁷¹ N. Smith, “‘Shall Make No Law Abridging...’ An Analysis of the Neglected, But Nearly Absolute, Right of Petition’, *University of Cincinnati Law Review*, 41 (1985-1986), pp. 1153-98. The legislation is found in C. Firth and R. Rait, eds, *Acts and Ordinances of the Interregnum, 1642-1660* (3 volumes, London, 1911), Volume 1, p. 1139; J. Raithby, ed, *Statutes of the Realm* (11 volumes, London, 1819), Volume 5, p. 308.

⁷² D. Hirst, ‘Making Contact: Petitions and the English Republic’, *JBS*, 45 (2006), pp. 26-40, at p. 41.

What MPs and peers feared was their intimidation by large crowds, who would ‘fright him [a peer] into unwilling compliance’.⁷³ In the sights of both the ordinance and act were intimidatory acts of petitioning. In a series of articles on petitioning published in early 1706, the *Review of the Nation* noted tumultuous rioting associated with a petition meant ‘the thing ceases to be...a petition, and becomes a demand, a force, or threatening of force...and cannot be called petitioning’, becoming instead an act of ‘opposition to authority’.⁷⁴ Such fears can be seen in the reactions of parliamentarians to petitioners in 1648, 1660 and 1689.

The immediate context for the ordinance of 1648 was ‘violence [being] offered to both houses’ that placed ‘force upon the parliament’.⁷⁵ On 16 May the numbers of apprentices and Londoners had been so great as to block access to the house, whilst the next day saw a ‘riot at the door’ with the ‘gentlemen and freeholders of Surrey’ threatening to ‘take the blood of the house’.⁷⁶ On 20 May, after only a gap of one day, the ordinance ‘regarding tumultuous assemblies under the pretence of presenting petitions’ was passed by both houses. This same context of responding to a specific series of violent events was also present in the Restoration. In 1660, the Commons journals suggest members were subject to pressure from demobilised soldiers who ‘continually attend[ed]’ the ‘house door’, presenting twelve petitions during the 1660 and 1661 sessions, one by 2500 soldiers and 3000 widows.⁷⁷ Mass intimidation was also a concern during the passage of the 1661 act, with two orders to clear the Lords’ lobbies. The only other orders passed after 1661 during the Restoration refer

⁷³ PA, HL/PO/JO/5/1/30, Manuscript Minutes, 18 April 1695 (Deleted entry).

⁷⁴ D. Defoe, *A Review of the State of English Nation* (9 volumes, 1706), Volume 3, p. 666.

⁷⁵ *LJ*, x, pp. 43-4.

⁷⁶ *CJ*, v, pp. 561-2.

⁷⁷ *CJ*, xiii, pp. 46; 97; 204; 236.

to the controlling of space around the court of requests and once from the lobby of the Lords in 1663, suggesting an absence of crowds and large groups of petitioners after 1661.⁷⁸

The same fears of violence were present in 1689, and caused the Lords to reject two petitions. The first petition to be rejected was ‘the humble petition of a great number of citizens and other inhabitants of the Cities of London and Westminster’ which ‘desire[d] the....Prince of Orange... [to] be speedily settled on the throne’.⁷⁹ Significantly, the petition ‘was not signed’, but presented ‘in a tumultuous manner’.⁸⁰ It was noted ‘the gang’ said ‘if [they were] not satisfied, [they] will come themselves’ and were ‘begin[ning] to threaten the bishops’.⁸¹ It was actually presented to the Lords, but ‘they could not read it because it was not signed by any person, but if [it] had been they would have accepted it’. However, the process of gathering signatures led to the petition being suppressed by the Lord Mayor, fearing it had ‘improved into a tumult’.⁸² A petition in the same year from the silk weavers of London and Canterbury on the Silk Manufactures Bill was also ‘presented...in a tumultuous manner’, because there was an ‘unusual manner of application of men, who ought to be better directed’.⁸³ The petition, signed by only seven men, was only accepted after the Lords had

⁷⁸ *LJ*, xi, pp. 254; 256; 291-2; 506.

⁷⁹ Count de Mayole, *A Collection of State Tracts Published on the Occasion of the Late Revolution in 1688* (3 volumes, 1705), Volume 1, p. 105. The petition is discussed further in Schwoerer, ‘Press and Parliament’, p. 552.

⁸⁰ J. Reresby, *Memoirs of the Honourable Sir John Reresby* (1734), p. 310.

⁸¹ HMC, *Manuscripts of Lord Kenyon, Fourteenth Report* (London, 1894), p. 216.

⁸² M. Goldie et al, eds, *The Entering Book of Roger Morrice* (7 volumes, Woodbridge, 2007-2009), Volume 4, p. 514.

⁸³ *LJ*, xiv, p. 311.

‘first require[d] that those crowds would go home’ and after the ‘quelling of the rabble’.⁸⁴ This was a large crowd, with Narcissus Luttrell estimating ‘two or three thousand men and women of the trade’ were present.⁸⁵ This fear also hindered the collection of larger responsive petitions in the localities—Mr Oglethorpe in a Commons debate in 1731 said he had declined to procure a petition signed by more than 6000 people because ‘it might occasion tumults’.⁸⁶ These were the forms of petitioning the 1661 act was against— not where more than twenty signatures had been gathered to a petition or presented by more than ten people, but when either had been done in a ‘tumultuous’ fashion.

Parliamentarians were in the business of ‘policing’ petitioning, meaning that even the clause of the 1661 act banning more than ten persons presenting a petition was used to regulate and control access to parliament, rather than to restrict it. As examined in chapter three, attempts to add guards were seen as ‘not the way to make friends for the king’.⁸⁷ It was not until the 1817 Seditious Meetings Act that meetings of more than fifty people ‘for the purpose or on the pretext of considering...or preparing any petition’ within a mile of Westminster Hall were banned when parliament or the courts were sitting.⁸⁸

Within the boundaries set by parliamentarians petitioning was becoming a more central part of the parliamentary process in the second half of the seventeenth century, as a

⁸⁴ PA, HL/PO/JO/10/1/413/140, Petition of Bailiffs, Wardens, and Assistants of Weavers of London and Canterbury, 14 August 1689.

⁸⁵ Luttrell, *Brief Relation*, Volume 1, pp. 568-9.

⁸⁶ D. Hayton, ‘Accounts of Debates in the House of Commons, March-April 1731, Supplementary to the Diary of the First Earl of Egmont,’ *EBLJ* (2013), pp. 1-40, at p. 37.

⁸⁷ *Grey’s Debates*, Volume 9, p. 513.

⁸⁸ 57 Geo. III c. 19 Clause XXIII. The Seditious Meetings Act of 1795 had not been so restrictive in terms of prohibiting meetings in Westminster.

result of the actions of parliamentarians themselves. That the wider public should be informed of relevant bills was an expected part of parliamentary procedure. It was traditional to have public notice for a bill—in 1678 the bill for a church in St Martin’s in the Fields was recommitted because ‘there was no summons sent forth to the parties concerned’, whilst the opponents of the River Wey in 1759 got the bill thrown out because ‘no public notice, either by advertisement or otherwise, was given of the intention to petition parliament.’⁸⁹ Even before petitioning occurred, meetings were held to ensure support in an attempt to co-opt any opposition. The petitioners for the Dunn Navigation stressed that they ‘frequently proposed [their project of navigation] to many of the landowners of the river...at a general meeting’.⁹⁰ There had also been a ‘large meeting at Doncaster to prove the practicalness of the thing’.⁹¹

The institutionalisation of print in the procedures of parliament expanded the numbers who would learn such bills were being proposed. In 1685, the Commons had ordered all private bills must be introduced by petition. Echoing the practice of the 1640s when the Commons had ordered cloth workers to print their petition because the ‘business [was] of a general concernment’, the Commons ordered all private bills had to be printed before their first reading in 1705, later made a standing order in 1722 for both houses.⁹² Similarly, the Lords ordered petitions on legal appeals should be ‘published in print, to the end that all persons concerned may take notice thereof’.⁹³ Parliamentarians were willing to wait for

⁸⁹ Lambert, *Bills and Acts*, p. 168.

⁹⁰ *The Methods Proposed for Making the River Dunn Navigable* (1723), p. 6.

⁹¹ NUL, Mellish 162/1, from T. Willan, *The Early History of the Don Navigation* (Manchester, 1965), p. 46.

⁹² *CJ*, ix, p. 719; Hirst, ‘Making Contact’, p. 40, note 63; *LJ*, xvii, p. 20; Lambert, *Bills and Acts*, p. 13.

⁹³ *LJ*, xiii, pp. 266-8.

petitions, arguing ‘we ought to allow them time’ or to put off business as ‘there are so few petitions yet delivered’, and demand that public bills should be printed to inform the public.⁹⁴ The Marquis of Hartington, ‘seeing there are so few petitions yet delivered’ believed ‘the house will think fit to put it off’, whilst the petition from Wales in 1689 was able to hold proceedings, their witnesses being ‘given time’ of eight days ‘to give proof of their grievances’.⁹⁵ Reflecting this, parliamentarians produced a ‘skeleton’ of future business providing advance notice to petitioners, with the Commons ordering that ‘no petitions be received after ten o’clock in the forenoon’.⁹⁶ This process was not new in the 1690s, but there was a more intensive attempt to organise and inform those who sought to participate after 1689.⁹⁷

Although parliamentarians increasingly saw the utility of petitioning and both the 1648 ordinance and 1661 act had recognised the right to petition within certain limits, responsive petitions could still be rejected by either house. The Lords thought twice about accepting the largest surviving petition of this period from Wales, which was signed by eighteen thousand and demanded the abolishing of the Council of Wales. The petition of the ‘several inhabitants of Wales’ was accepted, despite ‘the statute 13 Car II concerning riots [being] read [in the house] as to the petition...’⁹⁸ A limit to petitioning on non-‘political’ matters was introduced on those relating to public finance in 1697. The banning of such

⁹⁴ Hayton, ‘Accounts of Debates’, p. 29; HMC, *Manuscripts of the Earl Cowper* (3 volumes, London, 1888), Volume 2, p. 385.

⁹⁵ HMC, *Manuscripts of the Earl Cowper*, Volume 2, p. 385; PA, HL/PO/CO/1/4, Committee Book, 4 June 1689.

⁹⁶ *CJ*, xii, p. 83.

⁹⁷ *LJ*, xi, p. 362.

⁹⁸ PA, HL/PO/JO/5/1/24, Manuscript Minutes, 3 June 1689.

petitions in 1697 can be linked to the desperate need for finance during the Nine Years War, and MPs justified their decision by arguing that ‘all are represented here’ by their member, petitions not being necessary—however small the number of subscribers, or great the corporation or company.⁹⁹

The invoking of the idea that parliament was representative and sovereign did cause MPs and peers to reject petitions if they were politically difficult, though this did come at some cost. Rhetoric on the power of parliament initially intended by parliamentarians to justify the suppression of ‘political’ petitions could filter down into suppression of ‘lower’ forms of petitioning. However, this resulted in heightened rhetoric on the right to petition from petitioners and their supporters, checking parliament’s actions. One rejected petition from the London clergy in 1721 to the Lords saw peers protest that ‘the right of petitioning...is as essential to the public...as the liberty of debate to the constitution of parliament’.¹⁰⁰ The first septennial parliament was also attacked on these terms, whigs having rejected petitions for the relief of those affected by the South Sea Bubble, with opponents arguing that ‘our servants’ in parliament had ‘been the great invaders of [the right to petition]....[and] prevented our redress’.¹⁰¹

⁹⁹ J. Hatsell, *Precedents of Proceedings in the House of Commons* (4 volumes, London, 1818),

Volume 3, pp. 234-5; W. Cobbett, *The Parliamentary History of England, from the Earliest Period to the Year 1803* (36 volumes, London, 1806-1820), Volume 5, Column 445.

¹⁰⁰ *The Petition of the London Clergy to the House of Lords Against the Quakers Bill* (n.p., 1721), p. 2.

¹⁰¹ *A Complete History of the Late Septennial Parliament* (1722), pp. 12, 65. For the use of print as a means of escalating lobbying and political campaigns to maintain pressure on parliament in such circumstances, see Peacey, *Print and Public Politics*, pp. 353, 360.

Participation through petitioning was becoming more intense and accepted after 1689, reflecting attempts by parliamentarians to make relevant parts of their business more transparent. This regulated culture of participation recognised attitudes to the accountability of parliamentarians and the role of the public in politics were very different to those that had operated in the early Stuart period. Let us turn now to examine why parliamentarians largely accepted the presence of large responsive petitions in the parliamentary process, when other innovations of the 1640s—such as the print reporting of debates—had been curtailed or actively suppressed.¹⁰²

III: Representing the ‘Sense of the People?’: Interpretations of Petitioners

Although concerns were present about the gathering and presentation of petitions, there were positive reasons for parliamentarians to accept and hope for petitions on the business before it, and to encourage the debate which the collection of signatures to a petition tends to generate. It was not a matter of the larger responsive petitions being uncontroversial and sporadic, because they could be organised and divisive within communities. They could result in local tumults, being issues that affected stability. They were not like the petitions Brian Weiser has studied that were directed to Charles II, being ‘humbly phrased... touching national issues only peripherally... for mundane things like jobs or grants... [being] legalistic in form’.¹⁰³ During proceedings on the navigation bill for the River Don, Mr Sheburne had a ‘mob of five or six hundred about his house for the apprehension that he opposed the navigation’.¹⁰⁴ In Tiverton, 500 people signed a petition on the wool industry in 1698, with later complaints labourers were forming themselves ‘into combinations or clubs’ and said to

¹⁰² Peacey, *Print and Public Politics*, pp. 404-13.

¹⁰³ Knights, *Representation and Misrepresentation*, p. 127; E. Cruickshanks, ed, *The Stuart Courts* (Stroud, 2000), pp. 203; 213-14, notes 4 and 21.

¹⁰⁴ Willan, *Don Navigation*, p. 145.

have become ‘insolent [and] comply with whatever their clubs shall determine and assemble’ against the wishes of the Mayor and Corporation.¹⁰⁵ Through accepting their petitions parliamentarians were acknowledging the presence of wider political nation, and made the process of ruling more open to negotiation and popular pressure; something parliamentarians had been unwilling to do on matters of finance or on overtly ‘political’ subjects.

Significantly, petitions were recognised as a means to maintain the institutional arrangements after the Glorious Revolution, and give legitimacy to the local improvements being pursued in parliament. They should be seen as a nonviolent means for negotiation, aiding the development of political stability, but through different means to those J.H. Plumb set out nearly fifty years ago.¹⁰⁶ In response to another petition rejected in 1722, protesting peers explained ‘the rejecting such petitions, and the not receiving of them, is the way to occasion disorders and tumult’.¹⁰⁷ In the context of 1719, rioting weavers could be appealed to petition instead. Mary, Countess Cowper, wrote that ‘weavers [were] very discontented [over the Calico Bill]; people [are] assaulted in the streets [by those] that are dressed in calico’.¹⁰⁸ Petitioners ‘submit[ed] to the wisdom and authority of the person’ they petitioned to, strengthening the legitimacy of the Lords and constitution after the Glorious Revolution.¹⁰⁹

¹⁰⁵ PA, HL/PO/JO/10/3/189/2(c), Petition of Mayor, Corporation, Gentlemen, Traders and Inhabitants of Tiverton, 2 March 1698; *HP 1690-1715*, Volume 2, p. 155.

¹⁰⁶ J. H. Plumb, *The Growth of Political Stability in England, 1675-1725* (London, 1967).

¹⁰⁷ *A Historical Register, Containing an Impartial Relation of All Transactions, Foreign and Domestic* (1722), Volume 7, pp. 32-3.

¹⁰⁸ S. Cowper, ed, *Diary of Mary Countess Cowper, 1714-1720* (London, 1864), p. 157.

¹⁰⁹ D. Defoe, *Two Great Questions Considered: I. What is the Obligation of Parliaments to the Addresses or Petitions of the People* (Edinburgh, 1707), p. 6.

Neither did accepting these petitions require parliamentarians to consider them when judging the merits of a bill. There was a tacit recognition that by accepting petitions, rather than suppressing or rejecting them, the role of the ‘public voice’ could be safely contained without seeming to threaten the right of the wider public to participate, which could escalate towards riot and violent petitioning. As a result, in response to the adversarial addresses in Scotland against the union, supporters of the union argued addresses threatened to turn MPs into ‘delegates’, arguing parliament was a ‘sovereign constituted body’ that would not be directed by outside opinion.¹¹⁰ Daniel Defoe stressed the unrepresentative nature of addresses compared to the Scottish parliament, writing ‘I have not heard [of] above five [of the] three hundred gentleman of quality and estates in Lothian’ who had petitioned.¹¹¹ Others portrayed anti-union addresses as involving the ‘meaner sort [who] were imposed upon and deluded’.¹¹²

The same discourse in Scotland that aimed to undermine the legitimacy of adversarial addressing was found south of the border with regard to larger responsive petitions. There were allegations petitioners were ‘unwearyingly drawn into the signing of the petition’ in 1721 on a river navigation scheme.¹¹³ In 1698, the Corporation of Hereford were accused of ‘clandestinely prevail[ing] upon William Williams, a poor boatman, and several other poor men of the town of Monmouth to subscribe a paper’, whilst ‘ignorant work people’ were said to have signed blank sheets against Blackwell factors.¹¹⁴ Organisers of a petition on the cloth

¹¹⁰ G. MacKenzie, *A Friendly Return to a Letter* (Edinburgh, 1706), p. 29.

¹¹¹ Bowie, *Scottish Public Opinion*, Volume 2, p. 236.

¹¹² *Ibid*, p. 238.

¹¹³ *A Calendar to the Records of the Borough of Doncaster* (4 volumes, Doncaster, 1899-1902), Volume 4, p. 189.

¹¹⁴ T. Willan, *River Navigation in England 1600-1750* (Oxford, 1936), p. 33; *The Clothiers Complaint: or, Reasons for Passing the Bill Against the Blackwell-Hall Factors* (1692), p. 23.

industry were alleged to have kept ‘the clothiers ignorant of [their] design...for if they do once take wind, they will sign a counter petition, as the Frome clothiers have done’.¹¹⁵

Petitions presented against the laying of water pipes in Southwark led to complaints they had been signed ‘by a number of persons for the most part unknown’ to the people of Southwark, with allegations that petitioners were ‘rewarded’ for signing, or given ‘half a crown...to carry round the petition’.¹¹⁶ The unrepresentative nature of petitions was also attacked, with the *Newcastle Courant* criticising a petition against the City Election Bill of 1725, with claims the ‘petition for the bill was only signed by 2000, whereas by computation there are 60,000 freemen of London’.¹¹⁷ There were also allegations signatures had been forged. On petitions on the River Weaver navigation, it was ‘proved the petition was altered after it was signed’ in 1716 and again in 1719.¹¹⁸ The legitimacy of these larger responsive petitions could be undermined by attacks on the social status or local credentials of the petitioners, claims that signatures were fraudulently obtained, or stress on the role of parliament as the true ‘representative’ body, echoing the rhetoric against overtly ‘political’ and adversarial petitioning. This could be done without parliamentarians openly challenging the validity of claims of petitioners or their right to participate.

¹¹⁵ *A Dialogue Between Dick Branzenface the Card Maker and Tim Meanwell the Clothier* (n.p., 1711), p. 3.

¹¹⁶ PA, HL/PO/JO/10/1/460/771(d), Petition of Divers Inhabitants of the Borough of Southwark, 22 January 1694; HL/PO/JO/10/1/460/771(b)(d), Petitions of Persons Residing and Dwelling in Southwark, 15 January 1694 and Inhabitants of Southwark, 22 January 1694; HL/PO/JO/5/1/29, Manuscript Minutes, 22 January 1693.

¹¹⁷ *Newcastle Courant*, 13 February 1725, Issue 243.

¹¹⁸ BL, Add MSS 36914, River Weaver Navigation, fols. 63, 77.

Elites in counties and towns also sought to create the impression of control and suggest the subscription of large numbers of ‘inhabitants’ had occurred under their watch and advice. They did this through stressing a hierarchy of subscribers in petitioning campaigns. Peter Shakerley, MP for Chester, hoped petitions from the county would have a common statement and initially signed by ‘the justices and grand jury at the quarter sessions’. The next petitions would be from ‘justices, gentlemen, [and] freeholders, adjacent to the River [Weaver]’.¹¹⁹ Established county bodies like the grand jury were given precedence when signatures were collected. The opponents of the bill for improving the navigation of the River Weaver hoped their petitions ‘will be of some height to your lordships, when it is observed that the county petition is signed by the high sheriff, and above 100 of the justices of the peace, deputy lieutenant, and others, the most considerable of the landed interest’.¹²⁰ The grand jury was seen as the ‘representative body’ of the county.¹²¹ Reflecting this, Sir John Lowther’s father was in ‘so dangerous a condition’ about the Parton Harbour Bill, being concerned ‘with a list of the whole grand jury, the hands of the mayor and aldermen and others of Carlisle [and a] great many justices of the peace’ he needed the support of.¹²² This concern was justified, for when the petitions came to the Lords ‘Lord Wharton...pressed the content of the petitions against the bill, and was seconded by the Bishop of Carlisle who observed there were the subscriptions of fifteen (out of seventeen) of the justices of the peace and deputy lieutenants’.¹²³ The Kentish petition of 1701 also reflected this control of county elites, who had ‘refus[ed] to add any more rolls of parchment...insisting more upon the merits

¹¹⁹ Lancashire Archives, DDKE/acc. 7840, HMC/1141, Peter Shakerley to George Kenyon, 1712/13.

¹²⁰ BL, Add MSS 36914, River Weaver Navigation, fol. 117, p. 2.

¹²¹ R. Atkins, *An Enquiry into the Jurisdiction of the Chancery in Cases of Equity* (1695), p. 20.

¹²² Cumb., D/Lons/W2/1/39, Lowther to William Gilpin, 5 January 1705/6a, p. 1.

¹²³ Nicolson, *Diaries*, p. 383.

of the petition than the number of subscribers,' which could have been 'many thousands'.¹²⁴ The impression of 'sponsorship' of petitioning campaigns by elites and corporate interests helped to legitimise the reality of popular participation in politics.

Elites and projectors did attempt to create the impression of control and unanimity of local opinion. Four draft petitions against the Weaver navigation were seen centrally in 1699, and may have been circulated under terms established by elites.¹²⁵ The shared wording of petitions from Tiverton and Colchester, and between towns in Essex, Devon, Somerset and Suffolk in favour of the Woollen Manufactures Bill in 1698 also suggests a degree of organisation.¹²⁶ Reflecting this, there was no overturning of the 'humble' and deferential nature of petitioning in this period. The *Ludlow Post* believed linen drapers were right to petition because the 'British poor...are undoubtedly entitled to the care of the British parliament.'¹²⁷ Petitioners stressed the 'ruin' of their trades and of the 'poor increasing beyond the power of maintaining them', and others feared that they would have to 'quit their native land' to find work, striking at mercantilist conceptions of population.¹²⁸ Bills were also seen as creating unjust mechanisms where 'all buyers of cloth [could] cheat the clothiers'.¹²⁹ Petitioners threatened social instability and called for the protection of wages, the 'livelihoods' of the 'greatest part of the poor', and for parliamentarians to support local

¹²⁴ Defoe, *The History of the Kentish Petition* (1701), p. 2.

¹²⁵ BL, Add MSS 36914, River Weaver Navigation, fols. 16-29.

¹²⁶ PA, HL/PO/JO/10/1/189/2(b-c)(i)(l)(n)(p), Petitions on the Woollen Manufactures Bill, 2-28 March 1698.

¹²⁷ *Ludlow Post Man or the Weekly Journal*, 25 December 1719; Issue 12.

¹²⁸ PA, HL/PO/JO/10/3/189/2(e)(g), Petitions of Clothiers of Bocking, Braintree and Other Towns in Essex, and Gentlemen, Freeholders, Traders and Inhabitants of Moreton-Hampstead, Devon, 12-15 March 1698; HL/PO/JO/10/1/484/1051(c), Dyers of Wrought Silks, 3 April 1696.

¹²⁹ PA, HL/PO/JO/10/3/205/15, Petition of Clothiers and Others of Trowbridge, 2 July 1714.

industries against competitors.¹³⁰ Whether this can be taken as evidence of a ‘moral economy’, with petitioners calling on parliamentarians to live up to their obligations is unlikely as many of the protections were recent introductions, but shows the language of interest made parliamentarians prisoners of the rhetoric of ‘public interest’ and who could claim to represent and define it.¹³¹

This debate over who represented the ‘public interest’ meant projectors or corporations sought petitions to convey an impression of local consensus on the issue. Their role as initiators of legislation did give them a head start in this process. The Doncaster Corporation began their petitioning campaign by sending a member to ‘consult there with persons vested in the usage and custom of parliament, to know how the corporation shall proceed as to the navigation’.¹³² They decided to send out agents to collect petitions from York, Kings Lynn and Liverpool on the Dunn navigation in 1723.¹³³ Robert Harding recorded in 1698 ‘the navigators at Derby and Burton are very busy, going to every town on the river and petitioning all people’.¹³⁴ The gathers of signatures could also be employees of the projectors. The River Weaver projectors paid William Watts, a Middlewich attorney, to organise local petitions and watch parliamentary proceedings.¹³⁵

¹³⁰ PA, HL/PO/JO/10/3/201/33, Petition of Baymakers of Bocking and Braintree, 15 March 1711.

¹³¹ E.P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth Century’, *P&P*, 50 (1971), pp. 76-136.

¹³² *Calendar to the Records of the Borough of Doncaster*, Volume 4, p. 187.

¹³³ J. Leader, ed, *Records of the Burgery of Sheffield: Commonly Called the Town Trust* (London, 1897), pp. 350-1.

¹³⁴ HMC, *Manuscripts of the Earl Cowper*, Volume 2, p. 381.

¹³⁵ Lambert, *Bills and Acts*, p. 154.

The accepting of large responsive petitions and the associated subscription campaigns was, in part, an attempt by parliamentarians and elites to maintain the political status quo, being a tacit acknowledgement by them that it was no longer possible to eliminate the ‘public voice’. However, petitions were actively sought by elites, who saw them as advantageous to informing parliamentary deliberations on policy. A justification for petitioning was offered by John Brewer, arguing petitions provided information that was not available to parliamentarians at Westminster.¹³⁶ Even though a feature of large responsive petitions was the absence of detailed commentary, they can be still linked with information collection. The importance of petitions lay not just in the number of signatures, but their representation of the views and claims of those deemed knowledgeable on the matter at hand. This was not sufficient to cause or justify subscription on a large scale, but explains the differential subscription rates and a preference for ‘expertise’ rather than numbers in some cases. Defoe argued petitions could offer a ‘just knowledge of the reality’ and encourage parliamentarians ‘to look a little into the state of manufactures’.¹³⁷ Petitions could be subscriptions of ‘expert witnesses’, being statements of those judged to be knowledgeable about certain matters. To reject these petitions would, as peers put it, ‘deprive the legislature of proper lights, which they might otherwise [have] received’, resulting in poorer policy and weaker deliberation.¹³⁸ The importance attached to ‘expertise’ suggests an explanation for why the average petition from merchants was signed by forty-nine people, less than half the average number of 120 who signed a large responsive petition to the Lords.¹³⁹

¹³⁶ Brewer, *The Sinews of Power*, p. 232.

¹³⁷ D. Defoe, *A Brief State of the Question Between the Printed and Painted Calicoes* (1719), p. 38.

¹³⁸ *L.J.*, xxi, p. 622.

¹³⁹ This figure excludes the 1689 Welsh petition.

But many who petitioned were not ‘experts’ defined by an occupation, but ‘inhabitants’, defined by a locality. These were groups that the Marquis of Halifax saw as requiring ‘solicitors to pursue and look after their interests’, which would otherwise be too weak and unwieldy.¹⁴⁰ Their participation was problematic and partially solved by stressing the role of elites in ‘guiding’ their opinion. However, as shown in chapter three, the language of interest also made a plural politics compatible with stability. Briefly, all ranks of society could hold an ‘interest’, regardless of whether they were propertied or not. Contemporaries talked of the ‘protestant’, ‘landed’ or ‘private’ interest of projectors and communities, and it was perceived that policy should aim to strengthen certain ‘interests’ by discovering the true ‘national interest’.¹⁴¹ James Harrington argued that ‘the people taken apart are but so many private interests, but if you take them together they are the public interest’.¹⁴² This conception of society necessarily meant exploring what interests existed, and resulted in a politics which had a more diverse makeup than one solely based on rank or status.¹⁴³

There were two competing processes at work in petitioning—an initial attempt to stress social hierarchy by gathering signatures from the mayor, borough corporation or county body, followed later by lesser inhabitants, but also the use of print to appeal to the wider public, legitimised by the search for the national ‘interest’. Although elites attempted to demonstrate that the wider public was being regulated and their views had been ‘filtered’, petitions were still considerable agents of popular opinion in this period. If we consider the

¹⁴⁰ Foxcroft, *Life and Works of Sir George Savile*, Volume 2, p. 470.

¹⁴¹ S. Gunn, ‘Interest Shall Not Lie: A Seventeenth-Century Political Maxim’, *Journal of the History of Ideas*, 29 (1968), pp. 551-64.

¹⁴² J. Harrington, *Oceana* (Dublin, 1737), p. 155.

¹⁴³ S. Pincus, ‘Neither Machiavellian Moment Nor Possessive Individualism: Commercial Society and the Defenders of the English Commonwealth’, *AHR*, 103 (1998), pp. 705-36, at p. 730.

actual collection of petitions, we can see the extent that petitions were capable of reflecting the different attitudes of local communities, and the agency of lower sorts that stood behind the impression of a united front presented by elites.

The pamphlets that surrounded petitioning campaigns reflect the attempt of petitioners to represent the national interest. The language of public and private interest was an important legitimising factor to petition. Importantly, it meant contemporaries expected and searched for a ‘clash of interests’ on each bill. The MP Peter Shakerley sought petitions from different economic sectors—farmers, those employed in land carriage, the corn millers, and those who paid the poor rates—in order to illustrate the range of interests that supported his case on the Weaver navigation.¹⁴⁴ The Corporation of Rye wrote to inform New Romney they were ‘obliged to try their interest’ and procure a petition to protect their harbour, whilst the opponents of the Aire and Calder navigation argued that the scheme was ‘only to the private advantage of the undertakers’, and projectors of the River Dunn navigation believed they were opposed by ‘private interests and views’.¹⁴⁵

The imagining of society as a collection of interests was important as it meant the extent of popular participation would vary by locality. Some petitions reflected the opinions of gentlemen and county elites, whilst others represented those of lower and middling rank. Inhabitants could play an important, if subservient role, in discussions on the merits of bills. In the debate on the Parton Harbour Bill, the Bishop of Carlisle stressed ‘almost all the citizens of Carlisle that could write their name’ had also signed a petition against the bill.¹⁴⁶

¹⁴⁴ BL, Add MSS 36914, River Weaver Navigation, fol. 34.

¹⁴⁵ CKS, NR/AZ/87, Corporation of Rye to New Romney Borough, 9 January 1722; *Reasons Against the Bill for Making the Rivers Ayre and Calder in the West Riding of Yorkshire Navigable* (n.p., 1699); *The Methods Proposed for Making the River Dunn Navigable*, p. 3.

¹⁴⁶ Nicolson, *Diaries*, p. 383.

The printed *Reasons Against Making the River Weaver Navigable* stressed that ‘if it were for the common good of the county, for the advantage of trade or the public good, the same would have been proposed by the gentry, grand jury, the quarter sessions, *or by some number of the inhabitants*’ (my italics), allowing inhabitants a key role in determining the ‘common good’. The ‘very few of the lowest rank of gentlemen in the county’ were not enough to determine the policy.¹⁴⁷ The opponents of the Don navigation, after collecting signatures from the aldermen and principal inhabitants, then ‘consider[ed] the unite[d] strength of all hands in the county against the bill’.¹⁴⁸

The participation of lower groups shows the importance of shared legal rights, with all having some property to protect, but also that lower sorts were capable of holding an ‘interest’.¹⁴⁹ Sir Gilbert Clarke told the MP Thomas Coke that he thought ‘it very proper for those whose interest it is to be against the making [of the River] Derwent navigable to join in a petition. But...having no land upon that water...I am not willing to sign any paper’.¹⁵⁰ Inhabitants did have land or livelihoods on the water, allowing them to be part of this petitioning ‘interest’. A petition for a new harbour at Rye in East Sussex was ‘handed from town to town along the coast’, but the ‘Folkestone fishermen [who] generally complain’ of

¹⁴⁷ BL, Add MSS 36914, River Weaver Navigation, fol. 123.

¹⁴⁸ NUL, Mellish 162/14, from Willan, *Don Navigation*, p. 114.

¹⁴⁹ Women were also included in this petitioning culture. See M. Schmit Blaine, ‘The Power of

Petitions: Women and the New Hampshire Provincial Government, 1695-1770’, *International Review of Social History*, 46 (2001), pp. 57-77, at p. 64. For an example to the Lords, see PA, HL/PO/JO/10/1/484/1051(c)(m), Dyers of Wrought Silks and Divers Shopkeepers, 3 April 1696.

¹⁵⁰ HMC, *Manuscripts of the Earl Cowper*, Volume 2, p. 383.

the state of fishing, constructed their own.¹⁵¹ Petitions had been ‘handed about and signed by some of the town’ in Sheffield, suggesting that copies were circulated, creating a network of petitioners.¹⁵² Many copies of a single petition were sent around to different hundreds against the River Weaver, ‘intending to unite them in one roll’.¹⁵³

The fact that petitioners knew their ‘interest’, were knowledgeable of ‘facts’, and able to provide information to parliament, suggest that parliamentarians were content for the public to participate in debates on these legislative issues. Whilst the public acting as arbiters on ‘political’ issues was seen as problematic, because it was feared they were being misled by competing partisan fictions, public participation on issues the public had direct and lived experience of was believed to be conducive to the application of reason.¹⁵⁴ In response to the ‘monster petition’ created during the Exclusion Crisis, it was said that men ‘are to be esteemed capable of knowing their own wants, fears and dangers...yet not everyone is not to be accounted sufficiently qualified...to umpire differences between his majesty and his great council’.¹⁵⁵ Merchants petitioning in 1738 were said to ‘the most proper hands for giving in such a representation... [being] the most immediately interested in the facts’.¹⁵⁶ West-Country clothiers, it was said, ‘certainly must be the best judges [of] what cards are most necessary’,

¹⁵¹ CKS, NR/AZ/88, Corporation of Rye to New Romney Borough, 8 February 1723; NR/AZ/89, Borough of New Romney to its MPs, 20 November 1723.

¹⁵² *Calendar to the Records of the Borough of Doncaster*, Volume 4, p. 189.

¹⁵³ BL, Add MSS 36914, River Weaver Navigation, fol. 20.

¹⁵⁴ Knights, *Representation and Misrepresentation*, 332-3.

¹⁵⁵ *An Impartial Account of the Nature and Tendency of the Late Addresses in a Letter to a Gentleman in the Country* (1681), p. 1.

¹⁵⁶ Cobbett, *Parliamentary History*, Volume 10, Column 572.

and whether an act for regulating cards was necessary.¹⁵⁷ Petitioners were said to provide ‘the best information...of their own neighbourhood particularly’. This was because the lower people, such as the ‘small heritor’s and husbandmen, shop-keepers, seamen, [and] artificers’, were petitioning on issues linked to how they ‘get their bread, and therefore must have great knowledge of the particular...without knowledge of the particulars, he [the parliamentarian] may with all his brightness invent very good things for utopia, but not for Britain’.¹⁵⁸

The experience of ‘people’ in their ‘own dealings’, contrasted with the issues of ‘high’ politics that they only learned of as representations in print. Parliamentarians could trust them to act as rational actors and witnesses to their own lives, for the ‘creator, has not formed his rational creatures incapable of what is so needful for their wellbeing’.¹⁵⁹ The interest that ‘will not lie’ acted as a guide for public actions, it being only ‘fools or madmen...that do not know or understand their own interest...[and] act directly contrary to it’.¹⁶⁰ Through the ordinance of 1648 and the act of 1661, parliamentarians aimed to shift public involvement away from faction and violence, towards more reasoned and deliberative debate on matters of their locality and circumstances.

Reflecting their signing, petitions were also organised by middling and lower sorts. Groups against the Don navigation were ‘pleased by the farmers to send about petitions...and got one for Rotherham pretty unanimously signed...as the navigators have declared they shall

¹⁵⁷ *A Dialogue Between Dick Branzenface the Card Maker, and Tim Meanwell the Clothier* (n.p., 1711), p. 6.

¹⁵⁸ *The Right of British Subjects to Petition and Apply to Their Representatives Asserted and Vindicated* (1734), p. xi.

¹⁵⁹ *Ibid*, p. xxv.

¹⁶⁰ D. Defoe, *A Review of the Affairs of France, With Some Observations on Transactions at Home* (1705), Volume 2, Number 63, p. 254.

have no benefit of a wharf'.¹⁶¹ The towns of Pocock and Withington sent 'two small petitions...at the request of the people of those towns' to Edward Mellish in London.¹⁶² The Don navigation petitions were led by several men, with 'many petitions...procuring here by Mr Folejab' whilst 'Mr Roswell has undertaken to solicit several hands near him'.¹⁶³ Petitions were also garnered in spaces outside a county assize. The Don scheme had been 'declared in general terms...to a great crowd of people' and a petition was collected in a Southwark coffee house, which nineteen women also signed.¹⁶⁴ Local elites were unlikely to have organised this female support.

On occasion, the numbers signing petitions for or against a measure was seen as sufficient to judge whether a measure should succeed. As Daniel Defoe remarked, 'what can the meaning of numbers be, but of strength?'¹⁶⁵ It was argued that petitions gave a 'sense of the county'.¹⁶⁶ Counsel and petitioners in committee did appeal to the importance of numerical support, with the Droitwich Salt Works Act supported by 'forty-eight proprietors, [whilst] Mr Tremaine [appears] for only fourteen of them' and that bills were 'brought in by very few throwsters [and] their main body...disown it'.¹⁶⁷ The clerk of the proposed Southwark court of conscience stressed that 'he [was] recommended by many hundred of the

¹⁶¹ Willan, *Don Navigation*, p. 14.

¹⁶² NUL, Mellish 162/3, from *Ibid*, p. 144.

¹⁶³ NUL, Mellish 162/13, from *Ibid*, p. 112.

¹⁶⁴ NUL, Mellish 162/7 from *Ibid*, p. 68; PA, HL/PO/JO/5/1/29, Manuscript Minutes, 22 January 1693.

¹⁶⁵ Defoe, *Two Great Questions Considered*, p. 16.

¹⁶⁶ BL, Add MSS 36914, River Weaver Navigation, fol. 117, p. 2.

¹⁶⁷ PA, HL/PO/CO/1/4, Committee Book, 31 May 1689; HL/PO/CO/1/5 Committee Book, 13 January 1694.

inhabitants there'.¹⁶⁸ Clothiers claimed they 'are three or four more than those who have petitioned for the bill'.¹⁶⁹ Emphrain Parker believed as the calico trade was 'so populous throughout the nation they [parliamentarians] will hardly lay it on without their own consents', whilst Seymour Cholmondley argued that 'it is the law and custom of parliament upon any new device... to confer with their country before they agree.'¹⁷⁰ Petitions were representations of the 'sense' of a community or area, allowing the 'public' to exist as a pressure and factor in politics.

The local context of bills reflects the importance of negotiation in the locality between the projectors of bills and the wider population to determining whether petitioning campaigns would occur. Through the public petitioning on local and regional bills and acts, the participative culture of the localities was carried to Westminster.¹⁷¹ Petitions were commonly collected by churchwardens and other parish officials, as was the case with Welsh petition of 1689, and is suggested by a petition from Portugal Street ward in Westminster on a Bill for Setting up a Night Watch in 1720.¹⁷² In Scotland, ministers asked men to stay after their sermons to sign addresses against the union.¹⁷³ Coffee houses were also used as sites to garner signatories, with opponents of the Weaver Navigation Bill 'organising petitions at Mrs

¹⁶⁸ *The Case of Robert Weston... As Register and Clerk of the Court of Conscience* (London, 1689).

¹⁶⁹ *Dialogue between Branzenface and Meanwell*, p. 6.

¹⁷⁰ *Weekly Journal*, 10 October 1718; BL, Add MSS 36914, River Weaver Navigation, fol. 3.

¹⁷¹ M. Braddick and J. Walter, eds, *Negotiating Power in Early Modern Society* (Cambridge, 2001), Chapters 4 and 8; M. Goldie, 'The Unacknowledged Republic: Political Participation in Early Modern England', in T. Harris, ed, *The Politics of the Excluded* (Basingstoke, 2001).

¹⁷² PA, HL/PO/JO/10/6/307, Petition of the Inhabitants of the City and Liberty of Westminster, 29 April 1720.

¹⁷³ Bowie, *Scottish Public Opinion*, Volume 2, p. 226.

Kenneys and other places' to get signatures in 1726.¹⁷⁴ These spaces were publically known, being advertised in newspapers to meet to 'sign a petition... which lie[s] at...Garway's coffee house, between the hours of twelve and two' or 'on Tuesday...at the crown tavern...in order to consider a petition'.¹⁷⁵

The capacity for independent action by large numbers outside the elite was aided by the use of print, which was used to mobilise and widen those that constituted the 'public'. The 'citizens, tradesmen, and others, in and about the City of London' initially 'requested Mr Thompson to print their case, which is now publicised', before announcing they 'intend to petition the parliament'.¹⁷⁶ Copies of the London petition on the succession of 1689 were also printed and circulated in coffee houses.¹⁷⁷ This was also a non-London phenomenon. James Lowther 'brought the printed case of the port of Whitehaven' on 12 January 1706 to the Lords, although the first responsive petition was not presented to the Commons until 8 February and the Lords on 19 February.¹⁷⁸ In response to a proposal for raising a tax on tin, one writer 'printed my first proposal and sent it into Cornwall and Devon, [where] the tanners... of both counties were for it.¹⁷⁹ They were also 'shown, and [did] read... [the] book of proposals to many gentlemen, and a great many tanners' in February 1696.¹⁸⁰ The petitions

¹⁷⁴ Lambert, *Bills and Acts*, p. 158.

¹⁷⁵ *Daily Courant*, 3 December 1711, Issue 3164; *Aetheran Gazette*, 26 December 1696, Issue 3.

¹⁷⁶ *Flying Post*, 27-29 October 1698, Issue 541.

¹⁷⁷ Schwoerer, 'Press and Parliament', p. 552.

¹⁷⁸ Nicolson, *Diaries*, p. 351; PA, HL/PO/JO/10/3/195, Parton Harbour Petitions, 1706; *CJ*, xv, p.

134.

¹⁷⁹ *An Appendix to the Proposal for Raising the Price of Tin: Containing Reasons for Raising the Price, Quality, and Quantity, of Tin* (1697), p. 7.

¹⁸⁰ *Ibid*, p. 6.

Figure 11: PA HL/PO/JO/10/6/307 Petition of the Inhabitants of the City and Liberty of Westminster, 29 April 1720. Out of its 2800 signatures, there were seventy-nine women and eighteen marks.

committee of the London Weavers' Company sent their printed cases and petitions to Norwich and the throwsters and dyers of London in 1719.¹⁸¹ Cheshire tanners 'made it our business to show and communicate the contents of your [letter] to our neighbouring tanners'.¹⁸² They had also sent 'copies for the reasons...to all those who are willing to join in so good a work', suggesting encouragements to petition had been circulating in the north and west.¹⁸³ Printed sheets were circulated in Wales in 1689 to garner signatures for their petition

¹⁸¹ Rothstein, 'The Calico Campaign', p. 9.

¹⁸² CA, ZG 21/8/67a, Draft Letter of Cheshire Tanners to Tanners of London, 20 April 1717.

¹⁸³ CA, ZG 21/8/25, Tanners of Northern England to Cheshire Tanners, 1712?

for the abolition of the Court of Marches.¹⁸⁴ Print was a mechanism appropriated by a range of interests to encourage petitioning, becoming a key means for non-elites to organise and engage a locality.

Interests could also rely on newspapers to publicise their activity. Often information was at a general level, with the *Weekly Packet* reporting that

the weavers begin [to] swarm with their petitions against the calicoes, and the cause is now grown popular; the cities of London, Worcester, Norwich, and Coventry have petitioned already, and the towns of Calne and Kidderminster, and we are told, there are fifty petitions more coming after them.¹⁸⁵

The *Weekly Journal* said that ‘on Tuesday last the Weavers’ Company of London presented their petition...as on the Saturday before were several others presented from the poor clothiers and manufactures in the country, all begging relief against the exorbitant use of the calicoes’.¹⁸⁶ The printing of notices gave the sense of a collective grievance and strength of the ‘sense of the nation’. A pamphlet on the River Derwent had also included a list of ‘the places that have petitioned for the navigation’.¹⁸⁷ Collections of petitions were printed against the trade bill with France in 1713, on the ‘complaining of the great miseries’ of the South Sea Bubble in 1721, and in Scotland on the African Company in 1700, whilst Peter Shakerley had copies of the petitions against the River Weaver navigation printed.¹⁸⁸ Reporting could also

¹⁸⁴ PA, HL/PO/JO/10/1/408/80, Petition of Several of the Inhabitants of Wales, 1 June 1689. For example, sheets 3, 6, 10, 22.

¹⁸⁵ *Weekly Packet*, 28 November-5 December 1719, Issue 387.

¹⁸⁶ *Weekly Journal*, 5 December 1719, Issue 53.

¹⁸⁷ *An Answer to the Objections Against Making the River Derwent Navigable* (n.p., 1696).

¹⁸⁸ *A Collection of Petitions Presented to the Honourable House of Commons Against the Trade with France* (1713); *A Collection of the Several Petitions of the Counties [and] Boroughs Presented to the House of Commons* (1721); *A Full and Exact Collection of All the Considerable Addresses, Memorials, Petitions, Answers, Proclamations, Declarations,*

be more specific, enabling other interests to mobilise counter-petitions. The *Post Man* informed its readers that ‘the country [of Lincolnshire] [was] intend[ing] to petition the parliament’, whilst the *Post Boy* reported that the silk weavers of London had prepared a petition against the East India Company in 1696.¹⁸⁹

The growth of provincial press in this period should also be noted here, it being a new feature of British political culture.¹⁹⁰ The *Ludlow Postman*, which ran for only one year, published information on petitions being presented or solicited in almost every issue. The paper, which was ‘publish[ed] every Friday morning at Ludlow’ and promised to ‘be dispersed thirty or forty miles round’, was able to report on the petitions relating to the Derwent navigation, the Calico Bill and the statements made by witnesses in both houses on the legislation.¹⁹¹ The paper also reported ‘the goldsmiths and potters are about to join together in a petition for a bill to prohibit the importation of china ware into the kingdom’.¹⁹² The *Newcastle Courant* and *Stamford Post* also advertised petitioning and provided

Letters and Other Public Papers (Edinburgh, 1700); LA, DDKE/6/58, Printed Petitions on the River Weaver, 1720.

¹⁸⁹ *Post Man*, 12-14 May 1702, Issue 968; *Post Boy*, 21-24 November 1696; Issue 242.

¹⁹⁰ J. Black, ‘The Development of the Provincial Newspaper Press in the Eighteenth Century’, *Journal For Eighteenth-Century Studies*, 14 (1991), pp. 159-70; G. Cranfield, *The Development of the English Provincial Newspaper 1700-1760* (Oxford, 1962); N. Glaisyer, *The Culture of Commerce in England, 1660-1720* (Woodbridge, 2006), pp. 171-5. Glaisyer explores the reporting of commercial news in provincial newspapers in ‘Readers, Correspondents and Communities: John Houghton's *A Collection for Improvement of Husbandry and Trade* (1692-1703)’, in A. Shepard and P. Withington, eds, *Communities in Early Modern England* (Manchester, 2000), pp. 235-51.

¹⁹¹ *Ludlow Post Man*, 9 October 1719, Issue 1.

¹⁹² *Ibid*, 4 March 1720; Issue 22.

commentary on parliamentary business in both Houses of Parliament. The *Newcastle Mercury* informed its readers the city's merchants attended the Commons in 1712 with a petition, and a thousand citizens of London had signed a petition to the parliament in 1724, 'which no doubt [will] meet with the desired redress from parliament'.¹⁹³ The *Stamford Mercury* told its readers of the petitions against the Septennial Bill.¹⁹⁴ The establishment of local newspapers undoubtedly aided this culture of petitioning and the accessibility of parliament, through advertising the existence of petitioning activity and providing advanced warning of petitions and bills, particularly during the 'calico crisis' of 1719/20.

Once presented, petitions sparked wider debate and response in print, asking the public to adjudicate on the claims of petitioners. A manuscript petition from the weavers of London was followed by a printed petition, which hoped that 'parliament would be pleased to lay aside that bill...'¹⁹⁵ Weavers circulated printed cases to peers at the moment of the presentation of their petition in 1713.¹⁹⁶ The *Humble Reply of the Company of White Paper Makers* was written in response to other paper makers, who 'in several printed papers (delivered to the House of Commons) and to this most honourable house...last Saturday... [had attempted to] vindicate themselves.'¹⁹⁷ The 1689 petition of the inhabitants of Wales saw

¹⁹³ *Newcastle Courant*, 21 May 1712, Issue 116; 3 October 1724, Issue 224.

¹⁹⁴ *Stamford Mercury*, 3 May 1716.

¹⁹⁵ *The Weavers of London Do Humbly Offer to the Serious Consideration of Both Houses of Parliament* (1689?), p. 4.

¹⁹⁶ PA, HL/PO/JO/10/3/204/1/1, Petition of Company of Weavers, 4 June 1713.

¹⁹⁷ *The Humble Reply of the Company of White Paper Makers Answer to a Printed Paper* (1690).

one paper answer the ‘charge[s] of the inhabitants of Wales,’ arguing the administration of justice would be ruined by the ‘union’ with England.¹⁹⁸

The extent of popular involvement in petitioning helped to strengthen local identities. Keith Snell has argued that ‘local xenophobia’ was an increasingly important dynamic to early modern Britain, to which we can add ‘interest’ as a further driver of local hostilities and identities.¹⁹⁹ The ‘clash of interests’ explicit in these petitions and the campaigns in print that surround them ensured ‘interest’ functioned as an alternative identity to party, rank or class.

The origins behind petitioning often lay in local jealousies, which themselves motivated much legislation. Many parliamentary bills were pursued with the aim of furthering the strength of one town or community against another. The town of Kirby Kendal petitioned for the Aire and Calder Bill, arguing that it would be to the ‘great profit of the inhabitants’, whilst Newcastle saw it as ‘injurious to trade...of the port’.²⁰⁰ Chesterfield was said to be ‘jealous of losing their market [to] Sheffield...’, whilst Sheffield itself was ‘exceedingly angry at the counter petition from Doncaster and...said they would...do all they can to suppress it’.²⁰¹ The town of Chester was in competition with Liverpool, a port at Parton was feared by Whitehaven in Cumberland, whilst communication acts saw conflicts between waggoners and mariners. Mariners on the River Ouse argued that they ‘will be

¹⁹⁸ *A Welsh Man’s Answer to a Paper Entitled the Case of Their Majesties Subjects in the Principality of Wales* (n.p., 1689).

¹⁹⁹ K. Snell, ‘The Culture of Local Xenophobia’, *Social History*, 28 (2003), pp. 1-30.

²⁰⁰ PA, HL/PO/JO/10/1/507/1272(e)(g), Freemen of Company of Shearman, Kirby Kendal, Weavers of Kirby Kendal and Mayor and Burgesses of Same, 16 May 1698;
HL/PO/JO/10/1/507/1272(f), Mayor and Burgesses of Newcastle, 16 May 1698.

²⁰¹ NUL, Mellish 162/36; 162/47, from Willan, *Don Navigation*, pp. 63, 140.

ruined' if the Aire and Calder Navigation Bill passed, whilst the 'company of merchants of the City of York' appealed to parliament to protect an institution 'of ancient standing'.²⁰²

If conflicts could be resolved at a local level, no petitions would be sent to parliament from the locality. A vote of the Corporation of Shrewsbury, by thirty-one votes to twenty-one, meant that they did not petition against the Septennial Act, as six other areas did.²⁰³ The River Weaver Bill succeeded in 1721 and not a single petition was presented for or against it, meaning that if enough interests were negotiated with before a bill was presented no petitions would be created.²⁰⁴ In this case, the 'prevent[ing] [of] subscriptions in the county...' was done by 'convinc[ing] even the people of Northwich [that] even though they subscribed for it, [to] oppose it'.²⁰⁵

The signing of a petition could create and solidify social identities. As Daniel Defoe wrote, 'the procuring [of addresses]...raises and maintains factions in every town and country, keeps up the heat and propagates party divisions', to such an extent that 'a civil war [rages] among neighbourhoods and societies'.²⁰⁶ They could give identities to small villages, parishes, towns and boroughs, for a wide range of social ranks.²⁰⁷ The Don navigation petitions had been supported by a 'handsome subscription to support our opposition', with the towns of Bentley and Arksey 'agree[ing] to raise about twenty-four pounds by an

²⁰² PA, HL/PO/JO/10/1/607/1272(b), Masters of Ships and Mariners on the River Ouse, 10 May 1698;

HL/PO/JO/10/1/507/1272(c), Company of Merchant Adventurers of York, 11 May 1698.

²⁰³ *Weekly Journal*, 28 April 1716.

²⁰⁴ Lambert, *Bills and Acts*, p. 155.

²⁰⁵ BL, Add MSS 36914, River Weaver Navigation, fol. 34.

²⁰⁶ D. Defoe, *A New Test of the Sense of the Nation* (1710), pp. 82-3; 85, 86.

²⁰⁷ R. Sweet, 'Local Identities and a National Parliament', in Hoppit, ed, *Parliaments, Nations and Identities*, pp. 48-64.

assessment'.²⁰⁸ In the West Country, there was an agent of the card makers 'for taking subscriptions', including from a 'poor card maker of Trowbridge...[who] subscribe[d] five guineas' towards the bill.²⁰⁹ 'Not one in the town of Frome...subscribed less than three pounds and your journeymen, as poor as they are...advance[d] forty shillings each' in support of the same bill.²¹⁰

The frequency of petitioning was also important. The county of Lancashire presented 111 petitions to the Commons between 1689 and 1731, sending an average of 2.5 each session to the Commons, allowing these identities to be sustained over time.²¹¹ Local communities were subject to negotiation, mobilisation and division, session after session. The River Weaver Bill was revived five times between 1679 and 1721, with three other attempts previous to this.²¹² Petitions collected for the Dover Harbour Act were collected annually between 1756 and 1758, and London cordwainers organised petitions to parliament on issues relating to leather annually between 1694 and 1696, and again between 1711 and 1714.²¹³ The river and communication projects, once passed, aided regional economies and tightened regional identities further.²¹⁴ The capacity of interests to represent themselves by petition to parliament meant regional and local distinctiveness remained throughout the eighteenth

²⁰⁸ Willan, *Don Navigation*, p. 15.

²⁰⁹ *Dialogue Between Branzenface and Meanwell*, p. 11.

²¹⁰ *Ibid*, p. 3

²¹¹ Handley, 'Provincial Influence', p. 172.

²¹² T. Willan, *The Navigation of the River Weaver in the Eighteenth Century* (Manchester, 1951), pp. 2, 9, 12, 15, 17.

²¹³ CKS, DHB/L1, Dover Harbour Bill, 1775-1758; LMA, CLC/L/CJ/B/001/MS07353/003, Cordwainer Court Minute Book (no pagination).

²¹⁴ J. Langton, 'The Industrial Revolution and the Regional Geography of England', *Transactions of the Institute of British Geographers*, 9 (1984), pp. 145-67.

century. It was seen as a point of criticism to ‘get petitioners for the bill from many places where they are not at all concerned’, rooting petitioning in a locality.²¹⁵ A regional scheme, like river navigation, led to the representation of interests to parliament based on location or interest, adding a further layer to the plethora of social identities present in early modern Britain.

Litigation was an important organisational and legitimising backdrop to many of these petitioning campaigns. The long histories of many of these bills and acts meant these disputes were persistent features in many communities, raising the awareness of shared interests amongst inhabitants. A legal dispute over improving Parton Harbour in Cumberland had lasted for nearly thirty years, and continued to do so after the bill of 1706 was passed. It had already been ‘rais[ing] a great hubbub’, with the first legal proceedings beginning in 1678, well before petitioning started and the act of parliament proposed.²¹⁶ The cheesemongers of London had been at law against the Corporation of Chester in the Court of Exchequer about paying town duties, fearing the judgement would be ‘troublesome to all the ports in the county’ in 1699, and went on to petition on the Weaver Navigation Bill associated with it.²¹⁷ The Aire and Calder navigation saw inhabitants of five areas and eleven individuals sue the commissioners for navigation between 1709 and 1711 in order to prove the damage the navigation scheme had on their properties.²¹⁸ The projectors of the River Tone scheme sought a bill ‘to end these disputes and quiet all the differences for the future’ from the ‘several suits in law’ they were engaged in.²¹⁹ The laying of water pipes in Southwark had

²¹⁵ *Dialogue Between Branzeface and Meanwell*, p. 6.

²¹⁶ Lowther, *Correspondence*, pp. 237, 245.

²¹⁷ CA, ZM/L/4/556, Mayor of Liverpool and Aldermen to Mayor of Chester, 14 October 1699.

²¹⁸ TNA, RAIL 800/1, Commissioners of Aire and Calder Navigation, 2 June 1709 and 18 July 1710.

²¹⁹ Knights, ‘Regulation and Rival Interest in the 1690s’, in Gauci, ed, *Regulating*, p. 64.

already seen complaints by ‘many inhabitants... against Mr Gulston [who was alleged to have] raised and exhaust[ed] prices’, and led to nearly a thousand inhabitants signing a petition.²²⁰ Litigation helped crystallise identities and strengthen common interests amongst inhabitants, which could be transferred to Westminster through petitioning.

The two languages of ‘interest’ and ‘majority’ are significant in three respects. Firstly, their use would have strengthened the concern of political elites for the capacity of the public to act as rational arbiters of disputes, an issue explored by Mark Knights. However, rather than the Septennial Act and the ending of the ‘rage of party’ reducing many of these fears, this culture continued into the 1720s, driven by petitioning and interest-groups.²²¹ Secondly, this language marks the abandoning of any notion of unity within society, and the recognition by elites of the need for negotiation. Even despite the restrictive electorate, individual judgement and an active citizenship had its place when determining the merits of a bill. These two features suggest that elites were relatively tolerant of opinion ‘out of doors’ and sought to direct it into deliberative and peaceful representation on specific matters of policy.

The time between winter and late spring when parliament assembled was used by those outside the political nation as a ‘petitioning season’. In 1719, London weavers called for the end to ‘violence...upon the wearing of printed calicos’. They did so by arguing that there were ‘proper seasons, as well as proper methods, to be used to get redress of grievances.... [and] weavers [should] wait [until] the proper season to lay our case before the parliament’.²²² Although the 1661 act did not go as far as in 1648, when it was declared there was a ‘right and a privilege’ to petition, both laws acknowledged the existence of a legitimate space and avenue to petition. The rise of legislation, the growth in responsive petitioning, and

²²⁰ PA, HL/PO/JO/5/1/29, Manuscript Minutes, 22 January 1694.

²²¹ Knights, *Representation and Misrepresentation*, Conclusion.

²²² Defoe, *Just Complaint*, pp. 40-1.

tolerance of widespread participation meant that parliament was firmly established as a 'point of contact' for petitioners after 1689. Such responsive petitioning was quickly shifted into adversarial and initiatory petitioning when it came to events such as the Excise Crisis of 1733, the public already used to being mobilised to comment on matters of public policy.

IV: Conclusion.

The pattern of subscription campaigns to parliament in the first thirty years after the Glorious Revolution shows the extent of popular mobilisation, participation and negotiation that occurred on bills before parliament. Petitioning involved a high degree of participation from many social groups and locations, and was not limited to established companies, boroughs, the electorate, or men. As part of this culture, petitioners actively sought to appeal to the public to sign and organise, violated the 'secrecy' of parliament, and contributed to a divisive political culture that continued beyond the repeal of the Triennial Act in 1716 and the decline of the 'rage of party'. In these respects, petitioning did follow the pattern David Zaret set out as occurring in the 1640s, at a more sustained and intense level.²²³ Petitioners criticised elites and proposed laws, appealed to the public to sign through print, and claimed legitimacy on grounds other than rank or membership of corporate bodies. The later revival of 'political petitioning' drew on the rhetoric, experience, and identities created and maintained through large responsive petitions to parliament. The 'clash of interests' inherent in legislation helped to keep the features of partisanship and the concerns resulting from it, alive.

Paul Langford's work has been particularly significant in showing the extent that propertied society was active in 'public life', with associations, voluntary organisations, and other non-statutory bodies and individuals using the power of parliamentary statute in the

²²³ D. Zaret, 'Petitions and the "Invention" of Public Opinion in the English Revolution', *American Journal of Sociology*, 101 (1996), pp. 1497-1555, at pp. 1538-43.

eighteenth century to advance schemes for ‘improvement’.²²⁴ Petitioning by interest groups offers evidence of the extent the wider public were part of this culture, ensuring a porous culture of negotiation was present despite the restrictive membership of the oligarchy. The extent of subscription to the larger responsive petitions gave a ‘second wind’ to the participatory local state. Those affected by local and regional legislation petitioned directly on matters affecting them at the centre, strengthening further the participative and self-governing nature of these communities.

Driven by interest, rather than declining party strife, petitioning continued to enlarge the ‘public’ after 1716 and ensured that the oligarchy was a negotiable and challengeable one. Petitions may not have raised party matters or threatened the existence of the crown or state, but ensured that politics, the extent of negotiation and how policies were justified, was conducted on a different basis to what was the practice in the Restoration when parliament sat far less frequently and passed less legislation, and before the 1640s when responsive petitioning and the print culture associated with it was less developed. The regulation rather than suppression of ‘public opinion’ by parliamentarians reflected changing attitudes towards public access and their wish to uncover the ‘public interest’.²²⁵

The extensive participation of the public in signing petitions to parliament meant there was a growing culture or representation via petitioning in the eighteenth century on legislative matters. Petitioners could claim to represent the ‘public interest’ and pressure parliamentarians to act. This ‘system’ with high rates of petitioning made the pre-reform

²²⁴ Langford, *Public Life*, Chapter 3.

²²⁵ In addition to the works of Peacey referenced above, see M. Knights, ‘John Locke and Post-Revolutionary Politics: Electoral Reform and the Franchise’, *P&P*, 213 (2011), pp. 41-86, for attempts to reduce the corruptive and intimidatory elements of elections, rather than eliminate the ‘public voice’ altogether.

parliament more palatable and useful than it would have been. Even though parliament in the eighteenth century was in many respects ‘secretive’ and the role of the electorate was being reduced, participative petitioning remained central to the ruling of Britain.

This chapter also gives a new account of the role of peers in society. They were not as closed to outside influence, distant from wider politics or as hostile to the ‘public’ as accounts of them have stressed. Bishop Burnet believed the Lords had

by their knowledge, good judgement and integrity, raised the House of Peers to a pitch of reputation and credit, that seemed once beyond the expectation or belief of those that now see it. Their actions had raised the peerage, to such a regard that people contrary to all former precedents, have considered them more than their own representatives.²²⁶

The reception of petitions by elites suggests that peers were firmly part of wider political culture. Parliamentarians did not wish for or create a model of petitioning that left parliament as an isolated body that would have been declining in importance for those seeking redress.

This growth of petitioning was not a linear process, with the level of petitioning fluctuating from the 1640s to the present. The voice of the public was contested and ‘misrepresented’, but these features were present in the nineteenth century, and indeed in the present, with the contestation of the authority of petitions and opinion polls.²²⁷ Issues of credibility, judgement, and distortion, as Knights hinted, ‘are still apparent in the way in which politics works today and may be inherent to public politics *per se*.’²²⁸ Murray Edelman

²²⁶ Bishop Burnet, *History of My Own Time* (2 volumes, London, 1840), Volume 2, pp. 916-17.

²²⁷ For twentieth-century concerns, see W. Bennet, ‘Constructing Publics and Their Opinions’, *Political Communication*, 10 (1993), pp. 101-20; R. Entman and S. Herbst, ‘Reframing Public Opinion as we Have Known it’, in W. Lance Bennet and R. Entman, eds, *Mediated Politics: Communication in the Future of Democracy* (Cambridge, 2001).

²²⁸ Knights, *Representation and Misrepresentation*, p. 219. For further discussion, see S. Bennet, ‘Populism, Elitism, and the Populist Ideology of Elites: The Reception of the Work of Murray

explored the presence of misrepresentation in the modern world, arguing that ‘rationality [was] the exception’ in the post-1945 period.²²⁹ Even after the passage of the Septennial Act, that did reduce the role of the public as voters, the incidence of large responsive petitions suggests the culture of divided communities and adversarial politics continued, and were becoming more intense after 1716. Allegations of clandestinely signed petitions and the multiple opinions a single area could present on a bill at the same time continued to be present. Local communities were subject to negotiation, mobilisation and division, session after session. This situation must have been unsustainable, otherwise confidence and legitimacy of the law, parliament, parties, and the state would surely collapse. Considering parliament as a ‘theatre’ and a ‘public show’, with participants part of a ‘society of spectacle’ that stressed confrontational rhetoric, overlooks the need of a space for deliberation. The answer must lie in two places—the local context of politics and the ability to represent the locality at the centre, and the direct experience and nature of law-making and ruling.

The local context of the state enabled a division to exist between perceptions of the national political culture and the local one. Administration of poor relief, the collection of the land tax, or the use of parliament to pass local acts meant communities were to a great extent self-governing, allowing them to negotiate with the central state.²³⁰ The extent of

Edelman’, *Critical Review*, 17 (2005), pp. 351-66; M. Edelman, *The Politics of Misinformation* (Cambridge, 2001).

²²⁹ Edelman, *Misinformation*, p. 1.

²³⁰ This offered a continuation of the culture of overlapping jurisdictions of the medieval period, but within state structures. See also, L. Benton, ‘The Legal Regime of the South Atlantic World, 1400-1750: Jurisdictional Complexity as Institutional Order’, *Journal of World History*, 11 (2000), pp. 27-56; E. Gould, ‘Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772’, *W&MQ*, 60 (2003), pp. 471- 510; B. Tamanaha, ‘Understanding

participation in governing at a local level meant that reconciliation between divided interests was possible, and a different perception of the state may have existed between a personal and known 'local state' and a partisan, national one. A participative politics may also differ from a representative one by allowing governance and rulers to be 'experienced', countering a representative culture based on 'images' and 'imagination' of political divides and the nature of rule. At some point in the 'circulation of power', interest and the wider population could negotiate in a deliberative fashion, challenging the claims of elites and those that claimed to 'represent' certain interests and factions.

The second cause, direct engagement in lawmaking and negotiation, builds upon what has been shown in previous chapters. Parliament and the legal system had a 'culture of deliberation' that helped to create legitimacy, resolve disputes and create dialogue between parties, both before and during the decision-making process in parliament. As has been shown, parliamentary inquiry was a key means to how the house functioned. Before committees, witnesses were able to pursue different perspectives, including personal and local ones, and interact with 'experts' and political arithmetic, which was only one of the forms of knowledge available. The hearing of these arguments would mean peers and participants would have to respond and frame their own decisions in relation to what others had stated and disagreed on. The discourses of 'facts', 'law' and 'interest' were accessible, and there was an ability to present personal recollection to Lords committees, lowering the barriers to participation— aided further by the growth of print and petitioning. Committees were a space in which multiple interests acknowledged the opinions of others, in order to uncover the 'public interest' under common and agreed rules and norms. It was increasingly reconciliation through law, coercion and institutions, rather than through informal

mechanisms of a 'Christian community', that contemporaries looked towards to bring conflicts to an end.²³¹ This meant that in addition to an adversarial politics, focused on elections and petitioning, policy-makers and participants were in a culture of dialogue, creating legitimacy for the state and tying in the wider political community. The reality of dialogue and deliberation through participation in institutions at both the centre and locality was the counterpoint to polarisation.

As a result, it should be argued policy in eighteenth-century Britain was made by what could be termed, a 'deliberative oligarchy'. Membership of the oligarchy was limited by wealth, rank and contacts, but this did not mean it was closed from outside influence, having porous methods of policy-making and ruling. The participation of the public was directed into more deliberative and stability-inducing institutions in response to its greater role as arbiter of politics and policy. There had long been elements of parliament, especially in committees, that showed potential for this, but the presence of parliament after 1688 meant these were becoming everyday features. Society was able to move beyond solely the adversarial, towards deliberation as a co-existing feature of British politics.

²³¹ C. Muldrew, 'The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England', *HJ*, 39 (1996), pp. 915-42.

CHAPTER SIX

‘The Growth of Political Stability’ Fifty Years on: The Establishment of a ‘Deliberative Oligarchy’

J.H. Plumb’s 1965 Oxford Ford Lectures explained how Britain, and England especially, achieved a political stability from the 1720s which those living in the seventeenth century could only have imagined. The taming of the electorate and the City of London, the growth of social and political oligarchy, the development of the executive, and the effective elimination of the tory party under Sir Robert Walpole offered a compelling account of how the transition was made from seventeenth-century instability and the ‘rage of party’ into the ‘age of oligarchy’, where power was held by remarkably few and with virtually no transparency or accountability. Legislation strengthened its legal basis, constraining public commentary on and participation in politics: the Septennial Act reduced the frequency of general elections from three to seven years, the Riot Act made public protest harder, and the City Elections Act calmed the politics of the City of London. Such a view did not grate with the hitherto dominant Namierite framework, nor with the new studies of the social history of politics, notably by E.P. Thompson. Historians of all shades saw governance in eighteenth-century Britain in terms of narrow elite, preoccupied with matters of kinship and patronage, and its membership and policies isolated from broader society. Remarkably, fifty years on, Plumb’s account remains an established pillar of the historiography of eighteenth-century Britain.¹

But throughout this period, our approach to the question of oligarchy and the political history of early modern Britain has remained on the same interpretative framework, namely a

¹ For critiques, see C. Roberts, ‘The Growth of Political Stability Reconsidered’, *Albion*, 25 (1993), pp. 237-55 and N. Landau, ‘Country Matters: “The Growth of Political Stability” a Quarter-Century On’, *Albion*, 25, pp. 261-74. Norma Landau saw Plumb as raising the question of ‘how to govern effectively without arousing the ire of those whose autonomy effective central government would eventually infringe’ (p. 261).

focus on the representative and democratic elements of the constitution. This has led to the logical conclusion that a demonstrable reduction in the frequency and importance of elections ensured the triumph of oligarchy. But the political culture, modes of policy-making, and the functioning of parliamentary institutions of early modern Britain were not just about the handling of power by elected or appointed chambers, confined to elites or a clearly defined state. Petitions, participation and print—as John Brewer, Frank O’Gorman and Mark Knights have shown—were capable of disrupting stability. But these have largely been considered in the context of the wider public sphere, and not parliament. Our typical geography of parliament is a simple one—dominated by the Commons (or the monarch in Namierite accounts) and the study of elections. Who went to parliament as MPs and their party (or none) is what concerns us—a concern exacerbated by recent attempts to label all legislation as party-political.² Historians are not alone in this focus: responses to voter apathy usually attempt to strengthen representative elements of the constitution and political accountability, resulting in recent calls for allowing the recall of MPs, public holidays for voting and even the ‘preference for unpolitical figures on the political scene’. As Jürgen Habermas asked,

does participation in democratic procedures have only the functional meaning of silencing a defeated minority, or does it have the deliberative meaning of including the arguments of citizens in the democratic process of opinion- and will-formation? ... Democracy depends on the belief of the people that there is some scope left for collectively shaping a challenging future.³

This thesis has sought to mark new contours on our map of politics, which turns our focus on its head. It is less centred on party, legislatures, their membership, and the central

² S. Pincus, *1688: The First Modern Revolution* (New Haven, 2009); C. Dudley, ‘Party Politics,

Political Economy, and Economic Development in Early Eighteenth-Century Britain’, *EcHR*, 66 (2013), pp. 1084-1100.

³ J. Habermas, ‘Leadership and Leitkultur’, *New York Times*, 28 October 2010. Accessed

http://www.nytimes.com/2010/10/29/opinion/29Habermas.html?_r=0

state. Governing was not just carried out by parliamentarians at Westminster, but by wider society. Parliament was still not the maker of major events, remaining an institution reacting to proposals and ideas from legal courts, local communities, and interest-groups.⁴ This thesis has argued we need to reconsider how states, statutes, and parliaments operate in our interpretive model, shifting our concern towards participation and governance, and litigation as well as statutes. Historians have been circling this for some time, and work on the public sphere and print culture does illustrate the vibrancy and extent of political culture, but this approach fails to make the connection between words and action. The narrative remains that between the Restoration and the printer's case of the 1770s that parliament was secretive, and therefore hard to influence. Reasoned debate in coffee houses, petitions, or popular protests, were done *against* parliament, rather than working through it. This strengthens a continuing division between spectators and participants—only MPs, peers, and ministers being the actors, the public, at best, being commentators. The weakening of the power of the electorate after 1716, therefore, removed the most important mechanism of public involvement with parliament.

But not only should we take issue with the means of how political stability was established by the 1720s, but how far late Stuart and early Georgian political culture was dominated by concerns of misrepresentation, conspiracy and 'party rage', as there was a developing deliberative counter-balance. Historians have been quick to explore the 'informal' elements of the Habermasian public sphere in terms of the ability of free public communication, but far slower in examining the second part of Habermas's model, that is the

⁴ C. Russell, *Parliaments and English Politics, 1621-1629* (Oxford, 1979), p. 1.

creation of deliberative political institutions and the involvement of the public in them.⁵ Cultural history has been important in the demonstrating the importance of symbolism, consumerism and ritual to the operation of power.⁶ This reflects the fact politics can be based on emotion, irrationality, and conspiracy theories—all these launched being as research projects in the past few years.⁷ Clearly the seventeenth and eighteenth centuries had their fair share of conspiracies (both real and imagined), misrepresentations and political symbolism. Fear of popery was a significant driver of both seventeenth-century revolutions.⁸ Reflecting this, we have stressed the anti-deliberative nature of politics, focusing on the theatrical nature

⁵ J. Cohen, 'Reflections on Habermas on Democracy', *Ratio Juris*, 12 (1999), pp. 385-416; J.

Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, 1996), esp. Chapters 8-9.

⁶ For example, Kevin Sharpe's *Image Wars: Promoting Kings and Commonwealths in England, 1603-1660* (New Haven, 2010); *Rebranding Rule: The Restoration and Revolution Monarchy, 1660-1714* (New Haven, 2013).

⁷ 'Conspiracy and Democracy: History, Political Theory and Internet Research', at Cambridge University; 'Passionate Politics' has been launched at The Centre for Transnational History, UCL.

⁸ M. Knights, 'How Rational was the Later Stuart Public Sphere?', in P. Lake and S. Pincus, *The Politics of the Public Sphere in Early Modern England* (Manchester, 2007). The importance of fear and Popery is stressed in revisionist accounts, see L. Glassey, 'Introduction', in idem, ed, *The Reigns of Charles II and James VII and II* (New York, 1997), pp. 4-9; J. Morrill, 'Introduction' Idem, ed, *Revolution and Restoration: England in the 1650s* (London, 1992), p. 14; J. Scott, *England's Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge, 2000).

of both parliament and the law.⁹ Significant aspects of philosophy support this view. Murray Edelman, an American political scientist who has been quoted in this thesis, and who formed an important basis for Mark Knights' *Representation and Misrepresentation*, had a simple fear. This is that rational debate is not possible in the era of mass-politics. He argues there is an uncomfortable truth that many decisions and perceptions are based on misrepresentation and misunderstandings.¹⁰ His division is one between 'mythical' and 'utilitarian' politics—in the era of mass-politics, politics is an irrational spectacle. Only direct users of politics are capable of rational decisions (though this is not guaranteed either), being able to brush away illusionism and dogma to create rational decisions, through 'reality testing' their ideas. If this is how politics functioned, then it makes sense to consider parliament's role through the lens of a theatre or study of ritual. Politics and legitimising the state was about consuming symbols and images, not policy-making.

Ritualistic behaviour is an important sphere of politics, election rituals being aimed as much at voters as non-voters.¹¹ But this means there is a remaining question about how interest in politics can be shifted towards reasoned engagement, as certain institutional conditions can encourage, and whether this occurred in the eighteenth century, it being an

⁹ C. Kyle, *Theatre of State: Parliament and Political Culture in Early Stuart England* (Stamford, 2012); J. Peacey, 'Disorderly Debates: Noise and Gesture in the Seventeenth-Century House of Commons', *PH*, 32 (2013), pp. 60-78. On crime, see D. Hay et al, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1976); T. Laquer, 'Crowds, Carnival and the State in English Executions, 1604-1868', in A. Beier, D. Cannadine, and J. Rosenheim, eds, *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge, 1989).

¹⁰ M. Edelman, *The Politics of Misinformation* (Cambridge, 2001).

¹¹ F. O'Gorman, 'Campaign Rituals and Ceremonies: The Social Meaning of Elections in England, 1780-1860', *P&P*, 135 (1992), pp. 79-115.

aim of parliamentarians and elites. Symbols and rituals do act as mechanisms of social integration, but it is law, the state and the ‘norms’ they are operated by which regulate conflict when these other mechanisms fail.¹² Current studies of political culture echo the explosion of communicative media which constitute the ‘monitory democracy’ of the early twenty-first century, which is not well focused on the daily functioning of politics. This is a shallow and defensive form of political engagement, where citizens examine the climate, rather than the day to day political weather. It is very different to early modern forms of politics and engagement in governing, as has been illustrated in this thesis and elsewhere. But the nature of political culture in a monitory democracy does have an important parallel with early modern Britain; in that it furthers the sense politics is not about some governing the many, but a wide variety of pressure-groups and interests negotiating with representatives at particular moments. What monitory democracy lacks, like in previous historical studies of early modern Britain, is a consideration of how to bring together an explosion of communicative media with traditional representative institutions and the processes of governing. Currently, it stands as a process of criticism and accountability and dependent on a shallow definition of democracy encapsulated in arguments about the ‘majority’, demonstrated in petitions and elections, as the means of representing the ‘public’.

The antithesis to Edelman’s view is to show that the lower sorts of people were actors, not just spectators, being involved in utilitarian politics, demanding of some hard result, and able to get it.¹³ This is something that representative democracy struggles to achieve, but ‘monitory democracy’ has the potential to move closer to this model. But we have seen less study by historians of the potential for ordinary Britons to participate in governing, beyond

¹² Habermas, *Between Facts and Norms*, pp. 73-4.

¹³ For a critical review of Edleman’s work L. Arnhart, ‘Murray Edelman, Political Symbolism, and the Incoherence of Political Science’, *Political Science Reviewer*, 15 (1985), pp. 185-213.

the governing of the parish in the seventeenth century. This is a partly result of sources—the destruction of those of the Commons in the fire of 1834, the confused nature of Chancery records, lack of evidence of petitioning, and the assumptions about access laid out in earlier chapters, have all discouraged this exploration. But political arithmetic, debates in committees and the rule of law, were all important aspects of a deliberative system.

Impartiality, a search for certainty, reasoned argument, and an awareness of self-interest were features of parliamentary debates parliamentarians and the participating public had to at least acknowledge. This ensued policy was the result of a process of negotiation, which helped to identify and restrain ‘blind passion’. The control of the executive was weak over most aspects of policy in the eighteenth century, with the potential origins of policy many and varied. Participation of the public in politics through petitions, litigation, lobbying and providing witnesses to committees, had an important legitimising aspect to the restricted oligarchy of the eighteenth century. Parliamentarians increasingly directed the public towards participatory avenues that tended towards reasoned deliberation, and away from violent petitioning or partisan elections.

The continuing partisanship after the establishment of the whig oligarchy raises the question of how political stability and oligarchy was achieved, in spite of concerns regarding public participation. In 1716, the Triennial Act was repealed, and reduced the role of public judgement in politics.¹⁴ The establishment of an economy of credit and the crisis of the South Sea Bubble demonstrated to the whigs that the public was irrational and corruptible, struggling to adhere to the norms of rationality and politeness held up as the ideal political culture. Elections removed an aspect of public participation, but many elements of partisanship and misrepresentation remained in the issues brought before parliament. But, as

¹⁴ M. Knights, ‘Consequences’, in his *Representation and Misrepresentation in Later Stuart Britain* (Oxford, 2005).

has been argued, in the early eighteenth century the print revolution combined with parliament's increased presence after 1689 to create the 'deliberative oligarchy'. At its base was a transformation which occurred in political culture throughout the seventeenth and early eighteenth century, one that shifted the role of non-elites from spectators to participants, elites seeing political divisions as amenable to stability, rather than a cause of revolt.¹⁵ Stability rested on participation, not disengagement, and trust in subjects to interact with reasoned and deliberative modes of thought within the 'correct' institutional framework. This led to the reduction in the frequency of elections and the removing of certain issues from public debate (such as religion and the abandonment of controversial measures like the French Trade Bill), but also the strengthening of directed participation under subjects largely initiated from the middling sorts.

The features of the culture that formed the 'deliberative oligarchy' may appear a rag-bag list of loosely-related studied items, united by only a shared concern for the operation of the House of Lords. In this thesis, I have discussed the rise of the Lords as high court, civil litigation, physical access to parliament, parliamentary secrecy, the role of interest-groups, attendance at committees, political arithmetic and petitioning—not to mention the British and local aspects to many of these features. What these subjects have in common is their enabling of plural publics to exist, providing alternative viewpoints and information to various parts of the British state. The 'slow and strong drilling through hard boards' that constitutes politics was something many Britons were involved in, and sustained over many sessions of

¹⁵ As can be seen in the shift from the 'selection' of MPs to their 'election', see M. Kishlansky,

Parliamentary Selection: Social and Political Choice in Early Modern England (Cambridge, 1986).

parliament and legal terms.¹⁶ The diversity of voices and influence of the public on policy was on the increase—regardless of the outcome of general elections and the establishment of oligarchy.

The development of this ‘deliberative oligarchy’ was unplanned, and was not solely in response to the ‘rage of party’. Central to its presence was the structural weaknesses of the state and memories of the dislocation of the 1640s. The decision to avoid general acts, thanks to the fear of absolutism, resulted in a state that was in many respects still weak and decentralised—something reflected in the growth of local legislation and litigation.¹⁷ The protection of property meant the first (but limited) General Enclosure Act for England did not occur until 1756, allowing local initiative and negotiation to retain a central policy-making role, despite the development of the central state and parliamentary sovereignty.¹⁸ Equally, the rhetoric of defending property rights legitimised the petitioning and legal activity of lower orders, who could claim their interest as property-owners was being affected by legislation.¹⁹

As Mark Knights has shown, demand for political arithmetic and other impartial discourses gained new ground during the ‘rage of party’, being used by partisans of both sides to challenge the other.²⁰ The emergence of petitioning, a ‘culture of fact’, and ideas of interest offered a practical means of stabilising a society where consensus was no longer seen

¹⁶ D. Owen and T. Strong, eds, *The Vocation Lectures ‘Science as a Vocation’, ‘Politics as a Vocation’* (Indianapolis, 2004), p. 93.

¹⁷ Arguments found in P. Langford, *Public Life and the Propertied Englishman, 1689-1798* (Oxford, 1991), and regarding ‘legal pluralism’, see above note 230, p. 307.

¹⁸ J. Hoppit, ‘The Landed Interest and the National Interest’, in idem, *Parliaments, Nations, Identities* (Manchester, 2003), p. 90. A more powerful act was passed in 1836.

¹⁹ E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1977), Conclusion.

²⁰ Knights, *Representation and Misrepresentation*, p. 309.

as possible after associations, parties and interests had grown in number from the 1640s onwards.²¹ The language and decision of the ‘majority’ was not enough to bring stability—policy was not surrendered by the minority or defeated party after parliament or the electorate had ‘spoken’, because debates continued in print, the law and when it came to be enforced. Intellectual developments were important also in achieving stability—the imagining of a society as a collection of interests meant it was necessary to discover private interests to advance economic growth, whilst demands for ‘facts’ and political arithmetic in the context of a weak executive provided a window for local interests and experts to influence policymaking and resolve disputes. These were important in creating a common means to resolve conflict, and acknowledged by both sides; but many elements and the institutions of the deliberative oligarchy existed without the presence of party, because they were needed to resolve disputes experienced on other issues. The presence of the House of Lords as high court (as well as lower ones) ensured that anti-majority and anti-elite mechanisms were present across the British Isles through the legal system. These elements created a culture of ‘governance’, where there was a lack of division between state and non-state actors, with an overlapping process of governing, shared between locality, interest groups, parliament and the crown. Political pluralism was seen as compatible with stability.

The narrower aims and ends of government in early modern Britain enabled wider participation and the easier establishment of avenues for deliberation. The importance of the locality has always been part of early modern British historiography, but the narrative of state formation is essentially a state expanding towards a centralised Victorian one. John Brewer’s ‘fiscal-military state’ strengthened its financial and bureaucratic elements, Geoffrey Parker showed the impact of the ‘military revolution’ on the early seventeenth century, whilst

²¹ Kishlansky, *Parliamentary Selection*, p. 228.

Edward Higgs has demonstrated the growth of the ‘information state’.²² Parliament is seen as central to this process, through granting the civil list, funding the national debt, and providing legitimacy to the growing fiscal demands of the state. Marxist accounts stressed the decline of local custom through increased statutory regulation, tightening the power of the central state and its ruling elites further.²³ The nation-state was also on the rise, with the growth of Britishness building off one of the consequences of the fiscal-military state, namely the expansion of Empire.

But much of British politics was dependent on local rivalries and identities, and less about national categories of class or rank. People did not petition or sue social elites because of class or rank, but because they were perceived to threaten the economic or social strength of a community.²⁴ The legal system and parliament were structures that were conducive to the patchwork of identities and politics that was eighteenth-century Britain. Keith Snell’s ‘culture of local xenophobia’—a hostility and fear of near neighbours—was a powerful part and motivator of politics and engagement in the period examined in this thesis. The towns of

²² J. Brewer, *The Sinews of Power: War, Money and the English State 1688-1783* (London, 1989); G. Parker, *The Military Revolution: Military Innovation and the Rise of the West, 1500-1800* (Cambridge, 1996); E. Higgs, ‘The Rise of the Information State: The Development of Central State Surveillance of the Citizen in England, 1500-2000’, *Historical Sociology*, 14 (2001), pp. 175-97. For the alternative view, see D. Eastwood, *Government and Community in the English Provinces, 1700-1870* (Basingstoke, 1997); J. Innes, ‘Parliament and the Shaping of Eighteenth-Century Social Policy’, *TRHS*, Fifth Series, 40 (1990), pp. 63-92.

²³ E.P. Thompson, *Customs in Common* (London, 1991).

²⁴ K. Snell, ‘The Culture of Local Xenophobia’, *Social History*, 28 (2003), pp. 1-30. See also B. Kumin, ‘The Fear of Intrusion: Communal Resilience in Early Modern England’, in W. Naphy and P. Roberts, eds, *Fear in Early Modern Society* (Manchester, 1997), pp. 118-36.

Chatham and Rochester were divided only by a boundary stone, but still feared one another.²⁵ These localities could be political (a parish or county), but also geographical (particularly along a shared river) and economic (a shared West-Country cloth interest, for example). The role of the ‘county community’ and the ‘parochial state’ are commonly examined in the context of seventeenth-century historiography, but they did not disappear after 1689.²⁶ Richard Price has argued the period from 1680 to 1880 should be seen as a ‘distinct stage’ in British history, partly based on being the ‘age of localism’.²⁷ These are layers of the state and social identities we have not yet integrated into our accounts. Statutes, as we have seen, often had their origins in litigation, which had their origins in local negotiations. Britons may have killed in the name of national patriotism in the eighteenth century, but they also sued, petitioned, and occasionally fought for their locality or interest. Local interests and material concerns were not parochial, but significant in terms of governing and continuing to raise concerns on the role of the public as an arbiter and judge.

Participation was deepened through the presence of these small-scale ‘minipublics’ that were capable of introducing and influencing national policy and legislation. Provincial newspapers, assize meetings and petitions organised in local coffee houses and churches meant local communities, at certain times, were ‘living democratically’. Their mobilisation was strongly goal-orientated, and dependent on ‘socialising politics’, with an important role for shared interests, kinship, locality and church. These local origins of policy-making were

²⁵ E. Forrest, S. Scott, W. Gostling, *Hogarth's Frolic: The Five Day's Peregrination Around the Isle of Sheppey of William Hogarth and His Fellow Pilgrims* (1732), p. 7.

²⁶ M. Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge, 2000), pp. 12, 428.

²⁷ R. Price, *British Society 1680-1880: Dynamism Containment and Change* (Cambridge, 1999), p. x; Chapter 5.

important in creating legitimacy for the state, for it was easier to trust a policy made by known locals and interests than an institution at the centre. Equally, it was conducive to deliberation—knowledge of local circumstances by communities, rather than national ones would have been more likely, and increased the incentives for negotiation and compromise, as this would reduce the likelihood of further locally-disruptive petitioning campaigns. More research is needed about why (and how) communities finally succeeded in reconciling local tensions—it is notable, for example, that Norfolk provided no appeals to the House of Lords, and few large responsive petitions between 1685 and 1720.

There is a threat created from devolved power, however, in that it makes it easier for a majority or already-powerful interests to dominate the politics of a given area, being not conducive to pluralism and the engagement of the wider community.²⁸ Coercion, deference, and habit—not to mention party rage—were all alternatives to deliberation. Petitions from local areas can be seen as enforcing a particular view on a locality by leading petitioners. But a larger state takes in more varieties and interests, making it less likely that a majority will dominate. This was clearest in the case of Scottish appeals to the House of Lords. Being able to apply the Lords for legal redress meant that minorities in Scotland, such as Episcopalians and those not members of Royal Burghs or economic corporations, did have a means of balancing the power of established interests. Dynamic law making acted as a safety-valve for society, and provided an avenue amenable for deliberation—something the union of 1707 helped to advance. Access to litigation helped to guarantee widespread participation in lawmaking and checked the power of the executive, local elites, and established institutions. They also played an important role in blocking the views of the majority, forcing compromises and the initiators of a policy to rethink.²⁹ Forcing citizens into legal discourse

²⁸ J. Parkinson, 'Localism and Deliberative Democracy', *The Good Society*, 16 (2007), pp. 23-9.

²⁹ C. Mendes, *Constitutional Courts and Deliberative Democracy* (Oxford, 2013), pp. 2-3.

and processes aided the construction and maintenance of a framework of negotiation about what policies were seen as reasonable and for them to hold the consent of more than one interest.

Deliberative politics was a cultural mindset as much a procedural achievement—though both must be present to ensure procedures are used in a deliberative fashion. ‘Every deliberation pre-supposes a doubt’ of ‘what is possible’, instead of ‘what is necessary’.³⁰ For a deliberative system to have legitimacy, the involvement of non-parliamentarians had to have an impact on policy, requiring MPs and peers to recognise and use the views of those ‘out of doors’. It is important, therefore, that contemporaries did reflect on the concept of deliberation during the eighteenth century, and saw pluralism as compatible with political stability—something not easily imaginable under Charles I or James II. The comments of Burke and an anonymous MP of the 1730s were noted in the introduction to this thesis. In addition to them, works of rhetoric stressed the advantages of a deliberative method—René Rapin noted that judicial rhetoric was ‘offensive or defensive’, whilst thinking deliberatively was ‘to show what is useful and expedient...’³¹ ‘Mature’ was a common adjective for describing deliberation; one account claimed the Lords had acted in a ‘deliberative’ fashion during the impeachments of 1701, contrasting the ‘fierce, hot, and bitter’ expressions of the Commons with the ‘mature deliberation and wise counsel’ of the Lords.³² Another asked the reader whether decisions ought to be concluded by the:

³⁰ J. Patsall, ed, *Quintilian's Institutes of the Orator: In Twelve Books* (2 volumes, 1774), Volume 1, p. 173.

³¹ B. Kennet, ed, *The Whole Critical Works of Monsieur Rapin* (2 volumes, London, 1716), Volume 2, p. ii.

³² *A Letter from Some Electors, to one of Their Representatives in Parliament ... Showing the Electorate's Sentiments* (1701), p. 20.

opinion of the privy council after a full hearing and mature deliberation; or the opinion of another body, without any hearing, and upon examining only some persons on one side....and not upon their oaths...³³

The *Craftsman*, when describing parliamentary proceedings, saw the process of voting tobacco duties as ‘deliberative’, the house having heard data and calculations of tobacco duties, the views of a projectors and of ‘other gentlemen’.³⁴ It was desired MPs would be capable of ‘mature deliberation, void of pique as well as interest’ to avoid the ‘wounds made in private men’s circumstances’, encapsulated in the South Sea Bubble.³⁵ Deliberation was seen as having several features: the lack of pre-determined decision, the hearing of experts and interests, and a decision based on their substantial participation. It shared many features with the genteel culture of politeness, but went further in many respects, not least because it was institutionalised in parliament and other parts of the state, involved a wider part of the public and was not restricted to urban society.³⁶ Importantly, this culture of ‘deliberation’ recognised the importance of non-state actors to the proceedings of parliament. The desire was not for a decision that was value or interest-free, effectively hiding politics under a scientific pose, but rather one where the public were co-creators in legislation, where various interests would be negotiated with to determine the public interest, and for this to occur with reference to ‘facts’.³⁷ Potentially this culture declined by 1800, with one study suggesting clothiers and parliamentarians talked past each other during a committee investigation on the

³³ *A Long History of a Certain Session of a Certain Parliament in a Certain Kingdom* (Dublin, 1714), pp. 96-7.

³⁴ Caleb D'Anvers, *The Craftsman* (1737), Volume 11, pp. 109-10.

³⁵ *A Letter from a Gentleman in Worcestershire to a Member of Parliament in London* (1727), p. 26.

³⁶ L. Klein, ‘Politeness and the Interpretation of the British Eighteenth Century’, *HJ*, 45 (2002), pp. 186-214.

³⁷ M. Flinders and J. Buller, ‘Depoliticisation: Principles, Tactics and Tools’, *British Politics*, 1 (2006), pp. 293-318; B. Crick, *In Defence of Politics* (London, 1992), Chapter 5.

state of woollen manufacture, though further research is needed to determine the nature of committee deliberations.³⁸

This culture of deliberation ensured negotiation was firmly part of the processes of policy-making. Some features of this culture were present in the mid-seventeenth century, though not to the extent they were in the eighteenth century. As we have seen, large responsive petitions were present during the Restoration, though on a smaller scale; litigation was arguably a stronger feature of the seventeenth rather than eighteenth century and William Petty was active from the 1650s, but it took the permanent establishment of parliament after 1688/89 to institutionalise and regularise these features. Deliberative politics was not possible to the same extent under the political culture or institutions of the early Stuarts, for it required a number of overlapping institutions, a less hostile attitude to public dissent, and the pressure of both ‘party rage’ and the ‘clash of interests’. Even during the period of the whig oligarchy, deliberation was not a constant presence. Interest groups were not continuous and ever-present, instead there were waves of participation, with people ‘on standby’, capable of holding multiple levels of political identity raised at particular political moments. In this respect, it was less about continuous public sovereignty than the relative power of different interests. The key to the ‘deliberative oligarchy’ was institutional, in that power circulated amongst various institutions, rather than contained solely in parliament, making it accessible and amenable to a range of interests. As John Morley, writing at the end of the nineteenth century, stated:

one great tap-root of our national increase has been the growth of self-government, or government by deliberative bodies, representing opposed principles and conflicting interests. With the system of self-government has grown the habit—not of tolerance precisely, for Englishmen when in earnest are as little in love with

³⁸ J. Smail, ‘New Languages of Labour and Capital: The Transformation of Discourse in the Early Years of the Industrial Revolution’, *Social History*, 12 (1987), pp. 49-71.

tolerance as Frenchmen or any other people, but of giving way to the will of the majority, so long as they remain a majority.³⁹

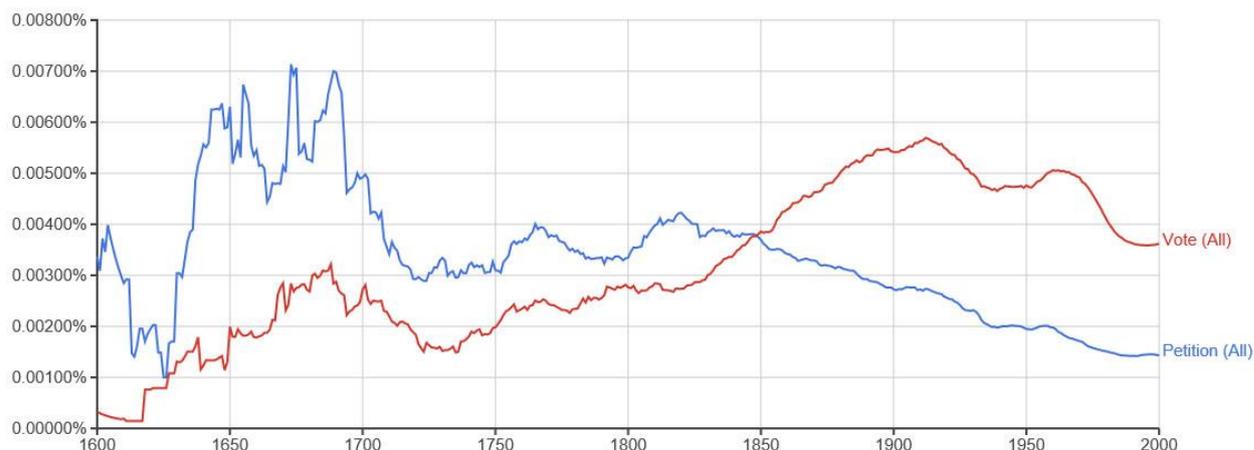
These are elements of political culture we have lost and not regained. If our political institutions had their origins in the medieval period, they ‘came of age’ in the late seventeenth century, but on very different terms to how they function today. The role of interest groups, petitioning, of lobbying committees, did not survive into the age of mass-democracies in the same form, and have traditionally not formed part of parliamentary history. As graph three plausibly suggests, the failure of the Chartist petitioning campaigns and demands for suffrage suggest the shift away from mass-petitioning began in the 1850s, something also supported by the decline in petitioning and their size in table eleven.⁴⁰ As groups became integrated into party politics—particularly nonconformists from the 1870s, and women after the suffrage campaigns of the 1910—there was less need for petitioning, with petitions in the twentieth century being largely on issues more distant from party politics, such as the campaign for nuclear disarmament.⁴¹ More frequent general elections in the nineteenth century also reduced the need for petitions to ‘represent’ the public. Before the end of the nineteenth-century, the dominant place of politics was in a public space, rather than ‘tucked away in the private sphere’. Campaign rituals, like chairing a candidate, also declined at the same time, with the last ‘chairing’ of a parliamentary candidate occurring in 1857 at Dover, a popular

³⁹ J. Morley, *On Compromise* (London, 1898), pp. 105-6.

⁴⁰ C. Leys, ‘Petitioning in the Nineteenth and Twentieth Centuries’, *Political Studies*, 3 (1955), pp. 45-64; D. Judges, ‘Public Petitions and the House of Commons’, *Parliamentary Affairs*, 31 (1978), pp. 391-405, at p. 402.

⁴¹ J. Thompson, *British Political Culture and the Idea of 'Public Opinion', 1867-1914* (Cambridge, 2013), pp. 129-35.

Graph 3: Incidence of ‘Vote’ and ‘Petition’ in Google Books, 1600-2000.



Source: Google Ngram viewer. ‘Vote’ and ‘petition’ were entered for the dates 1600-2000 (though the results are stronger after 1800) and results were case-incentive, with a smoothing of ten years. The results have a cross-over of 1849 here—only four years after the largest petition in British History. Search carried out on 5/11/2014.

Table 11: Petitions to the Commons at Select Years, 1836-1911.

Year	Signatures	Percentage of Electorate
1836	1,500,000	175
1843	6,135,050	718
1857	674,915	119
1865	811,964	34
1875	2,966,607	132
1883	4,638,235	91
1901	1,084,953	31
1911	165,870	2.4

Sources: C. Rallings and M. Thrasher, eds, *British Electoral Facts, 1832-2006* (Aldershot, 2007), p. 61, Table 2.03, and are taken from the closest general election; Leys, ‘Petitioning in the Nineteenth and Twentieth Centuries’.

ritual of politics that had developed in the late Stuart period.⁴² Paula Cossart has also suggested that public assemblies and petitioning in France declined from spaces of deliberation to demonstration between the mid- nineteenth and twentieth century, having

⁴² See Price, *British Society*, Chapter 7; p. 248.

more theatrical ends as a result of greater social antagonism.⁴³ Neither are current petitioning practices as substantive as those of the early modern period, having little impact on government policy.⁴⁴ At Westminster, the petitions system has been described as ‘populist democracy’, existing largely in virtual form, with little substantive debate or comment involved and without a meaningful impact on policy before the Commons (indeed, its ends are to be raised as a debating issue if petitions collect more than 100,000 signatures).⁴⁵ Broadly speaking, political engagement has transformed from a public duty, enforceable by party or group pressure (through petitioning, litigation, or a non-secret ballot) to a private act, enforceable through private conscience.⁴⁶

The Revolutions of the 1640s and 1688/89 ensured that political pluralism became the predominant feature of eighteenth-century Britain. These two events are part of the same story, in that irreconcilable tensions were created across British society, first between royalists and cavaliers, and later driven by parties and interest groups. But only the second ultimately led to the transformation in the public sphere from ‘informal debate’ to ‘formal deliberation’ (accepting the limits to political arithmetic discussed earlier). Given the longer length of parliament after the repeal of the Triennial Act, it is no surprise that because ‘it is impossible for the people to foresee at the time of the election what affairs might come under their [MPs] deliberation’, there was a need to ‘furnish them with matters of instruction...[or]

⁴³ P. Cossart, *From Deliberation to Demonstration: Political Rallies in France 1868-1939*

(Colchester, 2013).

⁴⁴ C. Bochel, H. Bochel, P. Somerville and C. Worley, ‘Marginalised or Enabled Voices? “User Participation” in Policy and Practice’, *Social Policy and Society*, 7 (2008), pp. 201-10.

⁴⁵ C. Bochel, ‘Petitions Systems: Contributing to Representative Democracy?’, *Parliamentary Affairs*, 66 (2013), pp. 798-815, at pp. 803-4.

⁴⁶ M. Schudson, *The Good Citizen: A History of American Civic Life* (Cambridge, Mass., 1999).

addresses...'.⁴⁷ The majority gained in an election rarely lasted long; new majorities would be formed during parliamentary sessions, and these changes in public opinion needed to be reflected for the maintenance of legitimacy and consent.

The reliance of elites on the law, their defence of property and distrust of a standing army meant there remained many sites of power, and the competing interests to use them. The Glorious Revolution and the annual sessions of parliament did alter the basis of public debate—even without electoral strife. The shift from policies being made through patents and prerogative means to statute in parliament increased the ability of the wider public to participate in its making, the terms on which they participated, and the 'rules' by which policy was made and justified by. The law and the importance of certain rules helped to enforce a greater plurality of voices in political debate and at some point in the 'circulation of power' for the decisions of elites to be tested against known and accepted rules.⁴⁸ These rules were a response to the growth of interests and involvement of the public in politics that the more open political culture centred on parliament, rather than a small court, created.

Despite the presence of a deliberative pluralistic political culture and institutions encouraging of reasoned public deliberation, Britain remained an oligarchy. Social and political inequality was still implicit in eighteenth-century Britain, the largest riots of the

⁴⁷ D'Anvers, *The Craftsman*, Volume 11, p. 262.

⁴⁸ The institutional revolution of 1688/89 altered the means and norms by which policy was made.

Ideas such as political arithmetic and the language of interest found their importance to lie in attempts to manage and understand the divided political culture of the post-1688/89 period. Parliamentarians often sought to provide constraints against dominant interests and a 'misled' public voice, not the crown, as was argued in D. North and B. Weingast, 'Constitutions and Commitment: The Evolution of Institutional Governing Public Choice in Seventeenth-Century England', *Journal of Economic History*, 59 (1989), pp. 803-32.

century were motivated by anti-popery, and the rule of law was abused. Neither was the culture of ‘representation’ any less important than Knights has shown, with ‘deliberation’ being an important response to it. Just like the culture of ‘representation and misrepresentation’ it sought to manage, deliberation could be episodic and focused on moments of policy-making, just as elections were moments of concentrated partisan activity. More research is needed in central and local institutions and at different times, to place this concept on surer footing. How extensive was the ‘great litigation decline’, and for which groups, subjects, and regions? The tension between the importance of a locality and the extent of genuine pluralism, and whether it encouraged reasoned deliberation, is a real one, and needs further research. The situation in Scotland before 1707 and the extent the union enabled opportunities to challenge elites, is also an important gap. If there was a multi-layered and circular-process of law-making, ruling, enforcement and challenge, work is needed on the functioning of local institutions and key national ones—especially the Convention of Royal Burghs. Nonetheless, I believe we need to think about a dualist conception of political engagement—the role of the public being heard through voting and contestation, but also as authors and editors of policy. The study of the public *doing things together* to affect policy, is what we need now. To quote an extract from Soame Jenyns’ poem, *The First Epistle of the Second Book of Horace, Imitated*, written in 1748:⁴⁹

But now the world’s quite altered, all are bent
 To leave their seats, and fly to parliament;
 Old men and boys in this alone agree,
 And vainly courting popularity
 Play their obstreperous voters all night long
 With bumpers, toasts, and now and then a song:
 Even I, who swear these follies I despise,
 Than statesman, or their porters tell more lies;
 And, for the fashion-sake, in spite of nature,
 Commence sometimes a most important creature,
 Busy as *Carus* rave for ink and quills,

⁴⁹ C. Cole, *The Works of Soame Jenyns* (2 volumes, Dublin, 1791), Volume 1, p. 77.

And stuff my head and pockets full of bills.
Few land-men go to sea, unless they're pressed,
And quacks in all professions are a jest;
None dare to kill, except the most learned physicians,
Learned or unlearned, we all are politicians:
There's not a soul but thinks, could he be sent,
He has parts enough to shine in parliament.

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ZA/F City of Chester Assembly
ZM/L Mayor's Letters

Cumberland Archives, Carlisle

D HG Howard Family of Greystocke
Castle
D HUD Huddlestone Family of Hutton
D LONS Letters of Sir John Lowther

Centre for Kentish Studies

DHB Dover Harbour Board
NR New Romney Borough
U38 Weller Manuscripts
U269 Sackville Manuscripts

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DDKE/acc. 7840 Kenyon of Peel

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T 1 Treasury Papers
T 27 Treasury Out-Letter Books
T 70 African Company
RAIL 800/1 Commissioners of Aire and
Calder Navigation

National Records of Scotland

GD5 Papers of the Bertram Family of
Nisbet
GD6 Papers of the Brooke Family of Biel
GD27/3 Kennedy of Dalquharran, Letters
and Papers
GD124/15/768 Correspondence to the Earl
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GD124/15/1024 Earls of Dalhousie,
Correspondence

Norfolk Record Office

Y/C/36 Great Yarmouth Borough
Miscellaneous Correspondence

Northumberland Record Office

ZBL 189 Blackett Family of Maften

University of Nottingham Special Collections

MeC Mellish Family of Hodsock
PwA Papers of First Earl of Portland

Parliamentary Archives

HL/PO/CO/1 Committee Books
HL/PO/JO/5/1 Manuscript Minutes
HL/PO/JO/10/1 Main Papers
HL/PO/JO/10/3 Main Papers (Large
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